

**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.

**MOTION RECORD OF THE MONITOR  
(Motion for a Restraining Order)  
(returnable January 22, 2017)**

January 10, 2018

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**TAB 1**

**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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LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611 CANADA INC.

Applicants

**NOTICE OF MOTION  
(returnable January 22, 2017)**

FTI Consulting Canada Inc., in its capacity as Court-appointed monitor (the "**Monitor**") in the proceedings of the Applicants pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. c-36, as amended (the "**CCAA**") will make a motion to a Judge, on Monday, January 22, 2017, at 10:00 am or as soon after that time as the motion can be heard, at the courthouse located at 330 University Avenue.

**PROPOSED METHOD OF HEARING:** The motion is to be heard orally.

**THE MOTION IS FOR:**

1 an Order, substantially in the form included in the Monitor's Motion Record (the "**Restraining Order**"):

- (a) declaring that the plaintiffs (the "**Tremblay Plaintiffs**") in the class action styled as *Karine Tremblay v. Centre Hi-Fi Chicoutimi, et al.* (Superior Court of Quebec

File Number: 150-06-000010-173) (the “**Tremblay Action**”) have failed to comply with and breached the stay of proceedings (the “**Stay**”) established by the Initial Order (as defined below);

(b) restraining and enjoining the Tremblay Plaintiffs and the plaintiffs in each of the following further class actions (the “**Plaintiffs**”) styled as:

(i) *Luc Cantin and Francois Routhier v. Ameublements Tanguay Inc. et al.* (Superior Court of Quebec File Number: 500-06-000709-143);

(ii) *Lise Ostiguy v. Sears Canada Inc.* (Superior Court of Quebec File Number: 500-06-000537-106); and

(iii) *Jacques Fillion v. Corbeil Électrique Inc.* (Superior Court of Quebec File Number: 500-06-000535-100),

(collectively with the Tremblay Action, the “**Warranty Class Actions**”) from taking any further step or action that would be in contravention of the Initial Order, the Stay ordered thereby, or any other Order of this Court; and

(c) ordering that the Monitor is entitled to the costs of this motion on a substantial indemnity basis, payable forthwith.

**THE GROUNDS FOR THE MOTION ARE:**

1 On June 22, 2017, the Applicants in these proceedings, including Sears Canada Inc. (“**Sears Canada**”) and Corbeil Électrique Inc. (“**Corbeil**”), sought and obtained an initial order (as amended and restated on July 13, 2017, the “**Initial Order**”) under the CCAA;

2 The Initial Order, among other things:

- (a) appointed FTI Consulting Canada Inc. as Monitor of the Sears Canada Entities in the CCAA proceedings;
- (b) granted an initial stay of proceedings (the “**Stay**”) in respect of the Sears Canada Entities, their current and former directors and officers, the Monitor and the Sears Canada Entities and Monitor’s respective employees and representatives until July 22, 2017;

3 The Stay has since been extended by various Orders of the Court, most recently on October 13, 2017, and is currently is set to expire on January 22, 2017. The Monitor understands that the Applicants will bring a motion on that date to have it further extended;

4 Sears Canada and Corbeil are currently the subject of each of the Warranty Class Actions, either together or singularly;

5 The Monitor has made counsel to the Plaintiffs in the Warranty Class Actions aware of the fact of the Initial Order and Stay on at least six occasions and the Applicants have also made counsel to the Plaintiffs aware of the Initial Order and the Stay;

6 Notwithstanding such warnings, on November 29, 2017, Plaintiffs’ counsel served a motion to amend the Tremblay Plaintiffs’ “original application for leave to institute a class action” (the “**Motion to Amend**”) in order to, among other things, add both the Monitor and certain former and current directors of Sears Canada as defendants in the Tremblay Action;

7 The Motion to Amend is scheduled to be heard by the Quebec Superior Court on February 16, 2018;

8 The provisions of the CCAA, including sections 11 and 11.02 thereof, and the inherent and equitable jurisdiction of this Honourable Court;

9 Rules 1.04, 1.05, 2.03, 16, 17.02, 37 and 57 of the *Rules of Civil Procedure*, R.R.O 1990, Reg. 194, as amended and sections, 101, 106 and 131 of the *Courts of Justice Act*, R.S.O. 1990, c. C-43 as amended; and

10 Such other and further grounds as counsel may advise and this Honourable Court may permit.

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

1 The Tenth Report of the Monitor dated January 10, 2018; and

2 Such further and other evidence as counsel may advise and this Court may permit.

January 10, 2018

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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., et al.

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

Proceeding commenced at TORONTO

**NOTICE OF MOTION**  
**(Motion for a Restraining Order)**  
**(returnable January 22, 2017)**

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**TAB 2**

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

**SEARS CANADA INC.,  
AND RELATED APPLICANTS**

**TENTH REPORT OF FTI CONSULTING CANADA INC., AS MONITOR**

**January 10, 2018**

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**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  
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ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC. AND  
3339611 CANADA INC.

APPLICANTS

**TENTH REPORT TO THE COURT  
SUBMITTED BY FTI CONSULTING CANADA INC.,  
IN ITS CAPACITY AS MONITOR**

**A. INTRODUCTION**

1. On June 22, 2017, Sears Canada Inc. ("**Sears Canada**") and a number of its operating subsidiaries (collectively with Sears Canada, the "**Applicants**") sought and obtained an initial order (as amended and restated on July 13, 2017, the "**Initial Order**"), under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"). The relief granted pursuant to the Initial Order was also extended to Sears Connect LP, a partnership forming part of the operations of the Applicants (and together with the Applicants, the "**Sears Canada Entities**"). The proceedings commenced under the CCAA by the Applicants are referred to herein as the "**CCAA Proceedings**".
2. The Initial Order, among other things:

- (a) appointed FTI Consulting Canada Inc. as monitor of the Sears Canada Entities (the “**Monitor**”) in the CCAA Proceedings;
- (b) granted an initial stay of proceedings (the “**Stay**”) against the Sears Canada Entities, their current and former directors and officers, the Monitor and the Sears Canada Entities and Monitor’s respective employees and representatives until July 22, 2017.

The Stay has since been extended by various Orders of the Court, most recently on October 13, 2017 (such Order being the “**Stay Extension Order**”), and is currently is set to expire on January 22, 2017. The Monitor understands that the Applicants will bring a motion on that date to have it further extended. Copies of the Initial Order and Stay Extension Order are included with **Appendix “E”**.

- 3. On October 13, 2017, the Court also approved an agreement and a process (the “**Second Liquidation Process**”) for the liquidation of the inventory and FF&E at all remaining Sears Canada locations (which liquidation commenced shortly thereafter).
- 4. On October 4, 2017, the Court issued orders approving the sale of various businesses and assets of the Applicants, including the going-concern sale of substantially all of the assets of Corbeil Électrique Inc. (“**Corbeil**”) to Am-Cam Électroménagers Inc. (the “**Corbeil Purchaser**”), which transaction ultimately closed on November 25, 2017.
- 5. On December 8, 2017, the Court issued, among other orders, an order approving a claims process for the identification, determination and adjudication of claims of certain creditors against the Sears Canada Entities and their current and former officers and directors.
- 6. In connection with the CCAA Proceedings, the Monitor has provided nine reports and four supplemental reports (collectively, the “**Prior Reports**”), and prior to its appointment as Monitor, FTI also provided to this Court a pre-filing report of the proposed Monitor dated June 22, 2017 (the “**Pre-Filing Report**”). The Pre-Filing Report, the Prior Reports and other Court-filed documents and notices in these CCAA

Proceedings are available on the Monitor's website at [cfcanada.fticonsulting.com/searscanada/](http://cfcanada.fticonsulting.com/searscanada/) (the "**Monitor's Website**").

## **B. PURPOSE**

7. The purpose of this tenth report of the Monitor (the "**Tenth Report**") is to provide the Court with information on the Monitor's motion for an Order, substantially in the form included in the Monitor's Motion Record (the "**Restraining Order**"):

(a) declaring that the plaintiffs (the "**Tremblay Plaintiffs**") in the class action *Karine Tremblay v. Centre Hi-Fi Chicoutimi, et al.* (Superior Court of Quebec File Number: 150-06-000010-173) (the "**Tremblay Action**") have failed to comply with and breached the Stay established by the Initial Order; and

(b) restraining and enjoining the Tremblay Plaintiffs and the plaintiffs in each of the following further class actions (the "**Plaintiffs**") styled as:

(i) *Luc Cantin and Francois Routhier v. Ameublements Tanguay Inc. et al.* (Superior Court of Quebec File Number: 500-06-000709-143) (the "**Cantin/Routhier Action**");

(ii) *Lise Ostiguy v. Sears Canada Inc.* (Superior Court of Quebec File Number: 500-06-000537-106); and

(iii) *Jacques Fillion v. Corbeil Électrique Inc.* (Superior Court of Quebec File Number: 500-06-000535-100)

(collectively with the Tremblay Action and Cantin/Routhier Action, the "**Warranty Class Actions**") from taking any further step or action that would be in contravention of the Initial Order, the Stay ordered thereby, or any other Order of the Court; and

(c) ordering that the Monitor is entitled to the costs of the motion for the Restraining Orders on a substantial indemnity basis.



**C. TERMS OF REFERENCE**

8. In preparing this Tenth Report, the Monitor has relied upon audited and unaudited financial information of the Sears Canada Entities, the Sears Canada Entities' books and records, certain financial information and forecasts prepared by the Sears Canada Entities and discussions and correspondence with, among others, the senior management (“**Management**”) of, and advisors to, the Sears Canada Entities (collectively, the “**Information**”).
9. Except as otherwise described in this Tenth Report:
  - (a) the Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the *Chartered Professional Accountants of Canada Handbook*; and
  - (b) the Monitor has not examined or reviewed the financial forecasts or projections referred to in this Tenth Report in a manner that would comply with the procedures described in the *Chartered Professional Accountants of Canada Handbook*.
10. Future-oriented financial information reported in or relied on in preparing this Tenth Report is based on Management's assumptions regarding future events. Actual results will vary from these forecasts and such variations may be material.
11. The Monitor has prepared this Tenth Report in connection with its motion for the Restraining Order. The Tenth Report should not be relied on for any other purpose.
12. Capitalized terms not otherwise defined herein have the meanings ascribed to them in the affidavit of Mr. Billy Wong, the Chief Financial Officer of Sears Canada, sworn on June 22, 2017, and the Prior Reports of the Monitor in these proceedings.

**D. BACKGROUND ON THE WARRANTY CLASS ACTIONS**

13. Two of the Applicants in these CCAA Proceedings, Sears Canada and Corbeil, are currently the subject of each of the Warranty Class Actions, either together or singularly, along with various other defendants in certain of the actions.
14. The Warranty Class Actions were initiated at various dates ranging from November 2010 to 2017 but in general they concern customers in Quebec who purchased an extended warranty from various appliance and other electronics retailers, including Sears Canada and Corbeil, following and in reliance upon misrepresentations allegedly made by these retailers.
15. The alleged misrepresentations made by the retailers at issue are that, absent the purchase of an extended warranty:
  - (a) the goods purchased by the Plaintiff class members would no longer be protected by any retailers' warranty beyond one year and/or expiry of the manufacturer's own warranty; and
  - (b) all costs of replacement or repair following damage to the good/product at issue would be the consumer's responsibility after such period.
16. According to the Plaintiffs, these were misrepresentations because sections 37 and 38 of the *Consumer Protection Act* (Quebec) (the "CPAQ") already requires merchants to warrant that all goods they sell be "fit for the purpose for which goods of that kind are ordinarily used" and be "durable in normal use for a reasonable length of time, having regard to their price, the terms of the contract and the conditions of their use."
17. The Plaintiffs involved in the Warranty Class Actions are generally seeking reimbursement of the cost (including taxes) of the extended warranties at issue plus punitive damages.
18. For the purposes of the present motion for the Restraining Order, the Monitor takes no position on the validity of the Plaintiffs' claims made.

**E. INITIAL INQUIRIES BY PLAINTIFFS' COUNSEL**

19. The Plaintiffs are represented by both David Bourgoïn of BGA Avocats, S.E.N.C.R.L. and Benoit Gamache of Cabinet BG Avocat Inc. On each of October 5 and 11, 2017, Mr. Gamache sent an email to the Monitor's general address, asking how he might file one or more proof of claim forms in respect of the Warranty Class Actions so that the underlying claims could be added to any claims register. Copies of these emails, together with certified translations of the same, are together attached hereto as **Appendix "A"**.
20. On October 17, 2017, Arad Mojtahedi, an associate at Norton Rose Fulbright Canada LLP, counsel to the Monitor, telephoned Mr. Gamache to discuss his questions. Among other things, Mr. Mojtahedi explained to Mr. Gamache the fact and nature of the CCAA Proceedings and Stay generally, and also noted that it was anticipated that the Sears Canada Entities would ultimately commence a claims process in which the claims of his clients could be addressed.
21. As Mr. Gamache also had further specific questions and concerns which Mr. Mojtahedi could not yet answer, he also invited Mr. Gamache to send an email setting out his questions so that could be more fully addressed in due course.
22. Mr. Gamache followed up by email to Mr. Mojtahedi on October 18, 2017, and enclosed various attachments including a letter dated October 16, 2017 addressed to the Monitor and a further letter dated the same date addressed to an individual understood to be former counsel to Corbeil in one of the Warranty Class Actions. In the email and letters, Mr. Gamache advised that section 256 of the CPAQ stipulated that where a merchant's obligations under a contract extended beyond two months after execution of the contract, monies transferred by a consumer to the merchant under the contract were to be held in trust pending the merchant's performance of those obligations. Mr. Gamache indicated he understood that, in order to exempt themselves from this requirement, both Sears Canada and Corbeil had posted performance bonds (the "**Consumer Protection Bonds**") with the Consumer Protection Office of Quebec (the "**CPO**") as security for such obligations.
23. Mr. Gamache suggested that the funds posted did not constitute property of the Applicants and indicated that he wished to access these funds for the benefit of the

Plaintiffs. In order to do so under the CPAQ, he advised that he needed either a “judgement (impossible under the stay) or an out-of-court settlement”<sup>1</sup>, and asked that the Monitor consider whether such a settlement might be possible. In addition, Mr. Gamache also requested that the Monitor provide him with various details of the Consumer Protection Bonds, including the amounts posted under each. A copy of the October 18, 2017 email, together with its attachments and together with a certified translation of the email and certain of those attachments (being the two letters dated October 16, 2017), are attached collectively hereto as **Appendix “B”**.

24. As the Monitor at that time had only very limited information regarding the circumstances or background of the Warranty Class Actions, it made inquiries with the Sears Canada Entities, as well as with the CPO and the relevant insurers on the Consumer Protection Bonds. To that end, on October 20, 2017, and then again on October 23 and 27, in reply to further follow up emails from Mr. Gamache, Mr. Mojtahedi advised that the Monitor was making such inquiries, and would respond once it had sufficient information to consider and reply to his requests. A copy of the chain of emails, together with a certified translation of the same, is attached hereto as **Appendix “C”**.

#### **F. BREACHES OF THE STAY DESPITE REPEATED WARNINGS**

25. On November 14, 2017, Mr. Gamache sent an email to Mr. Mojtahedi advising that, in light of evidence he had that extended warranties continued to be sold after the commencement of the CCAA Proceedings and after the October 13, 2017 approval of the Second Liquidation Process, he would be taking steps to add the Monitor as a defendant in the Tremblay Action unless “a negotiated solution” could be quickly found. A copy of the November 14, 2017 email, together with its attachments and a certified translation of the email, is attached hereto as **Appendix “D”**.
26. The next day, Mr. Mojtahedi sent a letter to Mr. Gamache confirming not only that the Stay continued to apply as against not only the Sears Canada Entities, but as against the Monitor as well, in addition to their respective employees and representatives. The letter

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<sup>1</sup> [Translation]

enclosed copies of both the Initial Order and Stay Extension Order, quoting the relevant excerpts in French, and further cautioned that the Initial Order holds the Monitor immune from any action brought by reason of its appointment, on the following terms:

“34. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.”

27. Mr. Mojtahedi’s November 15, 2017 letter advised Mr. Gamache that in due course he would be able to prove any claims his clients might have once the Court had approved a claims process, including any claims his clients might assert against the Consumer Protection Bonds. A copy of the November 15, 2017 letter, together with a certified translation of the same, is attached hereto as **Appendix “E”**.
28. Plaintiffs’ counsel provided no response to this letter to either the Monitor or its counsel. However on November 29, 2017, Mr. Gamache served Nick Rodrigo (of Davies, Ward, Philips & Vineberg LLP, counsel to Sears Canada in three of the Warranty Class Actions) with a motion to amend the Tremblay Plaintiffs’ “original application for leave to institute a class action” (the “**Motion to Amend**”) in order to, among other things, add both the Monitor and certain current and former directors of Sears Canada as defendants in the Tremblay Action. A copy of the Motion to Amend dated November 29, 2017, together with a certified translation of the same, is attached hereto as **Appendix “F”**.
29. On receipt of the Motion to Amend, counsel to the Monitor moved immediately to file a “Notice of Stay” in each of Warranty Class Actions that same day, and on December 4, 2017, Mr. Mojtahedi sent a further letter to Plaintiffs’ counsel again putting them on notice of the Stay and asking that they withdraw their Motion to Amend immediately and by no later than December 7, 2017. The letter additionally warned Mssrs. Gamache and Bourgoin of the potential consequences of their actions on the following terms:

[TRANSLATION] “This letter is therefore a warning. We request that you withdraw your Application to Amend **by December 7, 2017** at 5 p.m. and that you comply with the stay of proceedings in respect of Sears

Canada, Corbeil and the Monitor in each of your Class Actions. Our client will not permit any further breach of the Initial Order. In the event of a further breach, our client will be compelled to institute the appropriate proceedings, including for contempt of court. If we do not receive confirmation before December 8 that your Application to Amend has been withdrawn and that you agree to comply with the stay of proceedings in respect of the Sears Canada Entities and the Monitor, we intend to speak directly to the Honourable Justice Martin Dallaire and to make the necessary representations. We also reserve the right to produce this letter and the November 15 Letter, in the event of another breach, in order to show that it is not the first time you have breached the Initial Order.”

A copy of the December 4, 2017 letter, together with a certified translation of the same, is attached hereto as **Appendix “G”**.

30. Counsel to the Monitor at this time also learned that the Motion to Amend had been served by Plaintiffs’ counsel in the face of three previous notices by Mr. Rodrigo of the fact and effect of the Stay and Initial Order; firstly by email on June 26, 2017, and subsequently by copy in a letter to Justice Dallaire in the Tremblay Action dated September 25, 2017, and a letter to the presiding judge in the Cantin/Routhier Action dated September 21, 2017, in each case enclosing the Initial Order and any relevant Orders extending the Stay. Copies of the June 26, 2017 email, and the September 21 and September 25, 2017 letters, together with certified translations of the same, are attached hereto as **Appendices “H”, “I” and “J”**, respectively.

### **CASE CONFERENCE IN THE TREMBLAY ACTION**

31. At the time that Mr. Gamache had served the Motion to Amend, a motion to dismiss (the Tremblay Action (the **“Motion to Dismiss”**)) was pending before the Honourable Justice Dallaire of the Superior Court of Quebec in Chicoutimi, which was scheduled to be heard on February 16, 2018. As a result, Justice Dallaire sent a letter the following day requesting a case conference amongst the parties in order to consider the impact of Tremblay Plaintiffs’ Motion to Amend on the scheduled Motion to Dismiss.
32. On December 8, after having been advised of the case conference by Mr. Rodrigo and having received nothing from Plaintiffs’ counsel by the December 7 deadline, counsel to Monitor circulated a letter to Justice Dallaire (copying each of the other parties, including

Mr. Gamache) advising him of the CCAA Proceedings and Stay, and detailing the history of both the Monitor’s warnings and notices to Plaintiffs’ counsel as well as their actions to breach the Stay in spite of them. The letter advised as well that the Monitor proposed to participate in the pending case teleconference—which by that time had been scheduled for December 21, 2017. A copy of the December 8 letter to Justice Dallaire, together with a certified translation of the same, is attached hereto as **Appendix “K”**.

33. Counsel to the Tremblay Plaintiffs responded by way of a letter to Justice Dallaire on December 12, 2017, advised that they “consider[ed] it inappropriate for our colleague to plead his clients’ position in writing without having been authorized by the court and without any status to do so.”<sup>2</sup> This letter remains the only correspondence—direct or indirect—received by the Monitor from Plaintiff’s counsel since their November 14 email. A copy of the December 12 letter, together with a certified translation of the same, is attached hereto as **Appendix “L”**.
34. On December 14, 2017, counsel to the Monitor responded by letter to Justice Dallaire, copying the parties and noting that, contrary to Mr. Gamache’s suggestion, there was “nothing inappropriate”<sup>3</sup> about a Court-appointed officer notifying the Superior Court of Quebec that a stay was in effect in respect of the parties against whom the Tremblay Plaintiffs were seeking to exercise remedies. The letter went on to emphasize that if the Tremblay Plaintiffs sought to institute proceedings against such parties, a motion to lift that stay was required before the Ontario Superior Court of Justice in Toronto. A copy of the December 14 letter to Justice Dallaire, together with a certified translation of the same, is attached hereto as **Appendix “M”**.
35. On December 21, 2017, the case teleconference took place as scheduled and counsel to each of the original parties to the Tremblay Action, as well as counsel to each the Monitor and the Board of Directors participated. The Monitor participated in an effort to avoid costs and Court time for the instant motion.

---

<sup>2</sup> [Translation]

<sup>3</sup> [Translation]

36. Justice Dallaire directed that the Motion to Amend proceed on February 16, 2018, instead of the Motion to Dismiss as had been previously scheduled, and asked that the parties make full written submissions. Under the timeline ordered by Justice Dallaire, each of the existing defendants, the Monitor and the Board of Directors must submit their written submissions against the Motion to Amend by February 2, 2018.

**G. NEED FOR THE RESTRAINING ORDER**

37. The Monitor has now made Plaintiffs' counsel aware of the Initial Order and Stay on at least six occasions—four in writing—and Mr. Rodrigo on behalf of the Applicants has separately notified them on at least three further occasions. Plaintiffs' counsel's response has been not only to consistently ignore these notices and warnings, but also in fact to take multiple steps in direct breach of the Initial Order and Stay in spite of them.
38. The steps taken by Plaintiffs' counsel to add the Monitor and the certain former and past directors of Sears Canada as defendants in the Tremblay Action are not the only time that they have recently sought to circumvent Court Orders and cause additional costs for stakeholders in these CCAA Proceedings. On November 9, 2017, Plaintiff's counsel served on the Corbeil Purchaser an originating application in a class action (the "**Originating Application**") seeking to add the Corbeil Purchaser as a defendant in the Cantin/Routhier Action and hold it responsible for alleged actions of Corbeil, whose assets the Corbeil Purchaser acquired on November 25, 2017. In response, the Corbeil Purchaser's counsel promptly advised counsel to the Plaintiffs by letter dated November 28, 2017 that the transaction had been the subject of an approval and vesting order dated October 4, 2017 in the CCAA Proceedings that specifically excluded the assumption of any liabilities of Corbeil in the Cantin/Routhier Action. The letter included a copy of that Order, and accordingly requested that the Originating Application be withdrawn within five business days. A copy of the November 28, 2017 letter is attached hereto as **Appendix "N"**.
39. However, Plaintiffs' counsel failed to provide any substantive response to the November 28 letter and refused to withdraw its Originating Application, which in turn forced the



Corbeil Purchaser to file its own application to dismiss the Plaintiffs' Originating Application on December 21, 2017.

40. In light of such continuing attempts to circumvent the Initial Order, the Stay Extension Order and the other Orders of this Court, and with responding materials to the Motion to Amend due on February 2, 2018, the Monitor is now left with no alternative but to move for the Restraining Order. The Applicants, the Monitor and the other parties protected by the Stay and those Orders should not have to continue to expend time and limited resources addressing and responding to the Tremblay Plaintiffs' breaches, and it does not remain open to the Tremblay Plaintiffs or their counsel to continue them.
41. The Monitor therefore requests that the Court formally recognize this and grant the Restraining Order.


The Monitor respectfully submits to the Court this, its Tenth Report.

Dated this 10<sup>th</sup> day of January, 2018.

FTI Consulting Canada Inc.  
In its capacity as Monitor of  
Sears Canada Inc. and the other corporations in the Sears Canada Group



Paul Bishop  
Senior Managing Director



Greg Watson  
Senior Managing Director

**APPENDIX “A”  
(see attached)**

**From:** Benoît Gamache [mailto:bgamache@cabinetbg.ca]  
**Sent:** Wednesday, October 11, 2017 11:12 AM  
**To:** Sears Canada  
**Subject:** TR: CLASS ACTION / DEBTOR-CREDITOR: Creditors / Class Action Members (SEARS - CORBEIL)

Good day,

Our firm is acting as class counsel in class action matters (hereinafter referred to as "class actions" in the province of Quebec) against Sears Canada and Corbeil (Électroménagers/Électrique Inc.).

All these matters revolve around sales of extended warranties and systemic (mis)representations regarding the detrimental consequences of not purchasing additional protection.

We would like to know the procedure to follow to file one or more claim forms as creditors so that the claims from the class actions are added to the list of creditors.

The Court matters concerned are:

1. Filion v Corbeil Électrique inc.	(500-06-000535-100)
2. Ostiguy v Sears Canada	(500-06-000537-106)
3. Routhier v Corbeil Électroménagers inc. (Corbeil Électrique inc.) et als	(500-06-000709-143)
4. Tremblay v Sears Canada et als	150-06-000010-173)

We have left numerous messages (by telephone and email) for which we are still awaiting follow-up.

We look forward to hearing from you.

BG

**Benoît Gamache, avocat / attorney**  
Direct Line: (514) 908-7446  
Cabinet BG Avocat Inc.  
BG Law Firm Inc.

<image001.jpg>

4725 Metropolitan East, Suite  
207  
Montreal, Quebec H1R 0C1  
Telephone: (514) 908-7460 / 1-  
866-327-0123  
Fax: (514) 329-0120 / 1-866-  
616-0120  
Website: [www.bgavocat.com](http://www.bgavocat.com)



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**From:** Benoît Gamache  
**Sent:** October 5 2017 10:18  
**To:** 'searscanada@fticonsulting.com' <[searscanada@fticonsulting.com](mailto:searscanada@fticonsulting.com)>  
**Cc:** 'Sonia Tremblay' <[stremblay@bga-law.com](mailto:stremblay@bga-law.com)>  
**Subject:** Creditors / Class Action Members

Good day,

Our firm is acting as class counsel in class action matters (hereinafter referred to as "class actions" in the province of Quebec) against Sears Canada and Corbeil (Électroménagers/Électrique Inc.): [bga-law.com/gp](http://bga-law.com/gp) and [bga-law.com/gpcantin](http://bga-law.com/gpcantin)

All these matters revolve around sales of extended warranties and systemic (mis)representations regarding the detrimental consequences of not purchasing additional protection.

We would like to know the procedure to follow to file one or more claim forms as creditors so that the claims from the class actions are added to the list of creditors.

The Court matters concerned are:

1. Filion v Corbeil Électrique inc.	(500-06-000535-100)
2. Ostiguy v Sears Canada	(500-06-000537-106)
3. Routhier v Corbeil Électroménagers inc. (Corbeil Électrique inc.) et als	(500-06-000709-143)
4. Tremblay v Sears Canada et als	150-06-000010-173)

We have left numerous messages (by telephone and email) for which we are still awaiting follow-up.

We look forward to hearing from you.

BG

**Benoît Gamache, avocat / attorney**



Direct Line: (514) 908-7446  
Cabinet BG Avocat Inc.  
BG Law Firm Inc.

BG

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ORIGINAL DOCUMENT(S) FOLLOW

**Schmitt, Alexander**

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**From:** Sears Canada <searscanada@fticonsulting.com>  
**Sent:** October-16-17 12:28 PM  
**To:** Mojtahedi, Arad; Gauthier, Virginie  
**Subject:** FW: CLASS ACTION / DEBTOR-CREDITOR: Créanciers / Membres de recours collectifs

Good Morning Arad & Virginie,

Please see below / attached for an email rec'd by the FTI General Inquiry email that requires French Translation.

Kind Regards

**Lindsay Shierman**  
+1.403.454.6036 D | +1.587.581.0361 C  
[lindsay.shierman@fticonsulting.com](mailto:lindsay.shierman@fticonsulting.com)

---

**From:** Benoît Gamache [<mailto:bgamache@cabinetbg.ca>]  
**Sent:** Wednesday, October 11, 2017 11:12 AM  
**To:** Sears Canada  
**Subject:** CLASS ACTION / DEBTOR-CREDITOR: Créanciers / Membres de recours collectifs

Bonjour,

Notre firme agit comme avocats-conseils des demandeurs dans dossier de recours collectif (Désormais désignées « actions collectives » dans la province de Québec) contre Sears Canada et Corbeil (Électroménagers /Électrique).

Tous ces dossiers s'articulent autour de la vente de garanties prolongées et aux représentations (fausses) sur les conséquences préjudiciables de ne pas en faire l'achat d'une protection supplémentaire.

Nous désirons connaitre la procédure à suivre afin déposer un ou des formulaires de réclamations à titre de créanciers afin que les réclamations issues des actions collectives soient ajoutées à liste des créanciers

Les dossiers de justice concernées sont :

1. Filion c. Corbeil Électrique inc.	(500-06-000535-100)
2. Ostiguy c. Sears Canada	(500-06-000537-106)
3. Routhier c. Corbeil Électroménagers inc. (Corbeil Électrique inc.) et als	(500-06-000709-143)
4. Tremblay c, Sears Canada et als	150-06-000010-173)

Nous avons laissé des messages (téléphoniques et courriels) pour lesquels nous attendons toujours un suivi.

Dans l'attente de vos nouvelles

BG

**Benoît Gamache, avocat / attorney**

Ligne directe : (514) 908-7446  
Cabinet BG Avocat Inc.  
BG Law firm Inc.



4725, Métropolitaine Est, bureau 207  
Montréal (Québec) H1R 0C1  
Téléphone : (514) 908-7460 / 1-866-327-0123  
Télécopieur : (514) 329-0120 / 1-866-616-0120  
Site web : [www.bgavocat.com](http://www.bgavocat.com)

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---

**De :** Benoît Gamache  
**Envoyé :** 5 octobre 2017 10:18  
**À :** 'searscanada@fticonsulting.com' <[searscanada@fticonsulting.com](mailto:searscanada@fticonsulting.com)>  
**Cc :** 'Sonia Tremblay' <[stremblay@bga-law.com](mailto:stremblay@bga-law.com)>  
**Objet :** Créanciers / Membres de recours collectifs

Bonjour,

Notre firme agit comme avocats-conseils des demandeurs dans dossier de recours collectif (Désormais désignées « actions collectives » dans la province de Québec) contre Sears Canada et Corbeil (Électroménagers /Électrique) : [bga-law.com/gp](http://bga-law.com/gp) et [bga-law.com/gpcantin](http://bga-law.com/gpcantin)

Tous ces dossiers s'articulent autour de la vente de garanties prolongées et aux représentations (fausses) sur les conséquences préjudiciables de ne pas en faire l'achat d'une protection supplémentaire.

Nous désirons connaître la procédure à suivre afin déposer un ou plusieurs formulaires de réclamations à titre de créanciers afin que les réclamations issues des actions collectives soient ajoutées à liste des créanciers



## 28

Les dossiers de justice concernés sont :

1. Filion c. Corbeil Électrique inc.	(500-06-000535-100)
2. Ostiguy c. Sears Canada	(500-06-000537-106)
3. Routhier c. Corbeil Électroménagers inc. (Corbeil Électrique inc.) et als	(500-06-000709-143)
4. Tremblay c, Sears Canada et als	(150-06-000010-173)

Nous avons laissé des messages (téléphoniques et courriels) pour lesquels nous attendons toujours un suivi.

Dans l'attente de vos nouvelles

BG

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**APPENDIX "B"**  
**(see attached)**

**From:** Benoît Gamache [mailto:bgamache@cabinetbg.ca]  
**Sent:** October 18, 2017 10:52 AM  
**To:** Mojtahedi, Arad  
**Subject:** RE: CLASS ACTION / DEBTOR-CREDITOR: Creditors / Class Action Members (SEARS - CORBEIL)

Hello,

Thank you for your quick reply.

As discussed, please find attached a copy of our correspondence bearing yesterday's date.

We are also attaching a copy of the Sears protection plan describing (clause 6 *In fine*) the refund prorated on a monthly basis in the event of cancellation of the protection plan. Discontinuation of operations and termination of the protection plans constitute valid causes of cancellation.

Moreover, we hereby confirm that we wish to exercise our remedies with respect to the securities required by the Office de la protection du consommateur ( s. 256 CPA). We submit to you that the contracts of security can only cover protection plans. Consequently, such contracts cannot constitute "liquidatable" assets under the CCAA and are not part of the winding-up. From a certain perspective, the members of our class actions would be, in some sense, "preferred creditors" of the protection plans, on the grounds that they alone may benefit from the securities (Sears and Corbeil).

To exercise our rights in respect of the contracts of security and have the OPC intervene, we must first obtain either a judgement (impossible under the stay) or an out-of-court agreement covering the protection plans. Given that such an agreement would not in any way deprive the other creditors, we think it is an avenue worth exploring.

On a different note, we wish to be informed of the situation regarding the sale of Corbeil's assets. More specifically, we would like you to send us a copy of the transaction involving the continuance of operations under the "Corbeil" trademark. The constituent elements of that transaction will have an impact on the rights of the members of our class action (Routhier). For such purpose, you are hereby advised that our class action (Routhier v Corbeil) targets both Corbeil Électroménager and Corbeil électrique. See the decision of the Court of Appeal of Québec (attached hereto).

We look forward to your comments and suggestions.

BG

**Benoît Gamache, avocat / attorney**  
Direct Line: (514) 908-7446  
Cabinet BG Avocat Inc.  
BG Law Firm Inc.

<image001.jpg>

4725 Metropolitan East, Suite  
207  
Montreal, Quebec H1R 0C1  
Telephone: (514) 908-7460 / 1-  
866-327-0123  
Fax: (514) 329-0120 / 1-866-



616-0120  
Website: [www.bgavocat.com](http://www.bgavocat.com)

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**From:** Mojtahedi, Arad [<mailto:arad.mojtahedi@nortonrosefulbright.com>]  
**Sent:** October 17, 2017 5:14 PM  
**To:** Benoît Gamache <[bgamache@cabinetbg.ca](mailto:bgamache@cabinetbg.ca)>  
**Subject:** TR: CLASS ACTION / DEBTOR-CREDITOR: Creditors / Class Action Members (SEARS - CORBEIL)

Dear Mtre. Me Gamache,

As discussed on the telephone, here is my contact information.

Best regards,

**Arad Mojtahedi**  
Avocat  
Associate

Norton Rose Fulbright Canada S.E.N.C.R.L., s.r.l. / LLP  
1 Place Ville Marie, Suite 2500, Montréal, QC, H3B 1R1, Canada  
T: +1 514.847.4582 | F: +1 514 286 5474  
[arad.mojtahedi@nortonrosefulbright.com](mailto:arad.mojtahedi@nortonrosefulbright.com)

**NORTON ROSE FULBRIGHT**

**From:** Benoît Gamache [<mailto:bgamache@cabinetbg.ca>]  
**Sent:** Wednesday, October 11, 2017 11:12 AM  
**To:** Sears Canada  
**Subject:** TR: CLASS ACTION / DEBTOR-CREDITOR: Creditors / Class Action Members (SEARS - CORBEIL)

Good day,

Our firm is acting as class counsel in class action matters (hereinafter referred to as "class actions" in the province of Quebec) against Sears Canada and Corbeil (Électroménagers/Électrique Inc.).



All these matters revolve around sales of extended warranties and systemic (mis)representations regarding the detrimental consequences of not purchasing additional protection.

We would like to know the procedure to follow to file one or more claim forms as creditors so that the claims from the class actions are added to the list of creditors.

The Court matters concerned are:

1. Fillion v Corbeil Électrique inc.	(500-06-000535-100)
2. Ostiguy v Sears Canada	(500-06-000537-106)
3. Routhier v Corbeil Électroménagers inc. (Corbeil Électrique inc.) et als	(500-06-000709-143)
4. Tremblay v Sears Canada et als	150-06-000010-173)

We have left numerous messages (by telephone and email) for which we are still awaiting follow-up.

We look forward to hearing from you.

BG

**Benoît Gamache, avocat / attorney**

Direct Line: (514) 908-7446

Cabinet BG Avocat Inc.

BG Law Firm Inc.

<image001.jpg>

4725 Metropolitan East, Suite

207

Montreal, Quebec H1R 0C1

Telephone: (514) 908-7460 / 1-

866-327-0123

Fax: (514) 329-0120 / 1-866-

616-0120

Website: [www.bgavocat.com](http://www.bgavocat.com)

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**From:** Benoît Gamache

**Sent:** October 5 2017 10:18

**To:** '[searscanada@fticonsulting.com](mailto:searscanada@fticonsulting.com)' <[searscanada@fticonsulting.com](mailto:searscanada@fticonsulting.com)>



Cc: 'Sonia Tremblay' <stremblay@bga-law.com>

Subject: Creditors / Class Action Members

Good day,

Our firm is acting as class counsel in class action matters (hereinafter referred to as "class actions" in the province of Quebec) against Sears Canada and Corbeil (Électroménagers/Électrique Inc.): [bga-law.com/gp](http://bga-law.com/gp) and [bga-law.com/gpcantin](http://bga-law.com/gpcantin)

All these matters revolve around sales of extended warranties and systemic (mis)representations regarding the detrimental consequences of not purchasing additional protection.

We would like to know the procedure to follow to file one or more claim forms as creditors so that the claims from the class actions are added to the list of creditors.

The Court matters concerned are:

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2. Ostiguy v Sears Canada	(500-06-000537-106)
3. Routhier v Corbeil Électroménagers inc. (Corbeil Électrique inc.) et als	(500-06-000709-143)
4. Tremblay v Sears Canada et als	150-06-000010-173)

We have left numerous messages (by telephone and email) for which we are still awaiting follow-up.

We look forward to hearing from you.

BG

**Benoît Gamache, avocat / attorney**

Direct Line: (514) 908-7446

Cabinet BG Avocat Inc.

BG Law Firm Inc.

BG

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BG Law Firm Inc. Letterhead

**Benoît Gamache, Attorney**  
Direct Line: 514-908-7446  
Fax: 514-329-0120  
bgamache@cabinetbg.ca

**BY EMAIL: (416) 649-8101**

Montreal, October 16, 2017

**Messrs. Paul Bishop and Greg Watson**  
FTI CONSULTING CANADA LTD  
(SEARS CANADA AND CORBEIL)

Dear Sirs,

RE: Class Actions: *Sears Canada and Corbeil*  
No: 500-06-000709-143 and 150-06-000010-173

---

Our firm is acting as class counsel in four (4) class action matters (hereinafter referred to as "class actions" in the province of Québec) against *Sears Canada* and *Corbeil* (Électroménagers/Électrique Inc.).

All these matters revolve around sales of extended warranties and systemic (mis)representations regarding the detrimental consequences of not purchasing additional protection.

First, we would like to know the procedure to follow to file one or more claim forms as creditors so that the claims from the class actions are added to the list of creditors.

We respectfully submit that we have left numerous messages (by telephone and email) for which we are still awaiting follow-up.

The Court matters concerned are:

1. Filion v Corbeil Électrique inc.	(500-06-000535-100)
2. Ostiguy v Sears Canada	(500-06-000537-106)
3. Routhier v Corbeil Électroménagers inc. (Corbeil Électrique inc.) et als	(500-06-000709-143)
2. Tremblay v Sears Canada et als	(150-06-000010-173)

Second, barring an agreement, we are going to apply to the court for a *contrôle d'office* by the monitors for the matters 500-06-000709-143 and 150-06-000010-173 in which the securities of the Office de la protection du consommateur are still in effect. Necessarily cannot be included in the *contrôle d'office* the companies Corbeil and Sears.





As a reminder, when additional warranties are sold, the need for retailers to request an exemption under section 256 CPA applies (1) when immovables are sold and are to be delivered more than two months after the contract of sale is made or (2) when the Extended Warranty sold comes into effect more than two months after it is sold.

"Consumer Protection Act

Prohibited practice.

**Any merchant who proposes to a consumer to purchase a contract that includes an additional warranty on goods without first providing the information mentioned in this section is deemed to have failed to mention an important fact, and therefore to have used a practice prohibited under section 228.**

(...)

**256.** Any sum of money collected from a consumer by a merchant under a contract that stipulates that the principal obligation of the merchant is to be performed more than two months after the contract is made shall be transferred in trust. The merchant is the trustee of the sum and must deposit it in a trust account until the principal obligation has been performed.

(...)"

Now, these companies (corporate locations and several franchises listed in Schedule A) held securities in order to benefit from the exemption under section 256 CPA, the whole as appears from Schedule A hereto.

Now, these two companies, their corporate locations and/or franchises marketed and sold thousands of additional warranties in Quebec for which we are compelled today to request enforcement of the securities.

In view of the foregoing, we wish to know the monitors' position at the first opportunity by October 25, 2107 so that we may inform those assigned to special management of these class actions.

I look forward to your reply.

Yours truly,

(signed)

Benoît Gamache  
BG Law Firm Inc.



**LISTS OF SEARS AND CORBEIL STORES, OUTLETS OR FRANCHISEES WITH PERMITS AND SECURITIES UNDER SECTION 256 CPA**

NAMES OF PERMIT HOLDERS	NAMES USED	ENTERPRISE NO. AND PERMIT NO.
<p>SEARS CANADA INC. 700-290 YONGE STREET TORONTO, Ontario M5B 2C3</p> <p>SEARS CANADA INC. 3075 THIMENS BLVD. SAINT-LAURENT, Quebec H4R 1Y3</p>	<p>DECOR SEARS MOBILIER ELECTROMENAGER SEARS® SEARS CANADA INC.</p>	<p>Enterprise No.: 1140287658 Section 256 exemption: No. 101185</p>
<p>CORBEIL ÉLECTRIQUE INC. 6783 Léger Blvd. Montreal, Quebec H1G 6H8</p>	<p>Corbeil électroménagers (previous name) Corbeil Electric Inc. CORBEIL ÉLECTRIQUE INC. EXPANSOL (previous name)</p>	<p>Enterprise No.: 1140521528 Section 256 exemption: No. 601812</p>
<p>9304-2000 Québec inc. 3595 Chambly Rd. Longueuil, Quebec J4L 1N9</p>	<p>9304-2000 Québec inc. Corbeil Corbeil Électroménagers</p>	<p>Enterprise No.: 1170132402 Section 256 exemption: No. 601808</p>
<p>9128-8217 QUÉBEC INC. 4646 Parc Ave., Montreal, Quebec H2V 4E5</p>	<p>9128-8217 QUÉBEC INC. Corbeil Elect Corbeil Elect (previous name) CORBEIL ÉLECTROMÉNAGERS</p>	<p>Enterprise No.: 1161473815 Section 256 exemption: No. 601807</p>



NAMES OF PERMIT HOLDERS	NAMES USED	ENTERPRISE NO. AND PERMIT NO.
9059-0365 QUÉBEC INC. 7543 Taschereau Blvd. Brossard, Quebec J4Y 1A2	9059-0365 Québec inc. CORBEIL ÉLECTROMÉNAGERS CORBEIL ÉLECTROMÉNAGERS (Brossard) (previous name)	Enterprise No.: 1147390810 Section 256 exemption: No. 601324
9084-7443 QUÉBEC INC. 390 Lamontagne St. Saint-Jérôme, Quebec J7Y 0E1	9059-0365 Québec inc. CORBEIL ÉLECTROMÉNAGERS CORBEIL ÉLECTROMÉNAGERS (previous name)	Enterprise No.: 1148981278 Section 256 exemption: No. 601320
9121-4759 QUÉBEC INC. 1563 Des Promenades Blvd. Longueuil, Quebec J3Y 5K2	9121-4759 Québec inc. CORBEIL ÉLECTROMÉNAGERS	Enterprise No.: 1161068888 Section 256 exemption: No. 601536
GESTION ÉRIC DUBREUIL INC. 302-584 Touraine Rd. Boucherville, Quebec J4B 8S5	Corbeil Appliances Boucherville Corbeil Électroménager Boucherville GESTION ÉRIC DUBREUIL INC.	Enterprise No.: 1165513962 Section 256 exemption: No. 601633
7026111 CANADA INC. 325 GRÉBER BLVD., UNIT M-2 GATINEAU, Quebec J8T 8J3	7026111 CANADA INC. Corbeil électrique inc. CORBEIL ÉLECTROMÉNAGERS (previous name)	Enterprise No.: 1165465809 Section 256 exemption: No. 601635
MAINTENANCE BRUNEAU INC. 95 BABY ST. JOLIETTE, Québec J6E 2V4	CORBEIL ÉLECTROMÉNAGER MAINTENANCE BRUNEAU INC.	Enterprise No.: 1142850610 Section 256 exemption: No. 601323



NAMES OF PERMIT HOLDERS	NAMES USED	ENTERPRISE NO. AND PERMIT NO.
9050-7575 QUÉBEC INC. 2231 Des Récollets Blvd. Trois-Rivières, Quebec G8Z 3X6	9050-7575 QUÉBEC INC. CORBEIL ÉLECTROMÉNAGERS (Trois-Rivières)	Enterprise No.: 1146835732 Section 256 exemption: No. 601321
9081-7842 QUÉBEC INC. 67 Robichaud St. Granby, Quebec J2H 0W6	9081-7842 QUÉBEC INC. CORBEIL ÉLECTROMÉNAGERS	Enterprise No.: 1148820963 Section 256 exemption: No. 601329
ÉLECTROMÉNAGERS BUREAU & BUREAU INC. 600 Galt St. W. Sherbrooke, Quebec J1H 1Y9	CORBEIL ÉLECTROMÉNAGERS ÉLECTROMÉNAGERS BUREAU & BUREAU INC.	Enterprise No.: 1149262397 Section 256 exemption: No. 601519
LES ÉLECTROMÉNAGERS BOUVREUIL INC. 100 Moreau St. Saint-Jean-sur-Richelieu, Quebec J2W 2M4	CORBEIL ÉLECTROMÉNAGERS St-Jean-sur-Richelieu (previous name) LES ÉLECTROMÉNAGERS BOUVREUIL INC.	Enterprise No.: 1149959125 Section 256 exemption: No. 601534
9140-9508 QUÉBEC INC. 156-86 Brien Blvd. Repentigny, Quebec J6A 5K7	9140-9508 QUÉBEC INC. CORBEIL ÉLECTROMÉNAGERS	Enterprise No.: 1162156039 Section 256 exemption: No. 601685



BG Law Firm Inc. Letterhead

**Benoît Gamache, Attorney**  
Direct Line: 514-908-7446  
Fax: 514-329-0120  
bgamache@cabinetbg.ca

**BY EMAIL (THE ORIGINAL WILL FOLLOW BY MAIL)**

Montreal, October 16, 2017

**Mtre. Joël Simard**  
ALLARD, RENAUD ET ASSOCIÉS  
5199 Sherbrooke Street East, Suite 3671  
Montreal, Quebec H1T 3X2

Dear Confrère,

RE: Request for access to information regarding security  
No: 500-06-000709-143 and 150-06-000010-173

Our firm is acting as class counsel in the following class action matters (hereinafter referred to as "class actions" in the province of Québec) against *Sears Canada* and *Corbeil* (Électroménagers/Électrique Inc.):

<p><b>1. Routhier v Corbeil Électroménagers inc. (Corbeil Électrique inc.) et als</b></p> <p>(Sales made after June 30, 2010)</p>	<p>(500-06-000709-143)</p>
<p><b>2. Tremblay v Sears Canada et als</b></p> <p>(Sales made after June 30, 2010)</p>	<p>(150-06-000010-173)</p>

All these matters revolve around sales of extended warranties and systemic (mis)representations regarding the detrimental consequences of not purchasing additional protection.

As you probably know, Sears Canada is the principal shareholder of Corbeil. On June 22, 2017, Sears Canada Inc. and Corbeil Électrique Inc. ("Corbeil") sought and obtained an initial order from the Ontario Superior Court of Justice (Commercial List) under the *Companies' Creditors Arrangement Act* ("CCAA"). On October 13, 2017, the court ordered the business' winding-up.

Now, these companies are also the target of four (4) class action suits regarding the sale of such extended warranties.

As a reminder, when additional warranties are sold, the need for retailers to request an exemption under section 256 CPA applies (1) when immovables are sold and are to be delivered more than two months after the contract of sale is made or (2) when the Extended Warranty sold comes into effect more than two months after it is sold.



However, these companies (corporate locations and several franchises) held securities in order to benefit from the exemption under section 256 CPA, the whole as appears from Schedule A hereto.

Now, these two companies, their corporate locations and/or franchises marketed and sold thousands of additional warranties in Quebec for which we are compelled today to request enforcement of the securities.

In view of the foregoing, we wish to be provided with the following information:

- 1- The monetary value of each security given: (a) for each permit holder, (b) for their locations listed in Schedule A
- 2- The durations of the securities.

I look forward to your reply.

Yours truly,

(signed)

Benoît Gamache  
**BG Law Firm Inc.**



**LISTS OF SEARS AND CORBEIL STORES, OUTLETS OR FRANCHISEES WITH PERMITS AND SECURITIES UNDER SECTION 256 CPA**

NAMES OF PERMIT HOLDERS	NAMES USED	ENTERPRISE NO. AND PERMIT NO.
<p>SEARS CANADA INC. 700-290 YONGE STREET TORONTO, Ontario M5B 2C3</p> <p>SEARS CANADA INC. 3075 THIMENS BLVD. SAINT-LAURENT, Quebec H4R 1Y3</p>	<p>DECOR SEARS MOBILIER ELECTROMENAGER SEARS® SEARS CANADA INC.</p>	<p>Enterprise No.: 1140287658 Section 256 exemption: No. 101185</p>
<p>CORBEIL ÉLECTRIQUE INC. 6783 Léger Blvd. Montreal, Quebec H1G 6H8</p>	<p>Corbeil électroménagers (previous name) Corbeil Electric Inc. CORBEIL ÉLECTRIQUE INC. EXPANSOL (previous name)</p>	<p>Enterprise No.: 1140521528 Section 256 exemption: No. 601812</p>
<p>9304-2000 Québec inc. 3595 Chambly Rd. Longueuil, Quebec J4L 1N9</p>	<p>9304-2000 Québec inc. Corbeil Corbeil Électroménagers</p>	<p>Enterprise No.: 1170132402 Section 256 exemption: No. 601808</p>
<p>9128-8217 QUÉBEC INC. 4646 Parc Ave., Montreal, Quebec H2V 4E5</p>	<p>9128-8217 QUÉBEC INC. Corbeil Elect Corbeil Elect (previous name) CORBEIL ÉLECTROMÉNAGERS</p>	<p>Enterprise No.: 1161473815 Section 256 exemption: No. 601807</p>



NAMES OF PERMIT HOLDERS	NAMES USED	ENTERPRISE NO. AND PERMIT NO.
9059-0365 QUÉBEC INC. 7543 Taschereau Blvd. Brossard, Quebec J4Y 1A2	9059-0365 QUÉBEC INC. CORBEIL ÉLECTROMÉNAGERS CORBEIL ÉLECTROMÉNAGERS (Brossard) (previous name)	Enterprise No.: 1147390810 Section 256 exemption: No. 601324
9084-7443 QUÉBEC INC. 390 Lamontagne St. Saint-Jérôme, Quebec J7Y 0E1	9059-0365 Québec inc. CORBEIL ÉLECTROMÉNAGERS CORBEIL ÉLECTROMÉNAGERS (previous name)	Enterprise No.: 1148981278 Section 256 exemption: No. 601320
9121-4759 QUÉBEC INC. 1563 Des Promenades Blvd. Longueuil, Quebec J3Y 5K2	9121-4759 Québec inc. CORBEIL ÉLECTROMÉNAGERS	Enterprise No.: 1161068888 Section 256 exemption: No. 601536
GESTION ÉRIC DUBREUIL INC. 302-584 Touraine Rd. Boucherville, Quebec J4B 8S5	Corbeil Appliances Boucherville Corbeil Électroménager Boucherville GESTION ÉRIC DUBREUIL INC.	Enterprise No.: 1165513962 Section 256 exemption: No. 601633
7026111 CANADA INC. 325 GRÉBER BLVD., UNIT M-2 GATINEAU, Quebec J8T 8J3	7026111 CANADA INC. Corbeil électrique inc. CORBEIL ÉLECTROMÉNAGERS (previous name)	Enterprise No.: 1165465809 Section 256 exemption: No. 601635
MAINTENANCE BRUNEAU INC. 95 BABY ST. JOLIETTE, Québec J6E 2V4	CORBEIL ÉLECTROMÉNAGERS MAINTENANCE BRUNEAU INC.	Enterprise No.: 1142850610 Section 256 exemption: No. 601323





NAMES OF PERMIT HOLDERS	NAMES USED	ENTERPRISE NO. AND PERMIT NO.
9050-7575 QUÉBEC INC. 2231 Des Récollets Blvd. Trois-Rivières, Quebec G8Z 3X6	9050-7575 QUÉBEC INC. CORBEIL ÉLECTROMÉNAGERS (Trois-Rivières)	Enterprise No.: 1146835732 Section 256 exemption: No. 601321
9081-7842 QUÉBEC INC. 67 Robichaud St. Granby, Quebec J2H 0W6	9081-7842 QUÉBEC INC. CORBEIL ÉLECTROMÉNAGERS	Enterprise No.: 1148820963 Section 256 exemption: No. 601329
ÉLECTROMÉNAGERS BUREAU & BUREAU INC. 600 Galt St. W. Sherbrooke, Quebec J1H 1Y9	CORBEIL ÉLECTROMÉNAGERS ÉLECTROMÉNAGERS BUREAU & BUREAU INC.	Enterprise No.: 1149262397 Section 256 exemption: No. 601519
LES ÉLECTROMÉNAGERS BOUVREUIL INC. 100 Moreau St. Saint-Jean-sur-Richelieu, Quebec J2W 2M4	CORBEIL ÉLECTROMÉNAGERS St-Jean-sur-Richelieu (previous name) LES ÉLECTROMÉNAGERS BOUVREUIL INC.	Enterprise No.: 1149959125 Section 256 exemption: No. 601534
9140-9508 QUÉBEC INC. 156-86 Brien Blvd. Repentigny, Quebec J6A 5K7	9140-9508 QUÉBEC INC. CORBEIL ÉLECTROMÉNAGERS	Enterprise No.: 1162156039 Section 256 exemption: No. 601685



ORIGINAL DOCUMENT(S) FOLLOW

**Schmitt, Alexander**

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**From:** =?utf-8?B?QmVub8OudCBHYW1hY2hl?=? on behalf of Benoît Gamache  
<bgamache@cabinetbg.ca>  
**Sent:** October-18-17 10:52 AM  
**To:** Mojtahedi, Arad  
**Subject:** RE: CLASS ACTION / DEBTOR-CREDITOR: Créanciers / Membres de recours collectifs (SEARS - CORBEIL)  
**Attachments:** LFTI CONSULTING 16OCT2017 BG.PDF; LSIMARD OPC 16OCT2017.pdf; JUGEMENT CA 7 SEPTEMBRE 2017.pdf; PLAN PROTECTION SEARS.PDF  
**Follow Up Flag:** Assurer un suivi

Bonjour,

Merci pour votre réponse rapide,

Tel que discuté, veuillez trouver, ci-jointe, une copie de notre correspondance datée d'hier.

Nous vous joignons également une copie du plan de protection Sears qui fait état (clause no. 6 *In fine*) du remboursement proportionnel, sur une base mensuelle, en cas d'annulation du plan de protection. La cessation des opérations et la fin des plan de protection constituent des causes d'annulation valables.

Par ailleurs, nous vous confirmons vouloir exercer nos recours sur les cautions exigées par l'office de la protection du consommateur ( art. 256 L.p.c.). Nous vous soumettons que les contrats de cautionnement ne peuvent viser uniquement que les plans de protections. Par conséquent, ces contrats ne peuvent constituer des actifs « liquidables » au sens de la LAAC et ne font pas partie de la liquidation. Dans une certaine perspective, les membres de nos recours seraient en quelque sorte des « créanciers privilégiés » des plans de protection, et cela, au motif qu'eux seuls peuvent bénéficier des cautionnements ( Sears et Corbeil).

Pour exercer nos droits à l'encontre des contrats de cautionnement et faire intervenir l'OPC, nous devons préalablement obtenir soit un jugement ( impossible en vertu de la suspension) soit une entente hors-cour visant les plans de protections. Considérant qu'une telle entente ne priverait aucunement les autres créanciers, nous pensons que ce serait une voie à explorer.

Dans un autre registre, nous souhaitons être informé de la situation visant la vente d'actifs de Corbeil. Plus spécifiquement, nous désirons nous voir communiquer une copie de la transaction impliquant la continuité des opérations sous la marque de commerce « Corbeil ». Les éléments constitutif de cette transaction auront un effet sur les droits des membres de notre action collective ( Routhier). À cet effet, nous vous avisons que notre action collective (Routhier c. Corbeil) vise autant Corbeil Électroménager que Corbeil électrique. Voir la décision de la Cour d'appel du Québec ( ci-jointe)

Dans l'attente de vos commentaires et suggestions,

BG

**Benoît Gamache, avocat / attorney**

Ligne directe : (514) 908-7446

Cabinet BG Avocat Inc.

BG Law firm Inc.



4725, Métropolitaine Est, bureau 207  
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**De :** Mojtahedi, Arad [mailto:[arad.mojtahedi@nortonrosefulbright.com](mailto:arad.mojtahedi@nortonrosefulbright.com)]  
**Envoyé :** 17 octobre 2017 17:14  
**À :** Benoît Gamache <[bgamache@cabinetbg.ca](mailto:bgamache@cabinetbg.ca)>  
**Objet :** TR: CLASS ACTION / DEBTOR-CREDITOR: Créanciers / Membres de recours collectifs

Bonjour Me Gamache,

Tel que discuté au téléphone, voici mes coordonnées.

Meilleures salutations,

**Arad Mojtahedi**

Avocat  
Associate

Norton Rose Fulbright Canada S.E.N.C.R.L., s.r.l. / LLP  
1, Place Ville Marie, Bureau 2500, Montréal, QC, H3B 1R1, Canada  
T: +1 514.847.4582 | F: +1 514 286 5474  
[arad.mojtahedi@nortonrosefulbright.com](mailto:arad.mojtahedi@nortonrosefulbright.com)

**NORTON ROSE FULBRIGHT**

---

**From:** Benoît Gamache [mailto:[bgamache@cabinetbg.ca](mailto:bgamache@cabinetbg.ca)]  
**Sent:** Wednesday, October 11, 2017 11:12 AM  
**To:** Sears Canada  
**Subject:** CLASS ACTION / DEBTOR-CREDITOR: Créanciers / Membres de recours collectifs

Bonjour,

Notre firme agit comme avocats-conseils des demandeurs dans dossier de recours collectif (Désormais désignées « actions collectives » dans la province de Québec) contre Sears Canada et Corbeil (Électroménagers /Électrique).

## 48

Tous ces dossiers s'articulent autour de la vente de garanties prolongées et aux représentations (fausses) sur les conséquences préjudiciables de ne pas en faire l'achat d'une protection supplémentaire.

Nous désirons connaître la procédure à suivre afin déposer un ou des formulaires de réclamations à titre de créanciers afin que les réclamations issues des actions collectives soient ajoutées à liste des créanciers

Les dossiers de justice concernées sont :

1. Filion c. Corbeil Électrique inc.	(500-06-000535-100)
2. Ostiguy c. Sears Canada	(500-06-000537-106)
3. Routhier c. Corbeil Électroménagers inc. (Corbeil Électrique inc.) et als	(500-06-000709-143)
4. Tremblay c, Sears Canada et als	150-06-000010-173)

Nous avons laissé des messages (téléphoniques et courriels) pour lesquels nous attendons toujours un suivi.

Dans l'attente de vos nouvelles

BG

**Benoît Gamache, avocat / attorney**

Ligne directe : (514) 908-7446

Cabinet BG Avocat Inc.

BG Law firm Inc.



4725, Métropolitaine Est, bureau 207

Montréal (Québec) H1R 0C1

Téléphone : (514) 908-7460 / 1-866-327-0123

Télécopieur : (514) 329-0120 / 1-866-616-0120

Site web : [www.bgavocat.com](http://www.bgavocat.com)

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**De :** Benoît Gamache  
**Envoyé :** 5 octobre 2017 10:18  
**À :** 'searscanada@fticonsulting.com' <[searscanada@fticonsulting.com](mailto:searscanada@fticonsulting.com)>  
**Cc :** 'Sonia Tremblay' <[stremblay@bga-law.com](mailto:stremblay@bga-law.com)>  
**Objet :** Créanciers / Membres de recours collectifs

Bonjour,

Notre firme agit comme avocats-conseils des demandeurs dans dossier de recours collectif (Désormais désignées « actions collectives » dans la province de Québec) contre Sears Canada et Corbeil (Électroménagers /Électrique) : [bga-law.com/gp](http://bga-law.com/gp) et [bga-law.com/gpcantin](http://bga-law.com/gpcantin)

Tous ces dossiers s'articulent autour de la vente de garanties prolongées et aux représentations (fausses) sur les conséquences préjudiciables de ne pas en faire l'achat d'une protection supplémentaire.

Nous désirons connaître la procédure à suivre afin déposer un ou plusieurs formulaires de réclamations à titre de créanciers afin que les réclamations issues des actions collectives soient ajoutées à liste des créanciers

Les dossiers de justice concernés sont :

1. Filion c. Corbeil Électrique inc.	(500-06-000535-100)
2. Ostiguy c. Sears Canada	(500-06-000537-106)
3. Routhier c. Corbeil Électroménagers inc. (Corbeil Électrique inc.) et als	(500-06-000709-143)
4. Tremblay c, Sears Canada et als	(150-06-000010-173)

Nous avons laissé des messages (téléphoniques et courriels) pour lesquels nous attendons toujours un suivi.

Dans l'attente de vos nouvelles

BG

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4725, Métropolitaine Est, Bureau 207 Montreal (Québec) H1R 1C0  
Téléphone : 1-866-327-0123      Télécopieur : 1-866-606-0120

**Benoît Gamache, avocat**  
Ligne directe : 514 908-7446  
Télécopieur : 514-329-0120  
bgamache@cabinetbg.ca

**PAR TÉLÉCOPIEUR : (416) 649 8101**

Montréal, le 16 octobre 2017

**Messieurs Paul Bishop et Greg Watson**  
FTI CONSULTING CANADA LTD  
(SEARS CANADA & CORBEIL)

Objet :            *Actions collectives : Sears Canada et Corbeil*  
No. :              500-06-000709-143 et 150-06-000010-173.

---

Messieurs les contrôleurs,

Notre firme agit comme avocats-conseils des demandeurs dans quatre (4) dossiers de recours collectif (Désormais désignées « actions collectives » dans la province de Québec) contre *Sears Canada* et *Corbeil* (Électroménagers /Électrique Inc.).

Tous ces dossiers s'articulent autour de la vente de garanties prolongées et aux représentations (fausses) sur les conséquences préjudiciables de ne pas en faire l'achat d'une protection supplémentaire.

Dans un premier temps, nous désirons connaître la procédure à suivre afin déposer un ou plusieurs formulaires de réclamations à titre de créanciers afin que les réclamations issues des actions collectives soient ajoutées à liste des créanciers.

Nous vous soumettons respectueusement avoir laissé de nombreux messages (téléphoniques et courriels) pour lesquels nous attendons toujours un suivi.

Les dossiers de justice concernés sont :

1. Filion c. Corbeil Électrique inc.	(500-06-000535-100)
2. Ostiguy c. Sears Canada	(500-06-000537-106)
3. Routhier c. Corbeil Électroménagers inc. (Corbeil Électrique inc.) et als	(500-06-000709-143)
4. Tremblay c, Sears Canada et als	(150-06-000010-173)

En deuxième lieu, à moins d'une entente, nous allons solliciter du tribunal une reprise d'instance par les contrôleurs pour les dossier 500-06-000709-143 et 150-06-000010-173 où des cautionnements de l'office de la protection du consommateur sont toujours en vigueur. Nécessairement, ne peuvent passer dans la liquidation des entreprises *Corbeil et Sears*.

Nous rappelons que lors de la vente des garanties supplémentaires, la nécessité des détaillants de requérir à une exemption sous l'art. 256 L.p.c. s'applique dans deux cas : (1) lorsque des meubles sont vendus et qu'ils doivent être « livrés » plus de deux (2) mois après la conclusion du contrat de vente ou bien (2) lorsque la Garanties supplémentaire vendue entre en vigueur plus de deux mois après la conclusion de sa vente.

*« Loi sur la protection du consommateur*

*Pratique interdite.*

***Le commerçant qui propose à un consommateur de conclure un contrat comprenant une garantie supplémentaire relative à un bien sans lui transmettre préalablement les informations prévues au présent article est réputé passer sous silence un fait important et, par voie de conséquence, se livrer à une pratique interdite visée à l'article 228.***

(...)

***256. Une somme d'argent reçue par un commerçant d'un consommateur, par suite d'un contrat en vertu duquel l'obligation principale du commerçant doit être exécutée plus de deux mois après la conclusion de ce contrat, est transférée en fiducie. Le commerçant est alors fiduciaire de cette somme et doit la déposer dans un compte en fidéicommis jusqu'à l'exécution de son obligation principale.***

(...) »

Or, les entreprises (succursales et plusieurs franchises énoncées à l'Annexe A) détenaient des cautionnements pour bénéficier de l'exemption vertu de l'art. 256 L.p.c., le tout, tel qu'il appert de l'annexe A jointe à la présente.

Or, ces deux entreprises, leurs succursales corporatives et/ou franchises ont commercialisé et vendu des milliers de garanties supplémentaires au Québec pour lesquelles nous sommes forcées aujourd'hui de demander l'exécution des cautionnements.

En raison de ce qui précède, nous désirons connaître la position des contrôleurs à la première opportunité d'ici le 25 octobre 2017 afin que nous puissions informer les assignés à la gestion particulières de ces actions collectives.

Dans l'attente de vous lire, je vous prie d'agréer, messieurs, mes salutations distinguées.



Benoît Gamache  
**Cabinet BG Avocats Inc.**



**LISTES DES MAGASINS, SUCCURSALES OU FRANCHISÉS « SEARS » ET « CORBEIL » AVEC  
PERMIS ET CAUTIONNEMENT EN VERTU DE L'ART. 256 L.P.C.**

NOMS DU TITULAIRE DU PERMIS	NOMS D'USAGE	NO. ENTREPRISE ET NO. PERMIS
SEARS CANADA INC. 700-290, YONGE STREET TORONTO (Ontario) M5B 2C3  SEARS CANADA INC. 3075, BOUL. THIMENS SAINT-LAURENT (Québec) H4R 1Y3	DECOR SEARS MOBILIER ELECTROMENAGER SEARS® SEARS CANADA INC	No d'entreprise : 1140287658 Exemption à l'article 256 : No 101185
CORBEIL ÉLECTRIQUE INC. 6783, boul. Léger Montréal (Québec) H1G 6H8	Corbeil électroménagers (Nom antérieur) Corbeil Electric Inc. CORBEIL ÉLECTRIQUE INC. EXPANSOL (Nom antérieur)	No d'entreprise : 1140521528 Exemption à l'article 256 : No 601812
9304-2000 Québec inc. 3595, ch. de Chambly Longueuil (Québec) J4L 1N9	9304-2000 Québec inc. Corbeil Corbeil Électroménagers	No d'entreprise : 1170132402 Exemption à l'article 256 : No 601808
9128-8217 QUÉBEC INC. 4646, av. du Parc Montréal (Québec) H2V 4E5	9128-8217 QUÉBEC INC. Corbeil Elect Corbeil Elect (Nom antérieur) CORBEIL ÉLECTROMÉNAGERS	No d'entreprise : 1161473815 Exemption à l'article 256 : No 601807

NOMS DU TITULAIRE DU PERMIS	NOMS D'USAGE	NO. ENTREPRISE ET NO. PERMIS
9059-0365 QUÉBEC INC. 7543, boul. Taschereau Brossard (Québec) J4Y 1A2	9059-0365 QUÉBEC INC. CORBEIL ÉLECTROMÉNAGERS CORBEIL ÉLECTROMENAGERS (Brossard) (Nom antérieur)	No d'entreprise : 1147390810 Exemption à l'article 256 : No 601324
9084-7443 QUÉBEC INC. 390, rue Lamontagne Saint-Jérôme (Québec) J7Y 0E1	9084-7443 QUÉBEC INC. CORBEIL ÉLECTROMÉNAGERS CORBEIL ELECTROMENAGERS (Nom antérieur)	No d'entreprise : 1148981278 Exemption à l'article 256 : No 601320
9121-4759 QUÉBEC INC. 1563, boul. des Promenades Longueuil (Québec) J3Y 5K2	9121-4759 QUÉBEC INC. CORBEIL ÉLECTROMÉNAGERS	No d'entreprise : 1161068888 Exemption à l'article 256 : No 601536
GESTION ÉRIC DUBREUIL INC. 302-584, ch. de Touraine Boucherville (Québec) J4B 8S5	Corbeil Appliances Boucherville Corbeil Électroménager Boucherville GESTION ÉRIC DUBREUIL INC	No d'entreprise : 1165513962 Exemption à l'article 256 : No 601633
7026111 CANADA INC. 325, BOUL. GRÉBER, UNITÉ M-2 GATINEAU (Québec) J8T 8J3	7026111 CANADA INC. Corbeil Électrique inc. CORBEIL ÉLECTROMÉNAGERS (Nom antérieur)	No d'entreprise : 1165465809 Exemption à l'article 256 : No 601635
MAINTENANCE BRUNEAU INC. 95, RUE BABY JOLIETTE (Québec) J6E 2V4	CORBEIL ELECTROMÉNAGER MAINTENANCE BRUNEAU INC.	No d'entreprise : 1142850610 Exemption à l'article 256 : No 601323

NOMS DU TITULAIRE DU PERMIS	NOMS D'USAGE	NO. ENTREPRISE ET NO. PERMIS
9050-7575 QUÉBEC INC. 2231, boul. des Récollets Trois-Rivières (Québec) G8Z 3X6	9050-7575 QUÉBEC INC. CORBEIL ELECTROMENAGERS (Trois- rivières)	No d'entreprise : 1146835732 Exemption à l'article 256 : No 601321
9081-7842 QUÉBEC INC. 67, rue Robichaud Granby (Québec) J2H 0W6	9081-7842 QUÉBEC INC. CORBEIL ÉLECTROMÉNAGERS	No d'entreprise : 1148820963 Exemption à l'article 256 : No 601329
ÉLECTROMÉNAGERS BUREAU & BUREAU INC. 600, rue Galt O Sherbrooke (Québec) J1H 1Y9	CORBEIL ÉLECTROMÉNAGERS ÉLECTROMÉNAGERS BUREAU & BUREAU INC.	No d'entreprise : 1149262397 Exemption à l'article 256 : No 601519
LES ÉLECTROMÉNAGERS BOUVREUIL INC. 100, rue Moreau Saint-Jean-sur-Richelieu (Québec) J2W 2M4	CORBEIL ELECTROMENAGERS (St- Jean-sur-Richelieu) (Nom antérieur) LES ÉLECTROMÉNAGERS BOUVREUIL INC.	No d'entreprise : 1149959125 Exemption à l'article 256 : No 601534
9140-9508 QUÉBEC INC. 156-86, boul. Brien Repentigny (Québec) J6A 5K7	9140-9508 QUÉBEC INC. CORBEIL ÉLECTROMÉNAGERS	No d'entreprise : 1162156039 Exemption à l'article 256 : No 601685







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**Benoît Gamache, avocat**  
 Ligne directe : 514 908-7446  
 Télécopieur : 514-329-0120  
 bgamache@cabinetbg.ca

**PAR COURRIEL (L'ORIGINAL SUIVRA PAR LA POSTE)**

Montréal, le 16 octobre 2017

**Me Joël Simard**  
 ALLARD, RENAUD ET ASSOCIÉS  
 5199, rue Sherbrooke Est, Bureau 3671  
 Montréal (Québec) H1T 3X2

Objet : *Demande d'accès à l'information sur des cautionnements.*  
 No. : 500-06-000709-143 et 150-06-000010-173.

Cher Confrère,

Notre firme agit comme avocats-conseils des demandeurs dans les dossiers de recours collectif (Désormais désignées « actions collectives » dans la province de Québec) contre *Sears Canada* et *Corbeil* (Électroménagers /Électrique Inc.).

1. <b>Routhier c. Corbeil Électroménagers inc. (Corbeil Électrique inc.) et als</b> (Ventes effectuées après 30 juin 2010)	(500-06-000709-143)
2. <b>Tremblay c, Sears Canada et als</b> (Ventes effectuées après 30 juin 2010)	(150-06-000010-173)

Tous ces dossiers s'articulent autour de la vente de garanties prolongées et aux représentations systémiques (fausses) sur les conséquences préjudiciables de ne pas en faire l'achat d'une protection supplémentaire.

Comme vous le savez probablement, Sears Canada est l'actionnaire principal de Corbeil. Or, le 22 juin 2017 Sears Canada Inc. et Corbeil Électrique Inc. (« Corbeil »), ont demandé et obtenu ordonnance initiale de la Cour supérieure de

l'Ontario (Chambre commerciale) en vertu de la Loi sur les arrangements avec les créanciers des compagnies (« LACC »). Le 13 octobre 2017, le tribunal a ordonné la liquidation de l'entreprise.

Or, ces entreprises sont également visées dans quatre (4) procédures actions collectives concernant la vente de ces garanties supplémentaires.

Nous rappelons que lors de la vente des garanties supplémentaires, la nécessité des détaillants de requérir à une exemption sous l'art. 256 L.p.c. s'applique dans deux cas : (1) lorsque des meubles sont vendus et qu'ils doivent être « livrés » plus de deux (2) mois après la conclusion du contrat de vente ou bien (2) lorsque la Garanties supplémentaire vendue entre en vigueur plus de deux mois après la conclusion de sa vente.

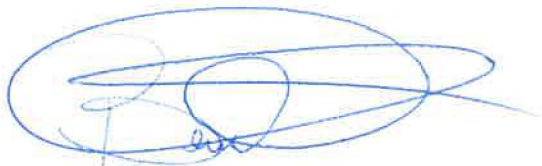
Or, ces entreprises (succursales et plusieurs franchises) détenaient des cautionnements pour bénéficier de l'exemption vertu de l'art. 256 L.p.c., le tout, tel qu'il appert de l'annexe A jointe à la présente.

Or, ces deux entreprises, leurs succursales corporatives et/ou franchises ont commercialisé et vendu des milliers de garanties supplémentaires au Québec pour lesquelles nous sommes forcées aujourd'hui de demander l'exécution des cautionnements.

En raison de ce qui précède, nous désirons nous voir communiquer les informations suivantes :

- 1- La valeur monétaire de chacun de cautionnements octroyés : a) pour chacun de titulaires de permis, b) pour leurs succursales de l'annexe A
- 2- La durée de validité des cautionnements

Dans l'attente de vous lire, je vous prie d'agréer, Cher Confrère, mes salutations distinguées.



Benoît Gamache  
**Cabinet BG Avocats Inc.**

**LISTES DES MAGASINS, SUCCURSALES OU FRANCHISÉS « SEARS » ET « CORBEIL » AVEC  
PERMIS ET CAUTIONNEMENT EN VERTU DE L'ART. 256 L.P.C.**

NOMS DU TITULAIRE DU PERMIS	NOMS D'USAGE	NO. ENTREPRISE ET NO. PERMIS
SEARS CANADA INC. 700-290, YONGE STREET TORONTO (Ontario) M5B 2C3  SEARS CANADA INC. 3075, BOUL. THIMENS SAINT-LAURENT (Québec) H4R 1Y3	DECOR SEARS MOBILIER ELECTROMENAGER SEARS® SEARS CANADA INC	No d'entreprise : 1140287658 Exemption à l'article 256 : No 101185
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9304-2000 Québec inc. 3595, ch. de Chambly Longueuil (Québec) J4L 1N9	9304-2000 Québec inc. Corbeil Corbeil Électroménagers	No d'entreprise : 1170132402 Exemption à l'article 256 : No 601808
9128-8217 QUÉBEC INC. 4646, av. du Parc Montréal (Québec) H2V 4E5	9128-8217 QUÉBEC INC. Corbeil Elect Corbeil Elect (Nom antérieur) CORBEIL ÉLECTROMÉNAGERS	No d'entreprise : 1161473815 Exemption à l'article 256 : No 601807

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7026111 CANADA INC. 325, BOUL. GRÉBER, UNITÉ M-2 GATINEAU (Québec) J8T 8J3	7026111 CANADA INC. Corbeil Électrique inc. CORBEIL ÉLECTROMÉNAGERS (Nom antérieur)	No d'entreprise : 1165465809 Exemption à l'article 256 : No 601635
MAINTENANCE BRUNEAU INC. 95, RUE BABY JOLIETTE (Québec) J6E 2V4	CORBEIL ELECTROMÉNAGER MAINTENANCE BRUNEAU INC.	No d'entreprise : 1142850610 Exemption à l'article 256 : No 601323

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9081-7842 QUÉBEC INC. 67, rue Robichaud Granby (Québec) J2H 0W6	9081-7842 QUÉBEC INC. CORBEIL ÉLECTROMÉNAGERS	No d'entreprise : 1148820963 Exemption à l'article 256 : No 601329
ÉLECTROMÉNAGERS BUREAU & BUREAU INC. 600, rue Galt O Sherbrooke (Québec) J1H 1Y9	CORBEIL ÉLECTROMÉNAGERS ÉLECTROMÉNAGERS BUREAU & BUREAU INC.	No d'entreprise : 1149262397 Exemption à l'article 256 : No 601519
LES ÉLECTROMÉNAGERS BOUVREUIL INC. 100, rue Moreau Saint-Jean-sur-Richelieu (Québec) J2W 2M4	CORBEIL ELECTROMENAGERS (St- Jean-sur-Richelieu) (Nom antérieur) LES ÉLECTROMÉNAGERS BOUVREUIL INC.	No d'entreprise : 1149959125 Exemption à l'article 256 : No 601534
9140-9508 QUÉBEC INC. 156-86, boul. Brien Repentigny (Québec) J6A 5K7	9140-9508 QUÉBEC INC. CORBEIL ÉLECTROMÉNAGERS	No d'entreprise : 1162156039 Exemption à l'article 256 : No 601685



## COUR D'APPEL

CANADA  
PROVINCE DE QUÉBEC  
GREFFE DE MONTRÉAL

N° : 500-09-026388-165, 500-09-026393-165, 500-09-026402-164,  
500-09-026413-161, 500-09-026414-169  
(500-06-000709-143)

DATE : LE 7 SEPTEMBRE 2017

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**CORAM : LES HONORABLES NICHOLAS KASIRER, J.C.A.  
MARIE ST-PIERRE, J.C.A.  
MARTIN VAUCLAIR, J.C.A.**

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**N° : 500-09-026388-165**

**AMEUBLEMENTS TANGUAY INC**  
REQUÉRANTE – Intimée

c.

**LUC CANTIN  
FRANÇOIS ROUTHIER**  
INTIMÉS – Requérants

et

**MEUBLES LÉON LTÉE  
GLENTEL INC.  
BRAULT & MARTINEAU INC.  
CORBEIL ÉLECTROMÉNAGERS INC.  
(CORBEIL ÉLECTRIQUE INC.)  
SEARS CANADA INC.  
THE BRICK WAREHOUSE LP  
CENTRE HI-FI (2763923 CANADA INC.)  
BUREAU EN GROS (STAPLES CANADA INC.)  
VIDEOTRON S.E.N.C.  
BELL CANADA  
TELUS MOBILITÉ  
APPLE CANADA INC.  
MISES EN CAUSE – Intimées**

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500-09-026413-161, 500-09-026414-169

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**N° : 500-09-026393-165**

**MEUBLES LÉON LTÉE**  
REQUÉRANTE – Intimée

c.

**LUC CANTIN**  
**FRANÇOIS ROUTHIER**  
INTIMÉS – Requérants

et

**AMEUBLEMENTS TANGUAY INC.**  
**GLENTEL INC.**  
**BRAULT & MARTINEAU INC.**  
**CORBEIL ÉLECTROMÉNAGERS INC.**  
**(CORBEIL ÉLECTRIQUE INC.)**  
**SEARS CANADA INC.**  
**THE BRICK WAREHOUSE LP**  
**CENTRE HI-FI (2763923 CANADA INC.)**  
**BUREAU EN GROS (STAPLES CANADA INC.)**  
**VIDEOTRON S.E.N.C.**  
**BELL CANADA**  
**TELUS MOBILITE**  
**APPLE CANADA INC.**  
MISES EN CAUSE – Intimées

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**N° : 500-09-026402-164**

**GLENTEL INC.**  
REQUÉRANTE – Intimée

c.

**LUC CANTIN**  
**FRANÇOIS ROUTHIER**  
INTIMÉS – Requérants

et

**AMEUBLEMENTS TANGUAY INC.**  
**MEUBLES LÉON LTÉE**  
**BRAULT & MARTINEAU INC.**  
**CORBEIL ÉLECTROMÉNAGERS INC.**  
**(CORBEIL ÉLECTRIQUE INC.)**



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500-09-026413-161, 500-09-026414-169

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**SEARS CANADA INC.**  
**THE BRICK WAREHOUSE LP**  
**CENTRE HI-FI (2763923 CANADA INC.)**  
**BUREAU EN GROS (STAPLES CANADA INC.)**  
**VIDEOTRON S.E.N.C.**  
**BELL CANADA**  
**TELUS MOBILITÉ**  
**APPLE CANADA INC.**  
MISES EN CAUSE – Intimées

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**N° : 500-09-026413-161**

**BRAULT & MARTINEAU INC.**  
REQUÉRANTE – Intimée

c.

**LUC CANTIN**  
**FRANÇOIS ROUTHIER**  
INTIMÉS – Requérants

et

**AMEUBLEMENTS TANGUAY INC.**  
**MEUBLES LÉON LTÉE**  
**GLENTEL INC.**  
**CORBEIL ÉLECTROMÉNAGERS INC.**  
**(CORBEIL ÉLECTRIQUE INC.)**  
**SEARS CANADA INC.**  
**THE BRICK WAREHOUSE LP**  
**CENTRE HI-FI (2763923 CANADA INC.)**  
**BUREAU EN GROS (STAPLES CANADA INC.)**  
**VIDEOTRON S.E.N.C.**  
**BELL CANADA**  
**TELUS MOBILITÉ**  
**APPLE CANADA INC.**  
MISES EN CAUSE – Intimées

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**N° : 500-09-026414-169**

**CORBEIL ÉLECTROMÉNAGERS INC.**  
**(CORBEIL ÉLECTRIQUE INC.)**  
APPELANTE – Intimée

c.

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**LUC CANTIN**  
**FRANÇOIS ROUTHIER**  
INTIMÉS – Requérants

et

**AMEUBLEMENTS TANGUAY INC.**  
**MEUBLES LÉON LTÉE**  
**GLENTEL INC.**  
**BRAULT & MARTINEAU INC.**  
**SEARS CANADA INC.**  
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**CENTRE HI-FI (2763923 CANADA INC.)**  
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**VIDEOTRON S.E.N.C.**  
**BELL CANADA**  
**TELUS MOBILITÉ**  
**APPLE CANADA INC.**  
MISES EN CAUSE – Intimées

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**ARRÊT**

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[1] Corbeil électroménagers inc. (Corbeil Électrique inc.) se pourvoit contre un jugement de la Cour supérieure, district de Montréal (l'honorable Pierre Nollet), rendu le 9 septembre 2016<sup>1</sup>, qui accueille la requête réamendée de François Routhier en autorisant l'exercice d'une action collective à son encontre, ainsi que contre Meubles Léon ltée, Ameublements Tanguay inc., Glentel inc. et Brault & Martineau inc.

[2] Les paragraphes [228] et [229] du jugement entrepris se lisent ainsi :

**POUR CES MOTIFS, LE TRIBUNAL :**

[...]

[228] **AUTORISE** l'exercice de l'action collective ci-après décrit :

***« Une action en dommages-intérêts contre les Intimées Ameublements Tanguay inc., Meubles Léon ltée, Brault & Martineau inc., Corbeil Électrique inc. et Glentel inc, afin de sanctionner des pratiques de commerce interdites effectuées***

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<sup>1</sup> *Cantin c. Ameublements Tanguay inc.*, 2016 QCCS 4546.

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***par les elles, de façon systémique et généralisée dans le cadre de la vente de contrats de garanties prolongées. »***

[229] **ATTRIBUE** à FRANÇOIS ROUTHIER le statut de représentant aux fins d'exercer l'action collective envisagée pour le compte du Groupe de personnes ci-après décrit :

***« Les personnes ayant acheté des Intimées Ameublements Tanguay inc., Meubles Léon Itée, Brault & Martineau inc., Corbeil Électrique inc. et Glentel inc, une garantie prolongée, après le 30 juin 2010, à la suite de la représentation à l'effet que si elles n'achetaient pas cette garantie supplémentaire et qu'un bris survenait après l'expiration de la garantie d'un an du manufacturier, elles devraient assumer le coût des réparations ou du remplacement. »***

[3] Un juge de cette Cour accueille la demande d'interjeter appel de Corbeil et défère à la présente formation les demandes de permission d'appeler des autres requérantes, défenderesses en première instance<sup>2</sup>.

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## **I Appel de Corbeil Électrique inc.**

[4] L'appelante estime que le juge autorisateur a erré en concluant qu'il existe un lien de droit entre elle et l'intimé Routhier.

[5] Ce faisant, il aurait aussi erré en attribuant à M. Routhier le statut de représentant de la présente action collective, alors que celui-ci n'aurait pas l'intérêt suffisant pour agir à l'encontre de l'appelante, et donc contre aucune des défenderesses.

[6] De plus, l'absence de lien de droit entre l'appelante et l'intimé Routhier confirmerait que le juge s'est mépris en concluant que les faits allégués à sa requête paraissent justifier les conclusions recherchées.

[7] Pour l'appelante, la requête réamendée pour autorisation d'exercer l'action collective et les pièces produites au dossier démontrent qu'elle n'a jamais offert ni vendu une garantie supplémentaire à M. Routhier. Ce dernier aurait acheté sa garantie auprès de Gestion Éric Dubreuil inc., un franchisé de l'appelante, et non directement de Corbeil Électrique inc. Par conséquent, dit l'appelante, elle ne saurait avoir fait quelque représentation fautive ou trompeuse à M. Routhier lors de la vente de la garantie, dans la mesure où ce n'est pas elle qui l'a effectuée.

<sup>2</sup> 2017 QCCA 135.

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[8] Par ailleurs, l'appelante soutient qu'elle ne peut être tenue responsable simplement parce que Gestion Éric Dubreuil inc. affiche la marque de commerce « Corbeil » dans son magasin. La jurisprudence pertinente, dont l'arrêt *Fortier c. Meubles Léon Itée*<sup>3</sup>, enseigne que ceci n'est pas suffisant pour créer un lien de droit et pour donner à l'intimé Routhier un intérêt suffisant à agir en tant que représentant du groupe. Dans ce même ordre d'idées, le juge aurait erré en écartant le jugement dans l'affaire *Blondin c. Stéréo Plus inc.*<sup>4</sup> où, selon elle, un allégué identique à celui qui est cité par le juge ici a été considéré insuffisant pour justifier l'autorisation d'intenter une action collective.

[9] Qu'en est-il? Le juge a-t-il erré en concluant qu'il y avait une preuve suffisante de l'existence d'un lien de droit entre l'appelante et l'intimé Routhier?

[10] Au stade de l'autorisation, le juge devait déterminer, selon la norme identifiée par la Cour suprême dans l'arrêt *Infineon*<sup>5</sup>, si les faits allégués permettaient à l'intimé Routhier d'établir une cause *prima facie* contre l'appelante, de par l'existence d'un lien de droit – contractuel ou extracontractuel – entre eux.

[11] Notons d'abord que, comme le juge le souligne au paragraphe [180] de ses motifs, l'intimé Routhier n'a pas été entendu à l'audition en Cour supérieure et, contrairement à l'intimé Cantin, il n'a pas été interrogé hors cour. Sa compétence en tant que représentant ayant un intérêt suffisant à agir repose principalement sur les allégués de la demande – allégués que le juge ne manque pas de qualifier de « très généraux » – ainsi que les pièces au dossier, dont sa facture d'achat (R-7) et les extraits du site web de l'appelante (R-7.1).

[12] Il y a lieu de noter que l'appelante a choisi de ne pas reproduire la pièce R-7.1 dans son dossier d'appel, même si le juge cite cette pièce en appui de ses conclusions quant à l'existence d'un lien de droit.

[13] Il convient aussi de rappeler que, parmi les extraits de la requête d'autorisation réamendée cités par le juge, on peut lire le paragraphe suivant :

59.1 Le Requérent Routhier a choisi d'acheter cet électroménager au magasin précité notamment parce que celui-ci faisait partie de la chaîne des établissements s'affichant sous la bannière « Corbeil » et connu du public sous ce nom, tel qu'il appert de la liste des établissements « Corbeil » sur le site web de l'intimée Corbeil et communiquée au soutien des présentes sous la cote R-7.1;

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<sup>3</sup> 2014 QCCA 195.

<sup>4</sup> 2012 QCCS 105.

<sup>5</sup> *Infineon Technologies et al. c. Options consommateurs*, [2013] 3 R.C.S. 600, suivi par cette Cour notamment dans *Charles c. Boiron Canada inc.*, 2016 QCCA 1716 et *Sibiga c. Fido Solutions inc.*, 2016 QCCA 1299.

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[14] Le cœur du raisonnement du juge quant à l'existence d'un lien de droit entre l'appelante et l'intimé Routhier se lit ainsi :

[196] Les Intimées, Corbeil en tête, plaide que le Requérant Routhier ne doit pas être autorisé comme représentant des membres puisqu'il n'a de lien de droit avec aucune des Intimées.

[197] En effet, les Intimées suggèrent que les pièces des Requérants démontrent que l'Intimée Corbeil n'a proposé ni vendu aucune garantie supplémentaire au Requérant Routhier.

[198] Il appert que le Requérant Routhier a acheté sa garantie prolongée auprès de Gestion Éric Dubreuil inc. [Pièce R-7]. Sur cette facture on voit le logo de Corbeil.

[199] Les Requérants n'ont pas produit la garantie supplémentaire achetée. La facture semble indiquer que c'est Comerco Services inc. qui assure le service de la garantie supplémentaire pour 50 mois.

[200] Comment alors relier les représentations fausses ou trompeuses à Corbeil alors que dans ce cas particulier le Requérant allègue une expérience directe avec le vendeur qui serait un employé de Gestion Éric Dubreuil inc.

[201] Dans l'affaire *Fortier*, Corbeil avait présenté un argument semblable à la Cour. La Cour d'appel s'exprimait ainsi sur le sujet :

[128] Dans le cas de l'intimée Corbeil Électrique, le juge considère qu'à l'étape de l'autorisation, il est trop tôt pour trancher définitivement l'argument de l'absence de lien de droit entre l'appelant Filion et l'intimée Corbeil Électrique. Il fait observer que les mots « représenté par le franchisé » sur la facture pour les biens vendus à M. Filion laissent planer un doute sur la nature exacte de la relation entre le franchiseur Corbeil Électrique et son franchisé. Il considère qu'il ne peut dans ce contexte rejeter la requête en autorisation pour ce seul motif. Le juge du fond sera mieux placé, selon lui, pour décider s'il existe une relation mandant-mandataire entre Corbeil Électrique et son franchisé. Il a raison. Il est préférable, en cas de doute, de laisser au juge du fond le soin de décider de cette question.

[202] Dans notre cas, la facture affiche la raison sociale Corbeil sans expliquer la nature de la relation entre cette raison sociale et Gestion Éric Dubreuil inc. Il n'y a pas d'indication que cette dernière représente Corbeil.

[203] Le magasin où le Requérant s'est procuré l'appareil apparaît toutefois sur la liste des établissements « Corbeil » publiée sur le site web de l'Intimée Corbeil [Pièce 7.1].

[204] Corbeil offre des plans de garantie supplémentaire que le Tribunal n'est pas en mesure de distinguer de celui souscrit par le Requérant Routhier [Pièce

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R-7.3]. Ce sont les plans de Corbeil que le Requéranr produit au soutien de ses allégués et qui sont sur le site internet de Corbeil.

[205] Contrairement à l'affaire *Blondin c. Stéréo Plus inc.*, [2012 QCCS 105, aux para. 54-64], la demande d'autorisation ici contient un allégué à l'effet que le membre désigné a choisi de faire affaire avec Corbeil et non avec Gestion Éric Dubreuil inc. En effet, le Requéranr Routhier allègue avoir choisi d'acheter cet électroménager au magasin Corbeil notamment parce que celui-ci faisait partie de la chaîne des établissements s'affichant sous la bannière « Corbeil » [Para. 59.1]. Cet allégué doit être tenu pour avéré. Le lien est fragile, mais réel.

[206] Il y a, au stade de la démonstration, suffisamment d'éléments pour que le Requéranr puisse argumenter avoir un intérêt à poursuivre Corbeil, sans toutefois se prononcer sur le mérite de celui-ci.

[Soulignement ajouté; renvois du juge inclus dans le corps du texte.]

[15] La nature juridique exacte de la relation entre Corbeil Électrique inc. et Gestion Éric Dubreuil inc. n'a pas encore fait l'objet d'une preuve. Bien que l'appelante déclare faire affaire comme franchiseur et que Gestion Éric Dubreuil inc. est un de ses franchisés, cette preuve n'est pas au dossier. À bon droit, le juge se garde de qualifier Gestion Éric Dubreuil inc. comme franchisé à partir de la preuve disponible au stade de l'autorisation, laissant au juge du fond, on peut le supposer, le soin de trancher la question de son statut par rapport à l'appelante.

[16] On comprend des motifs du juge qu'il existe notamment une preuve suffisante d'un lien de droit contractuel entre l'appelante et M. Routhier, même si, comme le juge ne manque pas de noter au paragraphe [203], ce dernier a acheté sa garantie prolongée auprès de Gestion Éric Dubreuil inc.

[17] Il est vrai que le nom de Gestion Éric Dubreuil inc. est inscrit en haut de la facture attestant la vente de l'appareil à M. Routhier. Par contre, il est tout aussi vrai que sur la même facture, comme le juge souligne, le logo de l'appelante se trouve à la même hauteur, et que « Gestion Éric Dubreuil inc. » n'est pas formellement identifiée comme le vendeur. De plus, même s'il n'y a pas d'indication sur la facture que Gestion Éric Dubreuil inc. représente l'appelante, le juge prend bonne note, en s'appuyant sur la Pièce R-7.1, que le magasin dans lequel M. Routhier s'est procuré l'appareil apparaît sur la liste des établissements « Corbeil » publiée sur le site web de l'appelante. Ajoutons que la facture Pièce R-7 comporte les mentions « Corbeil demeure propriétaire de la marchandise jusqu'à paiement final » et « Aucun retour de marchandise sans entente préalable avec Corbeil ».

[18] Ces éléments de preuve viennent soutenir la conclusion du juge qu'il existe une preuve suffisante d'un lien de droit entre l'appelante et M. Routhier pour les fins de l'autorisation de l'action collective. En effet, on peut y voir une preuve *prima facie* que

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Gestion Éric Dubreuil inc. représente l'appelante, le véritable vendeur, soit par le biais des règles contractuelles du mandat, soit en application de la définition de « représentant » énoncée à l'article 1o) de la *Loi sur la protection du consommateur*<sup>6</sup>.

[19] De surcroît, comme le juge le laisse entendre au paragraphe [204] de ses motifs, il existe une preuve *prima facie* d'un lien de droit entre eux, et ce, même si on ne qualifiait pas l'appelante de commerçant dans sa relation avec Routhier. En effet, il est loisible d'en arriver à cette conclusion vu la preuve *prima facie* de la qualité de l'appelante en tant que publicitaire des garanties prolongées vendues par Gestion Éric Dubreuil inc., et ce, en application des articles 219, 220 et 227 de la *Loi sur la protection du consommateur*.

[20] Mais il y a plus.

[21] Au paragraphe [205], le juge fait référence à l'allégué 59.1 pour appuyer sa conclusion qu'il existe une preuve suffisante d'un lien de droit entre l'appelante et l'intimé Routhier et pour ainsi soutenir sa décision d'autoriser l'action collective.

[22] Il est vrai que, règle générale, un franchiseur comme l'appelante – à supposer qu'on accepte la qualification de la relation qu'elle propose – n'a pas de lien contractuel direct avec le consommateur; d'ordinaire, c'est le franchisé – ici Gestion Éric Dubreuil inc. – qui conclut le contrat à l'égard duquel le franchiseur doit être considéré comme un tiers<sup>7</sup>. Toutefois, un franchiseur peut s'exposer à une responsabilité extracontractuelle envers celui qui a contracté directement avec le franchisé<sup>8</sup>.

[23] En effet, la responsabilité du franchiseur envers le consommateur serait de nature extracontractuelle si elle est fondée sur la théorie du mandat apparent énoncée à l'article 2163 C.c.Q.<sup>9</sup> Comme l'explique l'auteur Frédéric Gilbert, un franchiseur peut être tenu responsable des actes de son franchisé s'il « a donné des motifs raisonnables

<sup>6</sup> RLRQ, c. P-40.1. L'article 1o) se lit ainsi : « « représentant » : une personne qui agit pour un commerçant ou un fabricant ou au sujet de laquelle un commerçant ou un fabricant a donné des motifs raisonnables de croire qu'elle agit en son nom / "representative" means a person acting for a merchant or a manufacturer or regarding whom a merchant or a manufacturer has given reasonable cause to believe that such person is acting for him ».

<sup>7</sup> Pour le principe et ses exceptions, voir *Comité paritaire de l'entretien d'édifices publics de la région de Québec c. Modern Concept d'entretien inc.*, 2017 QCCA 1237, paragr. [169].

<sup>8</sup> Pascale Cloutier, Marie-Hélène Guay et Vanessa Leblanc, « La responsabilité contractuelle et extracontractuelle du franchiseur à l'égard des franchisés et des tiers », *Barreau du Québec, Développements récents en droit de la franchise et des groupements (2008)*, Cowansville, Éd. Yvon Blais, 2008, deuxième partie.

<sup>9</sup> Frédéric P. Gilbert, « Développements jurisprudentiels en droit de la franchise », dans *Barreau du Québec, Développements récents en droit de la franchise 2016*, Cowansville, Éd. Yvon Blais, p. 191, aux pages 288-289.

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de croire que le franchisé était véritablement son mandataire » et s'il « n'a pas pris les moyens adéquats pour éviter une telle méprise alors que celle-ci était prévisible »<sup>10</sup>.

[24] Force est de constater que l'intimé Routhier allègue, au paragraphe 59.1 de la requête, des éléments factuels suffisants pour établir une cause défendable vu l'existence possible d'un mandat apparent entre l'appelante et son franchisé. De plus, c'est aussi une preuve *prima facie* que Gestion Éric Dubreuil inc. serait la représentante de l'appelante – toujours selon la norme applicable au stade de l'autorisation – au sens de la deuxième partie de la définition de « représentant » à l'article 1o) de la *Loi sur la protection du consommateur* : « une personne [...] au sujet de laquelle un commerçant ou un fabricant a donné des motifs raisonnables de croire qu'elle agit en son nom / a person [...] regarding whom a merchant or a manufacturer has given reasonable cause to believe that such person is acting for him ».

[25] Dans tous les cas, il convient de rappeler que le juge ne pouvait trancher définitivement la question factuelle qui doit plutôt être laissée au juge du fond. C'est ce qu'il a fait, à bon droit, au paragraphe [206] cité plus haut.

[26] L'appelante a certes raison de dire que, contrairement au contexte factuel de l'arrêt *Fortier*<sup>11</sup>, où l'argument du franchiseur quant à l'absence de lien de droit est rejeté, les mots « représenté par » n'apparaissent pas sur la facture de l'intimé Routhier en l'espèce. Toutefois, le dossier comporte plusieurs autres indices, comme nous l'avons noté, appuyant la conclusion du juge ici selon laquelle il existe, aux fins de l'autorisation, « un lien de droit fragile, mais réel » entre l'appelante et l'intimé Routhier. Le juge relève, par exemple, que la raison sociale et le logo de l'appelante étaient présents sur la devanture du magasin, à l'intérieur de celui-ci ainsi que sur la facture et la garantie prolongée achetée par l'intimé Routhier. À cela s'ajoute le fait que le magasin choisi par M. Routhier apparaît sur la liste des établissements « Corbeil » publiée sur le site web de l'appelante. Le fait que son logo ainsi que le mot « Corbeil » soient reproduits à la facture, tout comme les mentions que Corbeil retient la propriété de l'objet vendu, alimentent, aussi, l'impression qu'il existe un mandat entre l'appelante et Gestion Éric Dubreuil inc.

[27] Il reste l'argument fondé sur le renvoi du juge à l'affaire *Blondin* au paragraphe [205] de ses motifs, précité. L'appelante soutient que le juge se trompe en distinguant les deux affaires. Dans *Blondin*, dit-elle, le juge de la Cour supérieure avait devant lui une requête avec un allégué pratiquement identique au paragraphe 59.1 cité plus haut et il a néanmoins rejeté l'argument fondé sur le mandat apparent. Rappelons qu'il s'agit

<sup>10</sup> Frédéric P. Gilbert, *Le droit de la franchise au Québec*, Cowansville, Éd. Yvon Blais, 2014, p. 291.

<sup>11</sup> *Fortier*, *supra*, note 3, paragr. [128].



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de la faiblesse apparente du jugement entrepris que le juge autorisateur a identifiée pour justifier l'octroi de la permission d'appeler<sup>12</sup>.

[28] Cet argument doit être rejeté.

[29] Il est vrai que le juge de première instance dans le présent dossier écrit que, contrairement à ce qui était le cas dans *Blondin*, la demande d'autorisation ici contient un allégué selon lequel Routhier a choisi de faire affaire avec l'appelante et non avec Gestion Éric Dubreuil inc. Toutefois, après étude, la Cour conclut que cette apparente discordance avec l'affaire *Blondin* ne justifie par l'intervention de la Cour telle que sollicitée.

[30] Dans *Blondin*, le juge affirme, à l'appui de sa conclusion quant à l'absence d'un mandat, que « la requête pour autorisation d'exercer un recours collectif ne contient aucune allégation voulant que M. Blondin ait cru avoir transigé directement avec Stéréo Plus »<sup>13</sup>. *A priori*, cette affirmation du juge laisse croire qu'il a choisi de faire abstraction de l'allégué que l'appelante qualifie d'identique au paragraphe 59.1 de la requête de l'intimé Routhier. Le juge dans *Blondin* – à tort ou à raison – n'a pas tenu compte de l'allégué en question, sans offrir d'autres explications. Il n'est donc pas possible de conclure que la distinction entre *Blondin* et le présent dossier que tire le juge au paragraphe [205] du jugement entrepris, constitue une véritable erreur, et encore moins une erreur ayant un impact déterminant sur la décision d'autoriser l'action collective ici. Ajoutons à cela le fait que l'affaire *Blondin* se démarque du présent dossier en ce que la facture du consommateur contenait alors la mention « Stéréo plus électronique FRANCHISE OPÉRÉE PAR : [...] »<sup>14</sup>, mention qui n'apparaît nulle part sur la facture d'achat de l'intimé Routhier.

[31] Au final, ce moyen fondé sur *Blondin* doit être rejeté.

[32] En résumé, nous sommes d'avis que le juge d'autorisation n'a pas commis d'erreur révisable en concluant que suffisamment d'éléments justifiaient, à ce stade, de soutenir un lien de droit entre l'appelante et l'intimé Routhier et, ainsi, en affirmant que ce dernier a une cause défendable qui lui permettait d'obtenir l'autorisation d'exercer l'action collective. Contrairement à ce que plaide l'appelante, il n'y a pas d'erreur dans la détermination que l'intimé a satisfait aux critères de l'intérêt suffisant à agir et de celui énoncé à l'article 575(2) *C.p.c.*

<sup>12</sup> *Supra*, note 2, aux paragr. [13] à [18].

<sup>13</sup> *Blondin*, *supra*, note 4, paragr. [59].

<sup>14</sup> *Id.*, paragr. [57].

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## II Demandes de permissions déferées de Meubles Léon, Glentel, Brault & Martineau et Ameublements Tanguay

[33] Au paragraphe [208] de ses motifs, le juge écrit :

[208] Pour le reste, le Requéranter Routhier peut agir comme représentant des membres pour l'ensemble des Intimées qui seront visées par le recours. En effet, les questions communes et causes d'actions retenues peuvent être adéquatement défendues par un seul représentant qui allègue une expérience similaire.

[34] Le juge unique ayant déferé les demandes de permission à la Cour prend note que la plupart des requérantes allèguent, comme l'appelante Corbeil Électrique inc., que le représentant Routhier n'a pas l'intérêt nécessaire pour les poursuivre et écrit, en partie, ainsi :

[...] Étant donné que le sort du pourvoi formé par Corbeil, et la question précise qu'il soulève, auront un impact certain sur les autres requérantes devant moi, il y a lieu de déferer leurs requêtes respectives pour permission d'appeler à la formation qui entendra l'appel sur la seule question portant sur l'intérêt nécessaire pour poursuivre et l'application au dossier des principes énoncés dans l'arrêt *Banque de Montréal c. Marcotte*, [[2014] 2 R.C.S. 725].

[35] Comme nous venons de le voir, le juge de première instance ne s'est pas mépris en concluant qu'il existe une preuve suffisante – justifiant l'autorisation d'intenter l'action collective – d'un lien de droit entre Corbeil et l'intimé Routhier.

[36] Malgré cela, toutes les requérantes soutiennent que, même si la Cour conclut que le juge n'a pas erré quant à l'existence d'un lien de droit entre Corbeil et l'intimé Routhier, ce dernier ne peut tout de même pas assurer une représentation adéquate du groupe, n'ayant pas l'intérêt suffisant pour le faire. Sur ce dernier point, elles soutiennent que le juge a mal appliqué les principes énoncés par la Cour suprême dans *Banque de Montréal c. Marcotte*<sup>15</sup>. Le juge autorisateur devait, disent-elles, se demander si le représentant proposé peut assurer une représentation adéquate des membres du groupe à l'égard des défenderesses contre lesquelles il n'aurait pas, en d'autres circonstances, le statut pour poursuivre<sup>16</sup>.

[37] Plus précisément, les requérantes plaident que le lien entre elles et l'intimé Routhier se fait via l'intimé Luc Cantin qui, lui, a été exclu du statut de représentant par le juge. M. Cantin aurait déclaré, lors d'un interrogatoire, ne pas avoir fait l'objet des fausses représentations telles qu'alléguées à sa requête. Ajoutant à cela la conclusion du premier juge que l'intimé Cantin est un « pantin à la solde du cabinet d'avocats »

<sup>15</sup> [2014] 2 R.C.S. 725.

<sup>16</sup> *Id.*, paragr. [43].

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(paragr. [194]), elles concluent qu'il ne peut faire le lien entre elles et l'intimé Routhier pour permettre à ce dernier de représenter de manière adéquate tous les membres du groupe. Elles plaident que sa situation n'est nullement représentative de celle des autres membres du groupe, n'y étant ni identique, similaire ou connexe.

[38] Les requérantes se trompent.

[39] Malgré les failles dans le témoignage de M. Cantin, nous sommes d'avis que le juge pouvait conclure que M. Routhier, en tant que représentant, a un intérêt suffisant à poursuivre chacune des requérantes.

[40] Dans l'arrêt *Marcotte*, la Cour suprême a décidé que la loi permet une action collective même lorsque le représentant n'a pas de cause d'action contre chaque défendeur ou un lien de droit avec chacun d'eux<sup>17</sup>. L'exigence que le demandeur ait un « intérêt suffisant » dans l'action doit être adaptée au contexte des actions collectives. Dès lors que le représentant est en mesure d'assurer une représentation adéquate du groupe et que le recours entrepris contre chaque défendeur soulève des questions de droit ou de faits identiques, similaires ou connexes, il est loisible au juge d'autoriser l'action collective.

[41] La lecture, notamment, des paragraphes [181] à [191] du jugement entrepris indiquent que le juge a bien compris cet enseignement de la Cour suprême.

[42] Prenant appui sur le paragraphe 144<sup>18</sup> de la requête réamendée des intimés, le juge trouve des « échos dans la preuve » pour conclure à une cause défendable contre chacune des requérantes (paragr. [113] à [118] (Ameublements Tanguy); paragr. [122] à [124] (Meubles Léon); paragr. [125] à [126] (Brault & Martineau) et paragr. [163] et [164] (Glentel)). Il le fait en analysant l'expérience de chacune des personnes identifiées à titre de « membres désignés » par les intimés, et ce, à travers la preuve documentaire et testimoniale qui lui est soumise. Certes, les personnes identifiées ont été d'abord choisies pour faire écho à ce que M. Cantin a expérimenté lors de son achat. Le juge en est conscient et trouve, malgré tout, que l'expérience de M. Routhier est similaire aux leurs au point de lui donner l'intérêt suffisant pour représenter les membres ayant fait affaire avec les requérantes.

[43] Les intimés ont concédé à l'audience que le paragraphe 144 seul aurait été insuffisant, vu son caractère général, pour fonder l'intérêt du représentant Routhier.

<sup>17</sup> *Id.*, notamment au paragr. [32].

<sup>18</sup> « D'une part, le seul fait que les intimées déclarent notamment aux consommateurs, qu'en l'absence d'une garantie supplémentaire, qu'ils doivent assumer le coût des réparations pour les bris survenant à l'expiration de la garantie du manufacturier, constitue non seulement une omission d'un fait important, mais surtout une représentation trompeuse. » : E.A. (Corbeil), p. 167. Il est à noter que le premier juge fait une erreur en référant à ce passage comme l'allégué 149 (paragr. [113] du Jugement dont appel), plutôt que 144.

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Toutefois, rappellent les intimés, les « échos dans la preuve », dégagés par le premier juge, tissent un lien valable avec l'expérience de Routhier – et non uniquement avec celle de Cantin – permettant à M. Routhier d'être en mesure d'assurer une représentation adéquate des membres du groupe face aux défenderesses, et ce, malgré l'absence de lien direct avec chacune d'elles.

[44] Malgré tout, les requérantes tentent toutes de plaider que les représentations faites chez chacune d'elles diffèrent de l'expérience de l'intimé Routhier. Or, l'article 575 *C.p.c.* ne requiert pas une expérience identique entre celle vécue par le représentant et celles vécues par les membres. Ce n'est pas non plus ce qu'exige l'arrêt *Marcotte*. L'important est que l'expérience du représentant permette d'identifier des questions de droit ou de faits similaires ou connexes et que cette expérience lui permette aussi d'assurer une représentation adéquate du groupe. En l'espèce, les allégations se rapportent toutes à la vente de garanties prolongées et aux représentations sur les conséquences préjudiciables de ne pas en faire l'achat, ce qui forge un lien suffisant entre la cause du représentant Routhier et celles des membres « putatifs » pour chaque entreprise, et par extension, avec celles de tous les membres du groupe. C'est ce que retient le juge et, rappelons-le, cette détermination mérite déférence en appel<sup>19</sup>. Ce raisonnement vaut pour les requérantes Meubles Léon, Brault & Martineau et Glentel.

[45] Qu'en est-il de la situation particulière de la requérante Ameublements Tanguay, pour qui le membre désigné est M. Cantin?

[46] Selon Ameublements Tanguay, le témoignage de M. Cantin – résultant en son exclusion comme représentant – ne permet pas de le rattacher au groupe pour lequel M. Routhier est maintenant nommé représentant. L'expérience de Cantin se démarque de celle de l'intimé Routhier. Le recours de ce dernier contre Corbeil repose sur des représentations verbales qui seraient fausses. M. Cantin témoigne à l'effet qu'il n'a reçu aucune représentation verbale de la sorte de la part du représentant d'Ameublements Tanguay.

[47] Plus précisément, le juge aurait commis une erreur manifeste et déterminante en concluant, au paragraphe [116] du jugement, que le plan de protection PAT-1 contenait une représentation établissant un lien factuel suffisant pour soutenir une cause d'action contre Ameublements Tanguay. Ce document n'est pas de nature promotionnelle et n'est remis au consommateur qu'après l'achat de la garantie.

[48] Par conséquent, selon la requérante Ameublements Tanguay, l'action collective ne peut plus tenir à son égard puisqu'il y a absence de preuve de fausses représentations.

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<sup>19</sup> Voir *Vivendi Canada Inc. c. Dell'Aniello*, [2014] 1 R.C.S. 3, paragr. [34] et [35] où la Cour suprême fait état de la déférence due en appel envers le juge autorisateur en raison de son pouvoir discrétionnaire dans l'appréciation des critères de l'article 575 *C.p.c.* (art. 1003 a.*C.p.c.* à l'époque).

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[49] La Cour ne partage pas cet avis.

[50] Voici ce que le juge écrit sur ce point :

[114] Comme nous venons de le voir, M. Cantin n'a pas eu de telles représentations de la part de la représentante de Tanguay. Toutefois, le dossier contient un engagement produit par le représentant de Tanguay et le plan de garantie prolongé.

[115] L'engagement E-3 (1) est une présentation donnée par les avocats de Tanguay aux représentants de cette dernière au moment où fut introduite, par des amendements à la *L.p.c.*, l'obligation de donner un avis concernant l'existence d'une garantie légale. On doit comprendre de ce document que les avocats forment les vendeurs à comprendre que la garantie du manufacturier et la garantie prolongée représentent « la parole donnée » alors que la garantie légale est l'objet de débats et source de litige parce qu'elle nécessite de prouver que le bien vendu n'est pas de qualité. Ce n'est pas en soi une fausse représentation et au surplus M. Cantin n'a jamais indiqué que c'est ce qu'on lui avait dit pour le convaincre d'acheter la garantie prolongée.

[116] Quant à la garantie prolongée [pièce PAT-1] la principale représentation qui y est faite, c'est que le plan de garantie prolongée protège contre le coût des réparations élevées jusqu'à quatre ans après l'expiration de la garantie du manufacturier si le produit vendu subi un bris qui empêche son fonctionnement durant cette période. Cette garantie s'applique à des laveuses, sècheuses, réfrigérateurs et autres électroménagers.

[117] Bien que M. Cantin n'ait pas reçu cette représentation verbalement de la représentante, son plan de garantie prolongée la contient.

[118] Le consommateur pourrait-il véritablement être exposé à des coûts de réparation élevés dans une si courte période, sauf si le produit a un vice, auquel cas la garantie légale devrait pouvoir offrir une certaine protection au consommateur? Pour paraphraser la Cour d'appel dans *Fortier* : Il n'est pas certain qu'il s'agisse d'une fausse représentation, mais il y a ici une cause défendable qui s'applique tant à M. Cantin qu'à tous les clients qui ont acheté cette garantie prolongée.

[51] Ces paragraphes, lus à la lumière de l'ensemble du jugement, nous permet de comprendre que le juge est d'avis que le fait de remettre le plan de garantie prolongée à M. Cantin – plan contenant une possible représentation fausse – est une preuve suffisante, au stade de l'autorisation, pour conclure que ce dernier a une cause défendable contre Ameublements Tanguay, et ce, même si M. Cantin n'a pas reçu

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verbalement cette représentation, comme le dit le juge au paragraphe [117], et qu'il affirme même ne pas avoir pris connaissance du plan de garantie<sup>20</sup>.

[52] Pour le juge, la compréhension que M. Cantin avait de la garantie prolongée suite à son contact avec la préposée d'Ameublements Tanguay est insuffisante en elle-même pour établir l'existence *prima facie* d'une fausse représentation. La garantie prolongée achetée, elle, constitue toutefois une preuve suffisante à cet effet.

[53] Rappelons que le fardeau de démonstration imposé à l'intimé au stade de l'autorisation n'est pas lourd<sup>21</sup>. Comme le juge l'écrit au paragraphe [118] de ses motifs, la preuve au fond reste à faire.

[54] La requérante Ameublements Tanguay a donc tort de prétendre que l'exclusion de l'intimé Cantin à titre de représentant veut dire que plus rien ne la rattache au représentant Routhier. Cantin n'a pas été exclu du recours, il a seulement été jugé qu'il n'avait pas la compétence pour en être le représentant.

[55] Rappelons que dans *Centrale des syndicats du Québec c. Allen*<sup>22</sup>, cette Cour, sous la plume du juge Chamberland, formule ainsi le test applicable, aux termes de l'article 578 *C.p.c.*, pour obtenir la permission d'appeler d'un jugement autorisant une action collective :

[59] Le juge accordera la permission de faire appel lorsque le jugement lui paraîtra comporter à *sa face même* une erreur déterminante concernant l'interprétation des conditions d'exercice de l'action collective ou l'appréciation des faits relatifs à ces conditions, ou encore, lorsqu'il s'agira d'un cas flagrant d'incompétence de la Cour supérieure.

[56] En définitive, aucune des requérantes ne réussit à se décharger de ce fardeau en l'espèce.

**POUR CES MOTIFS, LA COUR :**

[57] **REJETTE** l'appel, avec frais de justice contre l'appelante;

[58] **REJETTE** la demande de permission d'appeler présentée par Glentel inc., avec frais de justice;

[59] **REJETTE** la demande de permission d'appeler présentée par Meubles Léon ltée, avec frais de justice;

<sup>20</sup> Interrogatoire de Luc Cantin, E.A. (Ameublements Tanguay), p. 252.

<sup>21</sup> Voir *Infineon*, *supra*, note 5, suivi récemment sur ce point notamment dans *Société québécoise de gestion collective des droits de reproduction (Copibec) c. Université Laval*, 2017 QCCA 199.

<sup>22</sup> 2016 QCCA 1878. Les italiques dans la citation sont du juge Chamberland.

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[60] **REJETTE** la demande de permission d'appeler présentée par Brault et Martineau inc., avec frais de justice;

[61] **REJETTE** la demande de permission d'appeler présentée par Ameublements Tanguay inc., avec frais de justice.

  
NICHOLAS KASIRER, J.C.A.

  
MARIE ST-PIERRE, J.C.A.

  
MARTIN VAUCLAIR, J.C.A.

Me Daniel O'Brien  
O'Brien avocats S.E.N.C.R.L.  
Pour Ameublements Tanguay inc.

Me Marie-France Tozzi  
Jeansonne Avocats inc.  
Pour Meubles Léon Ltée

Me Guy Lemay  
Me Myriam Brix  
Lavery De Billy, S.E.N.C.R.L.  
Pour Glentel inc.

Me Nicholas Rodrigo  
Me Jean-Philippe Groleau  
Me Fanny Albrecht  
Davies Ward Phillips & Vineberg, S.E.N.C.R.L., s.r.l.  
Pour Brault & Martineau inc. et Corbeil Électrique inc.

Me David Bourgoin  
BGA Avocats, S.E.N.C.R.L.  
Me Benoît Gamache  
Cabinet BG Avocat inc.  
Pour les intimés

Date d'audience : Le 31 août 2017







# Contrat de Protection Sears

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 Veuillez conserver ce régalant comme preuve de propriété.  
 Pour le service de réparation ou pour prendre rendez-vous pour votre entretien préventif annuel, composez le 1-800-LE-FOYER  
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- Protégez votre budget : des rabais sont accordés sur tous les nouveaux contrats de protection lorsque vous achetez plus d'un contrat à la fois.
- Protégez votre investissement : protection offerte pour une grande gamme de produits, y compris les électroménagers, le matériel d'entretien de planchers, les appareils de conditionnement physique, les appareils pour pelouse et jardin et beaucoup plus.

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Pour nous faciliter la tâche, au moment de prendre rendez-vous, assurez-vous d'avoir les numéros suivants en main :  
 Numéro de modèle \_\_\_\_\_ Numéro de série \_\_\_\_\_ Révisé 07/07 10266

◆ FACTURE  
01094 122 2413

SEARS  
MERCİ DE MAGASINER CHEZ SEARS  
3005 BL. LE CARREFOUR  
CONTRAT D'ENTRETIEN  
OUVERT JUSQU'À 21 HEURES  
DU LUNDI AU VENDREDI

LIVRER A: CLIENT 01094  
 DATE LIVR: 10/09/2010  
 HEURE DE LIVRAISON: 12:00 PM - 06:00  
 CODE DEMANDE LIVR: 008575998700  
 CODE DEMANDE DOS: S0560612660700  
 CLIENT: FRANCE GIROUARD  
 ADRESSE: 660 AVE AMPERE APP 6  
 VILLE/PR: LAVAL, PQ  
 CD FOSTAL: H7N-6E6  
 TEL: 514-919-9551

CONTRAT D'ENTRETIEN  
 GP/STORE #CAI #YKAN #EMPL  
 01 01094 122 2413 2092B49

### VENTE

1: 46 20032  
 REFRIGER., B/BLANC, 19.7PI31599.99 B  
 RESERVE  
 REG 1499.99 271.00-B  
 2: ASSORTIMNET  
 CODE OFFRE 01162  
 3: ASSORTIMNET 75.00-B  
 CODE OFFRE 01162  
 4: 70 46508292  
 SA PAO.C.ENTR., REFRIGER. 219.99 B  
 5: 1B91Z6 COMPTE  
 LIVRAISON 75.00 B

COMPTE SEARS 1522.66  
 \*\*\*\*\*3863 R00

*Sans Protection assement*



## CONTRAT DE PROTECTION SERVICE À DOMICILE

- COUVERTURE ET DURÉE.** Nous fournissons les pièces et les services d'un technicien autorisé que nous désignerons (collectivement appelés dans les présentes « **contrat de protection** ») lorsqu'ils seront nécessaires à la réparation et à l'entretien des produits et/ou des biens indiqués dans le présent contrat, de protection (collectivement appelés dans les présentes « **biens couverts** ») ou « **produits couverts** »). La durée du contrat de protection commencera lorsque vous prendrez possession du bien couvert et prendra fin à la date d'expiration indiquée dans le présent contrat (la durée du contrat est de 12 mois à compter de la date d'expiration indiquée dans la facture). Les pièces utilisées pour réparer le bien couvert peuvent être des pièces neuves ou reconditionnées ou des pièces non d'origine du fabricant, à notre choix. S'il est impossible de trouver des pièces fonctionnelles adéquates pour le bien couvert, nous rembourserons le montant intégral du contrat de protection alors applicable au bien couvert. Le présent contrat de protection vise tout bien couvert qui est en bon état de fonctionnement au moment de l'achat. Nous nous réservons le droit d'annuler le présent contrat de protection à tout moment si cette condition n'est pas remplie.
- CESSIBILITÉ.** Le présent contrat de protection est cessible à tout propriétaire ultérieur au bien couvert, sous réserve des modalités et conditions des présentes.
- RABAIS SUR LES PIÈCES ET LA MAIN D'ŒUVRE NON COUVERTES.** Vous pouvez avoir droit à un rabais de 10 % du prix régulier sur les pièces non couvertes par le présent contrat de protection, sous réserve de leur disponibilité au moment de votre demande (le rabais applicable aux pièces esthétiques et à la main d'œuvre est de 20 % la première année uniquement pour les nouveaux produits).
- HEURES DE SERVICE.** Pour faire une demande de service, veuillez composer le 1 800 LE FOYER en tout temps. Le service sera effectué pendant les heures de travail habituelles de l'unité de service Sears autorisée de la localité. En cas de menace à votre santé ou votre sécurité ou d'endommagement ou de perte de vos biens, un service d'urgence sera fourni sans frais supplémentaires.
- LEU DU SERVICE.** Le service sera fourni à votre domicile à moins que le certificat n'indique « **service en atelier** ». Le service en atelier n'est effectué qu'aux unités de service Sears. Vous devez apporter le bien couvert à l'unité de service et venir le chercher une fois le service fourni ou la réparation effectuée. Vous reconnaissez que nous ne sommes pas responsables du remboursement des frais de cueillette ou de livraison pour le service en atelier.
- ANNULATION.** Nous pouvons annuler le présent contrat de protection si vous n'effectuez pas un paiement requis, faites une fausse déclaration importante ou manquez de façon importante à vos obligations aux termes du présent contrat de protection, ou lorsque nous déterminons, ou que nos représentants déterminent, que nous ne pouvons, ou qu'ils ne peuvent, assurer le service du bien couvert soit parce qu'il est difficile d'accès, soit en raison de conditions de travail non sécuritaires. Si vous annulez ou si nous annulons le présent contrat de protection dans la période de souvenance (60) jours suivant la date d'achat, ou avant la fin de la garantie complète du fabricant couvrant le produit en entier, à l'exclusion des garanties couvrant les pièces constitutives du produit, nous vous rembourserons le prix total payé pour votre contrat de protection (le prix total **x**). Si le présent contrat de protection est annulé par la suite, nous vous rembourserons une partie du prix total proportionnelle à la durée à courir du contrat de protection, calculée sur une base mensuelle. Le remboursement pourra être effectué selon le mode utilisé pour l'achat du présent contrat de protection.
- RENOUVELLEMENT.** Aucune des parties n'a l'obligation de renouveler le présent contrat de protection à l'expiration de la durée du contrat. Les prix peuvent changer au moment du renouvellement. En achetant le présent contrat de protection, vous reconnaissez qu'on pourra vous appeler pour vous aviser des renouvellements. Nous nous réservons le droit de déterminer l'admissibilité du produit ou de l'équipement à une couverture au moment de toute offre de renouvellement.
- POLITIQUE ANTICORRUPTION.** Advenant plus de trois (3) défaillances distinctes catastrophiques du produit pendant toute période ininterrompue de douze (12) mois au cours de laquelle le bien couvert est couvert, nous remplacerons le bien couvert à votre demande. Les réparations dont il est question au présent article comprennent le remplacement d'une pièce fonctionnelle, durable mais ne comprennent pas l'entretien préventif, le diagnostic, les directives du client, la réparation ou le remplacement accessoire, esthétique ou non fonctionnel ou toute réparation couverte par le rappel du produit par le fabricant. Les progrès techniques et la disponibilité des produits pourraient faire en sorte qu'un produit de remplacement soit offert à un prix de vente inférieur à celui du produit original. Dans tous les cas, il nous

apparaîtra entièrement de déterminer la comparabilité des produits REMBOURSEMENT DU CÔTÉ DES DERNIÈRES PÉRIODES POUR LES RÉFÉRÉNTIELS ET CONGELATEURS : Nous vous rembourserons jusqu'à concurrence de \$250 à vous d'une (1) année donnée pour la perte de denrées attribuables à une défaillance mécanique d'un produit couvert. La perte de denrées doit être constatée par nous. Si le produit couvert est toujours sous garantie, tout remboursement accordé aux termes du présent contrat de protection s'ajoute au remboursement prévu par la garantie. En aucun cas, le montant du remboursement total aux termes de la garantie en question et du présent contrat de protection ne doit excéder la valeur totale des denrées perdues.

**10. PROTECTION EN CAS DE SURTENSION DE COURANT.** Le présent contrat de protection couvre les coûts des pièces et de la main d'œuvre occasionnés par suite d'une défaillance mécanique ou électrique catastrophique du produit couvert causée par une surtension électrique. Le présent contrat de protection ne couvre pas les surtensions de courant causées par la foudre.

**11. LIMITATIONS DE LA COUVERTURE.** Le présent contrat de protection ne couvre pas : a) la marchandise utilisée à des fins commerciales (c. à d. utilisée à une autre fin que celle d'un ménage familial ou pour un usage domestique normal); b) l'installation, le service relié à l'installation, les systèmes de ventilation, l'installation et le nivellement du produit, les améliorations apportées aux ouvrages de plomberie ou aux installations électriques nécessaires à l'installation du produit, l'inversion de portes; c) l'endommagement ou la décoloration du produit attribuable à des causes indépendantes de notre volonté comprenant notamment : la négligence, l'utilisation impropre ou abusive, un vol, un incendie, une inondation, la vent, le gel, la foudre et les conditions atmosphériques inhabituelles qui causent une détérioration inhabituelle ou rapide du produit (y compris la rouille); d) le service nécessaire par suite de l'omission d'entretenir le produit ou l'équipement suivant les indications du manuel d'instructions, notamment par suite de négligence de l'utilisateur;

e) le remplacement de pièces non durables, jetables, non récupérables ou esthétiques, y compris : les lames de scie, les forets, le papier de verre et les disques de ponçage, les filtres ty compris l'eau), les câbles, les fils et connexions, les antennes, les mallettes et composants de transport, les liquides (essence et huile), les aiguilles de machine à coudre, les ampoules et les piles sèches et rechargeables; f) la réparation ou le remplacement du vilebrequin à cames et du cordon d'alimentation;

g) le service nécessaire par suite de modifications apportées à l'équipement ou de réparations effectuées pendant la durée du contrat que nous n'avons pas autorisées ou qui ont été effectuées par des parties que nous n'avons pas expressément autorisées;

h) les conduites d'alimentation en gaz, les robinets de fermeture du gaz, les lignes téléphoniques, les conduites d'eau, de gaz, d'électricité ou autres lignes, conduites ou réseaux de gaines reliés aux mises à niveau, des codes d'équipement, et i) l'âge ou le service non technique ou concernant le mode d'emploi.

**12. LIMITATION DE LA RESPONSABILITÉ. EXCEPTION FAITE DE LA PROTECTION CONTRE LA PÉRIE DE DENRÉES PRÉVUE DANS LE PRÉSENT CONTRAT DE PROTECTION ET DE TOUTE NÉGLIGENCE GROSSIÈRE DE NOTRE PART, VOUS RECONNAISSEZ ET CONVENEZ QUE QUELLES QUE SOIENT LES CIRCONSTANCES, NOUS NE SOMMES, ET NOS AGENTS, ENTREPRENEURS OU TITULAIRES DE LICENCE NE SOMES, AUCUNEMENT RESPONSABLES DES DOMMAGES DIRECTS OU INDIRECTS QUELS Outils SOIENT COMPRIS, SANS S'Y RESTREINDRE, DES DOMMAGES ACCESSOIRES OU CONSÉQUENTS, NOTAMMENT DES DOMMAGES MATÉRIELS, DES PERTES DE TEMPS, DE LA PERTE D'USAGE DU BIEN COUVERT OU D'AUTRES BIENS, NOTAMMENT DE BIENS MEUBLES OU IMMEUBLES DE PRODUITS OU D'ÉQUIPEMENTS), OU DE TOUT AUTRE DOMMAGE DÉCOULANT DU BRIS OU DE LA DÉFAILLANCE DU BIEN COUVERT OU A FAIT L'OBJET D'UN SERVICE OU D'UNE RÉPARATION EN VERTU DU PRÉSENT CONTRAT DE PROTECTION, DES RETARDS DANS LA FOURNITURE DU SERVICE OU DE LA RÉPARATION OU DE L'INCAPACITÉ D'EFFECTUER LE SERVICE OU LA RÉPARATION DU BIEN COUVERT.**

**13. RÉGLEMENT DES DIFFÉRENDS.** Vous reconnaissez et convenez que toute réclamation, toute controverse ou tout différend de quelque nature que ce soit (d'ordre contractuel, délictuel ou autre, notamment en vertu d'une loi, de la common law, par suite d'une fraude, d'un autre délit intentionnel ou d'une réclamation en equity ou liée à la propriété) découlant de ce contrat ou s'y rapportant : 1) le présent contrat de protection; 2) les relations découlant du présent contrat de protection ou de la validité, la portée, l'interprétation ou le caractère exécutoire de la présente disposition ou de l'ensemble du contrat de protection (le réclamation) sera réglé sur une base individuelle, sans possibilité de recours à une forme de recours collectif ou de jonction avec les demandes d'autres parties, par arbitrage final et exécutoire devant un seul arbitre. L'arbitre déterminera si vous serez, ou si nous serons, responsables en définitive des coûts de l'arbitrage. L'arbitre appliquera le droit substantiel pertinent et les règles en matière de prescription applicables et présentera par écrit des conclusions de

fait et de droit motivées. Si une partie de la présente disposition d'arbitrage est réputée invalide ou inexécutoire, le reste de cette disposition n'en sera pas invalide pour autant. La présente disposition demeurera en vigueur et aura plein effet après l'expiration ou la résiliation du présent contrat de protection et malgré le fait que vous n'avez pas signé de déclaration de compréhension et de consentement, OUVEN RAISON DE CETTE CLAUSE D'ARBITRAGE, VOUS MAURÉZ, ET VOUS MAURONS, PAS LE DROIT D'INTENTER DES POURSUITES DEVANT LES TRIBUNAUX OU DE PARTICIPER À TITRE DE REPRÉSENTANT OU DE MEMBRE D'UN GROUPE DE DEMANDEURS À AUCUNE RÉCLAMATION.

**14.** Le présent contrat de protection constitue l'entente intégrale intervenue entre nous et vous au sujet du présent contrat, et il annule et remplace toutes les autres ententes ou communications antérieures, orales ou écrites à cet égard. Il n'existe aucun engagement, modalité, condition, entente, déclaration ou garantie ou obligation (en droit, en equity, de nature fiduciaire ou d'ordre délictuel), explicite ou implicite, qui n'est pas expressément prévu dans le présent contrat de protection.

**15.** Dans le présent contrat de protection, les termes « nous », « notre » et « nos » désignent Sears Holdings Limited et ses sociétés affiliées individuellement et collectivement appelées « Sears » ou toute autre partie à qui Sears pourra à son entière discrétion, céder les droits et obligations énoncés dans les présentes. Les termes « vous », « votre » et « vos » désignent l'acheteur du présent contrat de protection ou tout propriétaire ultérieur du bien couvert.

**16. COLLECTE ET UTILISATION DE RENSEIGNEMENTS PERSONNELS.** Nous pouvons de temps à autre recueillir des renseignements financiers ou d'autres renseignements personnels vous concernant. Ces renseignements comprennent des renseignements au sujet des transactions obtenus par suite des relations que vous entretenez avec nous. Nous pouvons utiliser vos renseignements personnels de temps à autre aux fins suivantes : pour vous identifier et déterminer votre admissibilité à nos produits et services et à ceux de nos sociétés affiliées; pour vous fournir les produits et services que vous demandez de temps à autre ainsi qu'à nos sociétés affiliées ou à des tiers sélectionnés ou pour promouvoir auprès de vous les produits et services de tiers que nous sélectionnons et qui, à notre avis, pourraient vous intéresser; pour établir, entretenir et gérer nos relations avec vous et vous fournir des services de manière continue; pour administrer la livraison de produits et services fournis par nous, nos sociétés affiliées ou des tiers sélectionnés et pour effectuer les opérations de surveillance, de complaisance, de mise à jour et de recouvrement afférentes à votre compte; pour comprendre vos besoins et promouvoir auprès de vous nos produits et services; pour ajouter vos renseignements personnels à des listes de clients que nous préparons et utilisons à cette fin et pour mettre à jour nos dossiers et ceux de nos sociétés affiliées et des tiers sélectionnés; pour créer des statistiques sur nos activités; pour nous conformer à toute exigence prévue par la loi; et pour d'autres fins indiquées dans notre brochure sur la protection de la vie privée, telle qu'elle peut être modifiée de temps à autre.

**17. ACCÈS À VOS RENSEIGNEMENTS PERSONNELS ET RETRAIT DE VOTRE CONSENTEMENT.** Vous pouvez accéder à vos renseignements personnels, demander que des corrections y soient apportées, poser des questions à leur sujet ou retirer votre consentement à ce que nous, recueillions, utilisions et divulguions vos renseignements personnels en tout temps, sous réserve des restrictions (telles que contractuelles, applicables et d'un avis raisonnable) il vous suffit de nous faire parvenir un avis écrit au 222, rue Jarvis, Toronto (Ontario) M5B 2B8. À l'attention du directeur, protection des renseignements personnels, ou à toute autre adresse dont nous pouvons vous aviser. Cela peut prendre quelques semaines pour que votre demande prenne effet. Si vous retirez votre consentement, ce retrait peut avoir pour conséquence que nous ne soyons plus en mesure de fournir ou de continuer à vous fournir le produit ou le service que vous avez demandé. En outre, nos moyens de communication avec vous seront réduits.

**18. ENTRETIEN PRÉVENTIF ANNUEL.** Une fois l'an, à votre demande, un entretien préventif annuel sera effectué pour chaque bien couvert. Ce service se fera à domicile à moins que le certificat n'indique « **Service en atelier** » (ne s'applique pas au Programme d'entretien global pour les associés).

**Pour obtenir des précisions ou nous communiquer un changement d'adresse ou de numéro de téléphone, veuillez téléphoner au 1 800 361 6665.**

**Pour les demandes de service, veuillez téléphoner au 1 800 LE FOYER.**

**Sears**

**VEUILLEZ CONSERVER CE DOCUMENT. IL CONSTITUE VOTRE PREUVE DE PROPRIÉTÉ.**

**APPENDIX “C”  
(see attached)**



**From:** Mojtahedi, Arad [<mailto:arad.mojtahedi@nortonrosefulbright.com>]  
**Sent:** October 27, 2017 6:16 PM  
**To:** Benoît Gamache <[bgamache@cabinetbg.ca](mailto:bgamache@cabinetbg.ca)>  
**Cc:** Gauthier, Virginie <[virginie.gauthier@nortonrosefulbright.com](mailto:virginie.gauthier@nortonrosefulbright.com)>; Abitan, Sandra <[SAbitan@osler.com](mailto:SAbitan@osler.com)>; Morissette, Julien <[JMorissette@osler.com](mailto:JMorissette@osler.com)>  
**Subject:** RE: CLASS ACTION / DEBTOR-CREDITOR: Creditors / Class Action Members (SEARS - CORBEIL)

Dear Confrère,

We have requested the necessary information regarding the respective securities from the insurance brokers of the entities involved. Although we are doing our utmost to advance things quickly, we are still not in possession of some documents necessary for analysis of our concerns. We hope to get back to you quickly during the coming week.

Best regards,

**Arad Mojtahedi**

Avocat  
Associate

Norton Rose Fulbright Canada S.E.N.C.R.L., s.r.l. / LLP  
1, Place Ville Marie, Bureau 2500, Montréal, QC, H3B 1R1, Canada  
T: +1 514.847.4582 | F: +1 514 286 5474  
[arad.mojtahedi@nortonrosefulbright.com](mailto:arad.mojtahedi@nortonrosefulbright.com)

## NORTON ROSE FULBRIGHT

**From:** Benoît Gamache [<mailto:bgamache@cabinetbg.ca>]  
**Sent:** October 25, 2017 5:21 PM  
**To:** Mojtahedi, Arad  
**Subject:** RE: CLASS ACTION / DEBTOR-CREDITOR: Creditors / Class Action Members (SEARS - CORBEIL)

Dear Confrères,

Furthermore, we respectfully submit that the monitor should consider two possible options: 1) A transaction or 2) Acquiescence in the "Routhier" and "Tremblay" class actions, both scenarios having as their sole purpose the enforcement of the contracts of security of Sears Canada and Corbeil and its affiliates.

Obviously, in the case of Corbeil, if the "Franchisees" continue to operate under the Corbeil banner following a transaction assigning assets to them, such as the trademark or the business, our position will be different.

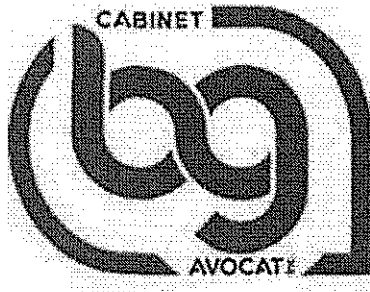
We look forward to hearing back from you.

BG

Benoît Gamache, avocat / attorney  
Direct Line: (514) 908-7446  
Cabinet BG Avocat Inc.



BG Law Firm Inc.



4725 Metropolitan East, Suite 207  
 Montreal, Quebec H1R 0C1  
 Telephone: (514) 908-7460 / 1-866-327-0123  
 Fax: (514) 329-0120 / 1-866-616-0120  
 Website: [www.bgavocat.com](http://www.bgavocat.com)

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**From:** Mojtahedi, Arad [<mailto:arad.mojtahedi@nortonrosefulbright.com>]  
**Sent:** October 23, 2017 3:51 PM  
**To:** Benoît Gamache <[bgamache@cabinetbg.ca](mailto:bgamache@cabinetbg.ca)>  
**Cc:** Gauthier, Virginie <[virginie.gauthier@nortonrosefulbright.com](mailto:virginie.gauthier@nortonrosefulbright.com)>; Abitan, Sandra <[SAbitan@osler.com](mailto:SAbitan@osler.com)>; Morissette, Julien <[JMorissette@osler.com](mailto:JMorissette@osler.com)>  
**Subject:** RE: CLASS ACTION / DEBTOR-CREDITOR: Creditors / Class Action Members (SEARS - CORBEIL)

Dear Confrère,

We hope to get back to you this week with an answer.

Regards,

**Arad Mojtahedi**  
 Avocat  
 Associate

Norton Rose Fulbright Canada S.E.N.C.R.L., s.r.l. / LLP  
 1, Place Ville Marie, Bureau 2500, Montréal, QC, H3B 1R1, Canada  
 T: +1 514.847.4582 | F: +1 514 286 5474  
[arad.mojtahedi@nortonrosefulbright.com](mailto:arad.mojtahedi@nortonrosefulbright.com)

**NORTON ROSE FULBRIGHT**

**From:** Benoît Gamache [<mailto:bgamache@cabinetbg.ca>]  
**Sent:** October 21, 2017 9:19 AM  
**To:** Mojtahedi, Arad  
**Subject:** RE: CLASS ACTION / DEBTOR-CREDITOR: Creditors / Class Action Members (SEARS - CORBEIL)



Thank you!

Do have an idea how long it will take for a reply? Time is a key factor in our equation.

Good day.

Benoît Gamache, Attorney  
BG Law Firm Inc.  
(514) 908-7446 / 1-877-908-7446  
Sent by iPhone

On Oct. 20, 2017 at 3:51 PM, Mojtahedi, Arad <[arad.mojtahedi@nortonrosefulbright.com](mailto:arad.mojtahedi@nortonrosefulbright.com)> wrote:

Hello Mtre. Gamache,

We received your email. We and the monitor of Sears (FTI Consulting) are currently in the process of analyzing everything and will get back to you once we have had a chance to consider all relevant factors.

Sincerely yours,

**Arad Mojtahedi**  
Avocat  
Associate

Norton Rose Fulbright Canada LLP  
1 Place Ville Marie, Suite 2500, Montréal, QC, H3B 1R1, Canada  
T: +1 514.847.4582 | F: +1 514 286 5474  
[arad.mojtahedi@nortonrosefulbright.com](mailto:arad.mojtahedi@nortonrosefulbright.com)

**NORTON ROSE FULBRIGHT**

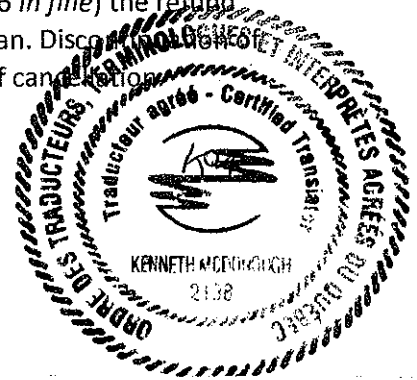
**From:** Benoît Gamache [<mailto:bgamache@cabinetbg.ca>]  
**Sent:** October 18, 2017 10:52 AM  
**To:** Mojtahedi, Arad  
**Subject:** RE: CLASS ACTION / DEBTOR-CREDITOR: Creditors / Class Action Members (SEARS - CORBEIL)

Hello,

Thank you for your quick reply.

As discussed, please find attached a copy of our correspondence bearing yesterday's date.

We are also attaching a copy of the Sears protection plan describing (clause 6 *In fine*) the refund prorated on a monthly basis in the event of cancellation of the protection plan. Discontinuance of operations and termination of the protection plans constitute valid causes of cancellation.



Moreover, we hereby confirm that we wish to exercise our remedies with respect to the securities required by the Office de la protection du consommateur ( s. 256 CPA). We submit to you that the contracts of security can only cover protection plans. Consequently, such contracts cannot constitute "liquidatable" assets under the CCAA and are not part of the winding-up. From a certain perspective, the members of our class actions would be, in some sense, "preferred creditors" of the protection plans, on the grounds that they alone may benefit from the securities (Sears and Corbeil).

To exercise our rights in respect of the contracts of security and have the OPC intervene, we must first obtain either a judgement (impossible under the stay) or an out-of-court agreement covering the protection plans. Given that such an agreement would not in any way deprive the other creditors, we think it is an avenue worth exploring.

On a different note, we wish to be informed of the situation regarding the sale of Corbeil's assets. More specifically, we would like you to send us a copy of the transaction involving the continuance of operations under the "Corbeil" trademark. The constituent elements of that transaction will have an impact on the rights of the members of our class action (Routhier). For such purpose, you are hereby advised that our class action (Routhier v Corbeil) targets both Corbeil Électroménager and Corbeil électrique. See the decision of the Court of Appeal of Québec (attached hereto).

We look forward to your comments and suggestions.

BG

**Benoît Gamache, avocat / attorney**

Direct Line: (514) 908-7446

Cabinet BG Avocat Inc.

BG Law Firm Inc.

<image001.jpg>

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616-0120  
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**From:** Mojtahedi, Arad [<mailto:arad.mojtahedi@nortonrosefulbright.com>]

**Sent:** October 17, 2017 5:14 PM



To: Benoît Gamache <[bgamache@cabinetbg.ca](mailto:bgamache@cabinetbg.ca)>

Subject: TR: CLASS ACTION / DEBTOR-CREDITOR: Creditors / Class Action Members (SEARS - CORBEIL)

Dear Mtre. Me Gamache,

As discussed on the telephone, here is my contact information.

Best regards,

**Arad Mojtahedi**

Avocat  
Associate

Norton Rose Fulbright Canada S.E.N.C.R.L., s.r.l. / LLP  
1 Place Ville Marie, Suite 2500, Montréal, QC, H3B 1R1, Canada  
T: +1 514.847.4582 | F: +1 514 286 5474  
[arad.mojtahedi@nortonrosefulbright.com](mailto:arad.mojtahedi@nortonrosefulbright.com)

**NORTON ROSE FULBRIGHT**

**From:** Benoît Gamache [<mailto:bgamache@cabinetbg.ca>]

**Sent:** Wednesday, October 11, 2017 11:12 AM

**To:** Sears Canada

**Subject:** TR: CLASS ACTION / DEBTOR-CREDITOR: Creditors / Class Action Members (SEARS - CORBEIL)

Good day,

Our firm is acting as class counsel in class action matters (hereinafter referred to as "class actions" in the province of Quebec) against Sears Canada and Corbeil (Électroménagers/Électrique Inc.).

All these matters revolve around sales of extended warranties and systemic (mis)representations regarding the detrimental consequences of not purchasing additional protection.

We would like to know the procedure to follow to file one or more claim forms as creditors so that the claims from the class actions are added to the list of creditors.

The Court matters concerned are:

1. Filion v Corbeil Électrique inc.	(500-06-000535-100)
2. Ostiguy v Sears Canada	(500-06-000537-106)
3. Routhier v Corbeil Électroménagers inc. (Corbeil Électrique inc.) et als	(500-06-000709-143)
4. Tremblay v Sears Canada et als	150-06-000010-173)





We have left numerous messages (by telephone and email) for which we are still awaiting follow-up.

We look forward to hearing from you.

BG

**Benoît Gamache, avocat / attorney**  
Direct Line: (514) 908-7446  
Cabinet BG Avocat Inc.  
BG Law Firm Inc.

<image001.jpg>

4725 Metropolitan East, Suite  
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866-327-0123  
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616-0120  
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**From:** Benoît Gamache  
**Sent:** October 5 2017 10:18  
**To:** '[searscanada@fticonsulting.com](mailto:searscanada@fticonsulting.com)' <[searscanada@fticonsulting.com](mailto:searscanada@fticonsulting.com)>  
**Cc:** 'Sonia Tremblay' <[stremblay@bga-law.com](mailto:stremblay@bga-law.com)>  
**Subject:** Creditors / Class Action Members

Good day,

Our firm is acting as class counsel in class action matters (hereinafter referred to as "class actions" in the province of Quebec) against Sears Canada and Corbeil (Électroménagers/Électrique Inc.): [bga-law.com/gp](http://bga-law.com/gp) and [bga-law.com/gpcantin](http://bga-law.com/gpcantin)

All these matters revolve around sales of extended warranties and systemic (mis)representations regarding the detrimental consequences of not purchasing additional protection.

We would like to know the procedure to follow to file one or more class actions as creditors so that the claims from the class actions are added to the list of creditors.

The Court matters concerned are:



1. Fillion v Corbeil Électrique inc.	(500-06-000535-100)
2. Ostiguy v Sears Canada	(500-06-000537-106)
3. Routhier v Corbeil Électroménagers inc. (Corbeil Électrique inc.) et als	(500-06-000709-143)
4. Tremblay v Sears Canada et als	150-06-000010-173)

We have left numerous messages (by telephone and email) for which we are still awaiting follow-up.

We look forward to hearing from you.

BG

**Benoît Gamache, avocat / attorney**

Direct Line: (514) 908-7446

Cabinet BG Avocat Inc.

BG Law Firm Inc.

BG

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ORIGINAL DOCUMENT(S) FOLLOW

**Schmitt, Alexander**

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**From:** Mojtahedi, Arad  
**Sent:** October-27-17 6:16 PM  
**To:** Benoît Gamache  
**Cc:** Gauthier, Virginie; Abitan, Sandra; Morissette, Julien  
**Subject:** RE: CLASS ACTION / DEBTOR-CREDITOR: Créanciers / Membres de recours collectifs (SEARS - CORBEIL)

Cher confrère,

Nous avons demandé aux courtiers d'assurance des entités impliqués les informations nécessaires sur leurs cautions respectives. Bien que nous faisons de notre mieux afin d'avancer les choses rapidement, certains documents qui sont nécessaires pour l'analyse de vos préoccupations ne sont pas encore dans notre possession. Nous espérons vous revenir rapidement au cours de la semaine prochaine.

Cordiales salutations,

**Arad Mojtahedi**

Avocat  
Associate

Norton Rose Fulbright Canada S.E.N.C.R.L., s.r.l. / LLP  
1, Place Ville Marie, Bureau 2500, Montréal, QC, H3B 1R1, Canada  
T: +1 514.847.4582 | F: +1 514 286 5474  
[arad.mojtahedi@nortonrosefulbright.com](mailto:arad.mojtahedi@nortonrosefulbright.com)

**NORTON ROSE FULBRIGHT**

---

**De :** Benoît Gamache [mailto:[bgamache@cabinetbg.ca](mailto:bgamache@cabinetbg.ca)]

**Envoyé :** 25 octobre 2017 17:21

**À :** Mojtahedi, Arad

**Objet :** RE: CLASS ACTION / DEBTOR-CREDITOR: Créanciers / Membres de recours collectifs (SEARS - CORBEIL)

Chers confrères,

Dans un complément d'idées, nous vous soumettons respectueusement que le contrôleur devrait considérer les deux options possibles sont : 1) Une transaction ou 2) L'acquiescement aux actions collectives « Routhier » et « Tremblay », les deux scénarios aux seules fins de faire exécuter les contrats de cautionnements des Sears Canada et de Corbeil et ses affiliés.

Dans le cas de Corbeil, il est évident que si les « Franchisés » continuent d'opérer sous la bannière Corbeil suite à une transaction leur cédant des actifs, telle la marque de commerce ou le fonds de commerce, notre position sera différente.

Dans l'attente de vos nouvelles,

BG

**Benoît Gamache, avocat / attorney**

Ligne directe : (514) 908-7446  
Cabinet BG Avocat Inc.  
BG Law firm Inc.



4725, Métropolitaine Est, bureau 207  
Montréal (Québec) H1R 0C1  
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---

**De :** Mojtahedi, Arad [mailto:arad.mojtahedi@nortonrosefulbright.com]

**Envoyé :** 23 octobre 2017 15:51

**À :** Benoît Gamache <bgamache@cabinetbg.ca>

**Cc :** Gauthier, Virginie <virginie.gauthier@nortonrosefulbright.com>; Abitan, Sandra <SAbitan@osler.com>; Morissette, Julien <JMorissette@osler.com>

**Objet :** RE: CLASS ACTION / DEBTOR-CREDITOR: Créanciers / Membres de recours collectifs (SEARS - CORBEIL)

Cher confrère,

Nous espérons vous répondre cette semaine.

Salutations,

**Arad Mojtahedi**

Avocat  
Associate

Norton Rose Fulbright Canada S.E.N.C.R.L., s.r.l. / LLP  
1, Place Ville Marie, Bureau 2500, Montréal, QC, H3B 1R1, Canada  
T: +1 514.847.4582 | F: +1 514 286 5474  
[arad.mojtahedi@nortonrosefulbright.com](mailto:arad.mojtahedi@nortonrosefulbright.com)

**NORTON ROSE FULBRIGHT**

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**De :** Benoît Gamache [mailto:bgamache@cabinetbg.ca]

**Envoyé :** 21 octobre 2017 09:19

**À :** Mojtahedi, Arad

**Objet :** Re: CLASS ACTION / DEBTOR-CREDITOR: Créanciers / Membres de recours collectifs (SEARS - CORBEIL)

Merci!

Avez-vous une idée du temps de réponse ? Le temps est un facteur important dans notre équation.

Bonne journée

Benoît Gamache, avocat

Cabinet BG Avocat Inc.

(514) 908-7446 / 1-877-908-7446

Envoyé par iPhone

Le 20 oct. 2017 à 15:51, Mojtahedi, Arad <[arad.mojtahedi@nortonrosefulbright.com](mailto:arad.mojtahedi@nortonrosefulbright.com)> a écrit :

Bonjour Me Gamache,

Nous avons bien reçu votre courriel. Le contrôleur du Sears (FTI Consulting) et nous sommes présentement en train d'analyser le tout et nous vous reviendrons une fois que nous aurons eu la chance de considérer tous les facteurs pertinents.

Veuillez agréer l'expression de nos sentiments distingués.

**Arad Mojtahedi**

Avocat

Associate

Norton Rose Fulbright Canada S.E.N.C.R.L., s.r.l. / LLP

1, Place Ville Marie, Bureau 2500, Montréal, QC, H3B 1R1, Canada

T: +1 514.847.4582 | F: +1 514 286 5474

[arad.mojtahedi@nortonrosefulbright.com](mailto:arad.mojtahedi@nortonrosefulbright.com)

**NORTON ROSE FULBRIGHT**

---

**De :** Benoît Gamache [<mailto:bgamache@cabinetbg.ca>]

**Envoyé :** 18 octobre 2017 10:52

**À :** Mojtahedi, Arad

**Objet :** RE: CLASS ACTION / DEBTOR-CREDITOR: Créanciers / Membres de recours collectifs (SEARS - CORBEIL)

Bonjour,

Merci pour votre réponse rapide,

Tel que discuté, veuillez trouver, ci-jointe, une copie de notre correspondance datée d'hier.

Nous vous joignons également une copie du plan de protection Sears qui fait état (clause no. 6 *In fine*) du remboursement proportionnel, sur une base mensuelle, en cas d'annulation du plan de protection. La cessation des opérations et la fin des plan de protection constituent des causes d'annulation valables.

Par ailleurs, nous vous confirmons vouloir exercer nos recours sur les cautions exigées par l'office de la protection du consommateurs (art. 256 L.p.c.). Nous vous soumettons que les contrats de cautionnement ne peuvent viser uniquement que les plans de protections. Par conséquent, ces contrats ne peuvent constituer des actifs « liquidables » au sens de la LAAC et ne font pas partie de la liquidation. Dans une certaine perspective, les membres de nos recours seraient en quelques sorte des

« créanciers privilégiés » des plans de protection , et cela, au motif qu'eux seuls peuvent bénéficier des cautionnements ( Sears et Corbeil).

Pour exercer nos droits à l'encontre des contrats de cautionnement et faire intervenir l'OPC, nous devons préalablement obtenir soit un jugement ( impossible en vertu de la suspension) soit une entente hors-cour visant les plan de protections. Considérant qu'une telle entente ne priverait aucunement les autres créanciers, nous pensons que ce serait une voie à explorer.

Dans un autre registre, nous souhaitons être informé de la situation visant la vente d'actifs de Corbeil. Plus spécifiquement, nous désirons nous voir communiquer une copie de la transaction impliquant la continuité des opérations sous la marque de commerce « Corbeil ». Les éléments constitutif de cette transaction auront un effet sur les droits des membres de notre action collective ( Routhier). À cet effet, nous vous avisons que notre action collective (Routhier c. Corbeil) vise autant Corbeil Électroménager que Corbeil électrique. Voir la décision de la Cour d'appel du Québec ( ci-jointe)

Dans l'attente de vos commentaires et suggestions,

BG

**Benoît Gamache, avocat / attorney**

Ligne directe : (514) 908-7446  
Cabinet BG Avocat Inc.  
BG Law firm Inc.

<image001.jpg>

4725, Métropolitaine Est, bureau  
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1-866-616-0120  
Site web : [www.bgavocat.com](http://www.bgavocat.com)

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---

**De :** Mojtahedi, Arad [<mailto:arad.mojtahedi@nortonrosefulbright.com>]

**Envoyé :** 17 octobre 2017 17:14

**À :** Benoît Gamache <[bgamache@cabinetbg.ca](mailto:bgamache@cabinetbg.ca)>

**Objet :** TR: CLASS ACTION / DEBTOR-CREDITOR: Créanciers / Membres de recours collectifs

Bonjour Me Gamache,

Tel que discuté au téléphone, voici mes coordonnées.

Meilleures salutations,

**Arad Mojtahedi**

Avocat  
Associate

Norton Rose Fulbright Canada S.E.N.C.R.L., s.r.l. / LLP  
1, Place Ville Marie, Bureau 2500, Montréal, QC, H3B 1R1, Canada  
T: +1 514.847.4582 | F: +1 514 286 5474  
[arad.mojtahedi@nortonrosefulbright.com](mailto:arad.mojtahedi@nortonrosefulbright.com)

**NORTON ROSE FULBRIGHT**


---

**From:** Benoît Gamache [<mailto:bgamache@cabinetbg.ca>]  
**Sent:** Wednesday, October 11, 2017 11:12 AM  
**To:** Sears Canada  
**Subject:** CLASS ACTION / DEBTOR-CREDITOR: Créanciers / Membres de recours collectifs

Bonjour,

Notre firme agit comme avocats-conseils des demandeurs dans dossier de recours collectif (Désormais désignées « actions collectives » dans la province de Québec) contre Sears Canada et Corbeil (Électroménagers /Électrique).

Tous ces dossiers s'articulent autour de la vente de garanties prolongées et aux représentations (fausses) sur les conséquences préjudiciables de ne pas en faire l'achat d'une protection supplémentaire.

Nous désirons connaître la procédure à suivre afin déposer un ou des formulaires de réclamations à titre de créanciers afin que les réclamations issues des actions collectives soient ajoutées à liste des créanciers

Les dossiers de justice concernées sont :

1. Filion c. Corbeil Électrique inc.	(500-06-000535-100)
2. Ostiguy c. Sears Canada	(500-06-000537-106)
3. Routhier c. Corbeil Électroménagers inc. (Corbeil Électrique inc.) et als	(500-06-000709-143)
4. Tremblay c, Sears Canada et als	150-06-000010-173)

Nous avons laissé des messages (téléphoniques et courriels) pour lesquels nous attendons toujours un suivi.

Dans l'attente de vos nouvelles

BG



**Benoît Gamache, avocat / attorney**  
Ligne directe : (514) 908-7446  
Cabinet BG Avocat Inc.  
BG Law firm Inc.

<image001.jpg>

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Site web : [www.bgavocat.com](http://www.bgavocat.com)

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---

**De :** Benoît Gamache  
**Envoyé :** 5 octobre 2017 10:18  
**À :** '[searscanada@fticonsulting.com](mailto:searscanada@fticonsulting.com)' <[searscanada@fticonsulting.com](mailto:searscanada@fticonsulting.com)>  
**Cc :** 'Sonia Tremblay' <[stremblay@bga-law.com](mailto:stremblay@bga-law.com)>  
**Objet :** Créanciers / Membres de recours collectifs

Bonjour,

Notre firme agit comme avocats-conseils des demandeurs dans dossier de recours collectif (Désormais désignées « actions collectives » dans la province de Québec) contre Sears Canada et Corbeil (Électroménagers /Électrique) : [bga-law.com/gp](http://bga-law.com/gp) et [bga-law.com/gpcantin](http://bga-law.com/gpcantin)

Tous ces dossiers s'articulent autour de la vente de garanties prolongées et aux représentations (fausses) sur les conséquences préjudiciables de ne pas en faire l'achat d'une protection supplémentaire.

Nous désirons connaître la procédure à suivre afin déposer un ou plusieurs formulaires de réclamations à titre de créanciers afin que les réclamations issues des actions collectives soient ajoutées à liste des créanciers

Les dossiers de justice concernés sont :

1. Filion c. Corbeil Électrique inc.	(500-06-000535-100)
2. Ostiguy c. Sears Canada	(500-06-000537-106)
3. Routhier c. Corbeil Électroménagers	(500-06-000709-143)

inc. (Corbeil Électrique inc.) et als	
4. Tremblay c, Sears Canada et als	(150-06-000010-173)

Nous avons laissé des messages (téléphoniques et courriels) pour lesquels nous attendons toujours un suivi.

Dans l'attente de vos nouvelles

BG

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**APPENDIX “D”  
(see attached)**

**From:** Benoît Gamache [mailto:bgamache@cabinetbg.ca]  
**Sent:** November 14, 2017 9:32 AM  
**To:** Mojtahedi, Arad  
**Subject:** RE: CLASS ACTION / DEBTOR-CREDITOR: Creditors / Class Action Members (SEARS - CORBEIL)

Dear Confrère,

First, kindly to let us know the current status of your requests for information regarding our matter.

To assist you, please find attached the security numbers we obtained from the Office de la Protection du Consommateur (OPC).

Also, you are hereby advised that your client FTI will soon be impleaded for Sears Canada in our class action matter: Tremblay v Sears Canada et als (150-06-000010-173). For this purpose, the evidence available to us demonstrates that protection plans continued to be sold after June 22, 2017 without the consumers who purchased them being informed at the time of sale that the company was under CCAA protection. Furthermore, protection plans were sold when the decision had already been made to wind up the company. Under these circumstances, we are obliged to reactivate our matter and join your client to it in order to be able to exercise our clients' rights in respect to the securities.

We understand that, unless otherwise specifically indicated, your practice will accept service of our proceeding.

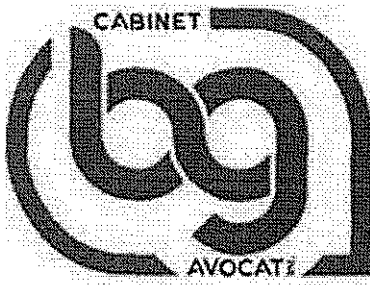
We reiterate our conviction that it is in the interests of all parties, particularly FTI, to quickly find a negotiated solution to the current situation.

We look forward to your reply.

Regards,

BG

**Benoît Gamache, avocat / attorney**  
Direct Line: (514) 908-7446  
Cabinet BG Avocat Inc.  
BG Law Firm Inc.



4725 Metropolitan East, Suite 207  
Montreal, Quebec H1R 0C1  
Telephone: (514) 908-7460 / 1-866-327-0123  
Fax: (514) 329-0120 / 1-866-616-0120  
Website: [www.bgavocat.com](http://www.bgavocat.com)

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**From:** Mojtahedi, Arad [<mailto:arad.mojtahedi@nortonrosefulbright.com>]  
**Sent:** October 27, 2017 6:16 PM  
**To:** Benoît Gamache <[bgamache@cabinetbg.ca](mailto:bgamache@cabinetbg.ca)>  
**Cc:** Gauthier, Virginie <[virginie.gauthier@nortonrosefulbright.com](mailto:virginie.gauthier@nortonrosefulbright.com)>; Abitan, Sandra <[SAbitan@osler.com](mailto:SAbitan@osler.com)>; Morissette, Julien <[JMorissette@osler.com](mailto:JMorissette@osler.com)>  
**Subject:** RE: CLASS ACTION / DEBTOR-CREDITOR: Creditors / Class Action Members (SEARS - CORBEIL)

Dear Confrère,

We have requested the necessary information regarding the respective securities from the insurance brokers of the entities involved. Although we are doing our utmost to advance things quickly, we are still not in possession of some documents necessary for analysis of our concerns. We hope to get back to you quickly during the coming week.

Best regards,

**Arad Mojtahedi**  
Avocat  
Associate

Norton Rose Fulbright Canada S.E.N.C.R.L., s.r.l. / LLP  
1, Place Ville Marie, Bureau 2500, Montréal, QC, H3B 1R1, Canada  
T: +1 514.847.4582 | F: +1 514 286 5474  
[arad.mojtahedi@nortonrosefulbright.com](mailto:arad.mojtahedi@nortonrosefulbright.com)

**NORTON ROSE FULBRIGHT**

**From:** Benoît Gamache [<mailto:bgamache@cabinetbg.ca>]  
**Sent:** October 25, 2017 5:21 PM  
**To:** Mojtahedi, Arad  
**Subject:** RE: CLASS ACTION / DEBTOR-CREDITOR: Creditors / Class Action Members (SEARS - CORBEIL)

Dear Confrères,

Furthermore, we respectfully submit that the monitor should consider two possible options: 1) A transaction or 2) Acquiescence in the "Routhier" and "Tremblay" class actions, both scenarios having as their sole purpose the enforcement of the contracts of security of Sears Canada and its affiliates.

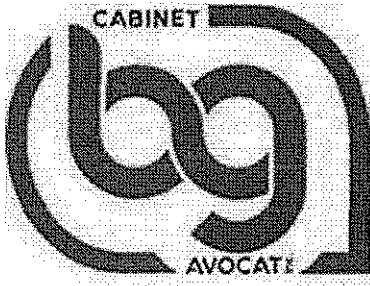


Obviously, in the case of Corbeil, if the "Franchisees" continue to operate under the Corbeil banner following a transaction assigning assets to them, such as the trademark or the business, our position will be different.

We look forward to hearing back from you.

BG

**Benoît Gamache, avocat / attorney**  
Direct Line: (514) 908-7446  
Cabinet BG Avocat Inc.  
BG Law Firm Inc.



4725 Metropolitan East, Suite 207  
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**From:** Mojtahedi, Arad [<mailto:arad.mojtahedi@nortonrosefulbright.com>]  
**Sent:** October 23, 2017 3:51 PM  
**To:** Benoît Gamache <[bgamache@cabinetbg.ca](mailto:bgamache@cabinetbg.ca)>  
**Cc:** Gauthier, Virginie <[virginie.gauthier@nortonrosefulbright.com](mailto:virginie.gauthier@nortonrosefulbright.com)>; Abitan, Sandra <[SAbitan@osler.com](mailto:SAbitan@osler.com)>; Morissette, Julien <[JMorissette@osler.com](mailto:JMorissette@osler.com)>  
**Subject:** RE: CLASS ACTION / DEBTOR-CREDITOR: Creditors / Class Action Members (SEARS - CORBEIL)

Dear Confrère,

We hope to get back to you this week with an answer.

Regards,

**Arad Mojtahedi**  
Avocat  
Associate

Norton Rose Fulbright Canada S.E.N.C.R.L., s.r.l. / LLP  
1, Place Ville Marie, Bureau 2500, Montréal, QC, H3B 1R1, Canada



T: +1 514.847.4582 | F: +1 514 286 5474  
[arad.mojtahedi@nortonrosefulbright.com](mailto:arad.mojtahedi@nortonrosefulbright.com)

**NORTON ROSE FULBRIGHT**

**From:** Benoît Gamache [<mailto:bgamache@cabinetbg.ca>]  
**Sent:** October 21, 2017 9:19 AM  
**To:** Mojtahedi, Arad  
**Subject:** RE: CLASS ACTION / DEBTOR-CREDITOR: Creditors / Class Action Members (SEARS - CORBEIL)

Thank you!

Do have an idea how long it will take for a reply? Time is a key factor in our equation.

Good day.

Benoît Gamache, Attorney  
BG Law Firm Inc.  
(514) 908-7446 / 1-877-908-7446  
Sent by iPhone

On Oct. 20, 2017 at 3:51 PM, Mojtahedi, Arad <[arad.mojtahedi@nortonrosefulbright.com](mailto:arad.mojtahedi@nortonrosefulbright.com)> wrote:

Hello Mtre. Gamache,

We received your email. We and the monitor of Sears (FTI Consulting) are currently in the process of analyzing everything and will get back to you once we have had a chance to consider all relevant factors.

Sincerely yours,

**Arad Mojtahedi**  
Avocat  
Associate

Norton Rose Fulbright Canada LLP  
1 Place Ville Marie, Suite 2500, Montréal, QC, H3B 1R1, Canada  
T: +1 514.847.4582 | F: +1 514 286 5474  
[arad.mojtahedi@nortonrosefulbright.com](mailto:arad.mojtahedi@nortonrosefulbright.com)

**NORTON ROSE FULBRIGHT**

**From:** Benoît Gamache [<mailto:bgamache@cabinetbg.ca>]  
**Sent:** October 18, 2017 10:52 AM  
**To:** Mojtahedi, Arad  
**Subject:** RE: CLASS ACTION / DEBTOR-CREDITOR: Creditors / Class Action Mem



Hello,

Thank you for your quick reply.

As discussed, please find attached a copy of our correspondence bearing yesterday's date.

We are also attaching a copy of the Sears protection plan describing (clause 6 *In fine*) the refund prorated on a monthly basis in the event of cancellation of the protection plan. Discontinuation of operations and termination of the protection plans constitute valid causes of cancellation.

Moreover, we hereby confirm that we wish to exercise our remedies with respect to the securities required by the Office de la protection du consommateur ( s. 256 CPA). We submit to you that the contracts of security can only cover protection plans. Consequently, such contracts cannot constitute "liquidatable" assets under the CCAA and are not part of the winding-up. From a certain perspective, the members of our class actions would be, in some sense, "preferred creditors" of the protection plans, on the grounds that they alone may benefit from the securities (Sears and Corbeil).

To exercise our rights in respect of the contracts of security and have the OPC intervene, we must first obtain either a judgement (impossible under the stay) or an out-of-court agreement covering the protection plans. Given that such an agreement would not in any way deprive the other creditors, we think it is an avenue worth exploring.

On a different note, we wish to be informed of the situation regarding the sale of Corbeil's assets. More specifically, we would like you to send us a copy of the transaction involving the continuance of operations under the "Corbeil" trademark. The constituent elements of that transaction will have an impact on the rights of the members of our class action (Routhier). For such purpose, you are hereby advised that our class action (Routhier v Corbeil) targets both Corbeil Électroménager and Corbeil électrique. See the decision of the Court of Appeal of Québec (attached hereto).

We look forward to your comments and suggestions.

BG

**Benoît Gamache, avocat / attorney**  
Direct Line: (514) 908-7446  
Cabinet BG Avocat Inc.  
BG Law Firm Inc.

<image001.jpg>

4725 Metropolitan East, Suite  
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Montreal, Quebec H1R 0C1  
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**From:** Mojtahedi, Arad [<mailto:arad.mojtahedi@nortonrosefulbright.com>]  
**Sent:** October 17, 2017 5:14 PM  
**To:** Benoît Gamache <[bgamache@cabinetbg.ca](mailto:bgamache@cabinetbg.ca)>  
**Subject:** TR: CLASS ACTION / DEBTOR-CREDITOR: Creditors / Class Action Members (SEARS - CORBEIL)

Dear Mtre. Me Gamache,

As discussed on the telephone, here is my contact information.

Best regards,

**Arad Mojtahedi**  
Avocat  
Associate

Norton Rose Fulbright Canada S.E.N.C.R.L., s.r.l. / LLP  
1 Place Ville Marie, Suite 2500, Montréal, QC, H3B 1R1, Canada  
T: +1 514.847.4582 | F: +1 514 286 5474  
[arad.mojtahedi@nortonrosefulbright.com](mailto:arad.mojtahedi@nortonrosefulbright.com)

**NORTON ROSE FULBRIGHT**

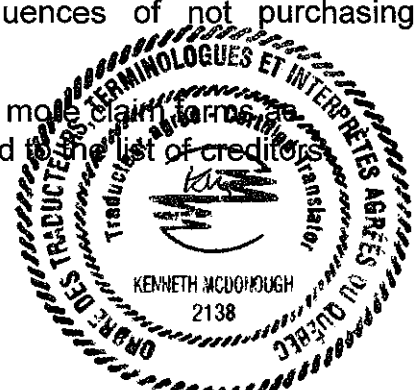
**From:** Benoît Gamache [<mailto:bgamache@cabinetbg.ca>]  
**Sent:** Wednesday, October 11, 2017 11:12 AM  
**To:** Sears Canada  
**Subject:** TR: CLASS ACTION / DEBTOR-CREDITOR: Creditors / Class Action Members (SEARS - CORBEIL)

Good day,

Our firm is acting as class counsel in class action matters (hereinafter referred to as "class actions" in the province of Quebec) against Sears Canada and Corbeil (Électroménagers/Électrique Inc.).

All these matters revolve around sales of extended warranties and systemic (mis)representations regarding the detrimental consequences of not purchasing additional protection.

We would like to know the procedure to follow to file one or more claims on behalf of creditors so that the claims from the class actions are added to the list of creditors



The Court matters concerned are:

1. Fillion v Corbeil Électrique inc.	(500-06-000535-100)
2. Ostiguy v Sears Canada	(500-06-000537-106)
3. Routhier v Corbeil Électroménagers inc. (Corbeil Électrique inc.) et als	(500-06-000709-143)
4. Tremblay v Sears Canada et als	150-06-000010-173)

We have left numerous messages (by telephone and email) for which we are still awaiting follow-up.

We look forward to hearing from you.

BG

**Benoît Gamache, avocat / attorney**  
 Direct Line: (514) 908-7446  
 Cabinet BG Avocat Inc.  
 BG Law Firm Inc.

<image001.jpg>

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 207  
 Montreal, Quebec H1R 0C1  
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**From:** Benoît Gamache  
**Sent:** October 5 2017 10:18  
**To:** 'searscanada@fticonsulting.com' <searscanada@fticonsulting.com>  
**Cc:** 'Sonia Tremblay' <stremblay@bga-law.com>  
**Subject:** Creditors / Class Action Members

Good day,



Our firm is acting as class counsel in class action matters (hereinafter referred to as "class actions" in the province of Quebec) against Sears Canada and Corbeil (Électroménagers/Électrique Inc.): [bga-law.com/gp](http://bga-law.com/gp) and [bga-law.com/gpcantin](http://bga-law.com/gpcantin)

All these matters revolve around sales of extended warranties and systemic (mis)representations regarding the detrimental consequences of not purchasing additional protection.

We would like to know the procedure to follow to file one or more claim forms as creditors so that the claims from the class actions are added to the list of creditors.

The Court matters concerned are:

1. Filion v Corbeil Électrique inc.	(500-06-000535-100)
2. Ostiguy v Sears Canada	(500-06-000537-106)
3. Routhier v Corbeil Électroménagers inc. (Corbeil Électrique inc.) et als	(500-06-000709-143)
4. Tremblay v Sears Canada et als	150-06-000010-173)

We have left numerous messages (by telephone and email) for which we are still awaiting follow-up.

We look forward to hearing from you.

BG

**Benoît Gamache, avocat / attorney**

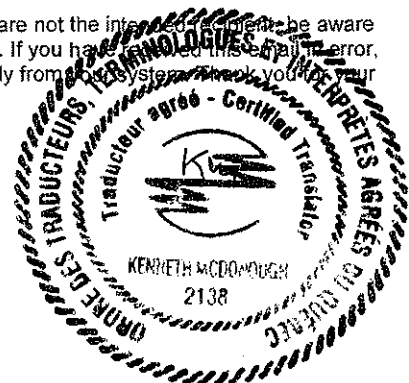
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ORIGINAL DOCUMENT(S) FOLLOW

**Schmitt, Alexander**

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**From:** =?utf-8?B?QmVub8OudCBHYW1hY2hl?=? on behalf of Benoît Gamache  
<bgamache@cabinetbg.ca>  
**Sent:** November-14-17 9:32 AM  
**To:** Mojtahedi, Arad  
**Subject:** RE: CLASS ACTION / DEBTOR-CREDITOR: Créanciers / Membres de recours collectifs  
(SEARS - CORBEIL)  
**Attachments:** Les Plans de Protection sears.pdf; Lettre\_reponse\_344000599.pdf; Valeur monétaire et  
durée des cautionnements.pdf  
**Follow Up Flag:** Assurer un suivi

Cher confrère,

Dans un premier temps, auriez-vous l'amabilité de nous indiquer où en sont vos demandes d'informations relativement à notre dossier.

Afin de vous appuyer dans vos démarches, veuillez trouver, ci-jointes, les numéros des cautionnements que nous avons obtenus de l'Office de la Protection du Consommateur (OPC).

Par ailleurs, nous vous avisons que votre cliente FTI sous peu *mise-en cause* pour Sears Canada dans notre dossier d'action collective : Tremblay c. Sears Canada et als (150-06-000010-173). À cet effet, la preuve que nous disposons établi la démonstration que des plans de protections ont continué d'être vendus après le 22 juin 2017 sans que les consommateurs, qu'il les ont acheté, soient informés au moment de la vente que l'entreprise était sous la protection de la LACC. Au surplus, des Plans de protection ont été vendus alors que la décision de liquidé avait déjà été prises. Dans ces circonstances, nous sommes dans l'obligation de réactiver notre dossier et d'y joindre votre cliente afin de pouvoir exercer les droits de nos clients sur les cautionnements.

Nous comprenons qu'à moins d'indications spécifiques à l'effet contraire, votre étude acceptera la signification de notre procédure.

Nous retirerons notre conviction à l'effet qu'il est dans l'intérêt de toutes les parties, notamment FTI, à trouver rapidement une solution négociée à la présente situation.

Dans l'attente de vous lire,

BG

**Benoît Gamache, avocat / attorney**

Ligne directe : (514) 908-7446

Cabinet BG Avocat Inc.

BG Law firm Inc.



4725, Métropolitaine Est, bureau 207  
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Téléphone : (514) 908-7460 / 1-866-327-0123  
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---

**De :** Mojtahedi, Arad [<mailto:arad.mojtahedi@nortonrosefulbright.com>]

**Envoyé :** 27 octobre 2017 18:16

**À :** Benoît Gamache <[bgamache@cabinetbg.ca](mailto:bgamache@cabinetbg.ca)>

**Cc :** Gauthier, Virginie <[virginie.gauthier@nortonrosefulbright.com](mailto:virginie.gauthier@nortonrosefulbright.com)>; Abitan, Sandra <[SAbitan@osler.com](mailto:SAbitan@osler.com)>; Morissette, Julien <[JMorissette@osler.com](mailto:JMorissette@osler.com)>

**Objet :** RE: CLASS ACTION / DEBTOR-CREDITOR: Créanciers / Membres de recours collectifs (SEARS - CORBEIL)

Cher confrère,

Nous avons demandé aux courtiers d'assurance des entités impliqués les informations nécessaires sur leurs cautions respectives. Bien que nous faisons de notre mieux afin d'avancer les choses rapidement, certains documents qui sont nécessaires pour l'analyse de vos préoccupations ne sont pas encore dans notre possession. Nous espérons vous revenir rapidement au cours de la semaine prochaine.

Cordiales salutations,

**Arad Mojtahedi**

Avocat

Associate

Norton Rose Fulbright Canada S.E.N.C.R.L., s.r.l. / LLP  
1, Place Ville Marie, Bureau 2500, Montréal, QC, H3B 1R1, Canada  
T: +1 514.847.4582 | F: +1 514 286 5474  
[arad.mojtahedi@nortonrosefulbright.com](mailto:arad.mojtahedi@nortonrosefulbright.com)

**NORTON ROSE FULBRIGHT**

---

**De :** Benoît Gamache [<mailto:bgamache@cabinetbg.ca>]

**Envoyé :** 25 octobre 2017 17:21

**À :** Mojtahedi, Arad

**Objet :** RE: CLASS ACTION / DEBTOR-CREDITOR: Créanciers / Membres de recours collectifs (SEARS - CORBEIL)

Chers confrères,

Dans un complément d'idées, nous vous soumettons respectueusement que le contrôleur devrait considérer les deux options possibles sont : 1) Une transaction ou 2) L'acquiescement aux actions collectives « Routhier » et « Tremblay », les deux scénario aux seules fins de faire exécuter les contrat de cautionnements des Sears Canada et de Corbeil et ses affiliés.

Dans le cas de Corbeil, il est évident que si les « Franchisés » continuent d'opérer sous la bannière Corbeil suite à une transaction leur cédant des actifs, telle la marque de commerce ou le fonds de commerce, nous position sera différente.

Dans l'attente de vos nouvelles,

BG

**Benoît Gamache, avocat / attorney**

Ligne directe : (514) 908-7446

Cabinet BG Avocat Inc.

BG Law firm Inc.



4725, Métropolitaine Est, bureau 207

Montréal (Québec) H1R 0C1

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Télécopieur : (514) 329-0120 / 1-866-616-0120

Site web : [www.bgavocat.com](http://www.bgavocat.com)

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**De :** Mojtahedi, Arad [<mailto:arad.mojtahedi@nortonrosefulbright.com>]

**Envoyé :** 23 octobre 2017 15:51

**À :** Benoît Gamache <[bgamache@cabinetbg.ca](mailto:bgamache@cabinetbg.ca)>

**Cc :** Gauthier, Virginie <[virginie.gauthier@nortonrosefulbright.com](mailto:virginie.gauthier@nortonrosefulbright.com)>; Abitan, Sandra <[SAbitan@osler.com](mailto:SAbitan@osler.com)>; Morissette, Julien <[JMorissette@osler.com](mailto:JMorissette@osler.com)>

**Objet :** RE: CLASS ACTION / DEBTOR-CREDITOR: Créanciers / Membres de recours collectifs (SEARS - CORBEIL)

Cher confrère,

Nous espérons vous répondre cette semaine.

Salutations,

**Arad Mojtahedi**

Avocat

Associate

Norton Rose Fulbright Canada S.E.N.C.R.L., s.r.l. / LLP



1, Place Ville Marie, Bureau 2500, Montréal, QC, H3B 1R1, Canada

T: +1 514.847.4582 | F: +1 514 286 5474

[arad.mojtahedi@nortonrosefulbright.com](mailto:arad.mojtahedi@nortonrosefulbright.com)

**NORTON ROSE FULBRIGHT**

---

**De :** Benoît Gamache [<mailto:bgamache@cabinetbg.ca>]

**Envoyé :** 21 octobre 2017 09:19

**À :** Mojtahedi, Arad

**Objet :** Re: CLASS ACTION / DEBTOR-CREDITOR: Créanciers / Membres de recours collectifs (SEARS - CORBEIL)

Merci!

Avez-vous une idée du temps de réponse ? Le temps est un facteur important dans notre équation.

Bonne journée

Benoît Gamache, avocat

Cabinet BG Avocat Inc.

(514) 908-7446 / 1-877-908-7446

Envoyé par iPhone

Le 20 oct. 2017 à 15:51, Mojtahedi, Arad <[arad.mojtahedi@nortonrosefulbright.com](mailto:arad.mojtahedi@nortonrosefulbright.com)> a écrit :

Bonjour Me Gamache,

Nous avons bien reçu votre courriel. Le contrôleur du Sears (FTI Consulting) et nous sommes présentement en train d'analyser le tout et nous vous reviendrons une fois que nous aurons eu la chance de considérer tous les facteurs pertinents.

Veuillez agréer l'expression de nos sentiments distingués.

**Arad Mojtahedi**

Avocat

Associate

Norton Rose Fulbright Canada S.E.N.C.R.L., s.r.l. / LLP

1, Place Ville Marie, Bureau 2500, Montréal, QC, H3B 1R1, Canada

T: +1 514.847.4582 | F: +1 514 286 5474

[arad.mojtahedi@nortonrosefulbright.com](mailto:arad.mojtahedi@nortonrosefulbright.com)

**NORTON ROSE FULBRIGHT**

---

**De :** Benoît Gamache [<mailto:bgamache@cabinetbg.ca>]

**Envoyé :** 18 octobre 2017 10:52

**À :** Mojtahedi, Arad

**Objet :** RE: CLASS ACTION / DEBTOR-CREDITOR: Créanciers / Membres de recours collectifs (SEARS - CORBEIL)

Bonjour,

Merci pour votre réponse rapide,

Tel que discuté, veuillez trouver, ci-jointe, une copie de notre correspondance datée d'hier.

Nous vous joignons également une copie du plan de protection Sears qui fait état (clause no. 6 *In fine*) du remboursement proportionnel, sur une base mensuelle, en cas d'annulation du plan de protection. La cessation des opérations et la fin des plan de protection constituent des causes d'annulation valables.

Par ailleurs, nous vous confirmons vouloir exercer nos recours sur les cautions exigées par l'office de la protection du consommateurs ( art. 256 L.p.c.). Nous vous soumettons que les contrats de cautionnement ne peuvent viser uniquement que les plans de protections. Par conséquent, ces contrats ne peuvent constituer des actifs « liquidables » au sens de la LAAC et ne font pas partie de la liquidation. Dans une certaine perspective, les membres de nos recours seraient en quelque sorte des « créanciers privilégiés » des plans de protection, et cela, au motif qu'eux seuls peuvent bénéficier des cautionnements ( Sears et Corbeil).

Pour exercer nos droits à l'encontre des contrats de cautionnement et faire intervenir l'OPC, nous devons préalablement obtenir soit un jugement ( impossible en vertu de la suspension) soit une entente hors-cour visant les plan de protections. Considérant qu'une telle entente ne priverait aucunement les autres créanciers, nous pensons que ce serait une voie à explorer.

Dans un autre registre, nous souhaitons être informé de la situation visant la vente d'actifs de Corbeil. Plus spécifiquement, nous désirons nous voir communiquer une copie de la transaction impliquant la continuité des opérations sous la marque de commerce « Corbeil ». Les éléments constitutif de cette transaction auront un effet sur les droits des membres de notre action collective ( Routhier). À cet effet, nous vous avisons que notre action collective (Routhier c. Corbeil) vise autant Corbeil Électroménager que Corbeil électrique. Voir la décision de la Cour d'appel du Québec ( ci-jointe)

Dans l'attente de vos commentaires et suggestions,

BG

**Benoît Gamache, avocat / attorney**

Ligne directe : (514) 908-7446

Cabinet BG Avocat Inc.

BG Law firm Inc.

**<image001.jpg>**

4725, Métropolitaine Est, bureau  
207

Montréal (Québec) H1R 0C1

Téléphone : (514) 908-7460 /

1-866-327-0123

Télécopieur : (514) 329-0120 /

1-866-616-0120

Site web : [www.bgavocat.com](http://www.bgavocat.com)

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**De :** Mojtahedi, Arad [<mailto:arad.mojtahedi@nortonrosefulbright.com>]  
**Envoyé :** 17 octobre 2017 17:14  
**À :** Benoît Gamache <[bgamache@cabinetbg.ca](mailto:bgamache@cabinetbg.ca)>  
**Objet :** TR: CLASS ACTION / DEBTOR-CREDITOR: Créanciers / Membres de recours collectifs

Bonjour Me Gamache,

Tel que discuté au téléphone, voici mes coordonnées.

Meilleures salutations,

**Arad Mojtahedi**

Avocat  
Associate

Norton Rose Fulbright Canada S.E.N.C.R.L., s.r.l. / LLP  
1, Place Ville Marie, Bureau 2500, Montréal, QC, H3B 1R1, Canada  
T: +1 514.847.4582 | F: +1 514 286 5474  
[arad.mojtahedi@nortonrosefulbright.com](mailto:arad.mojtahedi@nortonrosefulbright.com)

**NORTON ROSE FULBRIGHT**

---

**From:** Benoît Gamache [<mailto:bgamache@cabinetbg.ca>]  
**Sent:** Wednesday, October 11, 2017 11:12 AM  
**To:** Sears Canada  
**Subject:** CLASS ACTION / DEBTOR-CREDITOR: Créanciers / Membres de recours collectifs

Bonjour,

Notre firme agit comme avocats-conseils des demandeurs dans dossier de recours collectif (Désormais désignées « actions collectives » dans la province de Québec) contre Sears Canada et Corbeil (Électroménagers /Électrique).

Tous ces dossiers s'articulent autour de la vente de garanties prolongées et aux représentations (fausses) sur les conséquences préjudiciables de ne pas en faire l'achat d'une protection supplémentaire.

Nous désirons connaître la procédure à suivre afin déposer un ou des formulaires de réclamations à titre de créanciers afin que les réclamations issues des actions collectives soient ajoutées à liste des créanciers

Les dossiers de justice concernées sont :

1. Filion c. Corbeil Électrique inc.	(500-06-000535-100)
2. Ostiguy c. Sears Canada	(500-06-000537-106)
3. Routhier c. Corbeil Électroménagers inc. (Corbeil Électrique inc.) et als	(500-06-000709-143)
4. Tremblay c, Sears Canada et als	150-06-000010-173)

Nous avons laissé des messages (téléphoniques et courriels) pour lesquels nous attendons toujours un suivi.

Dans l'attente de vos nouvelles

BG

**Benoît Gamache, avocat / attorney**

Ligne directe : (514) 908-7446

Cabinet BG Avocat Inc.

BG Law firm Inc.

<image001.jpg>

4725, Métropolitaine Est, bureau  
207

Montréal (Québec) H1R 0C1

Téléphone : (514) 908-7460 /

1-866-327-0123

Télécopieur : (514) 329-0120 /

1-866-616-0120

Site web : [www.bgavocat.com](http://www.bgavocat.com)

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---

**De :** Benoît Gamache

**Envoyé :** 5 octobre 2017 10:18

**À :** 'searscanada@fticonsulting.com' <[searscanada@fticonsulting.com](mailto:searscanada@fticonsulting.com)>

**Cc :** 'Sonia Tremblay' <[stremblay@bga-law.com](mailto:stremblay@bga-law.com)>

**Objet :** Créanciers / Membres de recours collectifs

Bonjour,

## 120

Notre firme agit comme avocats-conseils des demandeurs dans dossier de recours collectif (Désormais désignées « actions collectives » dans la province de Québec) contre Sears Canada et Corbeil (Électroménagers /Électrique) : [bga-law.com/gp](http://bga-law.com/gp) et [bga-law.com/gpcantin](http://bga-law.com/gpcantin)

Tous ces dossiers s'articulent autour de la vente de garanties prolongées et aux représentations (fausses) sur les conséquences préjudiciables de ne pas en faire l'achat d'une protection supplémentaire.

Nous désirons connaître la procédure à suivre afin déposer un ou plusieurs formulaires de réclamations à titre de créanciers afin que les réclamations issues des actions collectives soient ajoutées à liste des créanciers

Les dossiers de justice concernés sont :

1. Filion c. Corbeil Électrique inc.	(500-06-000535-100)
2. Ostiguy c. Sears Canada	(500-06-000537-106)
3. Routhier c. Corbeil Électroménagers inc. (Corbeil Électrique inc.) et als	(500-06-000709-143)
4. Tremblay c, Sears Canada et als	(150-06-000010-173)

Nous avons laissé des messages (téléphoniques et courriels) pour lesquels nous attendons toujours un suivi.

Dans l'attente de vos nouvelles

BG

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# LES PLANS DE PROTECTION

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Le Groupe Sears Canada s'est placé sous la protection de la Loi sur les arrangements avec les créanciers des compagnies (LACC) le 22 juin 2017 et a entrepris la liquidation de tous ses stocks le 19 octobre 2017.

À compter du 19 octobre 2017, Sears n'honorera plus ses garanties ou ententes de protection. Elle remboursera les garanties et les ententes de protection achetées dans les 30 jours précédents la date de demande de remboursement dans un magasin Sears Canada.

Les clients ayant acheté une entente de protection plus de 30 jours avant la date de demande de remboursement pourront présenter une réclamation dans le futur, une fois que la procédure de réclamation aura été établie et approuvée par la Cour.

Lorsque la procédure de réclamation aura été établie, le contrôleur nommé judiciairement responsable des procédures relatives à la LACC de Sears Canada (FTI Consulting Canada Inc.) publiera les renseignements concernant la procédure de réclamation ainsi que les formulaires de réclamation sur son site Web : <http://cfcanada.fticonsulting.com/searscanada/>

## QUESTIONS ET RÉPONSES SUPPLÉMENTAIRES:

### **Quand la procédure de réclamation sera-t-elle établie?**

Il est actuellement difficile d'estimer la date d'établissement de la procédure, mais elle devrait être fixée dans les prochains mois, puisque la Société est sur le point de terminer la liquidation de ses actifs et de ses stocks. Nous vous recommandons de consulter le site Web de FTI (<http://cfcanada.fticonsulting.com/searscanada/>) régulièrement ou mensuellement.

### **Les clients recevront-ils un courriel lorsque la procédure de réclamation aura été établie?**

Non. Le contrôleur recommande de visiter son site Web régulièrement ou mensuellement afin d'obtenir ces renseignements.

### **Pourquoi le site Web ne contient-il actuellement aucun renseignement sur les réclamations?**

Puisque la Cour n'a pas encore approuvé la procédure de réclamation, le site Web du contrôleur ne contient aucun renseignement à ce sujet. Lorsque la Cour approuvera la procédure de réclamation, la nouvelle apparaîtra sur le site Web du contrôleur, en plus de tous les renseignements pertinents relatifs à la soumission de réclamations.

### **Est-ce que les clients sont actuellement couverts par une garantie?**

– La plupart des gros appareils électroménagers et des produits pour pelouses et jardins sont couverts par la garantie du fabricant pendant les 12 mois suivant la date d'achat initial du produit. Veuillez communiquer directement avec le fabricant pour obtenir de plus amples renseignements. Les clients ne bénéficient d'aucune garantie autre que celle du fabricant.





PAR COURRIEL

Québec, le 3 novembre 2017

Maître Benoît Gamache  
Cabinet BG Avocat inc.  
4725, autoroute Métropolitaine Est, bureau 207  
Montréal (Québec) H1R 1C0  
[bgamache@cabinetbg.ca](mailto:bgamache@cabinetbg.ca)

**Objet : Votre demande d'accès à l'information du 16 octobre 2017**  
**V/R : 500-06-000709-143 et 150-06-000010-173**

---

Maître,

La présente fait suite à votre demande d'accès à l'information du 16 octobre dernier.

Par cette demande, vous désirez obtenir copie des documents/informations suivants :

- La valeur monétaire de chacun des cautionnements octroyés :
  - Pour chacun des titulaires de permis;
  - Pour leurs succursales mentionnées en annexe A de votre demande;
- La durée de validité des cautionnements.

Vous souhaitez obtenir ces renseignements à propos des succursales suivantes (figurant en annexe A de votre demande) :

- Sears Canada inc. (Toronto et Saint-Laurent) NEQ 1140287658;
- Corbeil Électrique inc. (Montréal) NEQ 1140521528;
- 9304-2000 Québec inc. (Longueuil) NEQ 1170132402;
- 9128-8217 Québec inc. (Montréal) NEQ 1161473815;
- 9059-0365 Québec inc. (Brossard) NEQ 1147390810;
- 9084-7443 Québec inc. (Saint-Jérôme) NEQ 1148981278;
- 9121-4759 Québec inc. (Longueuil) NEQ 1161068888;
- Gestion Éric Dubreuil inc. (Boucherville) NEQ 1165513962;
- 7026111 Canada inc. (Gatineau) NEQ 1165465809;
- Maintenance Bruneau inc. (Joliette) NEQ 1142850610;
- 9050-7575 Québec inc. (Trois-Rivières) NEQ 1146835732;
- 9081-7842 Québec inc. (Granby) NEQ 1148820963;
- Électroménagers Bureau & Bureau inc. (Sherbrooke) NEQ 1149262397;
- Les électroménagers Bouvreur inc. (Saint-Jean-sur-Richelieu) NEQ 1149959125;
- 9140-9508 Québec inc. (Repentigny) NEQ 1162156039.

En réponse à votre demande, vous trouverez en annexe les renseignements demandés.

Notez également qu'en vertu de l'article 135 de *la Loi sur l'accès aux documents des organismes publics et sur la protection des renseignements personnels*, une personne dont la demande écrite a été refusée en tout ou en partie par le responsable de l'accès aux documents ou de la protection des renseignements personnels peut demander à la Commission de réviser cette décision. Le dépliant intitulé « avis de recours en révision » est joint à la présente et vous fournit plus d'explications.

**Enfin, prenez note que Me Joël Simard n'est plus le responsable de l'accès à l'information. Veuillez adresser vos prochaines demandes d'accès à l'information à la soussignée à l'adresse courriel suivante : [acces@opc.gouv.qc.ca](mailto:acces@opc.gouv.qc.ca).**

Veuillez agréer, Maître, l'expression de mes meilleurs sentiments.



Me Marjorie Théberge  
Responsable de l'accès à l'information

p.j.



## LISTE DES MAGASINS, SUCCURSALES OU FRANCHISÉS «SEARS» ET «CORBEIL»

Nom du titulaire du permis	Numéro du permis	Montant du cautionnement	Durée de validité du cautionnement
Sears Canada inc. (Toronto et Saint-Laurent) NEQ 1140287658	101185	200 000 \$	3 ans après la date de fermeture du permis
Corbeil Électrique inc. (Montréal) NEQ 1140521528	601812	160 000 \$	3 ans après la date de fermeture du permis
9304-2000 Québec inc. (Longueuil) NEQ 1170132402	601808	80 000 \$	3 ans après la date de fermeture du permis
9128-8217 Québec inc. (Montréal) NEQ 1161473815	601807	120 000 \$	3 ans après la date de fermeture du permis
9059-0365 Québec inc. (Brossard) NEQ 1147390810	601324	120 000 \$	3 ans après la date de fermeture du permis
9084-7443 Québec inc. (Saint-Jérôme) NEQ 1148981278	601320	160 000 \$	3 ans après la date de fermeture du permis
9121-4759 Québec inc. (Longueuil) NEQ 1161068888	601536	160 000 \$	3 ans après la date de fermeture du permis
Gestion Éric Dubreuil inc. (Boucherville) NEQ 1165513962	601633	120 000 \$	3 ans après la date de fermeture du permis
7026111 Canada inc. (Gatineau) NEQ 1165465809	601635	120 000 \$	3 ans après la date de fermeture du permis
Maintenance Bruneau inc. (Joliette) NEQ 1142850610	601323	120 000 \$	3 ans après la date de fermeture du permis
9050-7575 Québec inc. (Trois-Rivières) NEQ 1146835732	601321	120 000 \$	3 ans après la date de fermeture du permis
9081-7842 Québec inc. (Granby) NEQ 1148820963	601329	120 000 \$	3 ans après la date de fermeture du permis
Électroménagers Bureau & Bureau inc. (Sherbrooke) NEQ 1149262397	601519	120 000 \$	3 ans après la date de fermeture du permis
Les électroménagers Bouvreur inc. (Saint-Jean-sur-Richelieu) NEQ 1149959125	601534	120 000 \$	3 ans après la date de fermeture du permis
9140-9508 Québec inc. (Repentigny) NEQ 1162156039	601685	120 000 \$	3 ans après la date de fermeture du permis

**APPENDIX “E”  
(see attached)**

**From:** "Mojtahedi, Arad" [<mailto:ARAD.MOJTAHEDI@NORTONROSEFULBRIGHT.COM>] **On behalf of**  
Mojtahedi, Arad  
**Sent:** November 15, 2017 11:10 AM  
**To:** Benoît Gamache  
**Cc:** [abitan@osler.com](mailto:abitan@osler.com); [morissette@osler.com](mailto:morissette@osler.com); Gauthier, Virginie; Merskey, Alan  
**Subject:** RE: CLASS ACTION / DEBTOR-CREDITOR: Creditors / Class Action Members (SEARS - CORBEIL)

Mtre. Gamache,

Please take note of the attached letter and orders.

Best regards,

**Chantal Cléroux**  
Adjointe juridique  
Legal Assistant  
de / to Vanessa Rochester, Dominique Noël, Arad Mojtahedi

Norton Rose Fulbright Canada LLP  
1 Place Ville Marie, Bureau 2500, Montréal, QC, H3B 1R1, Canada  
T: +1 514.847.4653 | F: +1 514.286.5474  
[chantal.cleroux@nortonrosefulbright.com](mailto:chantal.cleroux@nortonrosefulbright.com)

## NORTON ROSE FULBRIGHT

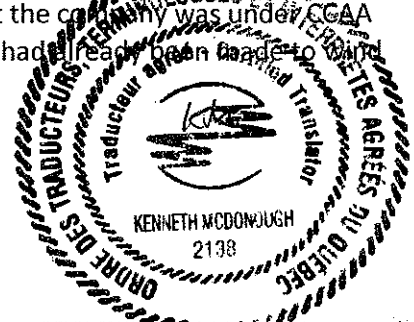
**From:** Benoît Gamache [<mailto:bgamache@cabinetbg.ca>]  
**Sent:** November 14, 2017 9:32 AM  
**To:** Mojtahedi, Arad  
**Subject:** RE: CLASS ACTION / DEBTOR-CREDITOR: Creditors / Class Action Members (SEARS - CORBEIL)

Dear Confrère,

First, kindly to let us know the current status of your requests for information regarding our matter.

To assist you, please find attached the security numbers we obtained from the Office de la Protection du Consommateur (OPC).

Also, you are hereby advised that your client FTI will soon be impleaded for Sears Canada in our class action matter: Tremblay v Sears Canada et als (150-06-000010-173). For this purpose, the evidence available to us demonstrates that protection plans continued to be sold after June 22, 2017 without the consumers who purchased them being informed at the time of sale that the company was under CCAA protection. Furthermore, protection plans were sold when the decision had already been made to wind



up the company. Under these circumstances, we are obliged to reactivate our matter and join your client to it in order to be able to exercise our clients' rights in respect to the securities.

We understand that, unless otherwise specifically indicated, your practice will accept service of our proceeding.

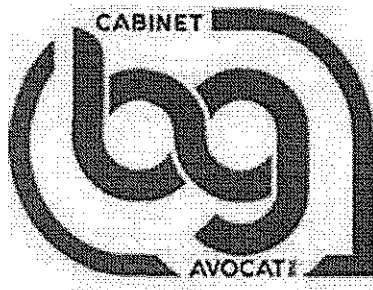
We reiterate our conviction that it is in the interests of all parties, particularly FTI, to quickly find a negotiated solution to the current situation.

We look forward to your reply.

Regards,

BG

**Benoît Gamache, avocat / attorney**  
Direct Line: (514) 908-7446  
Cabinet BG Avocat Inc.  
BG Law Firm Inc.



4725 Metropolitan East, Suite 207  
Montreal, Quebec H1R 0C1  
Telephone: (514) 908-7460 / 1-866-327-0123  
Fax: (514) 329-0120 / 1-866-616-0120  
Website: [www.bgavocat.com](http://www.bgavocat.com)

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**From:** Mojtabehi, Arad [<mailto:arad.mojtabehi@nortonrosefulbright.com>]

**Sent:** October 27, 2017 6:16 PM

**To:** Benoît Gamache <[bgamache@cabinetbg.ca](mailto:bgamache@cabinetbg.ca)>

**Cc :** Gauthier, Virginie <[virginie.gauthier@nortonrosefulbright.com](mailto:virginie.gauthier@nortonrosefulbright.com)>; Abitan, Sandra <[SAbitan@osler.com](mailto:SAbitan@osler.com)>; Morissette, Julien <[JMorissette@osler.com](mailto:JMorissette@osler.com)>

**Subject:** RE: CLASS ACTION / DEBTOR-CREDITOR: Creditors / Class Action Members (SPARS - COBBES)

Dear Confrère,



We have requested the necessary information regarding the respective securities from the insurance brokers of the entities involved. Although we are doing our utmost to advance things quickly, we are still not in possession of some documents necessary for analysis of our concerns. We hope to get back to you quickly during the coming week.

Best regards,

**Arad Mojtahedi**

Avocat  
Associate

Norton Rose Fulbright Canada S.E.N.C.R.L., s.r.l. / LLP  
1, Place Ville Marie, Bureau 2500, Montréal, QC, H3B 1R1, Canada  
T: +1 514.847.4582 | F: +1 514 286 5474  
[arad.mojtahedi@nortonrosefulbright.com](mailto:arad.mojtahedi@nortonrosefulbright.com)

**NORTON ROSE FULBRIGHT**

**From:** Benoît Gamache [<mailto:bgamache@cabinetbg.ca>]

**Sent:** October 25, 2017 5:21 PM

**To:** Mojtahedi, Arad

**Subject:** RE: CLASS ACTION / DEBTOR-CREDITOR: Creditors / Class Action Members (SEARS - CORBEIL)

Dear Confrères,

Furthermore, we respectfully submit that the monitor should consider two possible options: 1) A transaction or 2) Acquiescence in the "Routhier" and "Tremblay" class actions, both scenarios having as their sole purpose the enforcement of the contracts of security of Sears Canada and Corbeil and its affiliates.

Obviously, in the case of Corbeil, if the "Franchisees" continue to operate under the Corbeil banner following a transaction assigning assets to them, such as the trademark or the business, our position will be different.

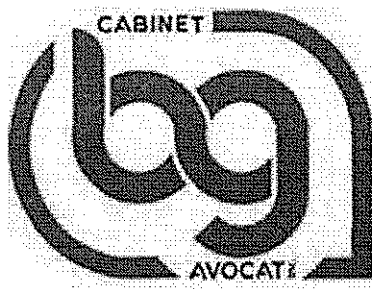
We look forward to hearing back from you.

BG

**Benoît Gamache, avocat / attorney**  
Direct Line: (514) 908-7446  
Cabinet BG Avocat Inc.  
BG Law Firm Inc.







4725 Metropolitan East, Suite 207  
 Montreal, Quebec H1R 0C1  
 Telephone: (514) 908-7460 / 1-866-327-0123  
 Fax: (514) 329-0120 / 1-866-616-0120  
 Website: [www.bgavocat.com](http://www.bgavocat.com)

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**From:** Mojtahedi, Arad [<mailto:arad.mojtahedi@nortonrosefulbright.com>]  
**Sent:** October 23, 2017 3:51 PM  
**To:** Benoît Gamache <[bgamache@cabinetbg.ca](mailto:bgamache@cabinetbg.ca)>  
**Cc:** Gauthier, Virginie <[virginie.gauthier@nortonrosefulbright.com](mailto:virginie.gauthier@nortonrosefulbright.com)>; Abitan, Sandra <[SAbitan@osler.com](mailto:SAbitan@osler.com)>; Morissette, Julien <[JMorissette@osler.com](mailto:JMorissette@osler.com)>  
**Subject:** RE: CLASS ACTION / DEBTOR-CREDITOR: Creditors / Class Action Members (SEARS - CORBEIL)

Dear Confrère,

We hope to get back to you this week with an answer.

Regards,

**Arad Mojtahedi**  
 Avocat  
 Associate

Norton Rose Fulbright Canada S.E.N.C.R.L., s.r.l. / LLP  
 1, Place Ville Marie, Bureau 2500, Montréal, QC, H3B 1R1, Canada  
 T: +1 514.847.4582 | F: +1 514 286 5474  
[arad.mojtahedi@nortonrosefulbright.com](mailto:arad.mojtahedi@nortonrosefulbright.com)

**NORTON ROSE FULBRIGHT**

**From:** Benoît Gamache [<mailto:bgamache@cabinetbg.ca>]  
**Sent:** October 21, 2017 9:19 AM  
**To:** Mojtahedi, Arad  
**Subject:** RE: CLASS ACTION / DEBTOR-CREDITOR: Creditors / Class Action Members (SEARS - CORBEIL)

Thank you!



Do have an idea how long it will take for a reply? Time is a key factor in our equation.

Good day.

Benoît Gamache, Attorney  
BG Law Firm Inc.  
(514) 908-7446 / 1-877-908-7446  
Sent by iPhone

On Oct. 20, 2017 at 3:51 PM, Mojtahedi, Arad <[arad.mojtahedi@nortonrosefulbright.com](mailto:arad.mojtahedi@nortonrosefulbright.com)> wrote:

Hello Mtre. Gamache,

We received your email. We and the monitor of Sears (FTI Consulting) are currently in the process of analyzing everything and will get back to you once we have had a chance to consider all relevant factors.

Sincerely yours,

**Arad Mojtahedi**  
Avocat  
Associate

Norton Rose Fulbright Canada LLP  
1 Place Ville Marie, Suite 2500, Montréal, QC, H3B 1R1, Canada  
T: +1 514.847.4582 | F: +1 514 286 5474  
[arad.mojtahedi@nortonrosefulbright.com](mailto:arad.mojtahedi@nortonrosefulbright.com)

**NORTON ROSE FULBRIGHT**

**From:** Benoît Gamache [<mailto:bgamache@cabinetbg.ca>]  
**Sent:** October 18, 2017 10:52 AM  
**To:** Mojtahedi, Arad  
**Subject:** RE: CLASS ACTION / DEBTOR-CREDITOR: Creditors / Class Action Members (SEARS - CORBEIL)

Hello,

Thank you for your quick reply.

As discussed, please find attached a copy of our correspondence bearing yesterday's date.

We are also attaching a copy of the Sears protection plan describing (clause 6 *In fine*) the refund prorated on a monthly basis in the event of cancellation of the protection plan. Discontinuation of operations and termination of the protection plans constitute valid causes of cancellation.

Moreover, we hereby confirm that we wish to exercise our remedies with respect to the securities required by the Office de la protection du consommateur ( s. 256 CPA). We submit that the contracts of security can only cover protection plans. Consequently, such contracts do not constitute



"liquidatable" assets under the CCAA and are not part of the winding-up. From a certain perspective, the members of our class actions would be, in some sense, "preferred creditors" of the protection plans, on the grounds that they alone may benefit from the securities (Sears and Corbeil).

To exercise our rights in respect of the contracts of security and have the OPC intervene, we must first obtain either a judgement (impossible under the stay) or an out-of-court agreement covering the protection plans. Given that such an agreement would not in any way deprive the other creditors, we think it is an avenue worth exploring.

On a different note, we wish to be informed of the situation regarding the sale of Corbeil's assets. More specifically, we would like you to send us a copy of the transaction involving the continuance of operations under the "Corbeil" trademark. The constituent elements of that transaction will have an impact on the rights of the members of our class action (Routhier). For such purpose, you are hereby advised that our class action (Routhier v Corbeil) targets both Corbeil Électroménager and Corbeil électrique. See the decision of the Court of Appeal of Québec (attached hereto).

We look forward to your comments and suggestions.

BG

**Benoît Gamache, avocat / attorney**  
Direct Line: (514) 908-7446  
Cabinet BG Avocat Inc.  
BG Law Firm Inc.

<image001.jpg>

4725 Metropolitan East, Suite  
207  
Montreal, Quebec H1R 0C1  
Telephone: (514) 908-7460 / 1-  
866-327-0123  
Fax: (514) 329-0120 / 1-866-  
616-0120  
Website: [www.bgavocat.com](http://www.bgavocat.com)

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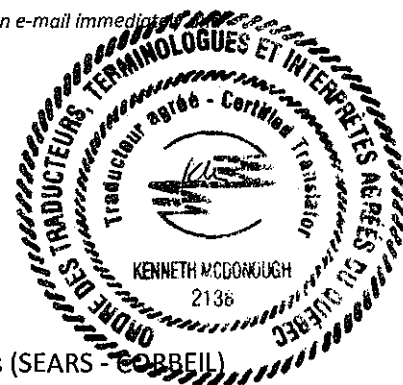
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**From:** Mojtahedi, Arad [<mailto:arad.mojtahedi@nortonrosefulbright.com>]

**Sent:** October 17, 2017 5:14 PM

**To:** Benoît Gamache <[bgamache@cabinetbg.ca](mailto:bgamache@cabinetbg.ca)>

**Subject:** TR: CLASS ACTION / DEBTOR-CREDITOR: Creditors / Class Action Members (SEARS - CORBEIL)



Dear Mtre. Me Gamache,

As discussed on the telephone, here is my contact information.

Best regards,

**Arad Mojtahedi**  
Avocat  
Associate

Norton Rose Fulbright Canada S.E.N.C.R.L., s.r.l. / LLP  
1 Place Ville Marie, Suite 2500, Montréal, QC, H3B 1R1, Canada  
T: +1 514.847.4582 | F: +1 514 286 5474  
[arad.mojtahedi@nortonrosefulbright.com](mailto:arad.mojtahedi@nortonrosefulbright.com)

**NORTON ROSE FULBRIGHT**

**From:** Benoît Gamache [<mailto:bgamache@cabinetbg.ca>]  
**Sent:** Wednesday, October 11, 2017 11:12 AM  
**To:** Sears Canada  
**Subject:** TR: CLASS ACTION / DEBTOR-CREDITOR: Creditors / Class Action Members (SEARS - CORBEIL)

Good day,

Our firm is acting as class counsel in class action matters (hereinafter referred to as "class actions" in the province of Quebec) against Sears Canada and Corbeil (Électroménagers/Électrique Inc.).

All these matters revolve around sales of extended warranties and systemic (mis)representations regarding the detrimental consequences of not purchasing additional protection.

We would like to know the procedure to follow to file one or more claim forms as creditors so that the claims from the class actions are added to the list of creditors.

The Court matters concerned are:

1. Filion v Corbeil Électrique inc.	(500-06-000535-100)
2. Ostiguy v Sears Canada	(500-06-000537-106)
3. Routhier v Corbeil Électroménagers inc. (Corbeil Électrique inc.) et als	(500-06-000709-143)
4. Tremblay v Sears Canada et als	150-06-000010-173)

We have left numerous messages (by telephone and email) for which we are still waiting, following

We look forward to hearing from you.



BG

**Benoît Gamache, avocat / attorney**  
Direct Line: (514) 908-7446  
Cabinet BG Avocat Inc.  
BG Law Firm Inc.

<image001.jpg>

4725 Metropolitan East, Suite  
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Montreal, Quebec H1R 0C1  
Telephone: (514) 908-7460 / 1-  
866-327-0123  
Fax: (514) 329-0120 / 1-866-  
616-0120  
Website: [www.bgavocat.com](http://www.bgavocat.com)

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**From:** Benoît Gamache  
**Sent:** October 5 2017 10:18  
**To:** 'searscanada@fticonsulting.com' <[searscanada@fticonsulting.com](mailto:searscanada@fticonsulting.com)>  
**Cc:** 'Sonia Tremblay' <[stremblay@bga-law.com](mailto:stremblay@bga-law.com)>  
**Subject:** Creditors / Class Action Members

Good day,

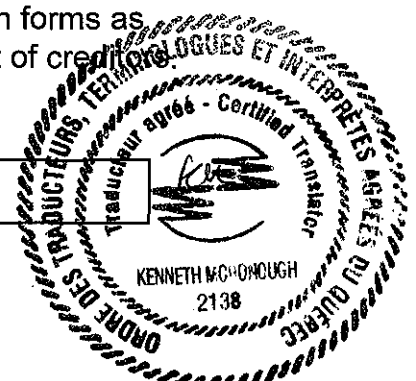
Our firm is acting as class counsel in class action matters (hereinafter referred to as "class actions" in the province of Quebec) against Sears Canada and Corbeil (Électroménagers/Électrique Inc.): [bga-law.com/gp](http://bga-law.com/gp) and [bga-law.com/gpcantin](http://bga-law.com/gpcantin)

All these matters revolve around sales of extended warranties and systemic (mis)representations regarding the detrimental consequences of not purchasing additional protection.

We would like to know the procedure to follow to file one or more claim forms as creditors so that the claims from the class actions are added to the list of creditors.

The Court matters concerned are:

1. Filion v Corbeil Électrique inc.	(500-06-000535-100)
-------------------------------------	---------------------



2. Ostiguy v Sears Canada	(500-06-000537-106)
3. Routhier v Corbeil Électroménagers inc. (Corbeil Électrique inc.) et als	(500-06-000709-143)
4. Tremblay v Sears Canada et als	150-06-000010-173)

We have left numerous messages (by telephone and email) for which we are still awaiting follow-up.

We look forward to hearing from you.

BG

**Benoît Gamache, avocat / attorney**

Direct Line: (514) 908-7446  
 Cabinet BG Avocat Inc.  
 BG Law Firm Inc.

BG

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[TRANSLATION]

November 15, 2017

**Without prejudice  
Sent by email**Mtre Benoît Gamache  
4725 Metropolitan East, Suite 207  
Montréal, Quebec H1R 0C1**NORTON ROSE FULBRIGHT**

Barristers &amp; Solicitors / Patent &amp; Trade-mark Agents

Norton Rose Fulbright Canada LLP  
1 Place Ville Marie, Suite 2500  
Montréal, Quebec H3B 1R1 CANADAF: +1 514.286.5474  
[nortonrosefulbright.com](http://nortonrosefulbright.com)Arad Mojtahedi  
+1 514.947.4582  
[arad.mojtahedi@nortonrosefulbright.com](mailto:arad.mojtahedi@nortonrosefulbright.com)

Dear Confrère,

**Class actions against Sears Canada Inc. and Corbeil Électrique Inc.**

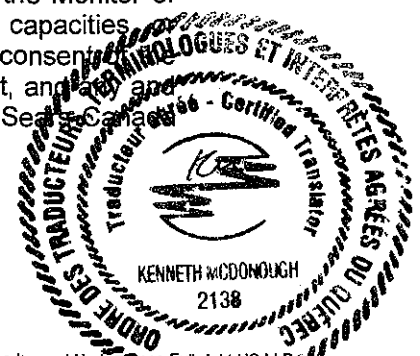
We are counsel for FTI Consulting Canada Inc. in its capacity as Monitor of Sears Canada Inc. ("**Sears Canada**"), Corbeil Électrique Inc. ("**Corbeil**"), S.L.H. Transport Inc. and their affiliates ("**Monitor**" or "**Our Client**"). Our client instructed us to send you this letter in connection with your emails dated October 18 and 25 and November 14, 2017 (your "**Emails**").

As you know, on June 22, 2017, the Ontario Superior Court of Justice (Commercial List) (the "**Court**") issued an initial order pursuant to the *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36 (the "**CCAA**") in the matter bearing the Court number CV-17-11846-00CL (the "**Initial Order**") in respect of Sears Canada, Corbeil, 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., 3339611 Canada Inc. and Sears Canada LP (together, the "**Sears Canada Entities**").

Under the Initial Order, FTI Consulting Canada Inc. was appointed Monitor of the Sears Canada Entities.

Paragraph 14 of the Initial Order provides the stay of proceedings in respect of the Sears Canada Entities and the Monitor for the following terms:

**THIS COURT ORDERS** that until and including July 22, 2017, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Sears Canada Entities or the Monitor or their respective employees and representatives acting in such capacities affecting the Business<sup>1</sup> or the Property,<sup>2</sup> except with the written consent of Sears Canada Entities and the Monitor, or with leave of this Court, and all Proceedings currently under way against or in respect of the Sears Canada Entities and the Monitor shall be stayed.



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Entities or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

- 
- <sup>1</sup> defined in paragraph 4 of the Initial Order as being “business carried on by the Sears Canada Entities in a manner consistent with the preservation of the value of their business.”
  - <sup>2</sup> defined in paragraph 4 of the Initial Order as including “current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof” of the Sears Canada Entities.

Furthermore, paragraph 34 of the Initial Order holds harmless FTI Consulting Canada Inc. from and against any action instituted as a result of its appointment as Monitor, except in the event of gross negligence or wilful misconduct:

**THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA, or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful (sic) misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

The Initial Order has been amended several times since in order to extend the Stay Period in favour of the Sears Canada Entities, which Stay Period has been extended until January 22, 2018 (the “**Extension Order**”) and remains subject to extension.

Copies of the Initial Order and the Extension Order are appended hereto for your convenience. The other Court orders may be consulted at any time on the Monitor’s website (<http://cfcanada.fticonsulting.com/searscanada/courtOrders.htm>).

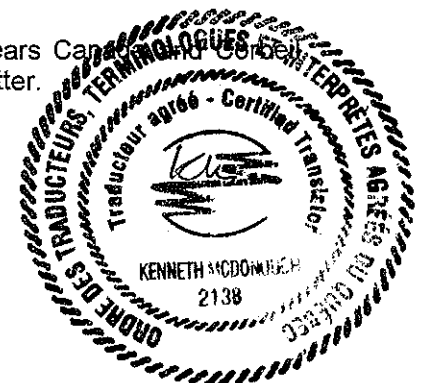
In accordance with the foregoing, you are required to suspend any proceeding in respect of Sears Canada, Corbeil, the Monitor and their representatives and respective employees. Also, it is prohibited to join our client as an impleaded party in the class actions mentioned in your emails. Obviously, the Monitor therefore has a duty to vigorously challenge any departure from aforementioned orders.

In due course, the Court may authorize a claims process in which the plaintiffs in the class action matters shall have the opportunity to file a claim and assert their potential rights against Sears Canada and Corbeil, including their rights in respect of the securities filed with the Office de la protection du consommateur. Without presuming the outcome, we nevertheless observe that at this stage, there is no judgment on the merits in the class action matters.

You will understand that, under the circumstances and particularly in light of the CCAA proceedings, it is impossible for the Monitor to consider entering into a transaction in the class action matters.

Note that our client is currently unable to respond to each of the allegations mentioned in your emails, but reserves all its rights and remedies, particularly regarding any breach of the aforementioned orders, and asks you to govern yourselves in accordance therewith.

Obviously, this letter is also sent to you without prejudice to the rights of Sears Canada and Corbeil. Counsel for Sears Canada and for Corbeil will be receiving a true copy of this letter.





Sincerely yours,

(signed)

Arad Mojtahedi  
Associate

AM/  
Encl.

c.c. Mtre Sandra Abitan, *Osler, Hoskin & Harcourt LLP*  
Mtre Julien Morissette, *Osler, Hoskin & Harcourt LLP*



ORIGINAL DOCUMENT(S) FOLLOW

**Schmitt, Alexander**

---

**From:** "Mojtahedi, Arad" on behalf of Mojtahedi, Arad  
**Sent:** November-15-17 11:10 AM  
**To:** Benoît Gamache  
**Cc:** SAbitan@osler.com; JMorissette@osler.com; Gauthier, Virginie; Merskey, Alan  
**Subject:** RE: CLASS ACTION / DEBTOR-CREDITOR: Créanciers / Membres de recours collectifs (SEARS - CORBEIL)  
**Attachments:** CAN\_DMS\_109476474\_v1\_Lettre à Me Benoit Gamache.PDF; Ordonnance de prologation.pdf; Ordonnance initiale.pdf

Me Gamache,

Veuillez prendre connaissance de la lettre et ordonnances ci-jointes.

Meilleures salutations.

**Chantal Cléroux**

Adjointe juridique

Legal Assistant

de / to Vanessa Rochester, Dominique Noël, Arad Mojtahedi

Norton Rose Fulbright Canada LLP / S.E.N.C.R.L., s.r.l.

1, Place Ville Marie, Bureau 2500, Montréal, QC, H3B 1R1, Canada

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[chantal.cleroux@nortonrosefulbright.com](mailto:chantal.cleroux@nortonrosefulbright.com)

**NORTON ROSE FULBRIGHT**


---

**De :** Benoît Gamache [mailto:bgamache@cabinetbg.ca]

**Envoyé :** 14 novembre 2017 09:32

**À :** Mojtahedi, Arad

**Objet :** RE: CLASS ACTION / DEBTOR-CREDITOR: Créanciers / Membres de recours collectifs (SEARS - CORBEIL)

Cher confrère,

Dans un premier temps, auriez-vous l'amabilité de nous indiquer où en sont vos demandes d'informations relativement à notre dossier.

Afin de vous appuyer dans vos démarches, veuillez trouver, ci-jointes, les numéros des cautionnements que nous avons obtenus de l'Office de la Protection du Consommateur (OPC).

Par ailleurs, nous vous avisons que votre cliente FTI sous peu *mise-en cause* pour Sears Canada dans notre dossier d'action collective : Tremblay c. Sears Canada et als (150-06-000010-173). À cet effet, la preuve que nous disposons établi la démonstration que des plans de protections ont continué d'être vendus après le 22 juin 2017 sans que les consommateurs, qu'il les ont acheté, soient informés au moment de la vente que l'entreprise était sous la protection de la LACC. Au surplus, des Plans de protection ont été vendus alors que la décision de liquidé avait déjà été prises. Dans ces circonstances, nous sommes dans l'obligation de réactiver notre dossier et d'y joindre votre cliente afin de pouvoir exercer les droits de nos clients sur les cautionnements.

## 143

Nous comprenons qu'à moins d'indications spécifiques à l'effet contraire, votre étude acceptera la signification de notre procédure.

Nous retirerons notre conviction à l'effet qu'il est dans l'intérêt de toutes les parties, notamment FTI, à trouver rapidement une solution négociée à la présente situation.

Dans l'attente de vous lire,

BG

**Benoît Gamache, avocat / attorney**

Ligne directe : (514) 908-7446  
Cabinet BG Avocat Inc.  
BG Law firm Inc.



4725, Métropolitaine Est, bureau 207  
Montréal (Québec) H1R 0C1  
Téléphone : (514) 908-7460 / 1-866-327-0123  
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Site web : [www.bgavocat.com](http://www.bgavocat.com)

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---

**De :** Mojtahedi, Arad [<mailto:arad.mojtahedi@nortonrosefulbright.com>]

**Envoyé :** 27 octobre 2017 18:16

**À :** Benoît Gamache <[bgamache@cabinetbg.ca](mailto:bgamache@cabinetbg.ca)>

**Cc :** Gauthier, Virginie <[virginie.gauthier@nortonrosefulbright.com](mailto:virginie.gauthier@nortonrosefulbright.com)>; Abitan, Sandra <[SAbitan@osler.com](mailto:SAbitan@osler.com)>; Morissette, Julien <[JMorissette@osler.com](mailto:JMorissette@osler.com)>

**Objet :** RE: CLASS ACTION / DEBTOR-CREDITOR: Créanciers / Membres de recours collectifs (SEARS - CORBEIL)

Cher confrère,

Nous avons demandé aux courtiers d'assurance des entités impliqués les informations nécessaires sur leurs cautions respectives. Bien que nous faisons de notre mieux afin d'avancer les choses rapidement, certains documents qui sont nécessaires pour l'analyse de vos préoccupations ne sont pas encore dans notre possession. Nous espérons vous revenir rapidement au cours de la semaine prochaine.

Cordiales salutations,

**Arad Mojtahedi**

Avocat  
Associate

Norton Rose Fulbright Canada S.E.N.C.R.L., s.r.l. / LLP  
1, Place Ville Marie, Bureau 2500, Montréal, QC, H3B 1R1, Canada  
T: +1 514.847.4582 | F: +1 514 286 5474  
[arad.mojtahedi@nortonrosefulbright.com](mailto:arad.mojtahedi@nortonrosefulbright.com)

## NORTON ROSE FULBRIGHT

**De :** Benoît Gamache [<mailto:bgamache@cabinetbg.ca>]

**Envoyé :** 25 octobre 2017 17:21

**À :** Mojtahedi, Arad

**Objet :** RE: CLASS ACTION / DEBTOR-CREDITOR: Créanciers / Membres de recours collectifs (SEARS - CORBEIL)

Chers confrères,

Dans un complément d'idées, nous vous soumettons respectueusement que le contrôleur devrait considérer les deux options possibles sont : 1) Une transaction ou 2) L'acquiescement aux actions collectives « Routhier » et « Tremblay », les deux scénario aux seules fins de faire exécuter les contrat de cautionnements des Sears Canada et de Corbeil et ses affiliés.

Dans le cas de Corbeil, il est évident que si les « Franchisés » continuent d'opérer sous la bannière Corbeil suite à une transaction leur cédant des actifs, telle la marque de commerce ou le fonds de commerce, nous position sera différente.

Dans l'attente de vos nouvelles,

BG

**Benoît Gamache, avocat / attorney**

Ligne directe : (514) 908-7446

Cabinet BG Avocat Inc.

BG Law firm Inc.



4725, Métropolitaine Est, bureau 207  
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Téléphone : (514) 908-7460 / 1-866-327-0123  
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Site web : [www.bgavocat.com](http://www.bgavocat.com)

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---

**De :** Mojtahedi, Arad [<mailto:arad.mojtahedi@nortonrosefulbright.com>]

**Envoyé :** 23 octobre 2017 15:51

**À :** Benoît Gamache <[bgamache@cabinetbg.ca](mailto:bgamache@cabinetbg.ca)>

**Cc :** Gauthier, Virginie <[virginie.gauthier@nortonrosefulbright.com](mailto:virginie.gauthier@nortonrosefulbright.com)>; Abitan, Sandra <[SAbitan@osler.com](mailto:SAbitan@osler.com)>; Morissette, Julien <[JMorissette@osler.com](mailto:JMorissette@osler.com)>

**Objet :** RE: CLASS ACTION / DEBTOR-CREDITOR: Créanciers / Membres de recours collectifs (SEARS - CORBEIL)

Cher confrère,

Nous espérons vous répondre cette semaine.

Salutations,

**Arad Mojtahedi**

Avocat

Associate

Norton Rose Fulbright Canada S.E.N.C.R.L., s.r.l. / LLP  
1, Place Ville Marie, Bureau 2500, Montréal, QC, H3B 1R1, Canada  
T: +1 514.847.4582 | F: +1 514 286 5474  
[arad.mojtahedi@nortonrosefulbright.com](mailto:arad.mojtahedi@nortonrosefulbright.com)

**NORTON ROSE FULBRIGHT**

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**De :** Benoît Gamache [<mailto:bgamache@cabinetbg.ca>]

**Envoyé :** 21 octobre 2017 09:19

**À :** Mojtahedi, Arad

**Objet :** Re: CLASS ACTION / DEBTOR-CREDITOR: Créanciers / Membres de recours collectifs (SEARS - CORBEIL)

Merci!

Avez-vous une idée du temps de réponse ? Le temps est un facteur important dans notre équation.

Bonne journée

Benoît Gamache, avocat

Cabinet BG Avocat Inc.

(514) 908-7446 / 1-877-908-7446

Envoyé par iPhone

Le 20 oct. 2017 à 15:51, Mojtahedi, Arad <[arad.mojtahedi@nortonrosefulbright.com](mailto:arad.mojtahedi@nortonrosefulbright.com)> a écrit :

Bonjour Me Gamache,

Nous avons bien reçu votre courriel. Le contrôleur du Sears (FTI Consulting) et nous sommes présentement en train d'analyser le tout et nous vous reviendrons une fois que nous aurons eu la chance de considérer tous les facteurs pertinents.

Veillez agréer l'expression de nos sentiments distingués.

**Arad Mojtahedi**

Avocat  
Associate

Norton Rose Fulbright Canada S.E.N.C.R.L., s.r.l. / LLP  
1, Place Ville Marie, Bureau 2500, Montréal, QC, H3B 1R1, Canada  
T: +1 514.847.4582 | F: +1 514 286 5474  
[arad.mojtahedi@nortonrosefulbright.com](mailto:arad.mojtahedi@nortonrosefulbright.com)

## NORTON ROSE FULBRIGHT

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**De :** Benoît Gamache [<mailto:bgamache@cabinetbg.ca>]

**Envoyé :** 18 octobre 2017 10:52

**À :** Mojtahedi, Arad

**Objet :** RE: CLASS ACTION / DEBTOR-CREDITOR: Créanciers / Membres de recours collectifs (SEARS - CORBEIL)

Bonjour,

Merci pour votre réponse rapide,

Tel que discuté, veuillez trouver, ci-jointe, une copie de notre correspondance datée d'hier.

Nous vous joignons également une copie du plan de protection Sears qui fait état (clause no. 6 *In fine*) du remboursement proportionnel, sur une base mensuelle, en cas d'annulation du plan de protection. La cessation des opérations et la fin des plan de protection constituent des causes d'annulation valables.

Par ailleurs, nous vous confirmons vouloir exercer nos recours sur les cautions exigées par l'office de la protection du consommateurs ( art. 256 L.p.c.). Nous vous soumettons que les contrats de cautionnement ne peuvent viser uniquement que les plans de protections. Par conséquent, ces contrats ne peuvent constituer des actifs « liquidables » au sens de la LAAC et ne font pas partie de la liquidation. Dans une certaine perspective, les membres de nos recours seraient en quelque sorte des « créanciers privilégiés » des plans de protection, et cela, au motif qu'eux seuls peuvent bénéficier des cautionnements ( Sears et Corbeil).

Pour exercer nos droits à l'encontre des contrats de cautionnement et faire intervenir l'OPC, nous devons préalablement obtenir soit un jugement ( impossible en vertu de la suspension) soit une entente hors-cour visant les plan de protections. Considérant qu'une telle entente ne priverait aucunement les autres créanciers, nous pensons que ce serait une voie à explorer.

Dans un autre registre, nous souhaitons être informé de la situation visant la vente d'actifs de Corbeil. Plus spécifiquement, nous désirons nous voir communiquer une copie de la transaction impliquant la continuité des opérations sous la marque de commerce « Corbeil ». Les éléments constitutif de cette transaction auront un effet sur les droits des membres de notre action collective ( Routhier). À cet effet, nous vous avisons que notre action collective (Routhier c. Corbeil) vise autant Corbeil Électroménager que Corbeil électrique. Voir la décision de la Cour d'appel du Québec ( ci-jointe)

Dans l'attente de vos commentaires et suggestions,

BG

**Benoît Gamache, avocat / attorney**

Ligne directe : (514) 908-7446

Cabinet BG Avocat Inc.

BG Law firm Inc.

<image001.jpg>

4725, Métropolitaine Est, bureau  
207

Montréal (Québec) H1R 0C1

Téléphone : (514) 908-7460 /

1-866-327-0123

Télécopieur : (514) 329-0120 /

1-866-616-0120

Site web : [www.bgavocat.com](http://www.bgavocat.com)

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**De :** Mojtahedi, Arad [<mailto:arad.mojtahedi@nortonrosefulbright.com>]

**Envoyé :** 17 octobre 2017 17:14

**À :** Benoît Gamache <[bgamache@cabinetbg.ca](mailto:bgamache@cabinetbg.ca)>

**Objet :** TR: CLASS ACTION / DEBTOR-CREDITOR: Créanciers / Membres de recours collectifs

Bonjour Me Gamache,

Tel que discuté au téléphone, voici mes coordonnées.

Meilleures salutations,

**Arad Mojtahedi**

Avocat

Associate

Norton Rose Fulbright Canada S.E.N.C.R.L., s.r.l. / LLP

1, Place Ville Marie, Bureau 2500, Montréal, QC, H3B 1R1, Canada

T: +1 514.847.4582 | F: +1 514 286 5474

[arad.mojtahedi@nortonrosefulbright.com](mailto:arad.mojtahedi@nortonrosefulbright.com)

**NORTON ROSE FULBRIGHT**

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**From:** Benoît Gamache [<mailto:bgamache@cabinetbg.ca>]

**Sent:** Wednesday, October 11, 2017 11:12 AM

**To:** Sears Canada

**Subject:** CLASS ACTION / DEBTOR-CREDITOR: Créanciers / Membres de recours collectifs



Bonjour,

Notre firme agit comme avocats-conseils des demandeurs dans dossier de recours collectif (Désormais désignées « actions collectives » dans la province de Québec) contre Sears Canada et Corbeil (Électroménagers /Électrique).

Tous ces dossiers s’articulent autour de la vente de garanties prolongées et aux représentations (fausses) sur les conséquences préjudiciables de ne pas en faire l’achat d’une protection supplémentaire.

Nous désirons connaître la procédure à suivre afin déposer un ou des formulaires de réclamations à titre de créanciers afin que les réclamations issues des actions collectives soient ajoutées à liste des créanciers

Les dossiers de justice concernées sont :

1. Fillion c. Corbeil Électrique inc.	(500-06-000535-100)
2. Ostiguy c. Sears Canada	(500-06-000537-106)
3. Routhier c. Corbeil Électroménagers inc. (Corbeil Électrique inc.) et als	(500-06-000709-143)
4. Tremblay c, Sears Canada et als	150-06-000010-173)

Nous avons laissé des messages (téléphoniques et courriels) pour lesquels nous attendons toujours un suivi.

Dans l’attente de vos nouvelles

BG

**Benoît Gamache, avocat / attorney**

Ligne directe : (514) 908-7446  
Cabinet BG Avocat Inc.  
BG Law firm Inc.

<image001.jpg>

4725, Métropolitaine Est, bureau  
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Montréal (Québec) H1R 0C1  
Téléphone : (514) 908-7460 /  
1-866-327-0123  
Télécopieur : (514) 329-0120 /  
1-866-616-0120  
Site web : [www.bgavocat.com](http://www.bgavocat.com)

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**De :** Benoît Gamache

**Envoyé :** 5 octobre 2017 10:18

**À :** 'searscanada@fticonsulting.com' <searscanada@fticonsulting.com>

**Cc :** 'Sonia Tremblay' <stremblay@bga-law.com>

**Objet :** Créanciers / Membres de recours collectifs

Bonjour,

Notre firme agit comme avocats-conseils des demandeurs dans dossier de recours collectif (Désormais désignées « actions collectives » dans la province de Québec) contre Sears Canada et Corbeil (Électroménagers /Électrique) : [bga-law.com/gp](http://bga-law.com/gp) et [bga-law.com/gpcantin](http://bga-law.com/gpcantin)

Tous ces dossiers s'articulent autour de la vente de garanties prolongées et aux représentations (fausses) sur les conséquences préjudiciables de ne pas en faire l'achat d'une protection supplémentaire.

Nous désirons connaître la procédure à suivre afin déposer un ou plusieurs formulaires de réclamations à titre de créanciers afin que les réclamations issues des actions collectives soient ajoutées à liste des créanciers

Les dossiers de justice concernés sont :

1. Filion c. Corbeil Électrique inc.	(500-06-000535-100)
2. Ostiguy c. Sears Canada	(500-06-000537-106)
3. Routhier c. Corbeil Électroménagers inc. (Corbeil Électrique inc.) et als	(500-06-000709-143)
4. Tremblay c, Sears Canada et als	(150-06-000010-173)

Nous avons laissé des messages (téléphoniques et courriels) pour lesquels nous attendons toujours un suivi.

Dans l'attente de vos nouvelles

BG

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*Le droit à l'échelle mondiale*  
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Le 15 novembre 2017

**Sous toutes réserves  
Transmis par courriel**Me Benoît Gamache  
4725, Métropolitaine Est, bureau 207  
Montréal (Québec) H1R 0C1**Actions collectives contre Sears Canada Inc. et Corbeil Électrique Inc.**

Cher confrère,

Nous sommes les procureurs de FTI Consulting Canada Inc., en sa qualité de Contrôleur de Sears Canada Inc. (**Sears Canada**), Corbeil Électrique Inc. (**Corbeil**), S.L.H. Transport Inc. et leurs sociétés affiliées (le **Contrôleur** ou **notre client**). Notre client nous a donné instruction de vous faire parvenir la présente lettre en lien avec vos courriels datés des 18 et 25 octobre et du 14 novembre 2017 (vos **Courriels**).

Comme vous le savez, le 22 juin 2017, la Cour supérieure de justice de l'Ontario (Rôle commercial) (la **Cour**) a rendu une ordonnance initiale conformément à la *Loi sur les arrangements avec les créanciers des compagnies*, L.R.C. 1985, c. C-36 (la **LACC**) dans le dossier portant le numéro de la Cour CV-17-11846-00CL (l'**Ordonnance initiale**) à l'égard de Sears Canada, Corbeil, 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., 3339611 Canada Inc. et Sears Canada LP (collectivement, les **Entités Sears Canada**).

En vertu de l'Ordonnance initiale, FTI Consulting Canada inc. a été nommée à titre de contrôleur des Entités Sears Canada.

Le paragraphe 14 de l'Ordonnance initiale prévoit la suspension des procédures à l'égard des Entités Sears Canada et le Contrôleur dans les termes suivants :

[TRADUCTION NON OFFICIELLE]

**ORDONNE** que, jusqu'au 22 juillet 2016, inclusivement, ou à une date ultérieure que le tribunal pourra fixer (la « **Période de suspension** »), aucune procédure ni aucune mesure d'exécution devant toute cour ou tout tribunal (collectivement les « **Procédures** »), ne puisse être introduite ou continuée à l'encontre ou à l'égard des Entités Sears Canada ou le Contrôleur ou leurs employés et représentants respectifs agissant en ces qualités, ou qui affecte les Affaires<sup>1</sup> ou les Biens<sup>2</sup>, sauf avec la permission de cette Cour. Toutes les Procédures déjà introduites à l'encontre des Entités Sears Canada ou affectant les Affaires ou les Biens sont suspendues jusqu'à ce que le

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tribunal en autorise la continuation.

- 1 définis au paragraphe 4 de l'Ordonnance initiale comme étant « les affaires et activités commerciales des Entités Sears Canada poursuivies d'une manière compatible avec la préservation de la valeur de leur entreprise ».
- 2 définis au paragraphe 4 de l'Ordonnance initiale comme incluant les « éléments d'actif, droits, entreprises et propriétés, présents et futurs, de quelque nature ou sorte, et en quelque lieu qu'ils se trouvent, incluant toutes recettes qui en résultent » des Entités Sears Canada.

En outre, le paragraphe 34 de l'Ordonnance initiale tient FTI Consulting Canada inc. indemne contre toute action intentée en raison de sa nomination en tant que Contrôleur, sauf en cas de négligence grave ou de faute lourde :

[TRADUCTION NON OFFICIELLE]

**ORDONNE** qu'en plus des droits et protections accordés au Contrôleur en vertu de la LACC ou en tant qu'officier de la Cour, le Contrôleur n'encourt aucune responsabilité ou obligation découlant de sa nomination ou de l'application des dispositions de la présente Ordonnance, sauf en cas de négligence grave ou faute intentionnelle de sa part. Rien dans la présente ordonnance ne déroge aux protections accordées au Contrôleur par la LACC ou toute autre loi applicable.

L'Ordonnance initiale a été amendée à plusieurs reprises depuis de manière à proroger la Période de suspension en faveur des Entités Sears Canada, laquelle a été étendue jusqu'au 22 janvier 2018 (**l'Ordonnance de prolongation**), et demeure sujette à prorogation.

Des copies de l'Ordonnance initiale et de l'Ordonnance de prolongation sont jointes aux présentes afin de vous faciliter leur consultation. Les autres ordonnances de la Cour peuvent être consultées en tout temps sur le site web du Contrôleur (<http://cfcanada.fticonsulting.com/searscanada/courtOrders.htm>).

Conformément à ce qui précède, vous êtes tenus de suspendre toute procédure à l'égard de Sears Canada, Corbeil, le Contrôleur et leurs représentants et employés respectifs. Également, il vous est interdit de joindre notre client comme mis en cause dans les actions collectives mentionnées dans vos Courriels. Bien évidemment, le Contrôleur a l'obligation de contester vigoureusement toute dérogation aux ordonnances susmentionnées.

En temps et lieu, la Cour pourra autoriser un processus de réclamation dans lequel les demandeurs dans les dossiers d'actions collectives auront l'occasion de déposer une réclamation et de faire valoir leurs droits éventuels contre Sears Canada et Corbeil, incluant leurs droits quant aux cautions déposées auprès de l'Office de la Protection de Consommateur. Sans présumer de la suite des choses, nous notons cependant qu'à ce stade-ci, il n'y a pas de jugement au fond dans les dossiers d'actions collectives.

Vous comprendrez que, dans les circonstances et au vu notamment des procédures de la LACC, il est impossible pour le Contrôleur d'envisager la conclusion d'une transaction dans les dossiers d'actions collectives.

Veuillez noter que notre client n'est présentement pas en mesure de répondre à chacune des allégations mentionnées dans vos Courriels, mais elle réserve tous ses droits et recours, particulièrement quant à toute violation des ordonnances précitées et vous invite à vous gouverner conformément à celles-ci.

Évidemment, la présente lettre vous est également transmise sous toutes réserves des droits de Sears Canada et Corbeil. Les procureurs de Sears Canada et Corbeil recevront une copie conforme de cette lettre.

Me Benoît Gamache  
Le 15 novembre 2017

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NORTON ROSE FULBRIGHT

Veillez agréer, Maître Gamache, l'expression de nos sentiments les plus distingués.



Arad Mojtahedi  
Avocat

AM/  
p.j.

c.c. Me Sandra Abitan, *Osler, Hoskin & Harcourt S.E.N.C.R.L./s.r.l.*  
Me Julien Morissette, *Osler, Hoskin & Harcourt S.E.N.C.R.L./s.r.l.*



ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE MR. ) THURSDAY, THE 22<sup>ND</sup>  
JUSTICE HAINEY ) DAY OF JUNE, 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**”)

INITIAL ORDER

**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 thereto (collectively, the “**Wong Affidavit**”), and the pre-filing report dated June 22, 2017 of FTI Consulting Canada Inc. (“**FTI**”), in its capacity as the proposed Monitor of the Applicants (the “**Pre-Filing Report**”), and on hearing the submissions of counsel to the Applicants and Sears Connect LP (the “**Partnership**”, and collectively with the Applicants, the “**Sears Canada**



**Entities**”), counsel to the Board of Directors (the “**Board of Directors**”) of Sears Canada Inc. (“**SCI**”) and the Special Committee of the Board of Directors (the “**Special Committee**”) of SCI, counsel to FTI, counsel to Wells Fargo Capital Finance Corporation Canada (the “**DIP ABL Agent**”), as administrative agent under the DIP ABL Credit Agreement (as defined herein), and counsel to GACP Finance Co., LLC (the “**DIP Term Agent**”), as administrative agent under the DIP Term Credit Agreement (as defined herein), Koskie Minsky LLP as counsel for Store Catalogue Retiree Group, counsel for the Financial Services Commission of Ontario, and on reading the consent of FTI to act as the Monitor.

### **SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

### **APPLICATION**

2. **THIS COURT ORDERS AND DECLARES** that the Applicants are companies to which the CCAA applies. Although not an Applicant, the Partnership shall enjoy the benefits of the protections and authorizations provided by this Order.

### **PLAN OF ARRANGEMENT**

3. **THIS COURT ORDERS** that the Applicants, individually or collectively, shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the “**Plan**”).

### **POSSESSION OF PROPERTY AND OPERATIONS**

4. **THIS COURT ORDERS** that the Sears Canada Entities shall remain in possession and control of their respective current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”). For greater certainty, the “**Property**” includes all inventory, assets, undertakings and property of the Sears Canada Entities in the possession or control of the Hometown Dealers (as defined in the Wong Affidavit) and all inventory, assets, undertakings and property of the Sears Canada

Entities in the possession or control of the Corbeil Franchisees (as defined in the Wong Affidavit). Subject to further Order of this Court, the Sears Canada Entities shall continue to carry on business in a manner consistent with the preservation of the value of their business (the “**Business**”) and Property. The Sears Canada Entities shall each be authorized and empowered to continue to retain and employ the employees, independent contractors, advisors, consultants, agents, experts, accountants, counsel and such other persons (collectively, “**Assistants**”) currently retained or employed by them, with liberty, subject to the terms of the Definitive Documents (as defined herein) to retain such further Assistants, as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. **THIS COURT ORDERS** that the Sears Canada Entities shall be entitled to continue to utilize the central cash management services currently in place as described in the Wong Affidavit, or, with the consent of the Monitor, the DIP ABL Agent on behalf of the DIP ABL Lenders (as defined herein) and the DIP Term Agent on behalf of the DIP Term Lenders (as defined herein), replace it with another substantially similar central cash management services (the “**Cash Management System**”) and that any present or future bank or other institution providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Sears Canada Entities of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Sears Canada Entities, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System; provided, however, that no bank or other institution providing such Cash Management System shall be obliged to extend any overdraft credit, on an aggregate net basis, directly or indirectly in connection therewith and further provided that, to the extent any overdraft occurs, on an aggregate net basis, the Sears Canada Entities shall make arrangements to repay such overdraft forthwith.

6. **THIS COURT ORDERS** that the Sears Canada Entities, subject to availability under, and in accordance with the terms of the DIP Facilities (as defined herein) and the Definitive Documents, and subject to further Order of this Court, shall be entitled but not required to pay the following expenses whether incurred prior to, on or after this Order to the extent that such expenses are incurred and payable by the Sears Canada Entities:

- (a) all outstanding and future wages, salaries, commissions, employee and retiree benefits (including, without limitation, medical, dental, life insurance and similar benefit plans or arrangements), pension benefits or contributions, vacation pay, expenses, and director fees and expenses, payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements (but not including termination or severance payments), and all other payroll, pension and benefits processing and servicing expenses;
- (b) all outstanding and future amounts owing to or in respect of Persons working as independent contractors in connection with the Business;
- (c) all outstanding or future amounts owing in respect of customer rebates, refunds, discounts or other amounts on account of similar customer programs or obligations;
- (d) all outstanding or future amounts related to honouring customer obligations, whether existing before or after the date of this Order, including customer financing, product warranties, pre-payments, deposits, gift cards, Sears Club programs (including redemptions of Sears Club points) and other customer loyalty programs, offers and benefits, in each case incurred in the ordinary course of business and consistent with existing policies and procedures;
- (e) the fees and disbursements of any Assistants retained or employed by the Sears Canada Entities at their standard rates and charges; and
- (f) with the consent of the Monitor, amounts owing for goods or services actually supplied to the Sears Canada Entities prior to the date of this Order by:



- (i) logistics or supply chain providers, including customs brokers and freight forwarders, fuel providers, repair, maintenance and parts providers, and security and armoured truck carriers, and including amounts payable in respect of customs and duties for goods;
- (ii) providers of information, internet, and other technology, including e-commerce providers and related services;
- (iii) providers of credit, debit and gift card processing related services; and
- (iv) other third party suppliers up to a maximum aggregate amount of \$25 million, if, in the opinion of the Sears Canada Entities, the supplier is critical to the business and ongoing operations of the Sears Canada Entities.

7. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein and subject to the terms of the Definitive Documents, the Sears Canada Entities shall be entitled but not required to pay all reasonable expenses incurred by them in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order and any other Order of this Court, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors' and officers' insurance), maintenance (including environmental remediation) and security services; and
- (b) payment for goods or services actually supplied to the Sears Canada Entities following the date of this Order.

8. **THIS COURT ORDERS** that the Sears Canada Entities shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from the Sears Canada Entities' employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;

- (b) all goods and services taxes, harmonized sales taxes or other applicable sales taxes (collectively, “**Sales Taxes**”) required to be remitted by the Sears Canada Entities in connection with the sale of goods and services by the Sears Canada Entities, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order;
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business, workers’ compensation or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Sears Canada Entities; and
- (d) taxes under the *Income Tax Act* (Canada) or other relevant taxing statutes to the extent that such taxing statutes give rise to statutory deemed trust amounts in favour of the Crown in right of Canada or any Province thereof or any political subdivision thereof or any other taxation authority.

9. **THIS COURT ORDERS** that, except as specifically permitted herein, the Sears Canada Entities are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by any one of the Sears Canada Entities to any of their creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of the Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business or pursuant to this Order or any further Order of this Court.

## **RESTRUCTURING**

10. **THIS COURT ORDERS** that the Sears Canada Entities shall, subject to such requirements as are imposed by the CCAA, and subject to the terms of the Definitive Documents, have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of their Business or operations, and to dispose of redundant or non-material assets not exceeding \$2 million in any one transaction or \$5 million in the aggregate in any series of related transactions, provided that, with respect to leased premises, the Sears Canada Entities may, subject to the requirements of the CCAA and paragraphs 11 to 13 herein, vacate, abandon or quit the whole (but not part of) and may permanently (but not temporarily) cease, downsize or shut down any of their Business or operations in respect of any leased premises;
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as the relevant Sears Canada Entity deems appropriate; and
- (c) pursue all avenues of refinancing, restructuring, selling and reorganizing the Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing, restructuring, sale or reorganization,

all of the foregoing to permit the Sears Canada Entities to proceed with an orderly restructuring of the Sears Canada Entities and/or the Business (the “**Restructuring**”).

#### **REAL PROPERTY LEASES**

11. **THIS COURT ORDERS** that until a real property lease is disclaimed or resiliated in accordance with the CCAA, the Sears Canada Entities shall pay, without duplication, all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under its lease, but for greater certainty, excluding accelerated rent or penalties, fees or other charges arising as a result of the insolvency of any or all of the Sears Canada Entities or the making of this Initial Order) or as otherwise may be negotiated between the applicable Sears Canada Entity and the landlord from time to time (“**Rent**”), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.



12. **THIS COURT ORDERS** that the Sears Canada Entities shall provide each of the relevant landlords with notice of the relevant Sears Canada Entity's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the entitlement of a Sears Canada Entity to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the relevant Sears Canada Entity, or by further Order of this Court upon application by the Sears Canada Entities on at least two (2) days' notice to such landlord and any such secured creditors. If any of the Sears Canada Entities disclaims or resiliates the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer or resiliation of the lease shall be without prejudice to the relevant Sears Canada Entity's claim to the fixtures in dispute.

13. **THIS COURT ORDERS** that if a notice of disclaimer or resiliation is delivered pursuant to Section 32 of the CCAA by any of the Sears Canada Entities, then: (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the relevant Sears Canada Entity and the Monitor 24 hours' prior written notice; and (b) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the relevant Sears Canada Entity in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

**NO PROCEEDINGS AGAINST THE SEARS CANADA ENTITIES, THE BUSINESS OR THE PROPERTY**

14. **THIS COURT ORDERS** that until and including July 22, 2017, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the

Sears Canada Entities or the Monitor or their respective employees and representatives acting in such capacities, or affecting the Business or the Property, except with the written consent of the Sears Canada Entities and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Sears Canada Entities or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

15. **THIS COURT ORDERS** that during the Stay Period, no Person having any agreements or arrangements with the owners, operators, managers or landlords of commercial shopping centres or other commercial properties (including retail, office and industrial (warehouse) properties) in which there is located a store, office or warehouse owned or operated by the Sears Canada Entities shall take any Proceedings or exercise any rights or remedies under such agreements or arrangements that may arise upon and/or as a result of the making of this Order, the insolvency of, or declarations of insolvency by, any or all of the Sears Canada Entities, or as a result of any steps taken by the Sears Canada Entities pursuant to this Order and, without limiting the generality of the foregoing, no Person shall terminate, accelerate, suspend, modify, determine or cancel any such arrangement or agreement or be entitled to exercise any rights or remedies in connection therewith.

16. **THIS COURT ORDERS** that during the Stay Period, no Person having any agreements or arrangements with the Hometown Dealers or the Corbeil Franchisees shall take any Proceedings or exercise any rights or remedies under such agreements or arrangements that may arise upon and/or as a result of the making of this Order, the insolvency of, or declarations of insolvency by, any or all of the Sears Canada Entities, or as a result of any steps taken by the Sears Canada Entities pursuant to this Order and, without limiting the generality of the foregoing, no Person shall terminate, accelerate, suspend, modify, determine or cancel any such arrangement or agreement or be entitled to exercise any rights or remedies in connection therewith.

17. **THIS COURT ORDERS** that during the Stay Period all rights and remedies, of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of the Sears Canada Entities or the Monitor or their respective employees and representatives acting in



such capacities, or affecting the Business or the Property, are hereby stayed and suspended, except with the written consent of the Sears Canada Entities and the Monitor, or leave of this Court, provided that nothing in this Order shall: (a) empower the Sears Canada Entities to carry on any business that the Sears Canada Entities are not lawfully entitled to carry on; (b) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA; (c) prevent the filing of any registration to preserve or perfect a security interest; or (d) prevent the registration of a claim for lien.

### **NO INTERFERENCE WITH RIGHTS**

18. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, lease, sublease, licence or permit in favour of or held by the Sears Canada Entities, except with the written consent of the Sears Canada Entities and the Monitor, or leave of this Court. Without limiting the foregoing, no right, option, remedy, and/or exemption in favour of the relevant Sears Canada Entity shall be or shall be deemed to be negated, suspended, waived and/or terminated as a result of this Order.

### **CONTINUATION OF SERVICES**

19. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Sears Canada Entities or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all trademark license and other intellectual property, computer software, communication and other data services, centralized banking services, payroll and benefit services, insurance, warranty services, transportation services, freight services, security and armoured truck carrier services, utility, customs clearing, warehouse and logistics services or other services to the Business or the Sears Canada Entities are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply or license of such goods, services, trademarks and other intellectual property as may be required by the Sears Canada Entities, and that the Sears Canada Entities shall be entitled to the continued use of the trademarks and other intellectual property currently licensed to, used or owned by the Sears Canada Entities, premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by

the Sears Canada Entities in accordance with normal payment practices of the Sears Canada Entities or such other practices as may be agreed upon by the supplier or service provider and each of the Sears Canada Entities and the Monitor, or as may be ordered by this Court.

#### **NON-DEROGATION OF RIGHTS**

20. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Sears Canada Entities. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

#### **KEY EMPLOYEE RETENTION PLAN**

21. **THIS COURT ORDERS** that the Key Employee Retention Plan (the “**KERP**”), as described in the Wong Affidavit, is hereby approved and the Sears Canada Entities are authorized to make payments contemplated thereunder in accordance with the terms and conditions of the KERP.

22. **THIS COURT ORDERS** that the key employees referred to in the KERP (the “**Key Employees**”) shall be entitled to the benefit of and are hereby granted the following charges on the Property, which charges shall not exceed: (a) an aggregate amount of \$4.6 million (the “**KERP Priority Charge**”) to secure the first \$4.6 million payable to the Key Employees under the KERP; and (b) an aggregate amount of \$4.6 million (the “**KERP Subordinated Charge**”) to secure any other payments to the Key Employees under the KERP. The KERP Priority Charge and the KERP Subordinated Charge shall have the priority set out in paragraphs 46, 47 and 49 hereof.

#### **APPROVAL OF FINANCIAL ADVISOR AGREEMENT**

23. **THIS COURT ORDERS** that the agreement dated May 15, 2017 engaging BMO Nesbitt Burns Inc. (the “**Financial Advisor**”) as financial advisor to SCI and attached as Confidential Appendix C to the Pre-Filing Report (the “**Financial Advisor Agreement**”), and the retention of the Financial Advisor under the terms thereof, is hereby ratified and approved

and SCI is authorized and directed *nunc pro tunc* to make the payments contemplated thereunder in accordance with the terms and conditions of the Financial Advisor Agreement.

24. **THIS COURT ORDERS** that the Financial Advisor shall be entitled to the benefit of and is hereby granted a charge (the “**FA Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$3.3 million, as security for the fees and disbursements payable under the Financial Advisor Agreement, both before and after the making of this Order in respect of these proceedings. The FA Charge shall have the priority set out in paragraphs 46, 47 and 49 hereof.

### **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

25. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Sears Canada Entities with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Sears Canada Entities whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Sears Canada Entities, if one is filed, is sanctioned by this Court or is refused by the creditors of the Sears Canada Entities or this Court.

### **DIRECTORS’ AND OFFICERS’ INDEMNIFICATION AND CHARGE**

26. **THIS COURT ORDERS** that the Sears Canada Entities shall jointly and severally indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Sears Canada Entities after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director’s or officer’s gross negligence or wilful misconduct.

27. **THIS COURT ORDERS** that the directors and officers of the Sears Canada Entities shall be entitled to the benefit of and are hereby granted the following charges on the Property, which charges shall not exceed: (a) an aggregate amount of \$44 million (the “**Directors’**



**Priority Charge**”); and (b) an aggregate amount of \$19.5 million (the “**Directors’ Subordinated Charge**”), respectively, and in each case, as security for the indemnity provided in paragraph 26 of this Order. The Directors’ Priority Charge and the Directors’ Subordinated Charge shall have the priority set out in paragraphs 46, 47 and 49 hereof.

28. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary: (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors’ Priority Charge and the Directors’ Subordinated Charge; and (b) the Sears Canada Entities’ directors and officers shall only be entitled to the benefit of the Directors’ Priority Charge and the Directors’ Subordinated Charge to the extent that they do not have coverage under any directors’ and officers’ insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 26 of this Order.

#### **APPOINTMENT OF MONITOR**

29. **THIS COURT ORDERS** that FTI is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the Business and financial affairs of the Sears Canada Entities with the powers and obligations set out in the CCAA or set forth herein and that the Sears Canada Entities and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Sears Canada Entities pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor’s functions.

30. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Sears Canada Entities’ receipts and disbursements;
- (b) liaise with the Sears Canada Entities and the Assistants and, if determined by the Monitor to be necessary, the Hometown Dealers and Corbeil Franchisees, with respect to all matters relating to the Property, the Business, the Restructuring and such other matters as may be relevant to the proceedings herein;

- (c) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, the Restructuring and such other matters as may be relevant to the proceedings herein;
- (d) assist the Sears Canada Entities, to the extent required by the Sears Canada Entities, in their dissemination of financial and other information to the DIP ABL Agent, the DIP ABL Lenders, the DIP Term Agent, the DIP Term Lenders and each of their respective counsel and financial advisors, pursuant to and in accordance with the Definitive Documents;
- (e) advise the Sears Canada Entities in their preparation of the Sears Canada Entities' cash flow statements and any reporting required by the Definitive Documents, which information shall be reviewed with the Monitor and delivered to the DIP ABL Agent, the DIP ABL Lenders, the DIP Term Agent, the DIP Term Lenders and each of their respective counsel and financial advisors, pursuant to and in accordance with the Definitive Documents;
- (f) advise the Sears Canada Entities in their development of the Plan and any amendments to the Plan;
- (g) assist the Sears Canada Entities, to the extent required by the Sears Canada Entities, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (h) have full and complete access to the Property (including any Property in the possession of the Hometown Dealers and the Corbeil Franchisees), including the premises, books, records, data, including data in electronic form, and other financial documents of the Sears Canada Entities, to the extent that is necessary to adequately assess the Business and the Sears Canada Entities' financial affairs or to perform its duties arising under this Order;
- (i) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;

- (j) assist the Sears Canada Entities, to the extent required by the Sears Canada Entities, with any matters relating to any foreign proceeding commenced in relation to any of the Sears Canada Entities, including retaining independent legal counsel, agents, experts, accountants, or such other persons as the Monitor deems necessary or desirable respecting the exercise of this power; and
- (k) perform such other duties as are required by this Order or by this Court from time to time.

31. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

32. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, “**Possession**”) of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the “**Environmental Legislation**”), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor’s duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

33. **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Sears Canada Entities, the DIP ABL Agent, the DIP ABL Lenders, the DIP Term Agent and the DIP Term Lenders with information provided by the Sears Canada Entities in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor



shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Sears Canada Entities is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Sears Canada Entities may agree.

34. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

35. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, counsel to the Sears Canada Entities and counsel to the Board of Directors and the Special Committee shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, whether incurred prior to or subsequent to the date of this Order, by the Sears Canada Entities as part of the costs of these proceedings. The Sears Canada Entities are hereby authorized and directed to pay the accounts of the Monitor, counsel to the Monitor, counsel to the Sears Canada Entities and counsel to the Board of Directors and the Special Committee on a weekly basis and, in addition, the Sears Canada Entities are hereby authorized to pay to the Monitor, counsel to the Monitor, counsel to the Sears Canada Entities and counsel to the Board of Directors and the Special Committee, retainers in the aggregate amount of \$700,000, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

36. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

37. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, counsel to the Sears Canada Entities and counsel to the Board of Directors and the Special Committee shall be entitled to the benefit of and are hereby granted a charge (the “**Administration Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$5 million, as security for their professional fees and disbursements incurred at their respective standard rates and charges, both

before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 46, 47 and 49 hereof.

## **DIP FINANCING**

38. **THIS COURT ORDERS** that the Sears Canada Entities are hereby authorized and empowered to obtain and borrow or guarantee, as applicable, on a joint and several basis, under:

- (a) the Senior Secured Superpriority Debtor-in-Possession Amended and Restated Credit Agreement dated as of June 22, 2017 and attached to the Wong Affidavit as Exhibit K, among the Sears Canada Entities, the DIP ABL Agent and the lenders from time to time party thereto (the “**DIP ABL Lenders**”) (as may be amended, restated, supplemented and/or modified, subject to approval of this Court in respect of any amendment that the Monitor determines to be material, the “**DIP ABL Credit Agreement**”), in order to finance the Sears Canada Entities’ working capital requirements and other general corporate purposes and capital expenditures, all in accordance with the Definitive Documents, provided that borrowings under DIP ABL Credit Agreement shall not exceed \$300 million unless permitted by further Order of this Court (the “**DIP ABL Credit Facility**”); and
- (b) the Senior Secured, Superpriority Debtor-in-Possession Credit Agreement dated as of June 22, 2017 and attached to the Wong Affidavit as Exhibit K, among the Sears Canada Entities, the DIP Term Agent and the lenders from time to time party thereto (the “**DIP Term Lenders**”) (as may be amended, restated, supplemented and/or modified, subject to approval of this Court in respect of any amendment that the Monitor determines to be material, the “**DIP Term Credit Agreement**”), in order to finance the Sears Canada Entities’ working capital requirements and other general corporate purposes and capital expenditures, all in accordance with the Definitive Documents, provided that borrowings under the DIP Term Credit Agreement shall not exceed \$150 million unless permitted by further Order of this Court (the “**DIP Term Credit Facility**”, and together with the DIP ABL Credit Facility, the “**DIP Facilities**”).



39. **THIS COURT ORDERS** that the DIP Facilities shall be on the terms and subject to the conditions set forth in the DIP ABL Credit Agreement, the DIP Term Credit Agreement and the other Definitive Documents.

40. **THIS COURT ORDERS** that the Sears Canada Entities are hereby authorized and empowered to execute and deliver the DIP ABL Credit Agreement, the DIP Term Credit Agreement and such mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, and including any schedules (as amended and updated from time to time) thereto, the “**Definitive Documents**”), as are contemplated by the DIP ABL Credit Agreement and the DIP Term Credit Agreement or as may be reasonably required by the DIP ABL Agent on behalf of the DIP ABL Lenders and the DIP Term Agent on behalf of the DIP Term Lenders pursuant to the terms thereof, as applicable, and the Sears Canada Entities are hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP ABL Agent, the DIP ABL Lenders, the DIP Term Agent and the DIP Term Lenders under and pursuant to the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

41. **THIS COURT ORDERS** that the DIP ABL Agent and the DIP ABL Lenders shall be entitled to the benefit of and are hereby granted a charge (the “**DIP ABL Lenders’ Charge**”) on the Property as security for any and all Obligations (as defined in the DIP ABL Credit Agreement) other than the Prepetition Obligations (as defined in the DIP ABL Credit Agreement) (including on account of principal, interest, fees, expenses and other liabilities, and the aggregate of all such obligations, the “**DIP ABL Obligations**”), which DIP ABL Lenders’ Charge shall be in the aggregate amount of the DIP ABL Obligations outstanding at any given time under the DIP ABL Credit Agreement. The DIP ABL Lenders’ Charge shall not secure an obligation that exists before this Order is made. The DIP ABL Lenders’ Charge shall have the priority set out in paragraphs 46, 47 and 49 hereof.

42. **THIS COURT ORDERS** that the DIP Term Agent and the DIP Term Lenders shall be entitled to the benefit of and are hereby granted a charge (the “**DIP Term Lenders’ Charge**”) on the Property as security for any and all Obligations (as defined in DIP Term Credit Agreement) (including on account of principal, interest, fees, expenses and other liabilities, and the aggregate of all such obligations, the “**DIP Term Obligations**”), which DIP Term Lenders’ Charge shall

be in the aggregate amount of the DIP Term Obligations outstanding at any given time under the DIP Term Credit Agreement. The DIP Term Lenders' Charge shall not secure an obligation that exists before this Order is made. The DIP Term Lenders' Charge shall have the priority set out in paragraphs 46, 47 and 49 hereof.

43. **THIS COURT ORDERS** that SCI's reimbursement obligation with respect to the letters of credit outstanding under the Wells Fargo Credit Agreement (as defined in the Wong Affidavit) prior to the date of this Order and which are drawn upon on or after the date of this Order shall be deemed to form part of the DIP ABL Credit Facility and shall be included as DIP ABL Obligations for the purposes of determining the amount of the DIP ABL Lenders' Charge.

44. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

- (a) the DIP ABL Agent on behalf of the DIP ABL Lenders, as applicable, may take such steps from time to time as they may deem necessary or appropriate to file, register, record or perfect the DIP ABL Lenders' Charge, the DIP ABL Credit Agreement or any of the other Definitive Documents;
- (b) the DIP Term Agent on behalf of the DIP Term Lenders, as applicable, may take such steps from time to time as they may deem necessary or appropriate to file, register, record or perfect the DIP Term Lenders' Charge, the DIP Term Credit Agreement or any of the other Definitive Documents;
- (c) upon the occurrence of an event of default under the DIP ABL Credit Agreement, the other related Definitive Documents or the DIP ABL Lenders' Charge, the DIP ABL Agent and the DIP ABL Lenders, as applicable, may, subject to the provisions of the DIP ABL Credit Agreement with respect to the giving of notice or otherwise, and in accordance with the DIP ABL Credit Agreement, the other related Definitive Documents and the DIP ABL Lenders' Charge, as applicable, cease making advances to the Sears Canada Entities, make demand, accelerate payment and give other notices; provided that, the DIP ABL Agent and the DIP ABL Lenders must apply to this Court on seven (7) days' prior written notice (which may include the service of materials in connection with such an application to this Court) to the Sears Canada Entities, the DIP Term Agent, the DIP Term Lenders and the Monitor, to enforce

against or exercise any other rights and remedies with respect to the Sears Canada Entities or any of the Property (including to set off and/or consolidate any amounts owing by the DIP ABL Agent and the DIP ABL Lenders to the Sears Canada Entities against the obligations of the Sears Canada Entities to the DIP ABL Agent and the DIP ABL Lenders under the DIP ABL Credit Agreement, the other related Definitive Documents or the DIP ABL Lenders' Charge), to appoint a receiver, receiver and manager or interim receiver, or to seek a bankruptcy order against the Sears Canada Entities and to appoint a trustee in bankruptcy of the Sears Canada Entities;

- (d) upon the occurrence of an event of default under the DIP Term Credit Agreement, the other related Definitive Documents or the DIP Term Lenders' Charge, the DIP Term Agent and the DIP Term Lenders, as applicable, may, subject to the provisions of the DIP Term Credit Agreement with respect to the giving of notice or otherwise, and in accordance with the DIP Term Credit Agreement, the other related Definitive Documents and the DIP Term Lenders' Charge, as applicable, cease making advances to the Sears Canada Entities, make demand, accelerate payment and give other notices; provided that, the DIP Term Agent and the DIP Term Lenders must apply to this Court on seven (7) days' prior written notice (which may include the service of materials in connection with such an application to this Court) to the Sears Canada Entities, the DIP ABL Agent, the DIP ABL Lenders and the Monitor, to enforce against or exercise any other rights and remedies with respect to the Sears Canada Entities or any of the Property (including to set off and/or consolidate any amounts owing by the DIP Term Agent and the DIP Term Lenders to the Sears Canada Entities against the obligations of the Sears Canada Entities to the DIP Term Agent and the DIP Term Lenders under the DIP Term Credit Agreement, the other related Definitive Documents or the DIP Term Lenders' Charge), to appoint a receiver, receiver and manager or interim receiver, or to seek a bankruptcy order against the Sears Canada Entities and to appoint a trustee in bankruptcy of the Sears Canada Entities; and
- (e) the foregoing rights and remedies of the DIP ABL Agent, the DIP ABL Lenders, the DIP Term Agent and the DIP Term Lenders shall be enforceable against any trustee



in bankruptcy, interim receiver, receiver or receiver and manager of the Sears Canada Entities or the Property.

45. **THIS COURT ORDERS AND DECLARES** that the DIP ABL Agent, the DIP ABL Lenders, the DIP Term Agent and the DIP Term Lenders shall be treated as unaffected in any plan of arrangement or compromise filed by the Sears Canada Entities or any of them under the CCAA, or any proposal filed by the Sears Canada Entities or any of them under the *Bankruptcy and Insolvency Act* of Canada (the “**BIA**”), with respect to any advances made under the DIP ABL Credit Agreement, the DIP Term Credit Agreement and the other Definitive Documents.

#### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

46. **THIS COURT ORDERS** that the priorities of the Administration Charge, the FA Charge, the DIP ABL Lenders’ Charge, the DIP Term Lenders’ Charge, the Directors’ Priority Charge, the Directors’ Subordinated Charge, the KERP Priority Charge and the KERP Subordinated Charge (collectively, the “**Charges**”), as among them, with respect to ABL Priority Collateral (as defined in the Intercreditor Agreement dated March 20, 2017 and attached as Exhibit J to the Wong Affidavit) shall be as follows:

First – Administration Charge, to the maximum amount of \$5 million, and the FA Charge, to the maximum amount of \$3.3 million, on a *pari passu* basis;

Second – KERP Priority Charge, to the maximum amount of \$4.6 million;

Third – Directors’ Priority Charge, to the maximum amount of \$44 million;

Fourth – DIP ABL Lenders’ Charge, to the maximum amount of the quantum of the DIP ABL Obligations at the relevant time;

Fifth – the DIP Term Lenders’ Charge, to the maximum amount of the quantum of the DIP Term Obligations at the relevant time;

Sixth – KERP Subordinated Charge, to the maximum amount of \$4.6 million; and

Seventh – the Directors’ Subordinated Charge, to the maximum amount of \$19.5 million.

47. **THIS COURT ORDERS** that the priorities of the Charges as among them, with respect to all Property other than the ABL Priority Collateral shall be as follows:

First – Administration Charge, to the maximum amount of \$5 million, and the FA Charge, to the maximum amount of \$3.3 million, on a *pari passu* basis;

Second – KERP Priority Charge, to the maximum amount of \$4.6 million;

Third – Directors’ Priority Charge, to the maximum amount of \$44 million;

Fourth – DIP Term Lenders’ Charge, to the maximum amount of the quantum of the DIP Term Obligations at the relevant time;

Fifth – DIP ABL Lenders’ Charge, to the maximum amount of the quantum of the DIP ABL Obligations at the relevant time;

Sixth – KERP Subordinated Charge, to the maximum amount of \$4.6 million; and

Seventh – the Directors’ Subordinated Charge, to the maximum amount of \$19.5 million.

48. **THIS COURT ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

49. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property, and such Charges shall rank in priority to all other security interests, trusts (including constructive trusts), liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (including without limitation any deemed trust that may be created under the Ontario *Pension Benefits Act*) (collectively, “**Encumbrances**”) other than (a) any Person with a properly perfected purchase money security interest under the *Personal Property Security Act* (Ontario) or such other applicable provincial legislation that has not been served with notice of this Order; and (b) statutory super-priority deemed trusts and liens for unpaid employee source deductions.

50. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Sears Canada Entities shall not grant any Encumbrances over any of the Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Sears Canada Entities also obtain the prior written consent of the Monitor, the DIP ABL Agent on behalf of the DIP ABL Lenders, the DIP Term Agent on behalf of the DIP Term Lenders and the other beneficiaries of affected Charges, or further Order of this Court.

51. **THIS COURT ORDERS** that the Charges, the DIP ABL Credit Agreement, the DIP Term Credit Agreement, and the other Definitive Documents shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the “**Chargees**”) thereunder shall not otherwise be limited or impaired in any way by: (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) that binds the Sears Canada Entities, and notwithstanding any provision to the contrary in any Agreement:

- (i) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the DIP ABL Credit Agreement, the DIP Term Credit Agreement or the other Definitive Documents shall create or be deemed to constitute a breach by the Sears Canada Entities of any Agreement to which it is a party;
- (ii) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Sears Canada Entities entering into the DIP ABL Credit Agreement and the DIP Term Credit Agreement, the creation of the Charges, or the execution, delivery or performance of the other Definitive Documents; and
- (iii) the payments made by the Sears Canada Entities pursuant to this Order, the DIP ABL Credit Agreement, the DIP Term Credit Agreement or the other Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.



52. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the relevant Sears Canada Entity's interest in such real property leases.

53. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order, the L/C Collateral Account (as defined in the DIP ABL Credit Agreement) shall be deemed to be subject to a lien, security, charge and security interest in favour of the DIP ABL Agent solely for the reimbursement obligation of SCI related to the letters of credit issued under the Wells Fargo Credit Agreement which remain undrawn from and after the Comeback Motion (as defined herein). The Charges as they may attach to the L/C Collateral Account, including by operation of law or otherwise: (a) shall rank junior in priority to the lien, security, charge and security interest in favour of the DIP ABL Agent in respect of the L/C Collateral Account; and (b) shall attach to the L/C Collateral Account only to the extent of the rights, if any, of any Sears Canada Entity to the return of any cash from the L/C Collateral Account in accordance with the DIP ABL Credit Agreement.

#### **CORPORATE MATTERS**

54. **THIS COURT ORDERS** that SCI be and is hereby relieved of any obligation to call and hold an annual meeting of its shareholders until further Order of this Court.

55. **THIS COURT ORDERS** that SCI be and is hereby relieved of any obligation to appoint any new directors until further Order of this Court.

#### **SERVICE AND NOTICE**

56. **THIS COURT ORDERS** that the Monitor shall: (a) without delay, publish in The Globe and Mail (National Edition) and La Presse a notice containing the information prescribed under the CCAA; and (b) within five days after the date of this Order, (i) make this Order publicly available in the manner prescribed under the CCAA, (ii) send or cause to be sent, in the prescribed manner, a notice to every known creditor who has a claim against the Sears Canada Entities of more than \$1,000 (excluding individual employees, former employees with pension and/or retirement savings plan entitlements, and retirees and other beneficiaries who have entitlements under any pension or retirement savings plans), and (iii) prepare a list showing the

names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder, provided that the Monitor shall not make the claims, names and addresses of the individuals who are creditors publicly available.

57. **THIS COURT ORDERS** that the Monitor shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in this proceeding (the “**Service List**”). The Monitor shall post the Service List, as may be updated from time to time, on the Monitor’s Website (as defined herein) as part of the public materials to be made available thereon in relation to this proceeding. Notwithstanding the foregoing, the Monitor shall have no liability in respect of the accuracy of or the timeliness of making any changes to the Service List.

58. **THIS COURT ORDERS** that any employee of any of the Sears Canada Entities that receives a notice of termination from any of the Sears Canada Entities shall be deemed to have received such notice of termination by no more than the seventh day following the date such notice of termination is delivered, if such notice of termination is sent by ordinary mail, courier or registered mail.

59. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05, this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: [cfcanada.fticonsulting.com/searscanada](http://cfcanada.fticonsulting.com/searscanada) (the “**Monitor’s Website**”).

60. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Sears Canada Entities and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Sears Canada Entities’ creditors or other



interested parties at their respective addresses as last shown on the records of the Sears Canada Entities and that any such service or distribution by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

61. **THIS COURT ORDERS** that the Applicants, the Monitor, the Financial Advisor, the DIP Term Agent on behalf of the DIP Term Lenders and the DIP ABL Agent on behalf of the DIP ABL Lenders, and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Applicants' creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the Electronic Commerce Protection Regulations, Reg. 81000-2-175 (SOR/DORS).

#### **COMEBACK MOTION**

62. **THIS COURT ORDERS** that the comeback motion shall be heard on July 13, 2017 (the "Comeback Motion").

#### **GENERAL**

63. **THIS COURT ORDERS** that the Sears Canada Entities or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

64. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Sears Canada Entities, the Business or the Property.

65. **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 Sears Canada Entities, 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 Sears Canada Entities 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 Sears Canada Entities and the Monitor and their respective agents in carrying out the terms of this Order.

66. **THIS COURT ORDERS** that each of the Applicants and the Monitor be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada, including acting as the foreign representative of the Applicants to apply to the United States Bankruptcy Court for relief pursuant to Chapter 15 of the *United States Bankruptcy Code*, 11 U.S.C. §§ 101-1515, as amended, and to act as foreign representative in respect of any such proceedings and any ancillary relief in respect thereto, and to take such other steps as may be authorized by the Court.

67. **THIS COURT ORDERS** that any interested party (including the Sears Canada Entities and the Monitor) may apply to this Court to vary or amend this Order at the Comeback Motion on not less than seven (7) calendar days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

68. **THIS COURT ORDERS** that Confidential Appendix B and Confidential Appendix C to the Pre-Filing Report shall be and are hereby sealed, kept confidential and shall not form part of the public record pending further Order of this Court.

69. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

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

JUN 22 2017

PER / PAR: 

  
C. Irwin  
Registrar

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. (collectively, the "Applicants")

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
(Commercial List)

Proceeding commenced at Toronto

**INITIAL ORDER**

**OSLER, HOSKIN & HARCOURT LLP**

Box 50, 1 First Canadian Place  
Toronto, Canada M5X 1B8

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Tel: 416.862.4908

Jeremy Dacks (LSUC #: 41851R)

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Michael De Lellis (LSUC #: 48038U)

Tel: 416.862.5997

Lawyers for the Applicants





ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE MR. ) FRIDAY, THE 13<sup>TH</sup>  
JUSTICE HAINEY ) DAY OF OCTOBER, 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")

**ORDER**

**(Approval of the Ninth Amendment to the DIP Term Credit Agreement and Stay Extension)**

**THIS MOTION**, made by the Applicants pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA"), for an order (i) approving the Ninth Amendment to the DIP Term Credit Agreement; (ii) extending the Stay Period (as defined below), and certain other relief, was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Notice of Motion of the Applicants, the Affidavit of Billy Wong sworn October 11, 2017, including the exhibits thereto (the "**Wong Affidavit**"), the affidavit of Mark Caiger sworn October 10, 2017, the Fourth Report of the Monitor, filed, the Supplement to

the Fourth Report of the Monitor, filed, and on hearing the submissions of respective counsel for the Applicants and SearsConnect (collectively, the “**Sears Canada Entities**”), the Monitor, the DIP ABL Agent, the DIP Term Agent, and such other counsel as were present, no one else appearing although duly served as appears from the Affidavit of Service of Karin Sachar sworn October 12, 2017, filed:

### **SERVICE AND DEFINITIONS**

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 each capitalized term used and not defined herein shall have the meaning ascribed to such term in the Amended and Restated Initial Order dated June 22, 2017 (the “**Initial Order**”) in the CCAA proceedings of the Sears Canada Entities (the “**CCAA Proceedings**”).

### **APPROVAL OF NINTH AMENDMENT TO THE DIP TERM CREDIT AGREEMENT**

3. **THIS COURT ORDERS** that the Ninth Amendment to the DIP Term Credit Agreement is hereby approved.

### **AMENDMENT TO THE INITIAL ORDER**

4. **THIS COURT ORDERS** that paragraph 54 of the Initial Order is hereby deleted in its entirety and replaced with the following:

54. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order, the L/C Collateral Account (as defined in the DIP ABL Credit Agreement) shall be deemed to be subject to a lien, security, charge and security interest in favour of the DIP ABL Agent for (i) the reimbursement obligation of SCI related to any letters of credit issued under the Wells Fargo Credit Agreement or under the DIP ABL Credit Agreement which remain undrawn from and after the October 18, 2017, and (ii) any fees and other charges accruing and payable with respect to such letters of credit under the DIP ABL Credit Agreement. The Charges as they may attach to the L/C Collateral Account, including by operation of law or otherwise: (a) shall rank junior in priority to the lien, security, charge and security interest in favour of the DIP ABL Agent in respect of the L/C Collateral Account; and (b) shall attach to the L/C Collateral Account only to the extent of the rights, if any, of any Sears Canada Entity to the return of any cash

from the L/C Collateral Account in accordance with the DIP ABL Credit Agreement.

#### EXTENSION OF THE STAY PERIOD

5. **THIS COURT ORDERS** that the Stay Period (as defined in paragraph 14 of the Initial Order) is hereby extended from November 7, 2017, until and including January 22, 2018. Further, the Application Period set out in the Employee Hardship Fund Term Sheet, approved by the Court on August 18, 2017 shall also be extended to January 22, 2018.

#### GENERAL

6. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

7. **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 of America, 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.

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

OCT 13 2017

PER / PAR:



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., CORBEL 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.

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

Applicants

*Ontario*  
**SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**  
Proceeding commenced at Toronto

**ORDER**  
**(Approval of the Ninth Amendment to the DIP  
Term Credit Agreement and Stay Extension)**

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P.O. Box 50, 1 First Canadian Place  
Toronto, ON M5X 1B8

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Tracy Sandler LSUC# 322443N  
Tel: 416.862.5890

Karin Sachar LSUC# 59944E  
Tel: 416.862.5949  
Fax: 416.862.6666

Lawyers for the Applicants



**APPENDIX “F”  
(see attached)**

[TRANSLATION]

CANADA

(Class Action)

PROVINCE OF QUEBEC  
DISTRICT OF CHICOUTIMI

SUPERIOR COURT

No. 150-06-000010-173

KARINE TREMBLAY

Plaintiff

v.

CENTRE HI-FI CHICOUTIMI

and

9246-9352 QUÉBEC INC.

and

CENTRE HI-FI, name under which operates  
the duly incorporated numbered company

149667 CANADA INC

and

CENTRE HI-FI, name under which operates  
the duly incorporated numbered company

2763923 CANADA INC.

and

THE BRICK WAREHOUSE LP

and

SEARS CANADA INC.

and

BUREAU EN GROS (Staples Canada Inc.)

Defendants




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APPLICATION FOR LEAVE TO AMEND THE APPLICATION  
FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION  
(Section 585 C.C.P.)

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TO THE HONOURABLE MARTIN DALLAIRE JUSTICE OF THE SUPERIOR COURT,  
SITTING IN SPECIAL MANAGEMENT OF THE PRESENT MATTER IN AND FOR THE  
DISTRICT OF CHICOUTIMI, THE PLAINTIFF SUBMITS THE FOLLOWING:

1. The Plaintiff is seeking this Honourable Court's authorization to institute a class action on behalf of all persons who are part the Group described hereinafter:

*"All persons who purchased, after June 30, 2010, an additional warranty, or any other product of the same type, from the Defendants Centre Hi-Fi Chicoutimi, Centre Hi-Fi, The Brick LLP, Sears Canada and Bureau en Gros as a result of a direct representation, or through any form of advertisement, to the effect that the new movable property sold was warranted for a limited duration of one year or less."*

2. The Plaintiff is seeking leave to amend its application to institute a class action in order to add and allege the facts regarding the situation of certain defendants, adjust other allegations, clarify certain aspects of the matter in light of new information obtained, and add defendants on the basis of the responsibility of the directors and monitor of the Defendant Sears Canada.
3. In particular, the amendments sought supplement the factual and legal table, clarify and/or add certain violations regarding the sale of Extended Warranties and address certain arguments raised in the motions for dismissal, but also react to the new facts pertaining to the insolvency and winding-up of the Defendant Sears Canada.
4. The amendments sought are consistent with the principles of proportionality and efficiency that must guide the courts.
5. Allowing this application is in the interests of the sound administration of justice.
6. This application for leave to amend the application for authorization is well founded in fact and in law.

**FOR THESE REASONS, MAY IT PLEASE THE COURT TO**

**GRANT** the present application to amend the application for authorization to institute a class action;

**ALLOW** the Plaintiff to amend her application for authorization to institute a class action in accordance with the amended application attached hereto;

**WITHOUT COSTS**, except in the event of contestation.

Quebec City, November 29, 2017

(Signed)

---

**Mtre. David Bourgoin**  
[dbourgoin@bga-law.com](mailto:dbourgoin@bga-law.com)  
BGA Barristers & Solicitors LLP  
(Court Number: BB-8221)  
67 Sainte-Ursule St.  
Quebec City, Quebec G1R 4E7  
Tel.: 418-523-4222  
Fax: 418-692-5695  
Counsel for the Plaintiff  
Reference: BGA-0070-4



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NOTICE OF PRESENTATION

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**TO: Mtre Nicholas Rodrigo**  
Ward Phillips & Vineberg LLP  
1501 McGill College Ave., 26<sup>th</sup> Floor  
Montreal, Quebec H3A 3N9  
Counsel for the Defendant Sears Canada Inc.

**Mtre Guy Poitras**  
Gowling Lafleur Henderson LLP  
1 Place Ville-Marie, 37<sup>th</sup> Floor  
Montreal, Quebec H3B 3P4  
Counsel for the Defendant The Brick Warehouse LP

**Mtre Luc Hervé Thibaudeau**  
Lavery, De Billy LLP  
1 Place Ville-Marie, Suite 4000  
Montreal, Quebec H3B 4M4  
Counsel for the Defendants Centre Hi-Fi Chicoutimi, 9249-9352 Québec inc.,  
Centre Hi-Fi (149667 Canada inc.) and Centre Hi-Fi (2763923 Canada Canada Inc.)

**Mtre Marie Audren**  
Audren Rolland LLP  
393 Saint-Jacques St., Suite 248  
Montreal, Quebec H2Y 1N9  
Counsel for the Defendant Bureau en gros (Staples Canada Inc.)

**TAKE NOTICE** that the present application for leave to amend the application for authorization to institute a class action will be presented for adjudication at the Chicoutimi Courthouse, located at 227 Racine St. East, 1<sup>st</sup> Floor, Saguenay, Chicoutimi Borough, Quebec, G7H 7B4, district of Chicoutimi, at a date, time and place to be determined by the Honourable Martin Dallaire (J.S.C.).

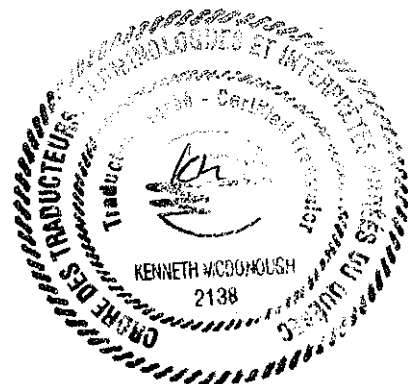
**PLEASE GOVERN YOURSELF  
ACCORDINGLY**

Quebec City, November 29, 2017

(Signed)

---

**BGA Barristers & Solicitors LLP  
Counsel for the Plaintiff**



CANADA

(Class Action)

PROVINCE OF QUEBEC  
DISTRICT OF CHICOUTIMI

SUPERIOR COURT

No. 150-06-000010-173

**KARINE TREMBLAY**

Plaintiff

v.

**CENTRE HI-FI CHICOUTIMI**

and

**9246-9352 QUÉBEC INC.**

and

**CENTRE HI-FI**

and

**CENTRE HI-FI (2763923 CANADA INC.)**

and

**THE BRICK WAREHOUSE LP**

and

**SEARS CANADA INC.**

and

**KHANNA, R. RAJA** (director of Sears Canada Inc.), 290 Yonge Street, Toronto, Ontario, M5B 2C3

and

**CARRIE KIRKMAN** (director of Sears Canada Inc.), 290 Yonge Street, Toronto, Ontario, M5B 2C3

and

**ROSATI, DEBI E** (director of Sears Canada Inc.), 290 Yonge Street, Toronto, Ontario, M5B 2C3



and

SAM JEFFREY STOLLENERK (director of Sears Canada Inc.), 290 Yonge Street, Toronto, Ontario, M5B 2C3

and

BRANDON STRANZL (director of Sears Canada Inc.), 290 Yonge Street, Toronto, Ontario, M5B 2C3

and

ANAND SAMUEL (director of Sears Canada Inc.), 290 Yonge Street, Toronto, Ontario, M5B 2C3

and

GRAHAM SAVAGE (director of Sears Canada Inc.), 290 Yonge Street, Toronto, Ontario, M5B 2C3

and

HEYWOOD WILANSKY (director of Sears Canada Inc.), 290 Yonge Street, Toronto, Ontario, M5B 2C3

and

PHILIP MOHTADI (director of Sears Canada Inc.), 290 Yonge Street, Toronto, Ontario, M5B 2C3

and

FTI CONSULTING CANADA INC., a duly incorporated legal entity having its place of business at Waterhouse Tower, 79 Wellington Street West, Suite 2010, P.O. Box 104, Toronto, Ontario M5K 1G8 and having elected as legal domicile for the purposes hereof the legal practice Norton Rose Fulbright LLP, located at 1 Place Ville-Marie, Suite 2500, Montreal, Quebec H3B 1R1, judicial district of Montreal



and

BUREAU EN GROS (Staples Canada Inc.)

Defendants [...]

**AMENDED APPLICATION FOR LEAVE TO AMEND THE APPLICATION  
FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION  
(Sections 574 and following C.C.P.)**

**TO THE HONOURABLE MARTIN DALLAIRE JUSTICE OF THE SUPERIOR COURT  
ASSIGNED TO SPECIAL MANAGEMENT IN AND FOR THE DISTRICT OF CHICOUTIMI,  
THE PLAINTIFF RESPECTFULLY SUBMITS THE FOLLOWING:**

1. The Plaintiff is seeking this Honourable Court's authorization to institute a class action on behalf of all persons who are part the Group described hereinafter and of which she herself is a member, namely:

***"All persons who purchased, after June 30, 2010, an additional warranty, or any other product of the same type, from the Defendants Centre Hi-Fi Chicoutimi, Centre Hi-Fi, 9246-9352 Québec inc. (Centre Hi-Fi), 2763923 Canada Inc. (Centre Hi-Fi), The Brick LLP, Sears Canada and Bureau en Gros as a result of a direct representation, or through any form of advertisement, to the effect that the new movable property sold was warranted for a limited duration of one year or less***

***and***

***All persons who purchased from the Defendants Centre Hi-Fi Chicoutimi, Centre Hi-Fi, 9246-9352 Québec inc. (Centre Hi-Fi), 2763923 Canada Inc. (Centre Hi-Fi), The Brick LLP, Sears Canada and Bureau en Gros an extended warranty where the amount paid was not deposited in a trust account.***

***and***

***All persons who purchased an extended warranty at Sears after May 13, 2016 without being informed that there was a risk that the protection in the event of breakage would not be honoured.***

2. The nature of the action that the Plaintiff intends to institute on behalf of the members is a class action for damages against the Defendants in order to punish breaches, violations and misrepresentations in respect of the offering and sale of additional warranties, extended warranties and protection plans ("Extended Warranties").

**THE PARTIES**

3. The Plaintiff and the members identified in the proceeding purchased Extended Warranties from the Defendants and they are consumers within the meaning of the Consumer Protection Act (hereinafter "CPA").



4. The Defendants Centre Hi-Fi Chicoutimi, 9246-9352 Québec inc., Centre Hi-Fi, Centre Hi-Fi (2763923 Canada Inc.), Bureau en gros, The Brick and Sears are merchants within the meaning of the CPA and their activities are, *inter alia*, governed by said Act, including the offering and sale of Extended Warranties.
5. Sales of Extended Warranties are also subject the *Competition Act*.
6. The corporate entity **9246-9352 Québec inc.**, which does business, in particular, under the name Centre Hi-Fi Chicoutimi (hereinafter referred to as "CHF Chicoutimi"), is a business that operates eight (8) electronic appliance retailers operating under the "Centre Hi-Fi" banner, as appears from the statement from the Quebec Enterprise Register (REQ) dated May 4, 2017 produced in support hereof as **P-1**;
- 6.1 At no relevant time has 9246-9352 Québec inc. held a permit from the Office de la protection du consommateur (hereinafter the "OPC") and/or benefitted from an exemption from the obligations arising out of section 256 CPA, as appears from an OPC document produced in support hereof as P-1.1.
7. The Defendant CHF Chicoutimi entered into a contract for the sale of an extended warranty with the Defendant.
8. The corporate entity **149667 Canada Inc.**, which does business under the name Centre Hi-Fi (hereinafter referred to as "CHF Head Office") is a franchiser and operates speciality retailers of electronic appliances that operate under the "Centre Hi-Fi" banner, as appears from the Quebec enterprise register (REQ) record dated May 7, 2017 produced in support hereof as **P-2**.
- 8.1 At no relevant time has 149667 Canada Inc. held a permit from the OPC and/or benefitted from an exemption from the obligations arising out of section 256 CPA, as appears from an OPC document produced in support hereof as P-2.1.
9. The corporate entity **2763923 Canada Inc.**, which does business under the name Centre Hi-Fi (hereinafter referred to as "CHF") operates sixteen (16) retail outlets selling electronic devices under the "Centre Hi-Fi" banner, as appears from the Quebec enterprise register (REQ) record dated May 4, 2017 produced in support hereof as **P-3**.
- 9.1 At no relevant time has 2763923 Canada Inc. held a permit from the OPC and/or benefitted from an exemption from the obligations arising out of section 256 CPA, as appears from an OPC document produced in support hereof as P-3.1.
10. The Defendant **The Brick Warehouse LP** (hereinafter referred to as "Brick") is a company specialized in the sale of electrical appliances and movable goods, as appears from the Quebec enterprise register (REQ) statement dated May 4, 2017 produced in support hereof as **P-4**.
- 10.1 At no relevant time has Brick held a permit from the OPC and/or benefitted from an exemption from the obligations arising out of section 256 CPA, as appears from an OPC document produced in support hereof as P-4.1.
11. The Defendant Brick entered into a contract of sale for an extended warranty with the member Dave Guénette.
12. The Defendant **Sears Canada** (hereinafter referred to as "Sears") is a company specialized in the sale of electrical appliances and movable goods, as appears from the





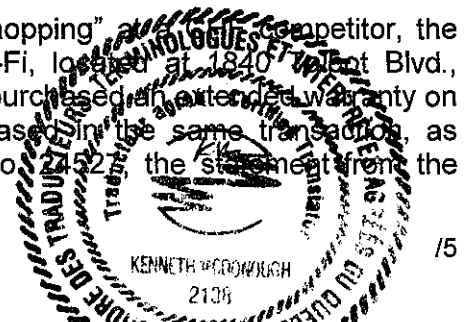
Quebec enterprise register (REQ) statement dated May 4, 2017 produced in support hereof as P-5.

- 12.1 Until its winding-up, Sears held the OPC permit required under the CPA, as appears from the permit produced in support hereof as P-5.1.
- 12.2 Between May 13, 2016 and June 22, 2017, the principal elected directors of the Defendant Sears were: R. Raja Khanna, Carrie Kirkman, Deborah E. Rosati, Anand A. Graham Savage, Jeffrey Stollenwerck and Brandon G. Stranzl, as appears from the press release dated May 13, 2016 and the REQ statement dated November 16, 2017 produced in support hereof as P-5.2.
13. The Defendant Sears entered into an agreement for the sale of an extended warranty with the member France Girouard.
- 13.1 The Defendant FTI Consulting Canada Inc. (hereinafter referred to as "FTI") is a trustee in bankruptcy authorized by the Superintendent of Bankruptcy (OSB), as appears from the excerpt from the Office of the Superintendent of Bankruptcy website dated November 14, 2017 produced in support hereof as P-5.3.
- 13.2 On June 22, 2017, the Defendant Sears obtained an order from the Ontario Superior Court of Justice (Commercial List) to be placed under the protection of the *Companies' Creditors Arrangement Act* ("CCAA") for the purpose of restructuring its operations.
- 13.3 Under the order of June 22, 2017 (Initial Order), FTI was appointed monitor in the matter of Sears.
- 13.4 Since June 22, 2017, FTI has supervised Sears' operations, particularly with respect to its retail sales activities, which include the sale of protection plans or Extended Warranties.
14. The Defendant **Staples Canada Inc.** (hereinafter referred to as "BEG" or "Bureau en gros") is a company specialized in the sale of stationery, office equipment (movable goods, computers, printers and electronic devices of all types), as appears from the Quebec enterprise register (REQ) statement dated May 4, 2017 produced in support hereof as P-6.
15. The Defendant BEG entered into a contract for the sale of an extended warranty with the member Guylaine Hebert.
- 15.1 At no relevant time has BEG held a permit from the OPC and/or benefitted from an exemption from the obligations arising out of section 256 CPA, as appears from an OPC document produced in support hereof as P-6.1.

## THE FACTS GIVING RISE TO THE CLASS ACTION AGAINST THE DEFENDANTS

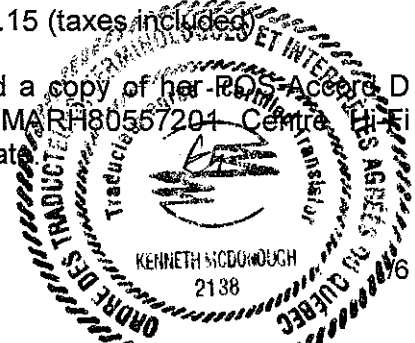
### A- THE FACTS IN SUPPORT OF THE PLAINTIFF'S ACTION AGAINST CHF CHICOUTIMI, CHF Head Office and CHF

16. On July 13, 2013, after beginning her "television shopping" as a competitor, the Defendant went to a shop identified as Centre Hi-Fi, located at 1840 Talbot Blvd., Saguenay, Chicoutimi Borough, Quebec, where she purchased an extended warranty on a Sony LCD 40 inch television (flat screen) purchased in the same transaction, as appears from the copies of the purchase invoice no. 422, the statement from the



point-of-sale terminal and the rebate application form produced *en liasse* in support hereof as P-7.

17. Less than five minutes after meeting a CHF-identified salesperson who was in the CHF store, the Defendant, accompanied by the salesperson, check out the various television models on offer and decided on the Sony LCD 40 inch.
18. After confirming the price and that the product was available, but before finalizing the purchase transaction, the salesperson and the Plaintiff discussed the "known" fragility of electronic components of audio and video devices and potential issues commonly affecting televisions.
19. The salesperson concluded the discussion initiated by the Plaintiff by insisting that all audio and video devices were only covered for a year and, after that time, the Plaintiff would have to pay the repair and/or replacement costs if anything broke or malfunctioned.
20. In order to address these two situations and avoid a situation where the device was no longer covered, the salesperson presented the Plaintiff with the "Centre Hi-Fi" protection plan, which added an additional protection period of four years in exchange for an amount of \$159.98, which protection covered the cost of parts and labour in the event of breakage or malfunction which may arise after the expiry of the manufacturing warranty.
21. The salesperson added "that there was a special" whereby "the extended warranty paid for itself" because if no claims were made during coverage period, a credit equal to the cost of the plan would be applied against a future purchase.
22. The sales person stated that, in the event of a problem, the Plaintiff could simply bring the television back to the store and she would be given a new one within minutes.
23. Following and based on these representations, the Plaintiff deduced that purchasing an extended warranty would be the only way to make sure that the device could be repaired or replaced without cost in the event of breakage or malfunction after one year.
- 23.1 In other words, the detrimental consequences for the Plaintiff of not purchasing an extended warranty from CHF were given priority by the salesperson during his representations.
- 23.2 The message conveyed by CHF to the Plaintiff and to the other customers is the following: beyond the one (1) year manufacturer's warranty, there is no coverage or protection against breakage unless one purchases an extended warranty.
24. The Plaintiff therefore decided to purchase said CHF protection plan while keeping in mind the salesperson's statement that the guarantee would "pay for itself" if she did not make any claims.
25. As of that moment, the Plaintiff went to the counter, where she provided her Desjardins Visa credit card and the clerk presented her with the POS terminal so that she could validate the "Accord D" transaction in the amount of \$865.15 (taxes included).
26. The Plaintiff was then handed her purchase invoice and a copy of her POS-Accord D statement, which bore the identifying merchant no. MAIRH80557204 Centre Chicoutimi, along with a form to be completed for her rebate.



27. The "Centre Hi-Fi" logo and name appear on the documentation provided to the Plaintiff and "Centre Hi-Fi" is indicated on the invoice as being the vendor.
28. On the Plaintiff's invoice, the protection plan purchased is indicated as "5 AT" at a price of \$159.98 plus tax and the document indicates a 48-month (4 year) period in addition to the manufacturer's warranty, which additional period appears to take effect upon the expiry of said warranty.
29. At the time of the transaction, no copy of the protection plan was given to the Plaintiff and she was invited to refer to the Centre Hi-Fi website if she wanted additional information.
30. There was no discussion of the existence of the legal warranty, and no further reference was made to said warranty by the vendor.
31. When making her purchase at the CHF store on Talbot Boulevard in Saguenay, Chicoutimi Borough, the Plaintiff noted that the logo and words "Centre Hi-Fi" were displayed throughout the interior of the store, on streamers, on posters, on the inside and outside walls of the establishment, on business cards, and on all documents available on site and displayed at various locations inside the store, including on the cards displaying the prices of the goods on sale, on the products offered and on the posters promoting an additional protection plan.
32. The Plaintiff made the same observations in at least one other CHF outlet that she visited in the Montreal area.
33. The Defendant decided to purchase the television in question at the CHF retailer in question primarily because of the price, which suited her budget (\$549.99), but also because it was a store under the Centre Hi-Fi banner, which she knew well.
34. The Plaintiff produces as Exhibit P-8 the lists of CHF locations dated October 9, 2015 and May 7, 2017 from the website of the Defendants CHF.
35. It never occurred to the Plaintiff that the vendor was 9246-9352 Québec inc. and that CHF did not have any obligation to her with respect to said purchase.
- 35.1 Through its business model and the way it conducts business, CHF Head Office gives consumers reasonable grounds to believe, based on a general impression, that all retailers operating under the CHF banner, particularly the Defendant CHF Chicoutimi and 9246-9352, are its agents, since it has not taken any measures to avoid such foreseeable confusion.
36. Several other customers of the Defendants CHF Chicoutimi, CHF Head Office and CHF were exposed to the representations and business practices experienced by the Plaintiff to the effect that the appliances purchased were only warranted for one year and/or that an extended warranty would allow them to avoid having to pay repair or replacement costs after that time had lapsed.
37. The Plaintiff is proposing to act as representative of the members and she is qualified to perform that role.



**THE DEFENDANT CHF CHICOUTIMI**

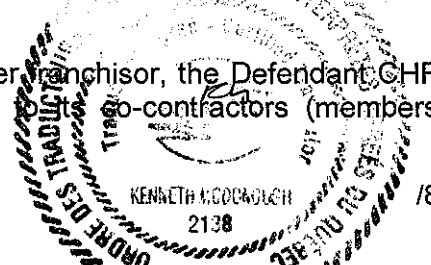
38. The Defendant CHF Chicoutimi is operated by 9246-9352 Québec inc., which operates seven (7) other establishments displaying the Centre-Hi-Fi banner, as appears from Exhibit P-1.
39. Commercial activities carried out in Quebec under the "Centre Hi-Fi" name are under the contractual supervision and control of CHF Head Office, which operates sixteen (16) retail outlets under the Centre Hi-Fi banner.
40. The Defendant CHF Chicoutimi is a franchisee member of the CHF franchise network operated by CHF Head Office.
41. The Defendant CHF Chicoutimi sells its customers protection plans (Extended Warranties) whose content has been developed and marketed by the Defendant CHF Head Office.

**Deposit in a trust account**

- 41.1 The sums from the sale of Extended Warranties of which the principal object, namely protection in the event breakage, was to be performed more than two months after the contract was made were not deposited in a trust account by CHF Chicoutimi and/or 9246-9352 Québec inc. and all the locations operated by such entity.
- 41.2 Nor was any security furnished in this respect to the president of the OPC by CHF Chicoutimi and/or 9246-9352 Québec inc.
- 41.3 The OPC Web site does not mention any exemption from Section 256 CPA in favour of CHF Chicoutimi and/or 9246-9352 Québec inc.
- 41.4 No declaration that a trust account has been used to deposit the sums from the sale of Extended Warranties appears to have been made to the president of the OPC.

**THE DEFENDANT CHF HEAD OFFICE**

42. The Defendant CHF Head Office is the exclusive owner of the trademark, name and logo identified on the Centre Hi-Fi banner, as appears from the Intellectual Property Office statements registered under the number TMA433386 produced *en liasse* in support hereof as P-9.
43. The Defendant CHF Head Office represents itself as the official franchisor of the Centre-Hi-Fi banner in Quebec.
44. The Defendant CHF Head Office appears to hold exclusive registrant and administrator rights to the domain name "centrehifi.com", as appears from the statements from the "Whois" registry dated October 9, 2015 and May 7, 2017 produced in support hereof as P-10.
45. The address and business name appearing in the Whois register are consistent with the name of the Defendant CHF Head Office's and the Defendant CHF's principal establishment identified in the REQ.
46. In the course of its activities as the Centre Hi-Fi banner franchisor, the Defendant CHF Head Office grants exclusive rights and advantages to its franchisee and co-contractors (members



and/or franchisees) in defined territories, as appears from the documentation appearing on the website and produced in support hereof as P-11.

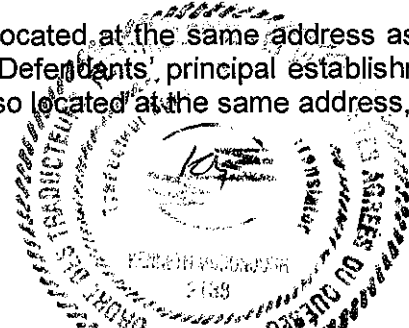
47. The Defendant CHF Head Office is headed by a buyer's group on behalf of the retailers operating under that banner, to which the Defendant CHF Chicoutimi belongs and with which it entered into an agreement allowing it to use the Centre Hi-Fi banner subject to certain conditions and payments, as appears from the agreement entered into on September 11, 2011 produced under confidential cover in support hereof as P-12.
48. Under the agreements entered into with its retail members, the Defendant CHF Head Office grants rights to use its "Centre Hi-Fi" trademark and allows, *inter alia*, the opening of locations under such name.
49. The Defendant CHF Head Office is also responsible for managing and developing promotional and advertising campaigns for the retailers, and for managing and controlling all information available online that relates to the Centre Hi-Fi banner, as appears from Exhibit P-11.
50. On its website, the Defendant markets and promotes the protection plans developed by it, which plans are sold at all establishments operating under the Centre Hi-Fi banner, as appears from Exhibit P-11.
51. In consideration of the rights and advantages conferred in the agreements with its members (retailers), the Defendant CHF Head Office collects a monthly fee and a continuous monthly royalty on the retailers' gross monthly revenues, which revenues include sales of Extended Warranties, as appears from Exhibit P-12.
52. The Defendant CHF Head Office also operates sixteen (16) retail outlets under the Centre Hi-Fi banner, all of which are located at the same addresses as those operated by the Defendant CHF (2763923 Canada Inc.), as appears from Exhibits P-2 and P-3.

#### **Deposit in a trust account**

- 52.1 The sums from sales of Extended Warranties of which the principal object, namely protection in the event breakage, was to be performed more than two months after the contract was made were not deposited in a trust account by CHF Head Office and all the locations operated by that entity in Quebec.
- 52.2 Nor was any security furnished in this respect to the president of the OPC by CHF Head Office.
- 52.3 The OPC website does not indicate any exemption from section 256 CPA in favour of CHF Head Office.
- 52.4 No declaration that a trust account has been used to deposit the sums from sales of Extended Warranties appears to have been made to the president of the OPC.

#### **THE DEFENDANT CHF**

53. First, the domicile of the Defendant CHF is located at the same address as that of the Defendant CHF Head Office and these two Defendants' principal establishment, which operates under the Centre Hi-Fi banner, is also located at the same address, as appears from Exhibits P-2 and P-3.



54. There is nothing in said principal establishment's signage and layout that makes it possible to distinguish between the two Defendants, both of which go under the name Centre Hi-Fi.
55. Posters promoting the Centre Hi-Fi protection plan that appears on the website of the Defendants CHF Head Office and CHF are installed on the counters of said principal establishment.
56. As part of its retail activities, the Defendant CHF markets the protection plans targeted by this application.

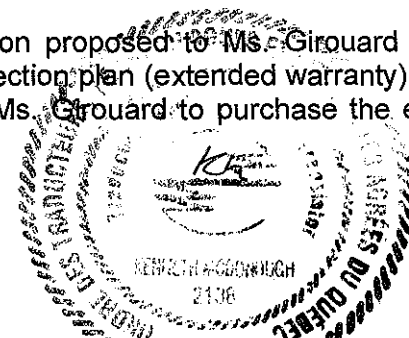
**Deposit in a trust account**

- 56.1 The sums from the sale of Extended Warranties of which the principal object, namely protection in the event breakage, was to be performed more than two months after the contract was made were not deposited in a trust account by CHF and all the locations operated by that entity in Quebec.
- 56.2 Nor was any security furnished in this respect to the president of the OPC by CHF.
- 56.3 The OPC website does not mention any exemption from section 256 CPA in favour of CHF.
- 56.4 No declaration that a trust account has been used to deposit the sums from the sale of Extended Warranties appears to have been made to the president of the OPC.

**B- THE FACTS IN SUPPORT OF THE ACTION AGAINST SEARS, ITS DIRECTORS PERSONALLY AND FTI CONSULTING**

**THE CASE OF THE MEMBER FRANCE GIROUARD**

57. On October 9, 2010, France Girouard purchased an extended warranty on a refrigerator that she bought at the Defendant Sears' store at 3005 Le Carrefour Blvd, Laval, Quebec, as appears from the purchase invoice dated October 9, 2010 produced in support hereof as **P-13**.
58. Ms. Girouard chose the refrigerator model in question because, based on the specifications requested, its dimensions made it the only model that could be installed in her home.
59. Ms. Girouard visited several retailers during the weeks preceding her purchase from the Defendant Sears.
60. When she went to the Defendant Sears, she knew the precise model she wanted and the price she wanted to pay.
61. Given this, the salesperson quickly understood Ms. Girouard's needs and agreed to sell the appliance at the same price as the price quoted by a competitor.
62. Before finalizing the transaction, the salesperson proposed to Ms. Girouard that she purchase a 60-month (five-year) additional protection plan (extended warranty), and the representations he made in order to convince Ms. Girouard to purchase the extended warranty lasted between 5 and 10 minutes.



63. The protection plan would take [...] effect on the date of purchase and would include the period covered by the manufacturer's one (1) year warranty.

63.1 All the protection plans sold by Sears provided for a refund allocable to the remainder of the term in the event of cancellation, as appears from clause No. 6 of Exhibit P-13 and P-13.1 in enlarged format, which clause reads as follows:

[Translation]

*"6. CANCELLATION: [...] If this agreement is cancelled by you or us within sixty (60) days following the purchase date or before the expiration of the full manufacturer's warranty covering the product in its entirety, excluding warranties covering component parts of the product, we will refund the total price paid for your protection agreement ("total price"). If this protection agreement is cancelled thereafter, we will refund the total price allocable to the remainder of the term of the protection agreement prorated on a monthly basis. [...]"*

64. The salesperson explained the usefulness of such additional protection by stating that Ms. Girouard would have to pay all the repair costs if the refrigerator were to break down or stop working after the one-year coverage period provided under the manufacturer's warranty.

65. Following and relying on the salesperson's representations regarding the extended warranty, Ms. Girouard agreed to purchase the refrigerator and the protection plan.

65.1 In other words, the detrimental consequences for Ms. Girouard of not purchasing a Sears extended warranty were given priority by the salesperson in his representations.

65.2 The message conveyed by Sears to customers is the following: beyond the one (1) year manufacturer's warranty, there is no coverage or protection against breakage unless one purchases an extended warranty.

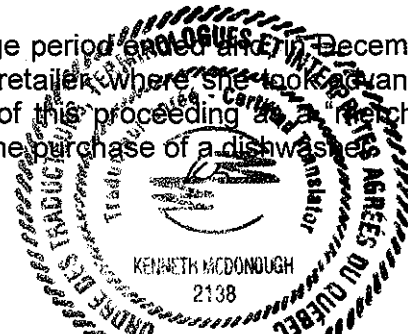
66. The salesperson also told Ms. Girouard that "ultimately", the protection "did not cost anything" if no service call was made during the coverage period, because a credit equal to the price paid for the extended warranty would be applicable against a future purchase.

67. Feeling reassured, Ms. Girouard went to a counter to finalize the purchase transaction.

68. From the time discussions with the salesperson began to the time the transaction was finalized, the salesperson did not discuss the legal warranty in any way.

69. In the years that followed, Ms. Girouard experienced some minor issues and irritants with her refrigerator, but she always refrained from making a claim so as not to "lose" her credit on a potential purchase.

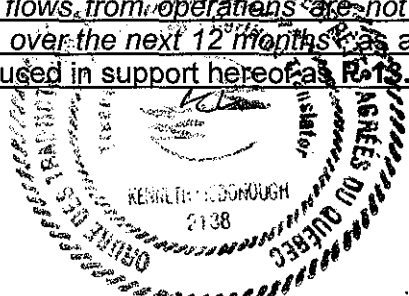
70. In the fall of 2015, the extended warranty coverage period ended and on December 16, 2015, Ms. Girouard returned to the same Sears retailer where she took advantage of her \$219.99 credit (referred to for the purposes of this proceeding as a "merchandise coupon equal to a credit against a purchase") on the purchase of a dishwasher.



71. The procedure to follow in order to have the coupon/credit recognized and applied on the purchase of the dishwasher was complicated and difficult.
72. Ms. Girouard knows of at least one other person who was exposed to similar representations when purchasing an extended warranty from the Defendant Sears.
73. Several customers of the Defendant Sears purchased Extended Warranties further to representations that the goods purchased were warranted only for a year and/or that the purchase of an extended warranty would allow them to avoid paying repair or replacement costs after that time.
- 73.1 At all relevant times, Sears administered its protection plans and personally ensured the sustainability of the Extended Warranties sold in its establishments.
- 73.2 Until its winding-up, Sears provided to the president of the OPC a \$200,000 security, as appears from an OPC confirmation produced in support hereof as P-13.2.

### SEARS' FINANCIAL DIFFICULTIES

- 73.3 For the past several years, Sears has been experiencing significant financial difficulties that have undermined its ability to sustain its day-to-day retail sales operations, as appears from newspaper articles and press releases published between 2015 and 2017 produced in support hereof as P-13.3.
- 73.4 Since 2014, the corporation has recorded losses at the close of each of its financial years.
- 73.5 To illustrate these difficulties, 3,500 jobs were eliminated between 2014 and 2016; the company's revenues dropped approximately 9% every quarter; and net losses for the 2015 and 2016 fiscal years were \$123.5 million and \$275.2 million, respectively.
- 73.6 However, even with major cuts in operating expenses (\$125 million in 2015 and \$159.6 million in 2016) and with revenue from downsizing its real estate portfolio, Sears has had to continue to mortgage its other assets to finance itself and compensate for its illiquidity.
- 73.7 On December 9, 2016, at the close of its third quarter, Sears confirmed a significant 21.1% decline in revenue compared to the previous fiscal year.
- 73.8 On March 20, 2017, to address its precarious situation, Sears entered into a \$300 million loan agreement with KKR Capital Markets LLC and GACP Finance Co., LLC.
- 73.9 In the quarter ending on April 29, 2017, Sears nonetheless declared a \$144 million net loss on revenue of \$505.5 million (-15%) and it said that it required an additional \$175 million to continue as a going concern, whereas its borrowing capacity was limited to \$109 million.
- 73.10 On June 13, 2017, Sears confirmed in these terms that it did not have sufficient liquidity to enable it to continue as a going concern. ~~Based on management's current assessment, cash and forecasted cash flows from operations are not expected to be sufficient to meet obligations coming due over the next 12 months.~~ as appears from the press releases dated June 13, 2017 produced in support hereof as P-13.4 and P-13.5.





73.11 On June 22, 2017, Sears announced that it had been placed under CCAA protection in order to make one final attempt to restructure its business, as appears from the press release dated June 22, 2017 produced in support hereof as P-13.6.

73.12 On July 13, 2017, the court authorized the payment of bonuses to 159 executive officers, directors and store managers up to an amount of \$9.2 million, as appears from a newspaper article dated July 14, 2017 produced in support hereof as P-13.7.

73.13 On October 18, 2017, the company announced its winding-up and confirmed that would no longer honour the Extended Warranties sold up to that date, as appears from a press release dated October 18, 2017 produced in support hereof as P-13.8.

73.14 The value of Extended Warranties purchased by consumers in the weeks, months and preceding year was therefore reduced to zero.

### THE BEHAVIOUR OF SEARS' DIRECTORS

73.15 During their last term beginning on May 13, 2016, the directors made decisions and managed a company facing financial difficulties that threatened its survival, a scenario that came to pass when the winding-up of Sears was confirmed on October 18, 2017.

73.16 However, even though the directors knew or could not deny that there was a probable risk that the company's financial woes could affect the value, duration and/or scope of the Extended Warranties sold, they did nothing to:

- (a) alter, discourage and/or restrict the sale of Extended Warranties to mitigate the risk incurred by customers;
- (b) disclose to customers that there was a risk that the company's financial woes could have a negative impact on the Extended Warranties sold;
- (c) implement a protocol or directive for salespeople so that customers purchasing Extended Warranties were informed beforehand that there was a risk of insolvency.

### FTI CONSULTING AND SALES OF EXTENDED WARRANTIES AFTER JUNE 22, 2017

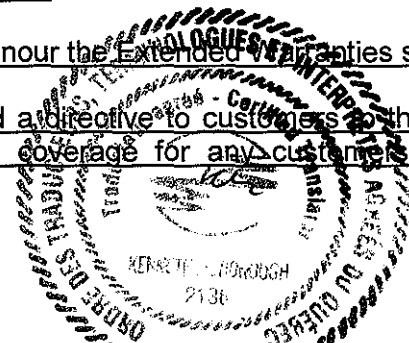
73.17 After June 22, 2017, as part of the contemplated restructuring, Sears and/or FTI maintained operations in Sears' stores, including the sale and renewal of protection plans.

73.18 However, neither Sears nor FTI took any measures whatsoever to ensure that customers were told that there was a risk and/or a probability that the business would cease operations, would be wound up or might not be able honour the protection plans.

73.19 Protection plans continued to be sold at least until October 18, 2017, the date on which the liquidation of all Sears property commenced.

73.20 Effective October 19, 2017, Sears did not honour the Extended Warranties sold.

73.21 Moreover, Sears and/or FTI even published a directive to customers to the effect that, after October 19 [translation] "there is no coverage for any customers beyond the manufacturer's warranty."

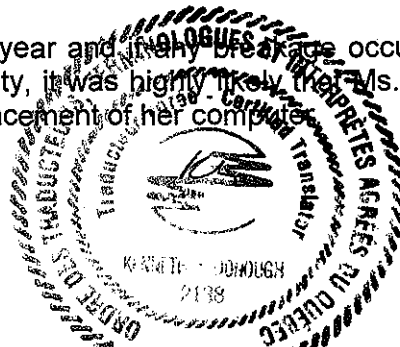


- 73.22 Sears and/or FTI had undertaken, however, to refund Extended Warranties purchased in the 30 days preceding the date of a consumer's request for a refund.
- 73.23 Despite this undertaking, no amount has been anticipated or budgeted; the Court has not approved such a claims procedure; and the monitor's website does not contain any information on this topic.
- 73.24 This application for authorization to institute a class action should be considered as a request for a refund by all the customers affected.

## THE FACTS IN SUPPORT OF THE ACTION AGAINST BEG

### THE CASE OF THE MEMBER GUYLAINE HÉBERT

74. On December 21, 2010, Guylaine Hébert purchased an extended warranty on a Toshiba laptop computer that she bought in a BEG store at 2790 Chambly Rd., Quebec, as appears from the BEG purchase invoice dated December 21, 2010 produced in support hereof as P-14.
75. Ms. Hébert was looking for a new computer for her personal use.
76. Before going to the BEG store in Longueuil, Ms. Hébert shopped around at the main computer retailers in her area.
77. She visited the Longueuil BEG store in the company of her spouse.
78. As soon as they arrived, a salesperson showed them various models and the features and available options for each one that fit Ms. Hébert's budget.
79. After about 20 minutes, Ms. Hébert settled on a Toshiba laptop.
80. Before directing Ms. Hébert to the checkout counter to finalize the transaction, the salesperson proposed that she purchase an additional protection plan (extended warranty), with service under the plan to be provided by the store itself.
81. This plan would add 24 months (2 years) to the manufacturer's one (1) year warranty for a cost of \$149.99 plus tax.
82. The salesperson mentioned the existence of related services under the plan while insisting on the risks that Ms. Hébert would run if she did not purchase the proposed extended warranty.
83. The salesperson's argument may be summarized as follows:
- (a) Ms. Hébert could not contact a BEG store to have her computer replaced or repaired unless the breakage or malfunction occurred within 30 days of purchase.
  - (b) After that time, Ms. Hébert would have to contact the manufacturer only.
  - (c) All computers are covered for one (1) year and, in any breakage occurred after the expiration of the manufacturer's warranty, it was highly likely that Ms. Hébert would be required to pay for the repair or replacement of her computer.



- (d) "A legal warranty on new devices is provided by law and not the retailer" and, in the event of breakage after one year, Ms. Hébert would only be able to contact the manufacturer to resolve her "issues."
84. The salesperson's representations concerning the protection plan lasted around 5 to 8 minutes and convinced Ms. Hébert to purchase the protection plan.
- 84.1 In other words, the detrimental consequences for Ms. Hébert of not purchasing an extended warranty from BEG were given priority by the salesperson during his representations.
- 84.2 The message conveyed to BEG's customers is the following: beyond the one (1) year manufacturer's warranty, there is not any coverage or protection against breakage unless one purchases an extended warranty.
85. Ms. Hébert therefore went to the checkout counter, where a clerk was waiting with the box containing the selected Toshiba laptop computer.
86. The clerk in question confirmed the price of the computer and the cost to purchase the protection plan covering two additional years.
87. Ms. Hébert paid with her MasterCard credit card and the clerk handed her a (POS) transaction statement and another hybrid document combining her invoice and the key elements of the protection plan.
88. Ms. Hébert did not receive the notice concerning the legal warranty and the existence of said warranty was not mentioned to her.
- 88.1 As a general rule, a display rack containing leaflets concerning the Extended Warranties is located on each checkout counter in BEG locations.
- 88.2 Those leaflets explain the main coverage and pricing elements, durations, terms and conditions and exclusions, as appears from two leaflets entitled "Plan du Programme de service fiable" dated February and May 2017 produced in support hereof as P-14.1.
- 88.3 The contractual terms and conditions contained in the two leaflets include as follows, among others:

[Translation]

**"Manufacturer's Responsibility**

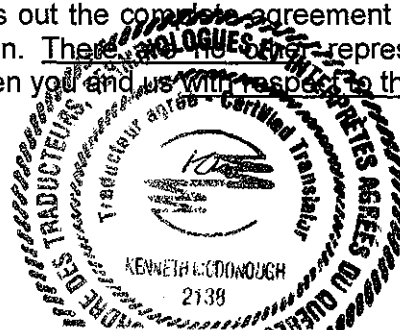
During the manufacturer's warranty coverage period, please contact the manufacturer directly. Should you contact us, we will refer you to the applicable manufacturer.

(...)

**Complete Agreement**

This document sets out the ~~complete~~ agreement between you and us with respect to the Plan. There are no other representations, warranties or agreements between you and us with respect to the Plan or the product.

[Our emphasis]



89. Several customers of the Defendant BEG purchased Extended Warranties further to representations that the goods purchased were warranted only for a year and/or that the purchase of an extended warranty would allow them to avoid paying repair or replacement costs after that time.

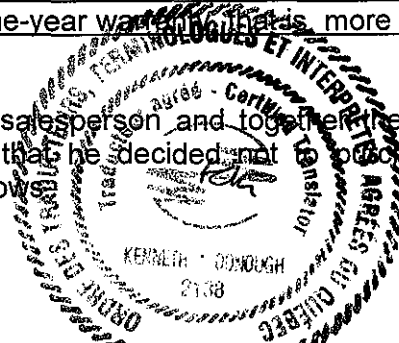
**Deposit in a trust account**

- 89.1 The sums from the sale of Extended Warranties of which the principal object, namely protection in the event breakage, was to be performed more than two months after the contract was made were not deposited in a trust account by BEG and the locations operated by BEG in Quebec.
- 89.2 Nor was any security furnished in this respect to the president of the OPC by BEG.
- 89.3 The OPC website does not mention any exemption from Section 256 CPA in favour of CHF.
- 89.4 No declaration that a trust account has been used to deposit the sums from the sale of Extended Warranties appears to have been made to the president of the OPC.

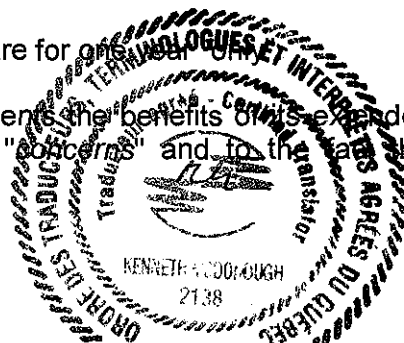
**FACTS IN SUPPORT OF THE ACTION AGAINST BRICK**

**THE CASE OF MEMBER DAVE GUENETTE**

90. On August 15, 2010, Dave Gu enette purchased an extended warranty on an audio-video system including a Sony ACL 42-inch television, a home theatre and a video stand, which he obtained at the Brick store, located at 1530 Le Corbusier Blvd, Laval, as appears on the purchase invoice dated August 15, 2010 and from the extended warranty filed jointly in support hereof as P-15.
91. In the month of August 2010, Mr. Gu enette was looking for a television equipped with a 42-inch screen.
92. When he went to the Brick retailer in Laval, Mr. Gu enette already had a good idea of the model he was interested in and of his budget for this purchase.
93. After having discussed with the salesperson the type of product he was looking for, Mr. Gu enette chose the Sony-brand television, a home theatre and a base for his television set.
94. Before finalizing the transaction, the salesperson of the Defendant Brick proposed an extended warranty to Mr. Gu enette.
95. This extended warranty, at the cost of \$239.99 plus tax, covered the goods for four years.
- 95.1 Although certain ancillary and/or related services become effective once the goods are owned (delivered), the main obligation, that is, the protection in the event of breakage takes place at the expiry of the manufacturer's one-year warranty, more than two months after the conclusion of the sales contract.
96. The store manager even came to support the salesperson and together they raised certain cautions to Mr. Gu enette in the event that he decided not to purchase the extended warranty, which are summarized as follows:



- a) They claimed that the manufacturer's warranty "covered only one year".
  - b) They claimed that in the event of breakage or malfunction after this period, Mr. Guénette should pay for the cost of the repairs, namely, the parts, labour, and possibly transportation costs.
  - c) They insisted a lot on the fragility of the appliances' electronic components, and especially on the exorbitant nature of the cost of the parts in connection with a repair.
  - d) They added that the cost of a repair frequently exceeded the initial value disbursed for the purchase of an electronic appliance.
  - e) In all cases, the salesperson claimed that Mr. Guénette should "deal with it on his own" if a breakage occurred after the manufacturer's warranty expired.
97. The salesperson also pointed out that the protection plan "fully paid for itself" because if Mr. Guénette did not file any claims over the next four years, the amount paid for the extended warranty could be credited on a future purchase.
98. For Mr. Guénette, the bulk of the representations of the employees of the Defendant Brick go back to the following point: without an extended warranty, the purchased goods were no longer protected after one year.
- 98.1 Otherwise, the detrimental consequences for Mr. Guénette not to purchase an extended warranty from Brick were focused on by the salesperson in her representations.
- 98.2 The message conveyed by Brick to its customers is as follows: in addition to the manufacturer's one (1)-year warranty, there is no more coverage or protection against breakage unless you purchase an extended warranty.
99. Mr. Guénette therefore agreed to purchase the protection plan in order to avoid any problems or risk of paying for a repair or replacement.
100. Neither the salesperson nor the manager referred at some time or discussed the legal warranty.
101. Several customers of the Defendant Brick purchased extended warranties following representations to the effect that the goods purchased were guaranteed only for one year and/or the purchase of an extended warranty would prevent having to pay fees for repairs or replacements after this time.
102. The website of the Defendant Brick also contains representations on the way in which extended warranties must be proposed to all customers, as appears from the web pages of the website of the Defendant Brick, addressing the sale of extended warranties as of October 11, 2015 and May 8, 2017 communicated *en liasse* in support hereof as P-16.
103. These pages may be summarized as follows:
- a) The manufacturer's warranties are for one year.
  - b) When the Defendant Brick presents the benefits of its extended warranties on its website, it refers to the word "solutions" and to the fact that in the event of



breakage, the "cost of the repairs may practically equal the initial purchase price of the item".

- c) Further on in this documentation, the Defendant Brick leaves open the idea of an absence of protection upon expiry of the manufacturer's warranty when it mentions: "*The Brick's Protection Plan Plus [...] was designed to protect you against the repairs and unexpected replacement costs over time*".
- d) The general impression of these representations is to the effect that if Brick customers wish to receive protection in addition to the manufacturer's warranty, the only option is to purchase an extended warranty.

### **Deposit in a trust account**

103.1 Brick and the locations operated by this entity in Quebec did not deposit in a trust account the sums from the sale of extended warranties of which the principal object, namely protection in the event breakage, was to be performed more than two months after the contract was made.

103.2 No security was furnished in this respect to the president of the OPC by Brick.

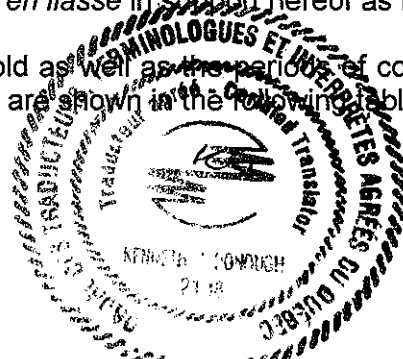
103.3 The OPC website does not indicate any exemption from section 256 CPA in favour of Brick.

103.4 No declaration that a trust account has been used to deposit the sums from sales of extended warranties appears to have been made to the president of the OPC.

## **LEGAL GROUNDS OF THE PROPOSED CLASS ACTION**

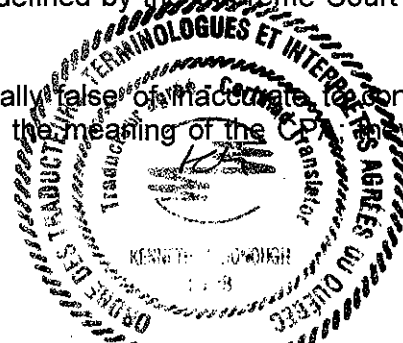
### **A) FALSE OR MISLEADING REPRESENTATIONS**

- 104. Through their false or misleading representations, the Defendants committed a breach of contract and a prohibited business practice sanctioned by the *Consumer Protection Act (LPC)*, the *Civil Code of Québec (CCQ)* and the *Competition Act*.
- 105. Within the meaning of sections 37 and 38 CPA, goods must be durable in normal use for a reasonable length of time.
- 106. These are legal warranties of durability and good working order.
- 107. It is well known that new appliances, such as those sold by the Defendants, have an expectation of durability and of good working order that substantially exceeds the duration of the manufacturer's warranty of one (1) year and of the extended warranties of two (2), three (3) or four (4) years.
- 108. For illustration purposes, the average duration of normal use of a television is twelve (12) years, that of a standard refrigerator is 13 years and that of a computer is five (5) years, as appears from the studies provided *en liasse* in support hereof as P-17.
- 109. The durability of certain goods frequently sold as well as the periods of coverage of the extended warranties sold by the Defendants are shown in the following table:



Type of product	Manufacturer's warranties	Extended warranties	Average duration of use
LCD/Plasma television	1 year	4 years	12 years
Front-loading washer	1 year	4 years	10 years
Refrigerator and stove	1 year	4 years	13 years
Microwave oven	1 year	4 years	9 years
Dryer	1 year	2 years	13 years
Computer	1 year	2 years	5 years

110. In this context, the direct representations to the effect that upon expiry of the manufacturer's warranty, the consumer must assume the repair or replacement costs, are *prima facie* false or misleading in respect of the existence, scope and extent of the legal warranty, in addition to dismissing an important fact.
111. When the Defendants represent that after expiry of the manufacturer's warranty, whose duration is generally one year following purchase, that there is no longer protection unless an extended or additional warranty is purchased, not only are they misleading consumers, but they are engaging in a prohibited business practice for the purpose of selling their protection plans.
112. These representations of the detrimental consequences of not making the purchase of an extended warranty are specifically alleged for each of the Defendants.
113. Considering that the factual allegations of false or misleading representations are likely in the case of the Plaintiff and the identified members, they must be found as a fact, especially since the institution of class actions has been authorized on the basis of causes of identical or similar actions.
114. In the same way as the provisions regarding the business practices applicable to this dispute, the legal warranty existed well before the amendments were adopted to the CPA and the Defendants could not opt out of it.
115. The intention to mislead that may or may not have motivated the salespeople is completely irrelevant.
116. When it is proven, the intention only aggravates the offence.
117. In fact, it is sufficient to prove that the representations are objectively false or misleading by following the criteria for analysis clearly defined by the Supreme Court of Canada in the matter *Richard v Time*.
118. The representations do not have to be totally false or inaccurate to constitute deceit and/or a prohibited business practice within the meaning of the CPA. They cannot very simply be partially false.



119. Furthermore, still based on the principles of the matter *Richard v Time*, the consumer does not need to prove a basis formed on a false or misleading representation to give rise to actions and remedies provided in the CPA, but only that the contract was entered into following such representation.
120. The causality intrinsic to each consumer, and the individual and personal motivations that led to each one's decision do not have to be proven and may not constitute an obstacle to authorization to institute a class action.
121. If the conditions allowing an absolute presumption of prejudice to be established are not brought together, the rebuttable presumption of deceit provided in section 253 CPA may be used.
122. Considering the nature of the breaches of the obligations, particularly stipulated in sections 219, 220 (c), 227 and 228 CPA, the Defendants are required to pay punitive damages based on section 272 of that same Act, especially considering that they did not amend the fundamental aspects of their conduct in respect of their representations surrounding the sale of extended warranties.

#### **B) FAILURE TO DEPOSIT IN A TRUST ACCOUNT**

- 122.1 Although certain ancillary and/or related services may come into effect upon possession (delivery) of the good for certain extended warranties, the main obligation, namely, the protection in the event of breakage, takes effect when the manufacturer's one-year warranty expires, that is, more than two months after the sales contract was made.
- 122.2 The Defendants Centre Hi-Fi Chicoutimi, 9246-9352 Québec inc., Centre Hi-Fi, Centre Hi-Fi (2763923 Canada Inc.), Bureau en gros and Brick violated section 256 CPA by failing to deposit in a trust account, declared to the president of the OPC, sums from the sale of extended warranties of which the principal object took place more than two months after the contract was made.

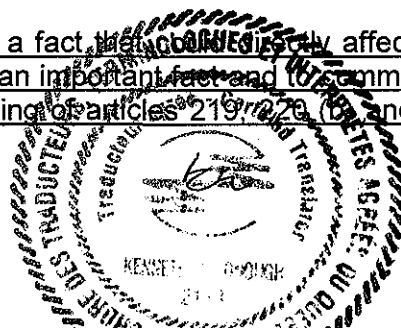
#### **C) PERSONAL MISCONDUCT OF SEARS DIRECTORS BETWEEN MAY 13, 2016 AND JUNE 22, 2017**

##### Prudence and diligence

- 122.3 Sears directors directed covered by this application incurred personal liability by failing to act prudently and diligently in respect of Sears customers by not implementing any measure to inform them that the company's precarious financial situation could affect the duration and the scope of the extended warranties sold (section 122(1) (b) of the *Canada Business Corporations Act, RSC (1985), c C-44 (CBCA)* and article 322 and 1457 CCQ).

##### Failing to mention an important fact

- 122.4 It is common knowledge that the duration and the scope of extended warranties constitute the main components of this type of product.
- 122.5 Contributing to not disclose to consumers a fact, which obviously affect one of these components amounts to failing to mention an important fact and to committing a false or misleading representation within the meaning of articles 219, 220 (b) and (c), 227, 228 CPA and 1401 CCQ.





122.6 The fact of contributing to the commission of such representations or omissions incurs the personal liability of the directors targeted to the extent that it is a breach of a rule of interest to the public order (sec. 227, 228 CPA and art. 317 CCQ)

Abuse of rights

122.7 The directors targeted knew or could not overlook the fact that the company's precarious financial situation constituted a risk and/or a situation likely to negatively affect the enforcement of the extended warranties.

122.8 Knowing or not being able to overlook the strong likelihood that Sears was no longer going to honour the extended warranties sold, the simple fact that the directors are keeping quiet, or that they are abstaining from getting involved, contributed to the fact that a piece of crucial information was not disclosed to customers at the time of their purchases, while a source of revenue for Sears was maintained.

122.9 The actions and omissions of the targeted directors had a direct consequence of maximizing the sale of extended warranties in a context of insolvency, in violation of the future obligations to customers, which gives rise to direct and personal action based on the following:

- a) an illegitimate and unfair outcome for customers (sec. 241 (b) CBCA);
- b) an abuse of right in respect of the customers or a violation of a rule of public order (art. 7 and 317 CCQ);
- c) a fault generating non-contractual liability to customers (1457 CCQ).

122.10 By their conduct, the directors-Defendants contributed to the injury suffered by Sears customers, who purchased extended warranties with no consideration or reciprocal arrangements.

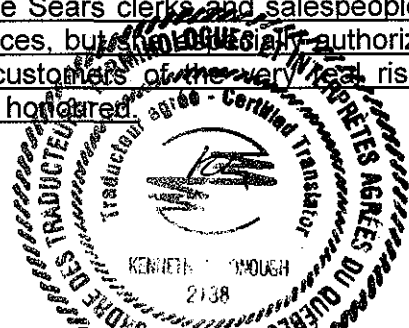
**D) THE SPECIFIC FAULTS OF THE DEFENDANT FTI**

122.11 After June 22, 2017, Sears continued its retail sales activities under the supervision of the Defendant FTI as "Monitor".

122.12 However, although the consumers did not deal directly with the Defendant FTI, it incurred non-contractual liability to Sears customers by supervising and ratifying the decisions of the directors in the conduct of business after June 22, 2017.

122.13 Under the supervision of FTI and the directors, Sears clerks continued to sell extended warranties to customers while leaving unsaid the predictable risks associated with the company's insolvency and/or restructuring under the CCAA, which could affect the value, duration and/or scope of the protection plans.

122.14 The Defendant FTI not only allowed the Sears clerks and salespeople continue to engage in prohibited business practices, but also authorized these clerks and salespeople not to warn customers of the very real risk that the extended warranties sold may never be honoured.



**APPLICABLE LEGISLATIVE PROVISIONS**

123. Sections 1 e.1), m) and o), 37, 38, 42, 43, 216, 218, 219, 220 c), 227, 228, 253, 254 to 260, 261 and 272 CPA apply to the proposed class action.
124. Sections 25.4 and 25.6 of the *Regulation respecting the application of the Consumer Protection Act* also apply.
125. Regarding the Quebec Civil Code, the Plaintiff is referring to articles 306, 317, 1400, 1401, 1407, 2163 and 2908.
- 125.1 Sections 122 and 141 of the *Canada Business Corporations Act, RSC 1985, c C-44* also apply.
126. Finally, the following provisions of the *Competition Act* are applicable to the proposed class action: **52** (1), (1.1a), (1.2), (2), (3), (4) and (6), **74.01** (1 a) and **74.08**.

**DAMAGES**

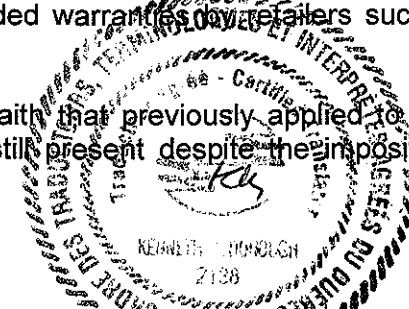
127. The following measures of damages may be opened:
- a) The refund of amounts paid to the Defendants for the purchase of extended warranties sold after June 30, 2010.
- b) A lump-sum amount to be determined as punitive damages for the breach(es) of one or more duties that the CPA imposes on the Defendants and for the serious and repetitive carelessness of this conduct.

**THE CLASS**

128. The Class on behalf of which the Plaintiff will be acting is described in the first paragraph of this proceeding.

**FACTS GIVING RISE TO PERSONAL ACTION BY EACH MEMBERS OF THE CLASS**

129. For each cause of action [...], the legal basis of the action of each of the members against the Defendants is identical or similar [...].
130. In fact, the faults committed by the Defendants on the part of the members, that is, the false or misleading representations at the time of the sale of the extended warranties, are very similar or identical to those undergone by the Plaintiff.
- 130.1 Regarding the faults alleged against the directors of Sears and the Defendant FTI, they are identical or similar for all the customers who had purchased extended warranties at Sears since June 13, 2016.
131. Each of the members suffered the same type of damages as the Plaintiff.
132. The purpose of the amendments to the CPA that came into effect on June 30, 2010 was to correct certain aspects of the sale of extended warranties by retailers such as the Defendants.
133. However, the duty of transparency and good faith that previously applied to and that currently apply to each of the Defendants is still present despite the imposition of a

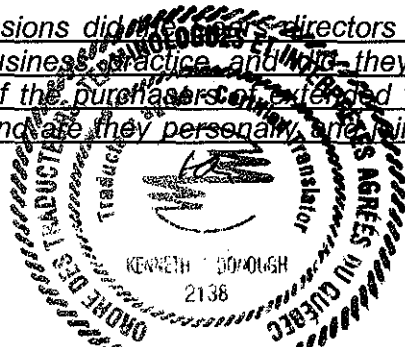


specific obligation of merchants to draw consumers' attention to the existence of the legal warranty.

134. The Plaintiff is not able to evaluate the total amount of damages suffered by all the members, which may be determined during the administration of essential evidence for the purpose of a collective recovery.
135. Considering the offences committed in light of the CPA, the Defendants must also be liable for punitive damages.
136. In respect of the starting point of the limitation period of the action taken by members against each of the Defendants, the Plaintiff is filing in particular the following:
- a) First, the very nature of the cause of action, namely the false and misleading representations at the basis of the class action, suspended the limitation period for all members;
  - b) Second, the proceedings in the *Fortier* and *Routhier* matters suspended the limitation period;
  - c) Third, under the rules of solidarity, the limitation periods of actions against the Defendants Centre Hi-Fi Chicoutimi, 9246-9352 Québec inc., Centre Hi-Fi, Centre Hi-Fi (2763923 Canada Inc.) were all suspended.

**IDENTICAL, SIMILAR OR RELATED ISSUES OF FACT OR LAW (SEC. 575 (1) C.C.P.)**

137. Issues relating each member to the Defendants [...], which could be amended based on the circumstances and the main evidence, and which the Plaintiff agrees to determine through the proposed class action are:
- a) Does the fact of representing to a consumer that the good sold is guaranteed only for one year constitute a false or misleading representation?
  - b) Does the fact of representing to a consumer that the purchase of an extended warranty avoids having to pay fees for the repair and replacement of a good after the manufacturer's warranty expires constitute a false or misleading representation?
  - c) Did the Defendants Centre Hi-Fi Chicoutimi, Centre Hi-Fi, 9246-9352 Québec inc. (Centre Hi-Fi), 2763923 Canada Inc. (Centre Hi-Fi), The Brick LLP, Sears Canada and Bureau en gros make, after June 30, 2010, false representations when they sold extended warranties to the members of the class?
  - d) Did the salespeople fail to mention an important fact by not disclosing to the purchasers of extended warranties at Sears that the company's financial difficulties could possibly cause them to lose the protection in the event of breakage?
  - e) Through their actions and omissions did the Defendants' directors participate in the commission of a prohibited business practice and did they commit a non-contractual offence in respect of the purchasers of extended warranties and, if such is the case, since when and are they personally and jointly and severally liable for the damages?



- f) Did the Defendant FTI Consulting commit a non-contractual offence in respect of the Sears customers who purchased extended warranties after June 22, 2017?
- g) In the case of false representations, what are the damages suffered by the members as a result of the violations?
- h) Was the limitation period suspended [...] and if so, since what date?
- i) Are the Defendants required to pay punitive damages?

138. The main individual question [...] to each of the members is:

*What is the amount of damages suffered by each of the members?*

**THE FACTS ALLEGED APPEAR TO JUSTIFY THE CONCLUSIONS SOUGHT (SEC. 575 (2) C.C.P.)**

139. In this respect, the Plaintiff refers to the positive facts contained in its allegations, but also to the allegations of the other members in this application for authorization.

**CONCLUSIONS SOUGHT**

140. The conclusions sought by the Plaintiff, which could be amended based on the circumstances and proof on the merits, are:

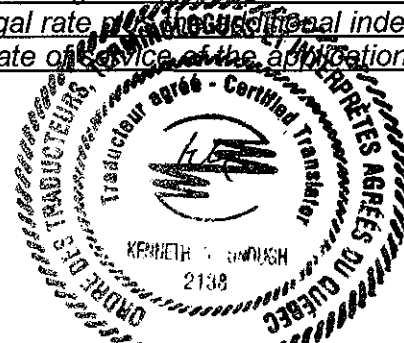
***TO GRANT*** the originating application a class action.

***TO ORDER*** the Defendants Centre Hi-Fi Chicoutimi, Centre Hi-Fi, 9246-9352 Québec inc. (Centre Hi-Fi), 2763923 Canada Inc. (Centre Hi-Fi), The Brick LLP, Sears Canada and Bureau en gros to pay each of the members of the group damages equivalent to the purchase cost plus taxes of the additional warranties, with interest at the legal rate plus the additional indemnity provided in article 1619 CCQ, calculated from the date of service of the application for authorization to institute a class action in matter 500-06-000709-143.

***TO ORDER*** the Defendants Centre Hi-Fi Chicoutimi, Centre Hi-Fi, 9246-9352 Québec inc. (Centre Hi-Fi), 2763923 Canada Inc. (Centre Hi-Fi), The Brick LLP, Sears Canada and Bureau en gros to pay an amount to be determined as punitive damages set on an overall and lump-sum basis, with interest at the legal rate plus the additional indemnity provided in article 1619 CCQ, calculated from the date of service of the application for authorization to institute a class action in matter 500-06-000709-143.

***TO ORDER*** jointly and severally the Sears directors targeted by the request for payment of damages for the period from May 13, 2016 to October 18, 2017, with interest at the legal rate plus the additional indemnity provided in article 1619 CCQ, calculated from the date of service of the application for authorization to institute the class action.

***TO ORDER*** the Defendant FTI to pay damages for the period from June 22, 2017 to October 18, 2017, with interest at the legal rate plus the additional indemnity provided in article 1619 CCQ, calculated from the date of service of the application for authorization to institute the class action.



**TO ORDER** the aforementioned damages to be subject to individual indemnities as part of a process of collective recovery [...] based on the provisions of sections 595 C.C.P. and the those following.

**TO ORDER** the Defendants to assume any other appropriate remedy deemed fair and appropriate.

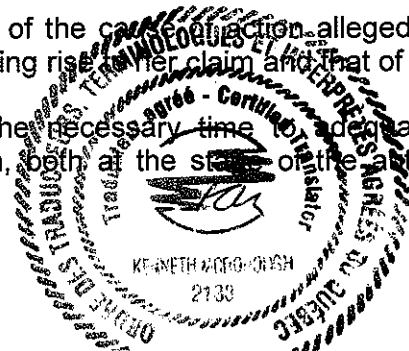
**TO ORDER** the Defendants to assume the legal costs, including the costs for the publication and dissemination of the notice to members.

**THE COMPOSITION OF THE CLASS (SEC. 575 (3) C.C.P.)**

141. The composition of the class makes it difficult or impracticable to apply the rules for mandates to take part in judicial proceedings on behalf of others or for consolidation of proceedings.
142. In fact, it is estimated that for each Defendant, there are thousands of people in Quebec who purchased their extended warranties.
143. It would be impossible and impractical for the Plaintiff to retrace and contact all the members so that they could join the same judicial application, especially since they do not have access to the Defendant's customer list and that they are the only ones who know the identity of those to whom an extended warranty was sold.
144. It would also be impossible and impractical for the Plaintiff to obtain a mandate or proxy from each person.
145. It would also not be practical and contrary to the interests of the proper administration of justice as well as to the spirit of the Code of Civil Procedure if each member instituted an individual action against the Defendants on the same basis.

**THE PLAINTIFF IS IN A POSITION TO PROPERLY REPRESENT THE CLASS MEMBERS (SEC. 575 (4) C.C.P.)**

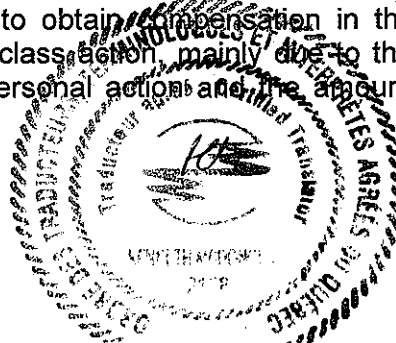
146. The Plaintiff requests that she be given the status of representative for the reasons set out below.
147. The Plaintiff shows an interest in the matter and the role she must play in disclosing the business practices targeted by the proposed class action.
148. The Plaintiff is available and able to ensure adequate representation of the members.
149. With the support of her counsel, the Plaintiff has taken steps to identify new members.
150. The Plaintiff has herself purchased an extended warranty after having been subjected to the alleged false or misleading representations of the Defendants.
151. The Plaintiff has personal knowledge of the case and the facts alleged in this application and properly understands the facts giving rise to her claim and that of the members.
152. The Plaintiff is available to invest the necessary time and resources to adequately represent the members as part of this class action, both at the stage of the authorization and the merits.



153. The Plaintiff intends to represent the interests of members with honesty and loyalty.
154. The Plaintiff is ready to do everything possible to expose all the facts giving rise to the proposed class action.
155. The Plaintiff argued the facts and relevant documents illustrating the alleged business practices.
156. The Plaintiff is therefore in an excellent position to adequately represent the members in the proposed class action.
157. In order to support the status of representative that she is seeking, the Plaintiff is adding the following elements:
- a) She was involved as an identified member in another application for authorization to institute a class action on the same topic in Court file No. 500-06-000709-143.
  - b) As of the month of March 2014, she participated in preparing steps to institute this class action in Court file No. 500-06-000709-143.
  - c) In spring 2014, she participated with other members identified in preparing the application for authorization in this other matter by providing her counsel with information relevant to her case.
  - d) She was available and would have been ready to serve as applicant in Court file No. 500-06-000709-143.
  - e) She has been interested in getting involved in this matter for several years.
  - f) She has had knowledge of the issues since the judgment of Justice Nollet in respect of the Defendants CHF and she is ready to solely assume the role of representative.
  - g) She is in no way in a conflict of interest with the members.
  - h) She is ready to testify at a hearing of the application for authorization to confirm the foregoing.

**PROPORTIONALITY IN THE ANALYSIS OF THE CONDITIONS OF SECTION 575 C.C.P.**

158. The class action is the ideal procedural vehicle for members to be able to enforce the claim arising from the alleged facts in this application.
159. Although the amount of damages suffered will differ for each member, the offence(s) committed by each of the Defendants and the resulting liability are identical or similar in respect of each member.
160. Considering the amount of the personal and individual claim of each of the members, they would be deprived of their right to obtain compensation in the absence of the procedural vehicle represented by the class action, mainly due to the disproportionate relationship between the costs for a personal action and the amount of the damages effectively suffered and payable.



161. In addition, the potential multiplicity of personal actions of the members could result in contradictory judgments on identical issues of fact and law, which would be contrary to the interests of justice.

### JUDICIAL DISTRICT OF THE CLASS ACTION

162. The Plaintiff proposes that the class action be instituted before the Superior Court sitting in the judicial district of Chicoutimi for the reasons stated hereafter.
163. The Plaintiff resides in the district of Chicoutimi where she entered into the consumer contract targeted by the proposed class action in an establishment operated by the Defendant CHF Chicoutimi.
164. Several members are domiciled in the judicial district of Chicoutimi and its surroundings, subject to the evidence that could be provided using in particular the information and data to which only the Defendants have access.
165. The Defendants Sears and BEG each have at least one place of business in the judicial district of Chicoutimi.
166. The extended warranties targeted by the proposed class action are marketed throughout Quebec by the Defendants, including in the district of Chicoutimi.

### SUMMARY

167. As the four conditions provided in section 575 CCP have been satisfied, the present application must be granted and the institution of the class action must be authorized.
168. The present application for authorization to institute a class action is well founded in fact and in law.

### FOR THESE REASONS, MAY IT PLEASE THE COURT:

**TO GRANT** the amended application for authorization to institute a class action;

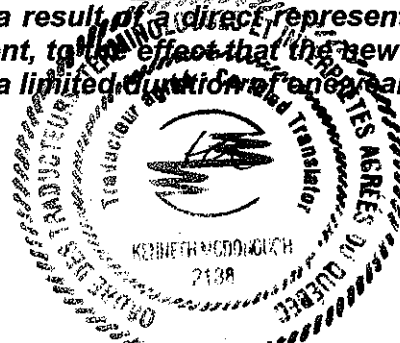
**TO AUTHORIZE** the institution of the class action described hereinafter:

***"A class action for damages against the Defendants in order to punish prohibited business practices in respect of the sale of extended warranties."***

**APPOINT** KARINE TREMBLAY as representative for purposes of instituting the proposed class action on behalf of the Group of persons described hereinafter:

***"All persons who purchased, after June 30, 2010, an additional warranty, or any other product of the same type, from the Defendants Centre Hi-Fi Chicoutimi, Centre Hi-Fi, 9246-9352 Québec inc. (Centre Hi-Fi), 2763923 Canada inc. (Centre Hi-Fi), The Brick LLP, Sears Canada and Bureau en gros as a result of a direct representation, or through any form of advertisement, to the effect that the new movable property sold was warranted for a limited duration of one year or less."***

**and**



All persons who purchased from the Defendants Centre Hi-Fi Chicoutimi, Centre Hi-Fi, 9246-9352 Québec inc. (Centre Hi-Fi), 2763923 Canada Inc. (Centre Hi-Fi), The Brick LLP, Sears Canada and Bureau en gros an extended warranty where the amount paid was not deposited in a trust account.

and

All persons who purchased an extended warranty at Sears after May 13, 2016 without being informed that there was a risk that the protection in the event of breakage would not be honoured.

IDENTIFY as follows the principal questions of fact and of law that will be dealt with collectively:

- a) Does the fact of representing to a consumer that the good sold is guaranteed only for one year constitute a false or misleading representation?
- b) Does the fact of representing to a consumer that the purchase of an extended warranty avoids having to pay fees for the repair and replacement of a good after the manufacturer's warranty expires constitute a false or misleading representation?
- c) Did the Defendants Centre Hi-Fi Chicoutimi, Centre Hi-Fi, 9246-9352 Québec inc. (Centre Hi-Fi), 2763923 Canada Inc. (Centre Hi-Fi), The Brick LLP, Sears Canada and Bureau en gros make, after June 30, 2010, false representations when they sold extended warranties to the members of the class?
- d) Did the salespeople fail to mention an important fact by not disclosing to the purchasers of extended warranties at Sears that the company's financial difficulties could possibly cause them to lose the protection in the event of breakage?
- e) Through their actions and omissions did the Sears directors participate in the commission of a prohibited business practice and did they commit a non-contractual offence in respect of the purchasers of extended warranties and, if such is the case, since when and are they personally and jointly and severally liable for the damages?
- f) Did the Defendant FTI Consulting commit a non-contractual offence in respect of the Sears customers who purchased extended warranties after June 22, 2017?
- g) In the case of false representations, what are the damages suffered by the members as a result of the violations?
- h) Was the limitation period suspended [...] and if so, since what date?
- i) Are the Defendants required to pay punitive damages?

IDENTIFY as follows the related conclusions sought:

**TO GRANT** the originating application to institute a class action.

**TO ORDER** the Defendants Centre Hi-Fi Chicoutimi, Centre Hi-Fi, 9246-9352 Québec inc. (Centre Hi-Fi), 2763923 Canada Inc. (Centre Hi-Fi), The Brick LLP, Sears Canada





and Bureau en gros to pay each of the members of the group damages equivalent to the purchase cost plus taxes of the additional warranties, with interest at the legal rate plus the additional indemnity provided in article 1619 CCQ, calculated from the date of service of the application for authorization to institute a class action in matter 500-06-000709-143.

TO ORDER the Defendants Centre Hi-Fi Chicoutimi, Centre Hi-Fi, 9246-9352 Québec inc. (Centre Hi-Fi), 2763923 Canada Inc. (Centre Hi-Fi), The Brick LLP, Sears Canada and Bureau en gros to pay an amount to be determined as punitive damages set on an overall and lump-sum basis, with interest at the legal rate plus the additional indemnity provided in article 1619 CCQ, calculated from the date of service of the application for authorization to institute a class action in matter 500-06-000709-143.

TO ORDER jointly and severally the Sears directors targeted by the request for payment of damages for the period from May 13, 2016 to October 18, 2017, with interest at the legal rate plus the additional indemnity provided in article 1619 CCQ, calculated from the date of service of the application for authorization to institute the class action.

TO ORDER the Defendant FTI to pay damages for the period from June 22, 2017 to October 18, 2017, with interest at the legal rate plus the additional indemnity provided in article 1619 CCQ, calculated from the date of service of the application for authorization to institute the class action.

**TO ORDER** the aforementioned damages to be subject to individual indemnities as part of a process of collective recovery [...] based on the provisions of sections 595 C.C.P. and the those following.

**TO ORDER** the Defendants to assume any other appropriate remedy deemed fair and appropriate.

**TO ORDER** the Defendants to assume the legal costs, including the costs for the publication and distribution of the notice to members.

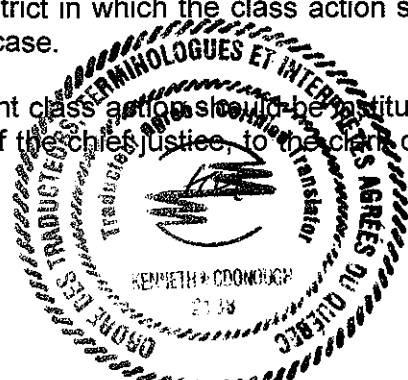
**DECLARE** that any member of the group who has not requested exclusion from the group be bound by any judgment rendered on the class action to be instituted in the manner provided by law.

**SET** the deadline for exclusion at sixty (60) days from the date of publication of the notice to members, upon the expiry of which time the members of the group who have not requested their exclusion will be bound by any judgment to be rendered.

**ORDER** the publication of a notice to the members based on the formulation, conditions and terms that will be determined by the Court following the proposals filed by the Counsel for the parties involved as part of a hearing following the judgment authorizing the institution of the class action.

**REFER** the matter to the chief justice to determine the district in which the class action should be instituted and to designate the justice who will hear the case.

**ORDER** the clerk of that Court, in the event that the present class action should be instituted in another district, to transfer the matter, upon the decision of the chief justice, to the clerk of that other district.



**ORDER** the Defendants to pay the legal costs, including expenses for the publication and dissemination of the notice to members.

Quebec City, November 29, 2017

(signed)

---

**Mtre. David Bourgoïn**  
dbourgoïn@bga-law.com  
**BGA Barristers & Solicitors LLP**  
(Court Number: BB-8221)  
67 Sainte-Ursule St.  
Quebec City, Quebec G1R 4E7  
Tel.: 418-523-4222  
Fax: 418-692-5695  
Counsel for the Plaintiff  
Reference: BGA-0070-4



ORIGINAL DOCUMENT(S) FOLLOW

CANADA

(Action collective)

PROVINCE DE QUÉBEC  
DISTRICT DE CHICOUTIMI

COUR SUPÉRIEURE

No. 150-06-000010-173

**KARINE TREMBLAY**

Demanderesse

c.

**CENTRE HI-FI CHICOUTIMI**

et

**9246-9352 QUÉBEC INC.**

et

**CENTRE HI-FI**, nom sous lequel s'identifie  
la compagnie numérique dûment constituée  
**149667 CANADA INC**

et

**CENTRE HI-FI**, nom sous lequel s'identifie  
la compagnie numérique dûment constituée  
**2763923 CANADA INC.**

et

**THE BRICK WAREHOUSE LP**

et

**SEARS CANADA INC.**

et

**BUREAU EN GROS** (Staples Canada Inc.)

Défenderesses

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**DEMANDE POUR PERMISSION DE MODIFIER LA DEMANDE POUR  
AUTORISATION D'EXERCER UNE ACTION COLLECTIVE  
(Article 585 C.p.c.)**

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**À L'HONORABLE MARTIN DALLAIRE JUGE DE LA COUR SUPÉRIEURE,  
SIÉGEANT EN GESTION PARTICULIÈRE DE LA PRÉSENTE AFFAIRE DANS ET  
POUR LE DISTRICT DE CHICOUTIMI, LA DEMANDERESSE EXPOSE  
RESPECTUEUSEMENT CE QUI SUIT :**

1. La demanderesse sollicite l'autorisation de cette Honorable Cour afin d'exercer une action collective pour le compte de toutes les personnes faisant partie du Groupe ci-après décrit :

**« Toutes les personnes ayant acheté après le 30 juin 2010 une garantie supplémentaire, ou tout autre produit du même type, des défenderesses Centre Hi-Fi Chicoutimi, Centre Hi-Fi, The Brick LLP, Sears Canada et Bureau en Gros à la suite d'une représentation directe, ou par le biais de toute forme de publicité, à l'effet que les biens mobiliers neufs vendus étaient garantis pour une durée limitée d'un an ou moins. »**

2. La demanderesse demande la permission de modifier sa demande d'autorisation d'exercer une action collective afin d'ajouter et alléguer les faits qui se rattachent à la situation de certaines défenderesses, d'ajuster d'autres allégations, de préciser certains volets du dossier en fonction des nouvelles informations obtenues et d'ajouter des défendeurs sur la base de la responsabilité des administrateurs et du contrôleur de la défenderesse Sears Canada.
3. Les amendements recherchés visent notamment à compléter le tableau factuel et juridique, préciser et/ou ajouter certaines contraventions entourant la vente de garanties prolongées, adresser certains arguments invoqués dans les requêtes en rejet, mais également pour réagir aux faits nouveaux entourant l'insolvabilité et la liquidation de la défenderesse Sears Canada.
4. Les modifications demandées sont conformes aux principes de proportionnalité et d'efficacité qui doivent guider les tribunaux.
5. Il est dans l'intérêt d'une saine administration de la justice que le présente demande soit accordée.
6. La présente demande pour permission de modifier la demande d'autorisation est bien fondée en fait et en droit.

**POUR CES MOTIFS, PLAISE AU TRIBUNAL :**

**ACCUEILLIR** la présente demande pour modifier la demande pour autorisation d'exercer une action collective.

**PERMETTRE** à la demanderesse de modifier sa demande pour autorisation d'exercer une action collective selon la demande modifiée annexée aux présentes.

**SANS FRAIS**, sauf en cas de contestation.

Québec, le 29 novembre 2017

*BGA*

---

**Me David Bourgoin**

[dbourgoin@bga-law.com](mailto:dbourgoin@bga-law.com)

**BGA Avocats s.e.n.c.r.l.**

(Code d'impliqué : BB-8221)

67, rue Sainte-Ursule

Québec (Québec) G1R 4E7

Téléphone : 418 523-4222

Télécopieur : 418 692-5695

Procureurs de la demanderesse

Référence : BGA-0070-4

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**AVIS DE PRÉSENTATION**

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**À : Me Nicholas Rodrigo**

Ward Phillips & Vineberg s.e.n.c.r.l, s.r.l  
1501, avenue McGill Collège, 26<sup>e</sup> étage  
Montréal (Québec) H3A 3N9  
Procureurs de la défenderesse Sears Canada inc.

**Me Guy Poitras**

Gowling Lafleur Henderson s.e.n.c.r.l  
1, place Ville-Marie, 37<sup>e</sup> étage  
Montréal (Québec) H3B 3P4  
Procureurs de la défenderesse The Brick Warehouse LP

**Me Luc Hervé Thibaudeau**

Lavery, De Billy s.e.n.c.r.l.  
1, place Ville-Marie, bureau 4000  
Montréal (Québec) H3B 4M4  
Procureurs des défenderesses Centre Hi-Fi Chicoutimi, 9249-9352 Québec inc., Centre Hi-Fi (149667 Canada inc.) et Centre Hi-Fi (2763923 Canada Canada Inc.)

**Me Marie Audren**

Audren Rolland s.e.n.c.r.l.  
393, rue Saint-Jacques, bureau 248  
Montréal (Québec) H2Y 1N9  
Procureurs de la défenderesse Bureau en gros (Staples Canada inc.)

**PRENEZ AVIS** que la présente demande pour permission de modifier la demande pour autorisation d'exercer une action collective sera présentée pour adjudication, au Palais de justice de Chicoutimi situé au 227, rue Racine Est, 1<sup>er</sup> étage, Saguenay, arrondissement Chicoutimi (Québec) G7H 7B4, district de Chicoutimi, à une date, une heure et une salle qui seront déterminées par l'honorable Martin Dallaire (j.c.s.).

**VEUILLEZ AGIR EN CONSÉQUENCE.**

Québec, le 29 novembre 2017



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**BGA Avocats s.e.n.c.r.l.**

Procureurs de la demanderesse





f C A N A D A

(Action collective)

PROVINCE DE QUÉBEC  
DISTRICT DE CHICOUTIMI

COUR SUPÉRIEURE

No. 150-06-000010-173

**KARINE TREMBLAY**

Demanderesse

c.

**CENTRE HI-FI CHICOUTIMI**

et

**9246-9352 QUÉBEC INC.**

et

**CENTRE HI-FI**

et

**CENTRE HI-FI (2763923 CANADA INC.)**

et

**THE BRICK WAREHOUSE LP**

et

**SEARS CANADA INC.**

et

**KHANNA, R. RAJA** (administratrice de  
Sears Canada Inc.), 290, Yonge Street,  
Toronto (Ontario) M5B 2C3

et

**CARRIE KIRKMAN**, administratrice de  
Sears Canada Inc.), 290, Yonge Street,  
Toronto (Ontario) M5B 2C3

et

**ROSATI, DEBI E**, administratrice de Sears  
Canada Inc.), 290, Yonge Street, Toronto  
(Ontario) M5B 2C3

et

**SAM JEFFREY STOLLENWERK**  
(administrateur de Sears Canada Inc.),  
290, Yonge Street, Toronto (Ontario) M5B  
2C3

et

**BRANDON STRANZL** (administrateur de  
Sears Canada Inc.), 290, Yonge Street,  
Toronto (Ontario) M5B 2C3

et

**ANAND SAMUEL** (administrateur de Sears  
Canada Inc.), 290, Yonge Street, Toronto  
(Ontario) M5B 2C3

et

**GRAHAM SAVAGE** (administrateur de  
Sears Canada Inc.), 290, Yonge Street,  
Toronto (Ontario) M5B 2C3

et

**HEYWOOD WILANSKY** (administrateur de  
Sears Canada Inc.), 290, Yonge Street,  
Toronto (Ontario) M5B 2C3

et

**PHILIP MOHTADI** (administrateur de  
Sears Canada Inc.), 290, Yonge Street,  
Toronto (Ontario) M5B 2C3

et

**FTI CONSULTING CANADA INC.**  
personne morale dûment constituée dont la  
principale place d'affaires est située au  
Waterhouse Tower, 79, Wellington Street  
West, Suite 2010, P.O. Box 104, Toronto,  
(Ontario) M5K 1G8 et a élu un domicile  
légal aux fins des présentes à l'étude  
**NORTON ROSE FULBRIGHT**  
**S.E.N.C.R.L., s.r.l. / LLP** située au 1, Place  
Ville Marie, bureau 2500, Montréal  
(Québec) H3B 1R1, district judiciaire de  
Montréal

et

BUREAU EN GROS (Staples Canada Inc.)

Défendeurs [...]

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DEMANDE MODIFIÉE POUR AUTORISATION D'EXERCER UNE ACTION  
COLLECTIVE  
(Articles 574 et suivants C.p.c.)

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À L'HONORABLE MARTIN DALLAIRE JUGE DE LA COUR SUPÉRIEURE  
ASSIGNÉ EN GESTION PARTICULIÈRE DANS ET POUR LE DISTRICT DE  
CHICOUTIMI, LA DEMANDERESSE EXPOSE RESPECTUEUSEMENT CE QUI  
SUIT :

1. La demanderesse sollicite l'autorisation de cette Honorable Cour afin d'exercer une action collective pour le compte de toutes les personnes faisant partie du Groupe ci-après décrit et dont elle est elle-même membre, à savoir :

***« Toutes les personnes ayant acheté après le 30 juin 2010 une garantie supplémentaire, ou tout autre produit du même type, des défenderesses Centre Hi-Fi Chicoutimi, Centre Hi-Fi, 9246-9352 Québec inc. (Centre Hi-Fi), 2763923 Canada inc. (Centre Hi-Fi), The Brick LLP, Sears Canada et Bureau en gros à la suite d'une représentation directe, ou par le biais de toute forme de publicité, à l'effet que les biens mobiliers neufs vendus étaient garantis pour une durée limitée d'un an ou moins***

***et***

***Toutes les personnes ayant acheté des défenderesses Centre Hi-Fi Chicoutimi, Centre Hi-Fi, 9246-9352 Québec inc. (Centre Hi-Fi), 2763923 Canada inc. (Centre Hi-Fi), The Brick LLP, Sears Canada et Bureau en gros une garantie prolongée alors que la somme payée n'a pas été déposée dans un compte en fidéicommiss.***

***et***

***Toutes les personnes ayant acheté une garantie prolongée chez Sears après le 13 mai 2016 sans avoir été avisées que la protection en cas de bris risquait de ne pas être honorée.***

2. La nature du recours que la demanderesse entend exercer pour le compte des membres est une action collective en dommages-intérêts contre les défenderesses afin de sanctionner des manquements, contraventions et fausses représentations à l'égard de l'offre et de la vente de garanties supplémentaires, garanties prolongées et plans de protection (ci-après « garanties prolongées »).

### **LES PARTIES**

3. La demanderesse et les membres identifiés à la procédure ont acheté des garanties prolongées avec les défenderesses et ils sont des consommateurs au sens de la *Loi sur la protection du consommateur* (ci-après « *L.p.c.* »).
4. Les défenderesses Centre Hi-Fi Chicoutimi, 9246-9352 Québec inc., Centre Hi-Fi, Centre Hi-Fi (2763923 Canada Inc.), Bureau en gros, The Brick et Sears sont des commerçants au sens de la *L.p.c.* et leurs activités sont notamment régies par cette loi, incluant l'offre et la vente de garanties prolongées.
5. Les ventes de garanties prolongées sont également soumises à la *Loi sur la concurrence*.
6. L'entité corporative **9246-9352 Québec inc.**, qui fait notamment affaires sous le nom Centre Hi-Fi Chicoutimi (ci-après désignée « CHF Chicoutimi »), est une entreprise qui opère huit (8) détaillants d'appareils électroniques œuvrant sous la bannière « Centre Hi-Fi », tel qu'il appert du relevé du Registraire des entreprises du Québec (REQ) daté du 4 mai 2017 communiqué au soutien des présentes sous la cote **P-1**.
- 6.1 En aucun temps pertinent, 9246-9352 Québec inc. n'a détenu de permis de l'Office de la protection du consommateur (ci-après « l'Office ») et/ou n'a bénéficié d'une exemption aux obligations découlant de l'article 256 *L.p.c.*, tel qu'il appert d'un document de l'OPC communiqué au soutien des présentes sous la cote **P-1.1**.
7. La défenderesse CHF Chicoutimi a conclu un contrat de vente de garantie prolongée avec la demanderesse.
8. L'entité corporative **149667 Canada inc.**, qui fait affaires sous le nom Centre Hi-Fi (ci-après désignée « CHF Bureau chef »), est un franchiseur et un opérateur de détaillants spécialisés dans la vente au détail d'appareils électroniques qui opèrent sous la bannière « Centre Hi-Fi », tel qu'il appert du relevé du Registraire des entreprises du Québec (REQ) daté du 7 mai 2017 communiqué au soutien des présentes sous la cote **P-2**.
- 8.1 En aucun temps pertinent, 149667 Canada inc. n'a détenu de permis de l'Office et/ou n'a bénéficié d'une exemption aux obligations découlant de l'article 256 *L.p.c.* tel qu'il appert d'un document de l'OPC communiqué au soutien des présentes sous la cote **P-2.1**.

9. L'entité corporative **2763923 Canada inc.**, qui fait affaires sous le nom Centre Hi-Fi (ci-après désignée « CHF »), exploite seize (16) établissements de vente au détail d'appareils électroniques sous la bannière Centre Hi-Fi, tel qu'il appert du relevé du Registraire des entreprises du Québec (REQ) daté du 4 mai 2017 communiqué au soutien des présentes sous la cote **P-3**
- 9.1 En aucun temps pertinent, 2763923 Canada inc. n'a détenu de permis de l'Office et/ou n'a bénéficié d'une exemption aux obligations découlant de l'article 256 L.p.c., tel qu'il appert d'un document de l'OPC communiqué au soutien des présentes sous la cote P-3.1.
10. La défenderesse **The Brick Warehouse LP** (ci-après désignée « Brick ») est une entreprise spécialisée dans la vente d'électroménagers et de biens mobiliers, tel qu'il appert du relevé du Registraire des entreprises du Québec (REQ) daté du 4 mai 2017 communiqué au soutien des présentes sous la cote **P-4**.
- 10.1 En aucun temps pertinent, Brick n'a détenu de permis de l'Office et/ou n'a bénéficié d'une exemption aux obligations découlant de l'article 256 L.p.c., tel qu'il appert d'un document de l'OPC communiqué au soutien des présentes sous la cote P-4.1.
11. La défenderesse Brick a conclu un contrat de vente de garantie prolongée avec le membre Dave Guénette.
12. La défenderesse **Sears Canada** (ci-après désignée « Sears ») est une entreprise spécialisée dans la vente d'électroménagers et de biens mobiliers, tel qu'il appert du relevé du Registraire des entreprises du Québec (REQ) daté du 4 mai 2017 communiqué au soutien des présentes sous la cote **P-5**.
- 12.1 Jusqu'à sa liquidation, Sears détenait le permis de l'Office de la protection du consommateur requis par la L.p.c., tel qu'il appert du permis communiqué au soutien des présentes sous la cote P-5.1.
- 12.2 Entre le 13 mai 2016 et le 22 juin 2017, les principaux administrateurs élus de la défenderesse Sears étaient: R. Raja Khanna, Carrie Kirkman, Deborah E. Rosati, Anand A. Graham Savage, Jeffrey Stollenwerck et Brandon G. Stranzl, tel qu'il appert du communiqué de presse daté du 13 mai 2016 et du relevé REQ daté du 16 novembre 2017 communiqués au soutien des présentes sous la cote P-5.2.
13. La défenderesse Sears a conclu un contrat de vente de garantie prolongée avec le membre France Girouard.
- 13.1 La défenderesse FTI Consulting Canada Inc. (ci-après désignée « FTI ») est un syndic en insolvabilité autorisé par le Bureau du Surintendant des Faillites (BSF), tel qu'il appert d'un extrait du site web du Bureau du Surintendant des Faillite daté du 14 novembre 2017 communiqué au soutien des présentes sous la cote P-5.3.

- 13.2 Le 22 juin 2017, la défenderesse Sears a obtenu une ordonnance de la Cour supérieure de l'Ontario (Chambre commerciale) afin de se placer sous la protection de la Loi sur les arrangements avec les créanciers des compagnies (« LACC ») dans le but de restructurer ses activités.
- 13.3 Conformément à l'ordonnance du 22 juin 2017 (ordonnance initiale), FTI a été nommée contrôleur dans le dossier de Sears.
- 13.4 Depuis le 22 juin 2017, FTI a supervisé les opérations de Sears, notamment quant à ses activités de vente au détail, ce qui inclut la vente de plans de protection ou garanties prolongées.
14. La défenderesse **Staples Canada Inc.** (ci-après désignée « BEG » ou « Bureau en gros ») est une entreprise spécialisée dans la vente de papeterie, équipements de bureau (biens meubles, ordinateurs, imprimante et appareils électroniques de tout genre) tel qu'il appert du relevé du Registraire des entreprises du Québec (REQ) daté du 4 mai 2017 dénoncé au soutien des présentes sous la cote **P-6**.
15. La défenderesse BEG a conclu un contrat de vente de garantie prolongée avec la membre Guylaine Hebert.
- 15.1 En aucun temps pertinent, BEG n'a détenu de permis de l'Office et/ou n'a bénéficié d'une exemption aux obligations découlant de l'article 256 L.p.c., tel qu'il appert d'un document de l'OPC communiqué au soutien des présentes sous la cote **P-6.1**.

## LES FAITS DONNANT OUVERTURE AU RECOURS COLLECTIF CONTRE LES DÉFENDERESSES

### **A- LES FAITS AU SOUTIEN DU RECOURS DE LA DEMANDERESSE CONTRE CHF CHICOUTIMI, CHF Bureau chef et CHF**

16. Le 13 juillet 2013, après avoir débuté son « magasinage de téléviseurs » chez un compétiteur de CHF, la demanderesse s'est présentée dans un commerce identifié sous le nom Centre Hi-Fi, situé au 1840, boul. Talbot, Saguenay, arrondissement Chicoutimi (Québec), où elle a acheté une garantie prolongée sur un téléviseur Sony LCD 40 pouces (écran plat) acheté dans la même transaction, tel qu'il appert des copies de la facture d'achat no. 24527, du relevé du terminal de point de vente (TPV) et du formulaire de demande du rabais communiqués en liasse au soutien des présentes sous la cote **P-7**.
17. Moins de 5 minutes après avoir rencontré un vendeur identifié CHF et présent dans le magasin CHF, la demanderesse a fait le tour des modèles de téléviseurs en sa compagnie et elle a arrêté son choix sur le Sony LCD de 40 pouces.

18. Après avoir confirmé le prix et la disponibilité de ce produit, mais avant de finaliser la transaction d'achat, le vendeur et la demanderesse ont échangé sur la notion de la fragilité « connue » des composantes électroniques des appareils audio et vidéo et sur les problèmes courants pouvant affecter les téléviseurs.
19. Le vendeur a complété la discussion initiée par la demanderesse en insistant sur le fait que tous les appareils audio et vidéo n'étaient garantis qu'une année et qu'après ce délai, la demanderesse devait assumer les coûts de réparations et/ou de remplacement s'il y avait un bris ou un problème de fonctionnement.
20. Afin de pallier à ces deux situations et d'éviter que l'appareil ne soit plus couvert, le vendeur a présenté à la demanderesse le plan de protection « Centre Hi-Fi » qui ajoutait une période de protection additionnelle d'une durée de 4 ans moyennant la somme de 159,98 \$, laquelle protection couvrait les coûts des pièces et de la main-d'œuvre en cas de bris ou de défaut de fonctionnement qui pourraient survenir après la garantie d'une année du manufacturier.
21. Le vendeur a ajouté « qu'il existait un spécial » à l'effet que « la garantie prolongée se payait toute seule » puisqu'en l'absence de réclamation formulée durant la période de couverture, un crédit équivalent au coût du plan de protection pouvait être imputé à un achat futur.
22. En cas de problème, le vendeur a affirmé que la demanderesse n'avait qu'à rapporter le téléviseur au magasin pour en obtenir un nouveau dans les minutes qui suivraient.
23. Suite à ces représentations et sur la base de celles-ci, la demanderesse en a déduit que l'achat d'une garantie prolongée constituait l'unique façon de s'assurer que l'appareil puisse être réparé ou remplacé sans frais en cas de bris ou de défaut de fonctionnement après un an.
- 23.1 Autrement dit, les conséquences préjudiciables pour la demanderesse de ne pas acheter une garantie prolongée de CHF ont été prioritaires par le vendeur lors de ses représentations.
- 23.2 Le message véhiculé par CHF à la demanderesse et aux autres clients est le suivant : au-delà de la garantie d'un (1) an du manufacturier, il n'y a plus de couverture ou de protection contre les bris à moins d'acheter une garantie prolongée.
24. La demanderesse a donc décidé d'acheter ce plan de protection CHF en gardant en tête la déclaration du vendeur à l'effet que la garantie « se payait toute seule » si elle ne faisait aucune réclamation.
25. À compter de ce moment, la Demanderesse s'est dirigée au comptoir où elle a remis sa carte de crédit Visa Desjardins et un préposé lui a alors présenté un terminal (TPV) afin de valider la transaction « Accord D » au montant de 865,15 \$ (taxes incluses).



26. Par la suite, la demanderesse s'est vue remettre sa facture d'achat et une copie de son relevé TPV- Accord D, lequel mentionne l'identité du marchand no. MARH80557201 Centre Hi-Fi Chicoutimi, ainsi qu'un formulaire pour obtenir son rabais.
27. Le logo et le nom « Centre Hi-Fi » apparaissent sur la documentation remise à la demanderesse en plus d'être désigné sur la facture comme étant le vendeur.
28. Sur la facture de la demanderesse, le plan de protection acheté est désigné sous l'appellation « 5 AT » au prix de 159,98 \$ plus taxes et le document précise l'ajout d'une période 48 mois (4 ans) à la garantie du manufacturier qui semble prendre effet à l'expiration de celle-ci.
29. Lors de la transaction, aucune copie du plan de protection n'a été remise à la demanderesse et elle a été invitée à consulter le site internet de Centre Hi-Fi si elle désirait des informations additionnelles.
30. En aucun temps il n'a été question de l'existence de la garantie légale et le vendeur n'a pas plus fait référence à cette garantie.
31. Lors de son achat au magasin CHF du boulevard Talbot à Saguenay, arrondissement Chicoutimi, la demanderesse a constaté que le logo et les mots « Centre Hi-Fi » étaient affichés partout à l'intérieur du magasin, sur des banderoles, sur des affiches, sur les murs intérieurs et extérieurs de l'établissement, sur les cartes d'affaires, de même que sur tous les documents disponibles sur place et exposés à différents endroits à l'intérieur du magasin, incluant sur les cartons affichant les prix des biens en vente, sur les produits offerts et sur les affiches sur faisant la promotion d'un plan de protection supplémentaire.
32. La demanderesse a fait les mêmes observations dans au moins un autre établissement CHF qu'elle a visité dans la région de Montréal.
33. La demanderesse a décidé d'acheter ce téléviseur chez ce détaillant CHF, principalement en raison du prix qui lui convenait (549,99 \$), mais également parce qu'il s'agissait d'un magasin de la bannière Centre Hi-Fi qu'elle connaissait bien.
34. La demanderesse communique comme pièce **P-8** les listes des succursales CHF en date du 9 octobre 2015 et du 7 mai 2017 provenant du site internet des défenderesses CHF.
35. La demanderesse n'a jamais pensé que le vendeur était 9246-9352 Québec inc. et que CHF n'avait aucune obligation envers elle dans le cadre de cet achat.
- 35.1 Par son modèle d'affaires et la conduite de ses affaires, CHF Bureau chef donne aux consommateurs des motifs raisonnables de croire, selon l'impression générale, que tous les détaillants opérant sous la bannière CHF, notamment la défenderesse CHF Chicoutimi et 9246-9352, sont ses mandataires, puisqu'elle n'a pris aucun moyen pour éviter cette confusion prévisible.



36. Plusieurs autres clients des défenderesses CHF Chicoutimi, CHF Bureau chef et CHF ont été exposés aux représentations et pratiques de commerce vécues par la demanderesse à l'effet que les appareils achetés n'étaient garantis qu'un an et/ou qu'une garantie prolongée permettait d'éviter de payer des frais de réparation ou de remplacement après ce délai.
37. La demanderesse se propose d'agir à titre de représentante des membres et elle se qualifie pour occuper ce rôle.

#### **LA DÉFENDERESSE CHF CHICOUTIMI**

38. La défenderesse CHF Chicoutimi est opérée par 9246-9352 Québec inc. laquelle exploite sept (7) autres établissements s'affichant tous sous la bannière Centre Hi-Fi, tel qu'il appert de la pièce P-1.
39. Les activités commerciales effectuées au Québec sous la désignation « Centre Hi-Fi » sont encadrées et contrôlées contractuellement par CHF Bureau chef, laquelle opère seize (16) succursales de vente au détail sous la bannière Centre Hi-Fi.
40. La défenderesse CHF Chicoutimi est un membre franchisé du réseau de franchises CHF opéré par CHF Bureau Chef.
41. La défenderesse CHF Chicoutimi vend des plans de protection (garanties prolongées) à ses clients dont le contenu a été élaboré et commercialisé par la défenderesse CHF Bureau chef.

#### **Dépôt dans un compte en fidéicomis**

- 41.1 CHF Chicoutimi et/ou 9246-9352 Québec inc. et toutes les succursales opérées par cette entité n'ont pas déposé dans un compte en fidéicomis les sommes issues de la vente de garanties prolongées dont l'objet principal, soit la protection en cas de bris, devait survenir plus de deux mois après la conclusion du contrat.
- 41.2 Aucun cautionnement n'a non plus été fourni à cet égard au président de l'Office par CHF Chicoutimi et/ou 9246-9352 Québec inc.
- 41.3 Le site web de l'Office ne fait état d'aucune exemption à l'article 256 L.p.c. en faveur de CHF Chicoutimi et/ou 9246-9352 Québec inc.
- 41.4 Aucune déclaration à l'effet qu'un compte en fidéicomis a été utilisé pour déposer les sommes issues de la vente de garanties supplémentaires n'apparaît avoir été effectuée au président de l'Office.

**LA DÉFENDERESSE CHF BUREAU CHEF**

42. La défenderesse CHF Bureau chef est la propriétaire exclusive de la marque de commerce, du nom et du logo identifié à la bannière Centre Hi-Fi, tel qu'il appert des relevés de l'Office de la propriété intellectuelle enregistrés sous le numéro TMA433386 communiqués en liasse au soutien des présentes sous la cote **P-9**.
43. La défenderesse CHF Bureau chef s'affiche comme le franchiseur officiel de la bannière Centre Hi-Fi au Québec.
44. La défenderesse CHF Bureau chef apparait être la détentrice exclusive des droits de « registrant » et d'administrateur du nom de domaine « centrehifi.com », tel qu'il appert des relevés du registre des noms de domaines « Whois » datés du 9 octobre 2015 et du 7 mai 2017 communiqués au soutien des présentes sous la cote **P-10**.
45. L'adresse et le nom d'affaires qui apparaissent au registre Whois coïncident avec la désignation du principal établissement de la défenderesse CHF Bureau chef et de la défenderesse CHF qui est identifié au REQ.
46. Dans le cours de ses activités de franchiseur de la bannière Centre Hi-Fi, la défenderesse CHF Bureau chef octroie des droits exclusifs et avantages à ses cocontractants (membres et/ou franchisés) sur des territoires définis, tel qu'il appert de la documentation apparaissant sur le site internet communiquée en liasse au soutien des présentes sous la cote **P-11**.
47. La défenderesse CHF Bureau chef chapeaute un regroupement d'achat au bénéfice des détaillants opérant sous cette bannière, dont la défenderesse CHF Chicoutimi fait partie et avec qui elle a conclu une entente lui permettant d'utiliser la bannière Centre Hi-Fi moyennant certaines conditions et rétributions, tel qu'il appert de l'entente conclue le 11 septembre 2011 communiquée sous pli confidentiel au soutien des présentes sous la cote **P-12**.
48. En vertu des ententes conclues avec ses membres détaillants, la défenderesse CHF Bureau chef octroie des droits d'utilisation de sa marque de commerce « Centre Hi-Fi » et elle permet notamment l'ouverture de succursales sous ce nom.
49. La défenderesse CHF Bureau chef est aussi responsable de la gestion et de l'élaboration des campagnes de promotion et de publicité pour les détaillants, en plus de gérer et de contrôler la totalité de l'information liée à la bannière Centre Hi-Fi qui est disponible en ligne, tel qu'il appert de la pièce P-11.
50. Sur son site internet, la défenderesse CHF Bureau chef commercialise et fait la promotion des plans de protection élaborés par elle, lesquels sont vendus dans tous les établissements opérant sous la bannière Centre Hi-Fi, tel qu'il appert de la pièce P-11.

51. En contrepartie des droits et avantages conférés dans les ententes avec ses membres (détaillants), la défenderesse CHF Bureau chef perçoit un frais mensuel et une redevance mensuelle continue sur les revenus mensuels bruts des détaillants, lesquels incluent la vente de garanties prolongées, tel qu'il appert de la pièce P-12.
52. La défenderesse CHF Bureau chef opère également seize (16) succursales de vente au détail sous la bannière Centre Hi-Fi, lesquelles sont toutes situées aux mêmes adresses que celles opérées par la défenderesse CHF (2763923 Canada inc.), tel qu'il appert des pièces P-2 et P-3.

#### **Dépôt dans un compte en fidéicommiss**

- 52.1 CHF Bureau chef et toutes les succursales opérées par cette entité au Québec n'ont pas déposé dans un compte en fidéicommiss les sommes issues de la vente de garanties prolongées dont l'objet principal, soit la protection en cas de bris, devait survenir plus de deux mois après la conclusion du contrat.
- 52.2 Aucun cautionnement n'a non plus été fourni à cet égard au président de l'Office par CHF Bureau chef.
- 52.3 Le site web de l'Office ne fait état d'aucune exemption à l'article 256 L.p.c. en faveur de CHF Bureau chef.
- 52.4 Aucune déclaration à l'effet qu'un compte en fidéicommiss a été utilisé pour déposer les sommes issues de la vente de garanties supplémentaires n'apparaît avoir été effectuée au président de l'Office.

#### **LA DÉFENDERESSE CHF**

53. D'emblée, le domicile de la défenderesse CHF est situé à la même adresse que celui de la défenderesse CHF Bureau chef et l'établissement principal de ces deux défenderesses qui opère sous la bannière Centre Hi-Fi est également situé à la même adresse, tel qu'il appert des pièces P-2 et P-3.
54. Dans l'affichage et l'aménagement de cet établissement principal, rien ne permet de distinguer l'une ou l'autre de ces défenderesses qui s'identifient toutes les deux sous la dénomination Centre Hi-Fi.
55. Des affiches faisant la promotion du plan de protection Centre Hi-Fi apparaissant sur le site internet des défenderesses CHF Bureau chef et CHF sont installées sur les comptoirs de cet établissement principal.
56. Dans le cadre de ses activités de vente au détail, la défenderesse CHF commercialise les plans de protection visés par la présente demande.

**Dépôt dans un compte en fidéicommiss**

- 56.1 CHF et toutes les succursales opérées par cette entité au Québec n'ont pas déposé dans un compte en fidéicommiss les sommes issues de la vente de garanties prolongées dont l'objet principal, soit la protection en cas de bris, devait survenir plus de deux mois après la conclusion du contrat.
- 56.2 Aucun cautionnement n'a non plus été fourni à cet égard au président de l'Office par CHF.
- 56.3 Le site web de l'Office ne fait état d'aucune exemption à l'article 256 L.p.c. en faveur de CHF.
- 56.4 Aucune déclaration à l'effet qu'un compte en fidéicommiss a été utilisé pour déposer les sommes issues de la vente de garanties supplémentaires n'apparaît avoir été effectuée au président de l'Office.

**B- LES FAITS AU SOUTIEN DU RECOURS CONTRE SEARS, SES ADMINISTRATEURS PERSONNELLEMENT ET FTI CONSULTING****LE CAS DE LA MEMBRE FRANCE GIROUARD**

57. Le 9 octobre 2010, France Girouard a acheté une garantie prolongée sur un réfrigérateur qu'elle s'est procurée au magasin de la défenderesse Sears situé au 3005, boul. Le Carrefour, Laval (Québec), tel qu'il appert de la facture d'achat datée du 9 octobre 2010 communiquée au soutien des présentes sous la cote **P-13**.
58. Mme Girouard a choisi ce modèle de réfrigérateur puisque, selon les spécifications demandées, il s'agissait du seul appareil dont les dimensions permettaient l'installation à son domicile.
59. Mme Girouard a visité plusieurs détaillants au cours des semaines précédant son achat chez la défenderesse Sears.
60. Lorsqu'elle s'est présentée chez la défenderesse Sears, elle savait exactement le modèle désiré et le prix qu'elle souhaitait payer.
61. Dans ce contexte, le vendeur de la défenderesse Sears a rapidement saisi les besoins de Mme Girouard et il a accepté de lui vendre l'appareil au même prix que celui obtenu d'un compétiteur.
62. Avant de finaliser la transaction, le vendeur a proposé à Mme Girouard l'achat d'un plan de protection supplémentaire (garantie prolongée) d'une durée de 60 mois (5 ans) et ses représentations afin de convaincre Mme Girouard d'acheter la garantie prolongée ont duré entre 5 et 10 minutes.
63. Le plan de protection prenait [...] effet à la date d'achat et englobait la période visée par la garantie d'une (1) année du manufacturier.

63.1 Tous les plans de protection vendus par Sears prévoient le remboursement proportionnel à la durée restante en cas d'annulation, tel qu'il appert de la clause no. 6 de la pièce P-13 et P-13.1 en version agrandie, laquelle se lit comme suit :

« 6. **ANNULATION** : [...] si vous annulez ou si nous annulons le présent contrat de protection dans la période de soixante (60) jours suivant la date d'achat, ou avant la fin de la garantie complète du fabricant couvrant le produit en entier, à l'exclusion des garanties couvrant les pièces constituant du produit, nous rembourserons le prix total payé pour votre contrat de protection (« prix total »). Si le présent contrat de protection est annulé par la suite, nous vous rembourserons une partie du prix total proportionnelle à la durée à courir du contrat de protection calculé sur une base mensuelle. [...] »

64. Le vendeur a justifié l'utilité de cette protection additionnelle en affirmant que Mme Girouard devait assumer les coûts des réparations si le réfrigérateur venait à briser ou s'il cessait de fonctionner après la période de couverture de la garantie du manufacturier d'une année.
65. À la suite de ces représentations du vendeur portant sur la garantie prolongée et sur la foi de celles-ci, Mme Girouard a accepté d'acheter le réfrigérateur et le plan de protection.
- 65.1 Autrement dit, les conséquences préjudiciables pour Mme Girouard de ne pas acheter une garantie prolongée de Sears ont été priorisées par le vendeur lors de ses représentations.
- 65.2 Le message véhiculé par Sears aux clients est le suivant : au-delà de la garantie d'un (1) an du manufacturier, il n'y a plus de couverture ou de protection contre les bris à moins d'acheter une garantie prolongée.
66. Le vendeur a également ajouté à Mme Girouard qu'en « bout de ligne », le plan de protection « ne coûtait rien » si aucun appel de service n'était effectué durant la période de couverture, puisqu'un crédit équivalent au prix payé pour la garantie prolongée serait applicable sur un achat futur.
67. Sécurisée, Mme Girouard s'est alors dirigée vers un comptoir pour finaliser la transaction d'achat.
68. Du début des discussions avec le vendeur à la finalisation de la transaction, le vendeur ne lui a pas parlé de la garantie légale, et ce, d'aucune façon.
69. Au fil des années qui ont suivi, Mme Girouard a rencontré quelques problèmes et irritants mineurs avec son réfrigérateur, mais celle-ci s'est toujours gardé de faire une réclamation afin d'éviter de « perdre » son crédit sur un éventuel achat.

70. À l'automne 2015, la période de couverture de la garantie prolongée s'est terminée et Mme Girouard est retournée le 16 décembre 2015 chez le même détaillant Sears où elle s'est prévalu de son « crédit » de 219,99 \$ (désigné aux fins de la présente procédure comme étant un « bon de marchandise équivalent à un crédit contre un achat ») sur l'achat d'un lave-vaisselle.
71. La marche à suivre pour réussir à faire reconnaître et appliquer ce crédit/coupon sur l'achat du lave-vaisselle a été complexe et ardue.
72. Mme Girouard a connaissance d'au moins une autre personne ayant été exposée à des représentations similaires lors de l'achat d'une garantie prolongée auprès de la défenderesse Sears.
73. Plusieurs clients de la défenderesse Sears ont acheté des garanties prolongées à la suite de représentations à l'effet que les biens achetés n'étaient garantis qu'une année et/ou que l'achat d'une garantie prolongée permettait d'éviter de payer des frais pour la réparation ou le remplacement après ce délai.
- 73.1 En tout temps pertinent, Sears administrait ses plans de protection et assurait elle-même la pérennité des garanties prolongées vendues dans ses établissements.
- 73.2 Jusqu'à sa liquidation, Sears a fourni au Président de l'Office un cautionnement d'une valeur de 200 000,00 \$ tel qu'il appert d'une confirmation de l'Office communiqué au soutien des présentes sous la cote P-13.2.

### **LES DIFFICULTÉS FINANCIÈRES DE SEARS**

- 73.3 Depuis plusieurs années, Sears connaît des difficultés financières importantes qui ont miné sa capacité à pouvoir assumer la poursuite quotidienne de ses activités de vente au détail, tel qu'il appert d'articles de journaux et de communiqués entre 2015 et 2017 communiqués au soutien des présentes sous la cote P-13.3.
- 73.4 Depuis 2014, la société a cumulé des pertes à la clôture de chacun de ses exercices financiers.
- 73.5 À titre d'illustration de ces difficultés, 3 500 emplois ont été supprimés entre 2014 et 2016, les revenus de l'entreprise ont chuté d'environ 9 % à chacun des trimestres, alors que les pertes nettes pour les exercices 2015 et 2016 sont respectivement de 123,5 M\$ et 275,2 M\$.
- 73.6 Or, malgré d'importantes réductions de ses coûts d'exploitation, soit 125 M\$ en 2015 et 159,6 M\$ en 2016, et des revenus provenant de la réduction de son parc immobilier, Sears a dû continuer d'hypothéquer ses autres actifs afin de se financer et de compenser son manque de liquidités.
- 73.7 Le 9 décembre 2016, à l'occasion de la clôture de son 3<sup>e</sup> trimestre, Sears a confirmé une baisse significative de ses revenus, soit de l'ordre de 21,1 % par rapport à l'exercice précédent.



- 73.8 Le 20 mars 2017, afin de répondre à la précarité de sa situation, Sears a conclu une convention de prêt de 300 M\$ avec KKR Capital Markets LLC et GACP Finance Co., LLC.
- 73.9 Au trimestre se terminant le 29 avril 2017, Sears a néanmoins déclaré une perte nette de 144 M\$ sur des revenus de 505,5 M\$ (-15 %) et elle disait avoir besoin de 175 M\$ additionnels pour poursuivre ses opérations alors que sa capacité d'emprunt était limitée à 109 M\$.
- 73.10 Le 13 juin 2017, Sears a confirmé en ces termes que ses liquidités étaient insuffisantes pour assurer la continuité de ses opérations : « Selon l'évaluation actuelle de la direction, la trésorerie et les flux de trésorerie prévus liés aux activités d'exploitation ne seront probablement pas suffisants pour acquitter les obligations qui deviendront exigibles au cours des 12 prochains mois », tel qu'il appert des communiqués datés du 13 juin 2017 communiqués au soutien des présentes sous les cotes **P-13.4** et **P-13.5**.
- 73.11 Le 22 juin 2017, Sears annonçait qu'elle s'était placée sous la protection de la LACC dans le but d'entamer une ultime tentative de restructuration de ses activités, tel qu'il appert d'un communiqué daté du 22 juin 2017 communiqué au soutien des présentes sous la cote **P-13.6**.
- 73.12 Le 13 juillet 2017, le tribunal autorisait le paiement de primes à 159 hauts dirigeants, administrateurs et directeurs de magasins jusqu'à concurrence de 9,2 M\$, tel qu'il appert d'un article de journal daté du 14 juillet 2017 communiqué au soutien des présentes sous la cote **P-13.7**.
- 73.13 Le 18 octobre 2017, l'entreprise annonçait sa liquidation et confirmait qu'elle n'honorait plus les garanties prolongées vendues jusqu'à ce jour, tel qu'il appert d'un communiqué daté du 18 octobre 2017 communiqué au soutien des présentes sous la cote **P-13.8**.
- 73.14 La valeur de garanties prolongées achetées par les consommateurs dans les semaines, les mois et l'année précédente a donc été réduite à néant.

### **LE COMPORTEMENT DES ADMINISTRATEURS DE SEARS**

- 73.15 Au cours de leur dernier mandat débutant le 13 mai 2016, les administrateurs ont pris des décisions et géré une entreprise qui était alors confrontée à des difficultés financières telles qu'elles menaçaient sa survie, lequel scénario s'est matérialisé par la confirmation de la liquidation de Sears le 18 octobre 2017.
- 73.16 Or, malgré que les administrateurs connaissaient ou ne pouvaient nier l'existence d'un risque probable à l'effet que les difficultés financières de l'entreprise pouvaient affecter soit la valeur, la durée et/ou la portée des garanties prolongées vendues, ils n'ont rien fait pour :
- a) modifier, décourager et/ou restreindre la vente de garanties prolongées afin d'atténuer le risque encouru par les clients;

- b) dénoncer aux clients l'existence du risque à l'effet que les difficultés financières de l'entreprise pouvaient avoir un effet négatif sur les garanties prolongées vendues;
- c) mettre en place un protocole ou une directive destinée aux vendeurs afin que les acheteurs de garanties prolongées soient préalablement informés de l'existence du risque d'insolvabilité.

### **FTI CONSULTING INC. ET LA VENTE DE GARANTIES PROLONGÉES APRÈS LE 22 JUIN 2017**

- 73.17 Après le 22 juin 2017, dans le cadre de la restructuration envisagée, Sears et/ou FTI ont maintenu les activités dans les magasins Sears, incluant la vente et le renouvellement de plans de protection.
- 73.18 Toutefois, ni Sears, ni FTI n'ont pris quelque mesure que ce soit afin qu'il soit mentionné aux consommateurs qu'il existait un risque et/ou une probabilité que l'entreprise cesse ses opérations, qu'elle soit liquidée ou qu'elle ne puisse plus honorer les plans de protection.
- 73.19 La vente de plans de protection s'est ainsi poursuivie au moins jusqu'au 18 octobre 2017, date à laquelle la liquidation de tous les biens de Sears a été entreprise.
- 73.20 Depuis le 19 octobre 2017, Sears n'honore plus les garanties prolongées vendues.
- 73.21 Au surplus, Sears et/ou FTI ont même énoncé une directive aux consommateurs à l'effet qu'après le 19 octobre, « Les clients ne bénéficient d'aucune garantie autre que celle du fabricant ».
- 73.22 Sears et/ou FTI s'étaient toutefois engagés à rembourser les garanties prolongées achetées dans les 30 jours précédant la date de la demande de remboursement par un consommateur.
- 73.23 En dépit de cet engagement, aucune somme n'a été prévue ou budgétée, la Cour n'a pas approuvé une telle procédure de réclamation et le site web du contrôleur ne contient aucun renseignement à ce sujet.
- 73.24 La présente demande d'autorisation d'exercer une action collective devrait être considérée comme une demande de remboursement par l'ensemble des clients visés.



**LES FAITS AU SOUTIEN DU RECOURS CONTRE BEG****LE CAS DE LA MEMBRE GUYLAINE HÉBERT**

74. Le 21 décembre 2010, Guylaine Hébert a acheté une garantie prolongée sur un ordinateur portable de marque Toshiba qu'elle s'est procurée dans un magasin BEG situé au 2790, Chemin Chambly (Québec), tel qu'il appert de la facture d'achat de BEG datée du 21 décembre 2010 communiquée au soutien des présentes sous la cote **P-14**.
75. Mme Hébert recherchait un nouvel ordinateur pour son usage personnel.
76. Avant de se rendre au magasin BEG de Longueuil, Mme Hébert a fait le tour des principaux détaillants d'informatique de son secteur.
77. Lors de sa visite au magasin BEG de Longueuil, elle était accompagnée de son conjoint.
78. Dès leur arrivée, un vendeur leur a présenté différents modèles ainsi que leurs caractéristiques et les options disponibles pour chacun à l'intérieur du budget de Mme Hébert.
79. Au bout d'environ 20 minutes, Mme Hébert a arrêté son choix sur un appareil de marque Toshiba.
80. Avant de diriger Mme Hébert vers les caisses afin de finaliser la transaction, le vendeur lui a proposé d'acheter un plan de protection additionnelle (garantie prolongée) dont le service était assuré à même le magasin.
81. Ce plan avait pour objet d'ajouter 24 mois (2 ans) à la garantie d'une (1) année du manufacturier pour un coût de 149,99 \$ plus taxes.
82. Le vendeur a mentionné l'existence de services connexes découlant du plan, en insistant sur les risques que Mme Hébert encourait si elle n'achetait pas la garantie prolongée proposée.
83. Les arguments du vendeur se résument comme suit :
  - a) Mme Hébert ne pouvait s'adresser à un magasin BEG pour remplacer ou faire réparer son ordinateur que si le bris ou le défaut de fonctionnement survenait dans les 30 jours de l'achat.
  - b) Après ce délai, Mme Hébert devait s'adresser uniquement au fabricant.
  - c) Tous les ordinateurs ne sont garantis qu'une (1) année et si un bris survenait après l'expiration de la garantie du manufacturier, il était fort probable que Mme Hébert devrait payer pour les réparations ou le remplacement de son appareil.
  - d) C'est la « loi et non le détaillant qui offre une garantie légale sur les appareils neufs » et en cas de bris après un an, Mme Hébert ne pourrait s'adresser qu'au fabricant pour résoudre ses « problèmes ».

84. Les représentations du vendeur sur le plan de protection ont duré environ 5 à 8 minutes et elles ont convaincu Mme Hébert d'acheter le plan de protection.
- 84.1 Autrement dit, les conséquences préjudiciables pour Mme Hébert de ne pas acheter une garantie prolongée de BEG ont été prioritaires par le vendeur ou le préposé lors de ses représentations.
- 84.2 Le message véhiculé par BEG aux clients est le suivant : au-delà de la garantie d'un (1) an du manufacturier, il n'y a plus de couverture ou de protection contre les bris à moins d'acheter une garantie prolongée.
85. Mme Hébert s'est donc dirigée vers une caisse où un préposé l'attendait avec la boîte du portable Toshiba sélectionné.
86. Ce préposé lui a confirmé le prix de son ordinateur et le coût pour l'achat du plan de protection de deux années supplémentaires.
87. Mme Hébert a payé avec sa carte de crédit Mastercard et le préposé lui a remis un relevé de transaction (TPV) ainsi qu'un autre document hybride jumelant sa facture et les principaux éléments du plan de protection.
88. Mme Hébert n'a pas reçu l'avis sur la garantie légale et ne lui a pas mentionné l'existence de cette garantie.
- 88.1 En règle générale, sur chacun des comptoirs-caisse des établissements BEG se trouve un présentoir dans lequel les dépliants sur les garanties prolongées sont insérés.
- 88.2 Ces dépliants expliquent les principaux éléments de couverture, de prix, de durée, modalités et exclusions, tel qu'il appert de deux dépliants intitulés « Plans du Programme de service fiable » de février et mai 2017 communiqués au soutien des présentes sous la cote P-14.1.
- 88.3 Les modalités contractuelles contenues dans les deux dépliants mentionnent notamment ce qui suit :

**« Responsabilité du fabricant.**

Pendant la durée de la garantie du fabricant, veuillez communiquer directement avec le fabricant. Si vous communiquez avec nous, nous donnons les coordonnées du fabricant concernés.

(...)

**Accord complet :**

Ce document constitue l'accord complet entre vous et nous relativement à ce plan. Il n'y a pas d'autres représentations, garantie ou entente entre vous et nous relativement à ce plan ou au produit.

(Nos soulignements)

89. Plusieurs clients de la défenderesse BEG ont acheté des garanties prolongées à la suite de représentations à l'effet que les biens achetés n'étaient garantis qu'une année et/ou que l'achat d'une garantie prolongée permettait d'éviter de payer des frais pour la réparation ou le remplacement après ce délai.

#### Dépôt dans un compte en fidéicommiss

- 89.1 BEG et les succursales opérées par cette entité au Québec n'ont pas déposé dans un compte en fidéicommiss les sommes issues de la vente de garanties prolongées dont l'objet principal, soit la protection en cas de bris, devait survenir plus de deux mois après la conclusion du contrat.
- 89.2 Aucun cautionnement n'a non plus été fourni à cet égard au président de l'Office par BEG.
- 89.3 Le site web de l'Office ne fait état d'aucune exemption à l'article 256 L.p.c. en faveur de BEG.
- 89.4 Aucune déclaration à l'effet qu'un compte en fidéicommiss a été utilisé pour déposer les sommes issues de la vente de garanties supplémentaires n'apparaît avoir été effectuée au président de l'Office.

### **LES FAITS AU SOUTIEN DU RECOURS CONTRE BRICK**

#### **LE CAS DU MEMBRE DAVE GUENETTE**

90. Le 15 août 2010, Dave Guénette a acheté une garantie prolongée sur un ensemble audio-vidéo comprenant un téléviseur Sony ACL 42 pouces, un cinéma maison et un meuble vidéo qu'il s'est procurés au magasin Brick situé au 1530, boul. Le Corbusier, Laval, tel qu'il appert de la facture d'achat datée du 15 août 2010 et de la garantie prolongée communiquées en liasse au soutien des présentes sous la cote **P-15**.
91. Au mois d'août 2010, M. Guénette était à la recherche d'un téléviseur muni d'un écran de 42 pouces.
92. Lorsqu'il s'est présenté chez ce détaillant Brick de Laval, M. Guénette avait déjà une bonne idée du modèle désiré et de son budget pour cet achat.
93. Après avoir échangé avec le vendeur sur le type de produit qu'il recherchait, M. Guénette a arrêté son choix sur un téléviseur de marque Sony, d'un cinéma maison et d'une base pour son téléviseur.
94. Avant de finaliser la transaction, le vendeur de la défenderesse Brick a proposé une garantie prolongée à M. Guénette.
95. Cette garantie prolongée au coût de 239,99 \$ plus taxes couvrait les biens pendant 4 années.

- 95.1 Bien que certains services accessoires et/ou connexes entrent en vigueur dès la prise de possession (livraison) du bien, l'obligation principale, soit la protection en cas de bris prend place à l'expiration de la garantie d'une année du fabricant, soit plus de deux mois après la conclusion du contrat de vente.
96. Le gérant du magasin est même venu appuyer le vendeur et ensemble ils ont fait certaines mises en garde à M. Guénette dans l'éventualité où il décidait de ne pas acheter la garantie prolongée, lesquelles se résument comme suit :
- a) Ils ont affirmé que la garantie du fabricant ne « couvrait qu'une année ».
  - b) Ils ont déclaré qu'en cas de bris ou de défaut de fonctionnement après cette période, M. Guénette devrait payer pour le coût des réparations, soit les pièces, la main-d'œuvre et possiblement les frais de transport.
  - c) Ils ont beaucoup insisté sur la fragilité des composantes électroniques des appareils et surtout sur le caractère exorbitant du coût des pièces lors d'une réparation.
  - d) Ils ont ajouté que le coût d'une réparation dépassait fréquemment la valeur initiale déboursée pour l'achat d'un appareil électronique.
  - e) Dans tous les cas, le vendeur a affirmé que M. Guénette devrait se « débrouiller seul » si un bris survenait après l'expiration de la garantie du fabricant.
97. Le vendeur a également souligné que le plan de protection « se payait tout seul » car si M. Guénette ne logeait aucune réclamation au cours des 4 prochaines années, le montant payé pour la garantie prolongée pourrait être crédité sur un futur achat.
98. Pour M. Guénette, l'essentiel des représentations des employés de la défenderesse Brick reviennent à ceci : sans garantie prolongée, les biens achetés n'étaient plus protégés après un an.
- 98.1 Autrement, les conséquences préjudiciables pour M. Guénette de ne pas acheter une garantie prolongée de Brick ont été prioritaires par le vendeur lors de ses représentations.
- 98.2 Le message véhiculé par Brick à ses clients est le suivant : au-delà de la garantie d'un (1) an du fabricant, il n'y a plus de couverture ou de protection contre les bris à moins d'acheter une garantie prolongée.
99. M. Guénette a donc accepté d'acheter le plan de protection afin d'éviter toute problématique ou risque de payer pour une réparation ou un remplacement.
100. Ni le vendeur, ni le gérant n'ont à quelque moment fait référence ou discuté de la garantie légale.

101. Plusieurs clients de la défenderesse Brick ont acheté des garanties prolongées à la suite de représentations à l'effet que les biens achetés n'étaient garantis qu'une année et/ou que l'achat d'une garantie prolongée permettait d'éviter de payer des frais pour la réparation ou le remplacement après ce délai.
102. Le site web de la défenderesse Brick contient par ailleurs des représentations sur la façon dont les garanties prolongées doivent être proposées à l'ensemble de la clientèle, tel qu'il appert des pages web du site internet de la défenderesse Brick portant sur la vente de garanties prolongées en date du 11 octobre 2015 et du 8 mai 2017 communiquées en liasse au soutien des présentes sous la cote **P-16**.
103. Ces pages peuvent se résumer comme suit :
- a) Les garanties du manufacturier sont d'une année « seulement ».
  - b) Lorsque la défenderesse Brick présente les avantages de ses garanties prolongées sur son site internet, elle réfère au mot « *inquiétudes* » et au fait qu'en cas de bris, le « *coût des réparations peut pratiquement égaler le prix d'achat initial de l'article* ».
  - c) Plus loin dans cette documentation, la défenderesse Brick laisse planer l'absence de protection à l'expiration de la garantie du manufacturier lorsqu'elle mentionne : « *Le plan de protection Plus de Brick [...] a été conçu pour vous protéger contre les réparations et les coûts de remplacement inattendus au fil du temps* ».
  - d) L'impression générale de ces représentations est à l'effet que si les clients de Brick souhaitent bénéficier d'une quelconque protection au-delà de la garantie du manufacturier, la seule option est l'achat d'une garantie prolongée.

#### **Dépôt dans un compte en fidéicommiss**

- 103.1 Brick et les succursales opérées par cette entité au Québec, n'ont pas déposé dans un compte en fidéicommiss les sommes issues de la vente de garanties prolongées dont l'objet principal, soit la protection en cas de bris, devait survenir plus de deux mois après la conclusion du contrat.
- 103.2 Aucun cautionnement n'a non plus été fourni à cet égard au président de l'Office par Brick.
- 103.3 Le site web de l'Office ne fait état d'aucune exemption à l'article 256 L.p.c. en faveur de Brick.
- 103.4 Aucune déclaration à l'effet qu'un compte en fidéicommiss a été utilisé pour déposer les sommes issues de la vente de garanties supplémentaires n'apparaît avoir été effectuée au président de l'Office.

## LES FONDEMENTS JURIDIQUES DE L'ACTION COLLECTIVE ENVISAGÉE

### A) LES REPRÉSENTATIONS FAUSSES OU TROMPEUSES

104. Par leurs représentations fausses ou trompeuses, les défenderesses ont commis une faute contractuelle et une pratique de commerce interdite sanctionnées par la *Loi sur la protection du consommateur (L.p.c.)*, le *Code civil du Québec (C.c.Q.)* et la *Loi sur la concurrence*.
105. Au sens des articles 37 et 38 *L.p.c.*, un bien doit pouvoir servir à l'usage normal auquel il est destiné pendant une durée raisonnable.
106. Il s'agit des garanties légales de durabilité et de bon fonctionnement.
107. Il est notoire que les appareils neufs tels que ceux vendus par les défenderesses ont une expectative de durabilité et de bon fonctionnement qui excède largement la durée de la garantie du manufacturier d'un (1) an et des garanties prolongées de deux (2), trois (3) ou quatre (4) ans.
108. À titre illustratif, la durée moyenne d'usage normal d'un téléviseur est de douze ans (12), celle d'un réfrigérateur standard est de 13 ans et celle d'un ordinateur est de cinq (5) ans, tel qu'il appert des études communiquées en liasse au soutien des présentes sous les cotes **P-17**.
109. La durabilité de certains biens fréquemment vendus de même que les périodes de couverture des garanties prolongées vendues par les défenderesses sont représentées dans ce tableau :

Type de produits	Garanties fabricant	Garanties prolongées	Durée moyenne d'usage
Télévision ACL /Plasma	1 an	4 ans	12 ans
Laveuse frontale	1 an	4 ans	10 ans
Réfrigérateur et cuisinière	1 an	4 ans	13 ans
Four micro-ondes	1 an	4 ans	9 ans
Sécheuse	1 an	2 ans	13 ans
Ordinateur	1 an	2 ans	5 ans

110. Dans ce contexte, les représentations directes à l'effet qu'après l'expiration de la garantie du manufacturier, le consommateur doit assumer les coûts de réparation ou de remplacement, sont *prima facie* fausses ou trompeuses quant à l'existence, à la portée et à l'étendue de la garantie légale, en plus de sous silence un fait important.
111. En effet, lorsque les défenderesses représentent qu'après l'expiration de la garantie du manufacturier, dont la durée est généralement d'une année après l'achat, il n'y a plus de protection sauf si une garantie prolongée ou supplémentaire est achetée, non seulement elles induisent les consommateurs en erreur, mais elles commettent une pratique de commerce interdite en vue de vendre leurs plans de protection.

112. Ces représentations sur les conséquences préjudiciables de ne pas faire l'achat d'une garantie prolongée sont spécifiquement alléguées pour chacune des défenderesses.
113. Considérant que les allégations factuelles de représentations fausses ou trompeuses sont vraisemblables dans le cas de la demanderesse et des membres identifiés, elles doivent être tenues pour avérées, d'autant plus que l'exercice d'actions collectives a été autorisé sur la base de causes d'action identiques ou similaires.
114. Au même titre que les dispositions sur les pratiques de commerce applicables au présent litige, la garantie légale existait bien avant l'adoption des modifications à la *L.p.c.* et les défenderesses ne pouvaient s'y soustraire.
115. L'intention d'induire en erreur qui aurait pu ou non animer les vendeurs n'est d'aucune pertinence.
116. Lorsqu'elle est prouvée, l'intention ne fait qu'aggraver la faute.
117. En effet, il suffit de prouver que les représentations sont objectivement fausses ou trompeuses en suivant les critères d'analyse bien circonscrits par la Cour suprême du Canada dans l'affaire *Richard c. Time*.
118. Les représentations n'ont pas à être totalement fausses ou inexactes pour constituer un dol et/ou une pratique de commerce interdite au sens de la *L.p.c.*; elles ne peuvent tout simplement pas être fausses en partie.
119. Par ailleurs, toujours en application des enseignements de l'affaire *Richard c. Time*, le consommateur n'a pas à prouver qu'il s'est fondé sur une représentation fausse ou trompeuse pour donner ouverture aux recours et remèdes prévus à la *L.p.c.*, mais seulement que le contrat a été conclu à la suite d'une telle représentation.
120. La causalité intrinsèque à chaque consommateur, de même que les motivations individuelles et personnelles ayant mené à la décision de chacun n'ont pas à être prouvées et ne peuvent constituer un obstacle à l'autorisation d'exercer une action collective.
121. Si les conditions permettant d'établir une présomption absolue de préjudice ne sont pas réunies, la présomption réfragable de dol prévue à l'article 253 *L.p.c.* peut être utilisée.
122. Considérant la nature des manquements aux obligations notamment stipulées aux articles 219, 220 c), 227 et 228 *L.p.c.*, les défenderesses sont tenues au paiement de dommages punitifs en application de l'article 272 de cette même loi, d'autant plus qu'elles n'ont pas modifié les aspects fondamentaux de leur comportement à l'égard de leurs représentations entourant la vente de garanties prolongées.



**B) LE DÉFAUT DE DÉPOSER DANS UN COMPTE EN FIDÉICOMMIS**

- 122.1 Bien que certains services accessoires et/ou connexes puissent entrer en vigueur dès la prise de possession (livraison) du bien pour certaines garanties prolongées, l'obligation principale, soit la protection en cas de bris, prend effet à l'expiration de la garantie d'une année du manufacturier, soit plus de deux mois après la conclusion du contrat de vente.
- 122.2 Les défenderesses Centre Hi-Fi Chicoutimi, 9246-9352 Québec inc., Centre Hi-Fi, Centre Hi-Fi (2763923 Canada Inc.), Bureau en gros et Brick ont contrevenu à l'art. 256 L.p.c. en omettant de déposer dans un compte en fidéicommis, déclaré au président de l'Office, les sommes issues de la vente de garanties prolongées dont l'exécution de l'objet principal avait lieu plus de deux mois après la conclusion du contrat.

**C) LES FAUTES PERSONNELLES DES ADMINISTRATEURS DE SEARS ENTRE LE 13 MAI 2016 ET LE 22 JUIN 2017**Prudence et diligence

- 122.3 Les administrateurs de Sears visés par la présente demande ont engagé leur responsabilité personnelle en omettant d'agir avec prudence et diligence à l'égard des clients de Sears en ne mettant en place aucune mesure pour les informer que la situation financière précaire de l'entreprise pouvait affecter la durée et la portée des garanties prolongées vendues (art. 122 (1) b) de la Loi canadienne sur les sociétés par actions L.R.C. (1985), ch. C-44 (L.C.S.A) et l'art. 322 et 1457 C.c.Q.).

Passer sous silence un fait important

- 122.4 Il est de notoriété publique que la durée et la portée des garanties prolongées constituent les principales composantes de ce type de produit.
- 122.5 Or, contribuer à ne pas révéler aux consommateurs un fait qui pourrait affecter directement l'une de ces composantes revient à passer sous silence un fait important et à commettre une représentation fautive ou trompeuse au sens des articles 219, 220 b) et c), 227, 228 L.p.c. et 1401 C.c.Q.
- 122.6 Le fait de contribuer à la commission de telles représentations ou omissions engage la responsabilité personnelle des administrateurs visés dans la mesure où il s'agit d'une contravention à une règle intéressant l'ordre public (art. 227, 228 L.p.c. et art. 317 C.c.Q.)

Abus de droit

- 122.7 Les administrateurs visés savaient ou ne pouvaient ignorer que la situation financière précaire de l'entreprise constituait un risque et/ou une situation pouvant affecter négativement l'exécution des garanties prolongées.



- 122.8 Or, sachant ou ne pouvant ignorer la forte probabilité que Sears n'allait plus honorer les garanties prolongées vendues, le simple fait que les administrateurs gardent le silence, ou qu'ils s'abstiennent d'intervenir, a contribué à ce qu'une information déterminante ne soit pas dénoncée aux clients au moment de leurs achats, tout en maintenant une source de revenus à Sears.
- 122.9 Les actions et omissions des administrateurs visés ont eu comme conséquence directe de maximiser la vente de garanties prolongées dans un contexte d'insolvabilité et cela, au mépris des obligations futures envers les clients, ce qui donne ouverture à un recours direct et personnel sur les bases suivantes :
- a) une fin illégitime et inéquitable pour les clients (art. 241 b) L.C.S.A.);
  - b) un abus de droit à l'égard des clients ou une contravention à une règle intéressant l'ordre public (art. 7 et 317 C.c.Q.);
  - c) une faute génératrice de responsabilité extracontractuelle envers les clients (1457 C.c.Q.).
- 122.10 Par leur conduite, les administrateurs-défendeurs ont contribué au préjudice subis par les clients de Sears, lesquels se sont retrouvés à acheter des garanties prolongées sans aucune contrepartie ou prestation réciproque.

#### **D) LES FAUTES SPÉCIFIQUES DE LA DÉFENDERESSE FTI**

- 122.11 Après le 22 juin 2017, Sears a poursuivi ses activités de vente au détail sous la supervision de la défenderesse FTI à titre de « Contrôleur ».
- 122.12 Toutefois, bien que les consommateurs n'aient pas transigé directement avec la défenderesse FTI, elle a engagé sa responsabilité extracontractuelle envers les clients de Sears en supervisant et ratifiant les décisions des administrateurs dans la conduite des affaires après le 22 juin 2017.
- 122.13 Sous la supervision de FTI et des administrateurs, les préposés de Sears ont continué de vendre des garanties prolongées aux clients en passant sous silence les risques prévisibles découlant de l'insolvabilité de l'entreprise et/ou de la restructuration sous la LACC, lesquelles pouvaient affecter la valeur, la durée et/ou la portée des plans de protection.
- 122.14 La défenderesse FTI a non seulement permis que les préposés et vendeurs de Sears continuent de commettre des pratiques de commerce interdites, mais elle a surtout autorisé ces préposés et vendeurs à ne pas aviser les clients du risque bien réel que les garanties prolongées vendues ne soient jamais honorées.

### DISPOSITIONS LÉGISLATIVES APPLICABLES

123. Les articles 1 e.1), m) et o), 37, 38, 42, 43, 216, 218, 219, 220 c), 227, 228, 253, 254 à 260, 261 et 272 *L.p.c.* s'appliquent à l'action collective envisagée.
124. Les articles 25.4 et 25.6 du *Règlement d'application de la Loi sur la protection du consommateur* trouvent également application.
125. Quant au *Code civil du Québec*, la demanderesse réfère aux articles 306, 317, 1400, 1401, 1407, 2163 et 2908.
- 125.1 Les articles 122 et 141 de *Loi canadienne sur les sociétés par actions L.R.C. (1985)*, ch. C-44 trouvent également application.
126. Finalement, les dispositions de la *Loi sur la concurrence* applicables à l'action collective envisagée sont les suivantes : **52** (1), (1.1 a), (1.2), (2), (3), (4) et (6), **74.01** (1 a) et **74.08**.

### LES DOMMAGES

127. Les postes de dommages suivants peuvent être ouverts :
- a) Le remboursement des montants payés aux défenderesses pour l'achat de garanties prolongées vendues après le 30 juin 2010.
  - b) Une somme forfaitaire à être déterminée à titre de dommages punitifs pour le ou les manquement(s) à une ou des obligation(s) que la *L.p.c.* impose aux défenderesses et pour le caractère d'insouciance grave et répétitive de ce comportement.

### LE GROUPE

128. Le Groupe pour le compte duquel la demanderesse entend agir est décrit au premier paragraphe de la présente procédure.

### LES FAITS DONNANT OUVERTURE À UN RECOURS INDIVIDUEL DE LA PART DE CHACUN DES MEMBRES DU GROUPE

129. Pour chaque cause d'action [...], le fondement juridique du recours de chacun des membres contre les défenderesses est identique ou similaire [...].
130. En effet, les fautes commises par les défenderesses à l'endroit des membres, soit les représentations fausses ou trompeuses lors de la vente de garanties prolongées, sont très similaires, voire identiques à celles subies par la demanderesse.
- 130.1 Quant aux fautes reprochées aux administrateurs de Sears et à la défenderesse FTI, elles sont identiques ou similaires pour l'ensemble des clients ayant acheté des garanties prolongées chez Sears depuis le 13 juin 2016.

131. Chacun des membres a subi le même type de dommages que la demanderesse.
132. Les modifications à la *L.p.c.* entrées en vigueur le 30 juin 2010 avaient pour objectif de corriger certains volets de la vente de garanties prolongées par des détaillants telles que les défenderesses.
133. Toutefois, la transparence et la bonne foi qui incombait et incombent à chacune des défenderesses ont toujours été présentes malgré l'imposition d'une obligation spécifique des commerçants d'attirer l'attention des consommateurs sur l'existence de la garantie légale.
134. La demanderesse n'est pas en mesure d'évaluer le montant global des dommages subis par l'ensemble des membres, lequel pourra l'être lors de l'administration d'une preuve au fond en vue d'un recouvrement collectif.
135. Compte tenu des infractions commises à la *L.p.c.*, les défenderesses doivent également être tenues au paiement de dommages punitifs.
136. Quant au point de départ du délai de prescription du recours des membres à l'encontre de chacune des défenderesses, la demanderesse soumet notamment ce qui suit :
- a) En premier lieu, la nature même de la cause d'action, soit les représentations fausses et trompeuses à la base de l'action collective envisagée, a suspendu le délai de prescription pour tous les membres;
  - b) Deuxièmement, les procédures dans les dossiers *Fortier* et *Routhier* ont suspendu le délai de prescription.
  - c) Troisièmement, en vertu des règles de la solidarité, les délais de prescription des recours à l'encontre des défenderesses Centre Hi-Fi Chicoutimi, 9246-9352 Québec inc., Centre Hi-Fi, Centre Hi-Fi (2763923 Canada Inc.) ont tous été suspendus.

**LES QUESTIONS DE FAIT ET DE DROIT IDENTIQUES, SIMILAIRES OU CONNEXES (ART. 575 (1) C.P.C.)**

137. Les questions reliant chaque membre aux défendeurs [...], qui pourront être modifiées selon les circonstances et la preuve au fond, et que la demanderesse entend faire trancher par l'action collective envisagée sont :
- a) *Le fait de représenter à un consommateur que le bien vendu n'est garanti qu'un an constitue-t-il une représentation fausse ou trompeuse ?*
  - b) *Le fait de représenter à un consommateur que l'achat d'une garantie prolongée permet d'éviter de payer des frais pour la réparation ou le remplacement d'un bien après l'expiration de la garantie du manufacturier constitue-t-il une représentation fausse ou trompeuse ?*

- c) Est-ce que les défenderesses Centre Hi-Fi Chicoutimi, Centre Hi-Fi, 9246-9352 Québec inc. (Centre Hi-Fi), 2763923 Canada inc. (Centre Hi-Fi), The Brick LLP, Sears Canada et Bureau en gros ont effectué, après le 30 juin 2010, de fausses représentations lorsqu'elles ont vendu des garanties prolongées aux membres du groupe ?
- d) Est-ce que les vendeurs ont passé sous silence un fait important en ne dénonçant pas aux acheteurs de garanties prolongées chez Sears que les difficultés financières de l'entreprise risquaient de leur faire perdre la protection en cas de bris ?
- e) Est-ce que par leurs actions et omissions les administrateurs de Sears ont participé à la commission d'une pratique de commerce interdite et ont-ils commis une faute extracontractuelle à l'égard des acheteurs de garanties prolongées et dans l'affirmative, depuis quand et sont-ils personnellement et solidairement responsables des dommages ?
- f) Est-ce que la défenderesse FTI Consulting a commis une faute extracontractuelle à l'égard des clients de Sears ayant acheté des garanties prolongées après le 22 juin 2017 ?
- g) Advenant le cas de fausses représentations, quels sont les dommages subis par les membres découlant de chacune des contraventions ?
- h) Le délai de prescription a-t-il été suspendu [...] et dans l'affirmative, depuis quelle date ?
- i) Est-ce que les défenderesses sont tenues de payer des dommages punitifs ?

138. La principale question individuelle [...] à chacun des membres est :

*Quel est le montant des dommages subis par chacun des membres?*

**LES FAITS ALLEGUÉS PARAISSENT JUSTIFIER LES CONCLUSIONS RECHERCHÉES (ART. 575 (2) C.P.C.)**

139. À cet égard, la demanderesse réfère aux faits positifs contenus à ses allégations, mais également aux allégations des autres membres à la présente demande d'autorisation.

**LES CONCLUSIONS RECHERCHÉES**

140. Les conclusions recherchées par la demanderesse, qui pourront être modifiées en fonction des circonstances et de la preuve au fond, sont :

**ACCUEILLIR** la demande introductive d'instance en action collective.

**CONDAMNER** les défenderesses Centre Hi-Fi Chicoutimi, Centre Hi-Fi, 9246-9352 Québec inc. (Centre Hi-Fi), 2763923 Canada inc. (Centre Hi-Fi), The Brick LLP, Sears Canada et Bureau en gros à verser à chacun des membres du groupe les dommages équivalant au coût d'achat plus taxes des garanties supplémentaires, avec intérêt au taux légal majoré de l'indemnité additionnelle prévue à l'article 1619 C.c.Q., calculés à compter de la date de signification de la demande pour autorisation d'exercer une action collective dans le dossier 500-06-000709-143.

**CONDAMNER** les défenderesses Centre Hi-Fi Chicoutimi, Centre Hi-Fi, 9246-9352 Québec inc. (Centre Hi-Fi), 2763923 Canada inc. (Centre Hi-Fi), The Brick LLP, Sears Canada et Bureau en gros à verser une somme à être déterminée à titre de dommages punitifs fixés sur une base globale et forfaitaire, avec intérêt au taux légal majoré de l'indemnité additionnelle prévue à l'article 1619 C.c.Q., calculés à compter de la date de signification de la demande pour autorisation d'exercer une action collective dans le dossier 500-06-000709-143.

**CONDAMNER** solidairement les administrateurs de Sears visés par la demande au paiement des dommages pour la période du 13 mai 2016 au 18 octobre 2017, avec intérêt au taux légal majoré de l'indemnité additionnelle prévue à l'article 1619 C.c.Q., calculés à compter de la date de signification de la demande modifiée pour autorisation d'exercer l'action collective.

**CONDAMNER** la défenderesse FTI au paiement des dommages pour la période du 22 juin 2017 au 18 octobre 2017, avec intérêt au taux légal majoré de l'indemnité additionnelle prévue à l'article 1619 C.c.Q., calculés à compter de la date de signification de la demande modifiée pour autorisation d'exercer l'action collective.

**ORDONNER** que les dommages précités fassent l'objet d'indemnisations individuelles dans le cadre d'un processus de recouvrement collectif [...] selon les prescriptions des articles 595 C.p.c. et suivants.

**CONDAMNER** les défenderesses à tout autre remède approprié jugé juste et approprié.

**CONDAMNER** les défenderesses aux frais de justice, incluant les frais pour la publication et la diffusion de l'avis aux membres.

**LA COMPOSITION DU GROUPE (ART. 575 (3) C.P.C.)**

141. La composition du groupe rend difficile ou peu pratique l'application des règles sur le mandat d'ester en justice pour le compte d'autrui ou sur la jonction d'instance.
142. En effet, il est estimé que pour chacune des défenderesses, plusieurs milliers de personnes au Québec ont acheté leurs garanties prolongées.
143. Il serait impossible et impraticable pour la demanderesse de retracer et de contacter tous les membres afin que ceux-ci puissent se joindre dans une même demande en justice, d'autant plus qu'ils n'ont pas accès à la liste des clients des défenderesses et que seules ces dernières connaissent l'identité des personnes à qui des garanties prolongées ont été vendues.
144. Il serait tout aussi impossible et impraticable pour la demanderesse d'obtenir un mandat ou une procuration de chacune de ces personnes.
145. Il serait également peu pratique et contraire aux intérêts d'une saine administration de la justice ainsi qu'à l'esprit du *Code de procédure civile* que chacun des membres intente une action individuelle contre les défenderesses sur la même base.

**LA DEMANDERESSE EST EN MESURE D'ASSURER UNE REPRÉSENTATION ADÉQUATE DES MEMBRES (ART. 575 (4) C.P.C.)**

146. La demanderesse demande que le statut de représentant lui soit attribué pour les motifs ci-après exposés.
147. La demanderesse démontre un intérêt pour le dossier et pour le rôle qu'elle doit jouer dans la dénonciation des pratiques de commerce visées par l'action collective envisagée.
148. La demanderesse est disponible et en mesure d'assurer une représentation adéquate des membres.
149. Avec le support de ses avocats, la demanderesse a entrepris des démarches pour identifier de nouveaux membres.
150. La demanderesse a elle-même acheté une garantie prolongée après avoir subi les représentations fausses ou trompeuses reprochées aux défenderesses.
151. La demanderesse a une connaissance personnelle de la cause d'action alléguée dans la présente demande et elle comprend bien les faits donnant ouverture à sa réclamation ainsi qu'à celle des membres.
152. La demanderesse est disposée à consacrer le temps requis pour bien représenter les membres dans le cadre de la présente action collective, et ce, tant au stade de l'autorisation que du mérite.

153. La demanderesse entend représenter honnêtement et loyalement les intérêts des membres.
154. La demanderesse se déclare prête à faire tout en son possible pour exposer l'ensemble des faits donnant ouverture à l'action collective envisagée.
155. La demanderesse a allégué les faits et des documents pertinents illustrant les pratiques de commerce reprochées.
156. La demanderesse est donc en excellente position pour représenter adéquatement les membres dans le cadre de l'action collective envisagée.
157. Afin d'appuyer le statut de représentante qu'elle recherche, la demanderesse ajoute les éléments suivants :
  - a) Elle a été impliquée à titre de membre identifiée dans une autre demande d'autorisation d'exercer une action collective sur le même sujet dans le dossier de cour no. 500-06-000709-143.
  - b) Dès le mois de mars 2014, elle a participé aux démarches préparatoires à l'institution de cette action collective dans le dossier no. 500-06-000709-143.
  - c) Au printemps 2014, elle a participé avec d'autres membres identifiés à la préparation de la demande pour autorisation dans cet autre dossier en fournissant à ses procureurs les informations pertinentes à son cas.
  - d) Elle était disposée et aurait été prête à agir à titre de requérante dans le dossier no. 500-06-000709-143.
  - e) Elle est intéressée à s'impliquer dans la présente affaire depuis plusieurs années.
  - f) Elle a connaissance des enjeux depuis le jugement du juge Nollet à l'égard des défenderesses CHF et elle est prête à assumer seule le rôle de représentante.
  - g) Elle n'est d'aucune façon en conflit d'intérêt avec les membres.
  - h) Elle est prête à témoigner lors de l'audition de la demande pour autorisation afin de confirmer ce qui précède.



**LA PROPORTIONNALITÉ DANS L'ANALYSE DES CONDITIONS DE L'ARTICLE 575 C.P.C.**

158. L'action collective est le véhicule procédural tout désigné afin que les membres puissent faire valoir la réclamation découlant des faits allégués dans la présente demande.
159. Bien que le montant des dommages subis différera pour chaque membre, la ou les faute(s) commise(s) par chacune des défenderesses et la responsabilité en résultant sont identiques ou similaires à l'égard de chacun des membres.
160. Considérant le montant de la réclamation personnelle et individuelle de chacun des membres, ceux-ci se verraient privés de leur droit d'obtenir compensation en l'absence du véhicule procédural que représente l'action collective, et ce, principalement en raison du rapport disproportionné entre les coûts pour un recours individuel et le montant des dommages effectivement subis et exigibles.
161. Au surplus, la multiplicité potentielle des recours individuels des membres pourrait résulter en des jugements contradictoires sur des questions de faits et de droit identiques, ce qui serait contraire aux intérêts de la justice.

**DISTRICT JUDICIAIRE DE L'ACTION COLLECTIVE**

162. La demanderesse propose que l'action collective soit exercée devant la Cour supérieure siégeant dans le district judiciaire de Chicoutimi pour les motifs ci-après exposés.
163. La demanderesse réside dans le district de Chicoutimi et elle y a conclu le contrat de consommation visé par l'action collective envisagée dans un établissement opéré par la défenderesse CHF Chicoutimi.
164. Plusieurs membres sont domiciliés dans le district judiciaire de Chicoutimi et ses environs, sous réserve de la preuve qui pourra être faite à l'aide notamment des informations et données auxquelles seules les défenderesses ont accès.
165. Les défenderesses Sears et BEG ont chacune au moins une place d'affaires dans le district judiciaire de Chicoutimi.
166. Les garanties prolongées visées par l'action collective envisagée sont commercialisées partout au Québec par les défenderesses, incluant dans le district de Chicoutimi.



**SYNTHÈSE**

167. Les quatre conditions prévues à l'article 575 C.p.c. étant remplies, la présente demande doit être accueillie et l'exercice de l'action collective doit être autorisé.
168. La présente demande pour autorisation d'exercer une action collective est bien fondée en fait et en droit.

**POUR CES MOTIFS, PLAISE AU TRIBUNAL :**

**ACCUEILLIR** la demande modifiée pour autorisation d'exercer une action collective ;

**AUTORISER** l'exercice de l'action collective ci-après décrit :

***« Une action en dommages-intérêts contre les défenderesses afin de sanctionner des pratiques de commerce interdites dans le cadre de la vente de garanties prolongées. »***

**ATTRIBUER** à KARINE TREMBLAY le statut de représentant aux fins d'exercer l'action collective envisagée pour le compte du Groupe de personnes ci-après décrit :

***« Toutes les personnes ayant acheté après le 30 juin 2010 une garantie supplémentaire, ou tout autre produit du même type, des défenderesses Centre Hi-Fi Chicoutimi, Centre Hi-Fi, 9246-9352 Québec inc. (Centre Hi-Fi), 2763923 Canada inc. (Centre Hi-Fi), The Brick LLP, Sears Canada et Bureau en gros à la suite d'une représentation directe, ou par le biais de toute forme de publicité, à l'effet que les biens mobiliers neufs vendus étaient garantis pour une durée limitée d'un an ou moins***

**et**

**Toutes les personnes ayant acheté des défenderesses Centre Hi-Fi Chicoutimi, Centre Hi-Fi, 9246-9352 Québec inc. (Centre Hi-Fi), 2763923 Canada inc. (Centre Hi-Fi), The Brick LLP, Sears Canada et Bureau en gros une garantie prolongée alors que la somme payée n'a pas été déposée dans un compte en fidéicommis.**

**et**

**Toutes les personnes ayant acheté une garantie prolongée chez Sears après le 13 mai 2016 sans avoir été avisées que la protection en cas de bris risquait de ne pas être honorée.**

**IDENTIFIER** comme suit les principales questions de faits et de droit qui seront traitées collectivement :

- a) *Le fait de représenter à un consommateur que le bien vendu n'est garanti qu'un an constitue-t-il une représentation fausse ou trompeuse ?*
- b) *Le fait de représenter à un consommateur que l'achat d'une garantie prolongée permet d'éviter de payer des frais pour la réparation ou le remplacement d'un bien après l'expiration de la garantie du manufacturier constitue-t-il une représentation fausse ou trompeuse ?*
- c) *Est-ce que les défenderesses Centre Hi-Fi Chicoutimi, Centre Hi-Fi, 9246-9352 Québec inc. (Centre Hi-Fi), 2763923 Canada inc. (Centre Hi-Fi), The Brick LLP, Sears Canada et Bureau en gros ont effectué, après le 30 juin 2010, de fausses représentations lorsqu'elles ont vendu des garanties prolongées aux membres du groupe ?*
- d) *Est-ce que les vendeurs ont passé sous silence un fait important en ne dénonçant pas aux acheteurs de garanties prolongées chez Sears que les difficultés financières de l'entreprise risquaient de leur faire perdre la protection en cas de bris ?*
- e) *Est-ce que par leurs actions et omissions les administrateurs de Sears ont participé à la commission d'une pratique de commerce interdite et ont-ils commis une faute extracontractuelle à l'égard des acheteurs de garanties prolongées et dans l'affirmative, depuis quand et sont-ils personnellement et solidairement responsables des dommages ?*
- f) *Est-ce que la défenderesse FTI Consulting a commis une faute extracontractuelle à l'égard des clients de Sears ayant acheté des garanties prolongées après le 22 juin 2017 ?*
- g) *Advenant le cas de fausses représentations, quels sont les dommages subis par les membres découlant de chacune des contraventions ?*
- h) *Le délai de prescription a-t-il été suspendu [...] et dans l'affirmative, depuis quelle date ?*
- i) *Est-ce que les défenderesses sont tenues de payer des dommages punitifs ?*

**IDENTIFIER** comme suit les conclusions recherchées qui s'y rattachent :

**ACCUEILLIR** la demande introductive d'instance en action collective.

**CONDAMNER** les défenderesses Centre Hi-Fi Chicoutimi, Centre Hi-Fi, 9246-9352 Québec inc. (Centre Hi-Fi), 2763923 Canada inc. (Centre Hi-Fi), The Brick LLP, Sears Canada et Bureau en gros à verser à chacun des membres du groupe les dommages équivalant au coût d'achat plus taxes des garanties supplémentaires, avec intérêt au taux légal majoré de l'indemnité additionnelle prévue à l'article 1619 C.c.Q., calculés à compter de la date de signification de la demande pour autorisation d'exercer une action collective dans le dossier 500-06-000709-143.

**CONDAMNER** les défenderesses Centre Hi-Fi Chicoutimi, Centre Hi-Fi, 9246-9352 Québec inc. (Centre Hi-Fi), 2763923 Canada inc. (Centre Hi-Fi), The Brick LLP, Sears Canada et Bureau en gros à verser une somme à être déterminée à titre de dommages punitifs fixés sur une base globale et forfaitaire, avec intérêt au taux légal majoré de l'indemnité additionnelle prévue à l'article 1619 C.c.Q., calculés à compter de la date de signification de la demande pour autorisation d'exercer une action collective dans le dossier 500-06-000709-143.

**CONDAMNER** solidairement les administrateurs de Sears visés par la demande au paiement des dommages pour la période du 13 mai 2016 au 18 octobre 2017, avec intérêt au taux légal majoré de l'indemnité additionnelle prévue à l'article 1619 C.c.Q., calculés à compter de la date de signification de la demande modifiée pour autorisation d'exercer l'action collective.

**CONDAMNER** la défenderesse FTI au paiement des dommages pour la période du 22 juin 2017 au 18 octobre 2017, avec intérêt au taux légal majoré de l'indemnité additionnelle prévue à l'article 1619 C.c.Q., calculés à compter de la date de signification de la demande modifiée pour autorisation d'exercer l'action collective.

**ORDONNER** que les dommages précités fassent l'objet d'indemnités individuelles dans le cadre d'un processus de recouvrement collectif [...] selon les prescriptions des articles 595 C.p.c. et suivants.

**CONDAMNER** les défenderesses à tout autre remède approprié jugé juste et approprié.

**CONDAMNER** les défenderesses aux frais de justice, incluant les frais pour la publication et la diffusion de l'avis aux membres.

**DÉCLARER** qu'à moins d'exclusion, les membres seront liés par tout jugement à intervenir sur l'action collective de la manière prévue par la loi.

**FIXER** le délai d'exclusion à trente (30) jours après la date de publication de l'avis aux Membres, délai à l'expiration duquel les membres qui ne se seront pas prévalus des moyens d'exclusion seront liés par tout jugement à intervenir.

**ORDONNER** la publication d'un avis aux membres selon la formulation, les conditions et les modalités qui seront déterminées par le tribunal à la suite de propositions soumises par les procureurs des parties impliquées dans le cadre d'une audition postérieure au jugement autorisant l'exercice de l'action collective.

**RÉFÉRER** le dossier au juge en chef pour détermination du district dans lequel l'action collective devra être exercée et pour désignation du juge qui en sera saisi.

**ORDONNER** au greffier de cette Cour, pour le cas où la présente action collective devait être exercée dans un autre district, de transmettre le dossier, dès décision du juge en chef, au greffier de cet autre district.

**CONDAMNER** les défenderesses aux frais de justice, incluant les frais pour la publication et la diffusion de l'avis aux membres.

Québec, le 29 novembre 2017



**Me David Bourgoin**

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Téléphone : 418 523-4222

Télécopieur : 418 692-5695

Procureurs de la demanderesse

Référence : BGA-0070-4

f C A N A D A

(Action collective)

PROVINCE DE QUÉBEC  
DISTRICT DE CHICOUTIMI

COUR SUPÉRIEURE

No. 150-06-000010-173

**KARINE TREMBLAY**

Demanderesse

c.

**CENTRE HI-FI CHICOUTIMI**

et

**9246-9352 QUÉBEC INC.**

et

**CENTRE HI-FI**

et

**CENTRE HI-FI (2763923 CANADA INC.)**

et

**THE BRICK WAREHOUSE LP**

et

**SEARS CANADA INC.**

et

**KHANNA, R. RAJA**

et

**CARRIE KIRKMAN**

et

**ROSATI, DEBI E**

et

**SAM JEFFREY STOLLENWERK**

et

BRANDON STRANZL

et

ANAND SAMUEL

et

GRAHAM SAVAGE

et

HEYWOOD WILANSKY

et

PHILIP MOHTADI

et

FTI CONSULTING CANADA INC

et

**BUREAU EN GROS** (Staples Canada Inc.)

Défendeurs [...]

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**LISTE DE PIÈCES MODIFIÉE**

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- PIÈCE P-1 :** Relevé du Registraire des entreprises du Québec (REQ) daté du 4 mai 2017
- PIÈCE P-1.1 :** Document de l'OPC
- PIÈCE P-2 :** Relevé du Registraire des entreprises du Québec (REQ) daté du 7 mai 2017
- PIÈCE P-2.1 :** Document de l'OPC
- PIÈCE P-3 :** Relevé du Registraire des entreprises du Québec (REQ) daté du 4 mai 2017
- PIÈCE P-3.1 :** Document de l'OPC
- PIÈCE P-4 :** Relevé du Registraire des entreprises du Québec (REQ) daté du 4 mai 2017
- PIÈCE P-4.1 :** Document de l'OPC

- PIÈCE P-5 :** Relevé du Registraire des entreprises du Québec (REQ) daté du 4 mai 2017
- PIÈCE P-5.1 :** Permis
- PIÈCE P-5.2 :** Communiqué de presse daté du 13 mai 2016 et relevé REQ daté du 16 novembre 2017
- PIÈCE P-5.3 :** Extrait du site web du Bureau du Surintendant des Faillites daté du 14 novembre 2017
- PIÈCE P-6 :** Relevé du Registraire des entreprises du Québec (REQ) daté du 4 mai 2017
- PIÈCE P-6.1 :** Document de l'OPC
- PIÈCE P-7 :** Copies de la facture d'achat no. 24527, du relevé du terminal de point de vente (TPV) et du formulaire de demande du rabais
- PIÈCE P-8 :** Listes des succursales CHF en date du 9 octobre 2015 et du 7 mai 2017 provenant du site internet des défenderesses CHF
- PIÈCE P-9 :** Relevés de l'Office de la propriété intellectuelle enregistrés sous le numéro TMA433386
- PIÈCE P-10 :** Relevés du registre des noms de domaines « Whois » datés du 9 octobre 2015 et du 7 mai 2017
- PIÈCE P-11 :** Documentation apparaissant sur le site internet de Centre Hi-Fi
- PIÈCE P-12 :** Entente conclue le 11 septembre 2011 entre CHF Chicoutimi et CHF (**sous pli confidentiel**)
- PIÈCE P-13 :** Facture d'achat de Sears datée du 9 octobre 2010
- PIÈCE P-13.1 :** Clause no. 6 en version agrandie
- PIÈCE P-13.2 :** Confirmation de l'Office
- PIÈCE P-13.3 :** Articles de journaux et communiqués entre 2015 et 2017
- PIÈCE P-13.4 :** Communiqués datés du 13 juin 2017
- PIÈCE P-13.5 :** Communiqués datés du 13 juin 2017
- PIÈCE P-13.6 :** Communiqué daté du 22 juin 2017
- PIÈCE P-13.7 :** Article de journal daté du 14 juillet 2017
- PIÈCE P-13.8 :** Communiqué daté du 18 octobre 2017
- PIÈCE P-13.9 :** Articles de journaux et communiqués entre 2015 et 2017
- PIÈCE P-14 :** Facture d'achat de BEG datée du 21 décembre 2010

- PIÈCE P-14.1 :** Deux dépliants intitulés « Plans du Programme de service fiable » de février et mai 2017
- PIÈCE P-15 :** Facture d'achat de Brick datée du 15 août 2010 et garantie prolongée
- PIÈCE P-16 :** Pages web du site internet de Brick portant sur la vente de garanties prolongées en date du 11 octobre 2015 et du 8 mai 2017
- PIÈCE P-17 :** Études sur la durabilité en liasse

Québec, le 29 novembre 2017



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Procureurs de la demanderesse

Référence : BGA-0070-4



NO	150-06-000010-173
COUR	Supérieure (Action collective)
DISTRICT	De Chicoutimi
<b>KARINE TREMBLAY</b>	Demanderesse
c. <b>CENTRE HIFI CHICOUTIMI</b> et <b>9246-9352 QUÉBEC INC.</b> et <b>CENTRE HI-FI (149667 CANADA INC.)</b> et <b>CENTRE HI-FI (2763923 CANADA INC.)</b> et <b>THE BRICK WAREHOUSE LP</b> et <b>SEARS CANADA INC.</b> et <b>BUREAU EN GROS</b>	Défenderesses
<b>DEMANDE POUR PERMISSION DE MODIFIER LA DEMANDE POUR AUTORISATION D'EXERCER UNE ACTION COLLECTIVE, AVIS DE PRÉSENTATION, DEMANDE MODIFIÉE POUR AUTORISATION D'EXERCER UNE ACTION COLLECTIVE ET LISTE DE PIÈCES MODIFIÉE</b>	
<b>ORIGINAL</b>	
BB-8221	ME DAVID BOURGOIN dbourgoin@bga-law.com
	N/☎: BGA-0070-4
<b>BGA AVOCATS S.E.N.C.R.L.</b> 67, rue Sainte-Ursule QUÉBEC (QUÉBEC) G1R 4E7 TÉLÉPHONE : 418 692-5137 TÉLÉCOPIEUR : 418 692-5695 CASIER 72	

**APPENDIX "G"**  
**(see attached)**

[Translation]

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**From:** Cleroux, Chantal **On Behalf Of** Mojtahedi, Arad  
**Sent:** December-04-17 2:03 PM  
**To:** dbourgoin@bga-law.com; bgamache@cabinetbg.ca  
**Cc:** Merskey, Alan; Gauthier, Virginie  
**Subject:** Karine Tremblay v. Centre Hi-Fi Chicoutimi et al

Good day,

Please take note of the attached letter.

Best regards,

**Arad Mojtahedi**  
Avocat  
Associate

Norton Rose Fulbright Canada S.E.N.C.R.L., s.r.l. / LLP  
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**NORTON ROSE FULBRIGHT**



[Translation]

**NORTON ROSE FULBRIGHT**

Barristers &amp; Solicitors / Patent &amp; Trade-mark Agents

December 4, 2017

Norton Rose Fulbright Canada LLP  
 1 Place Ville Marie, Suite 2500  
 Montréal, Quebec H3B 1R1 CANADA

**Sent by email**  
**Without prejudice**

F: +1 514.286.5474  
**nortonrosefulbright.com**

Mtre. David Bourgoïn  
 BGA Avocats S.E.N.C.R.L.  
 67 Saint-Ursule  
 Québec, Quebec G1R 4E7

**Arad Mojtahedi**  
 +1 514.847.4582  
 arad.mojtahedi@nortonrosefulbright.com

Mtre. Benoît Gamache  
**BG Avocat Inc.**  
 4725 Metropolitan Blvd. East.  
 Montréal, Quebec H1R 0C1

Our reference  
 1000299972

Mtres. Bourgoïn and Gamache,

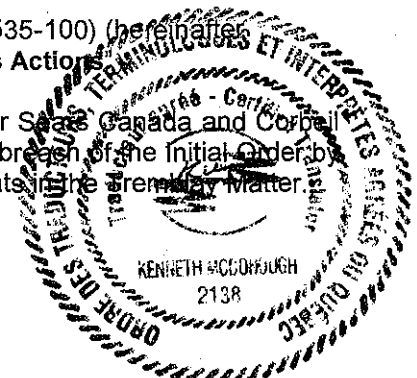
***Karine Tremblay v Centre H-Fi Chicoutimi et al***  
**(Court Record: 150-06-000010-173)**

As you know, we are counsel for FTI Consulting Canada Inc. in its capacity as Monitor of Sears Canada Inc. (hereinafter "**Sears Canada**"), Corbeil Électrique Inc. (hereinafter "**Corbeil**") and their subsidiaries (hereinafter "**Monitor**").

We are writing you regarding your *Application for Leave to Amend the Application for Authorization to Institute a Class Action* dated November 29, 2017 in the above-referenced matter (hereinafter your "**Application to Amend**"), as well as the Initial Order and order of stay of proceedings rendered by the Ontario Superior Court of Justice (Commercial List) (hereinafter the "**CCAA Court**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 in the matter bearing the Court number CV-17-11846-00CL (hereinafter the "**Initial Order**") in respect of Sears Canada, Corbeil, 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., 3339611 Canada Inc. and Sears Canada LP (together, the "**Sears Canada Entities**"). As such, we also refer you to the following class actions in which we are acting as class counsel (the "**Notices of Stay**"):

- *Karine Tremblay v. Centre Hi-Fi Chicoutimi et als.* (Court Record: 150-06-000010-173) (hereinafter the "**Tremblay Matter**");
- *Lise Ostiguy v. Sears Canada Inc.* (Court Record: 500-06-000537-106) (hereinafter the "**Ostiguy Matter**");
- *Luc Cantin and François Routhier v. Ameublements Tanguay inc. et als.* (Court Matter: 500-06-000709143) (hereinafter the "**Routhier Matter**"); and
- *Jacques Fillion v. Corbeil Electrique inc.* (Court Matter: 500-06-000535-100) (hereinafter collectively with Tremblay, Ostiguy and Routhier Matters, the "**Class Action**");

On November 29, 2017, we were informed by Mtre. Nick Rodrigo, counsel for Sears Canada and Corbeil in the Tremblay, Ostiguy and Routhier Matters, that you committed a glaring breach of the Initial Order by attempting to add the Monitor and the directors of Sears Canada as defendants in the Tremblay Matter.



You had already been made of aware of the existence of the Initial Order and stay of proceedings by Mtre. Rodrigo and our letter to Mtre. Gamache dated November 15, 2017 (hereinafter our "**November 15 Letter**"). We remind you again that paragraphs 14 and 25 of the Initial Order provide that all proceedings in any court or tribunal in respect of the Sears Canada Entities, the directors and officers of the Sears Canada Entities and the Monitor are stayed. Notices of Stay of Proceedings were consequently filed in the Tremblay, Ostiguy and Routhier Matters on November 30, 2017.

This letter is therefore a warning. We request that you withdraw your Application to Amend **by December 7, 2017 at 5 p.m.** and that you comply with the stay of proceedings in respect of Sears Canada, Corbeil and the Monitor in each of your Class Actions. Our client will not permit any further breach of the Initial Order. In the event of a further breach, our client will be compelled to institute the appropriate proceedings, including for contempt of court. If we do not receive confirmation before December 8 that your Application to Amend has been withdrawn and that you agree to comply with the stay of proceedings in respect of the Sears Canada Entities and the Monitor, we intend to speak directly to the Honourable Justice Martin Dallaire and to make the necessary representations. We also reserve the right to produce this letter and the November 15 Letter, in the event of another breach, in order to show that it is not the first time you have breached the Initial Order.

If you wish to have the stays of proceedings lifted in relation to your Class Actions, we invite you to apply to the CCAA Court and obtain an order for such purpose, the whole pursuant to paragraph 14 of the Initial Order.

Regards,

(signed)  
*Chantal Cléroux, Legal Assistant*  
Arad Mojtahedi  
Associate

AM/



ORIGINAL DOCUMENT(S) FOLLOW

**Schmitt, Alexander**

---

**From:** Cleroux, Chantal on behalf of Mojtahedi, Arad  
**Sent:** December-04-17 2:03 PM  
**To:** dbourgoin@bga-law.com; bgamache@cabinetbg.ca  
**Cc:** Merskey, Alan; Gauthier, Virginie  
**Subject:** Karine Tremblay c. Centre Hi-Fi Chicoutimi et al  
**Attachments:** CAN\_DMS\_109722957\_v1\_lettre à Me Bourgoïn et Me Gamache.PDF

Bonjour,

Veillez prendre connaissance de la lettre ci-jointe.

Meilleures salutations.

**Arad Mojtahedi**

Avocat  
Associate

Norton Rose Fulbright Canada S.E.N.C.R.L., s.r.l. / LLP  
1, Place Ville Marie, Bureau 2500, Montréal, QC, H3B 1R1, Canada  
T: +1 514.847.4582 | F: +1 514 286 5474  
[arad.mojtahedi@nortonrosefulbright.com](mailto:arad.mojtahedi@nortonrosefulbright.com)

**NORTON ROSE FULBRIGHT**

Le 4 décembre 2017

**Transmis par courriel**  
**Sous toutes réserves**

Me David Bourgoïn  
**BGA Avocats, S.E.N.C.R.L.**  
67, Sainte-Ursule  
Québec (Québec) G1R 4E7

Me Benoît Gamache  
**BG Avocat Inc.**  
4725, Métropolitaine Est, bureau 207  
Montréal (Québec) H1R 0C1

***Karine Tremblay c. Centre Hi-Fi Chicoutimi et al***  
**(Dossier de Cour : 150-06-000010-173)**

Maîtres Bourgoïn et Gamache,

Comme vous le savez, nous sommes les procureurs de FTI Consulting Canada Inc., en sa qualité de Contrôleur de Sears Canada Inc. (ci-après « **Sears Canada** »), Corbeil Électrique Inc. (ci-après « **Corbeil** ») et leurs filiales (ci-après le « **Contrôleur** »).

Nous vous écrivons la présente en relation avec votre *Demande pour permission de modifier la demande pour autorisation d'exercer une action collective* datée du 29 novembre 2017 dans le dossier mentionné en titre (ci-après votre « **Demande de modification** »), ainsi que l'Ordonnance initiale et l'Ordonnance de suspension des procédures rendues par la Cour supérieure de l'Ontario (Rôle commercial) (ci-après la « **Cour LACC** ») conformément à la *Loi sur les arrangements avec les créanciers des compagnies*, L.R.C. 1985, c. C-36 dans le dossier portant le numéro de Cour CV-17-11846-00CL (ci-après l'« **Ordonnance initiale** ») à l'égard de Sears Canada, Corbeil, 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., 3339611 Canada Inc. et Sears Canada LP (collectivement, les « **Entités Sears Canada** »). À ce titre, nous vous référons également aux actions collectives listées ci-dessous dans lesquelles vous agissez comme procureurs en demande (les « **Avis de suspension** ») :

- *Karine Tremblay c. Centre Hi-Fi Chicoutimi et als.* (Dossier de Cour : 150-06-000010-173) (ci-après le « **Dossier Tremblay** »);
- *Lise Ostiguy c. Sears Canada Inc.* (Dossier de Cour : 500-06-000537-106) (ci-après le « **Dossier Ostiguy** »);
- *Luc Cantin et François Routhier c. Ameublements Tanguay inc. et als.* (Dossier de Cour : 500-06-000709-143) (ci-après le « **Dossier Routhier** »); et
- *Jacques Fillion c. Corbeil Électrique inc.* (Dossier de Cour : 500-06-000535-100) (ci-après collectivement avec les Dossiers Tremblay, Ostiguy et Routhier, les « **Actions collectives** »).

CAN\_DMS: \109710845\1

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Le 4 décembre 2017

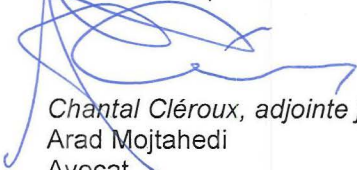
Le 29 novembre 2017, nous avons été informés par Me Nick Rodrigo, procureur de Sears Canada et Corbeil dans les Dossiers Tremblay, Ostiguy et Routhier, que vous avez contrevenu de façon flagrante à l'Ordonnance initiale par votre tentative d'ajouter le Contrôleur et les administrateurs de Sears Canada comme défendeurs dans le Dossier Tremblay.

Or, l'existence de l'Ordonnance initiale et de la suspension de procédures a déjà été portée à votre attention par Me Rodrigo ainsi que par notre lettre adressée à Me Gamache en date du 15 novembre 2017 (ci-après notre « **Lettre du 15 novembre** »). Nous vous rappelons à nouveau que les paragraphes 14 et 25 de l'Ordonnance initiale prévoient la suspension totale des procédures devant toute cour ou tout tribunal à l'égard des Entités Sears Canada, les administrateurs et dirigeants des Entités Sears Canada et le Contrôleur. De ce fait, le 30 novembre 2017, des *Avis de suspension des procédures* ont été dûment déposés dans les Dossiers Tremblay, Ostiguy et Routhier.

La présente constitue alors un avertissement. Nous vous demandons de retirer votre Demande de modification **d'ici le 7 décembre 2017 à 17 h**, et de respecter la suspension de procédures à l'égard de Sears Canada, Corbeil et le Contrôleur dans chacune de vos Actions collectives. Notre cliente ne permettra pas que l'Ordonnance initiale soit enfreinte une autre fois. S'il y avait récurrence, elle aurait l'obligation d'entreprendre les procédures appropriées, incluant les procédures en outrage au tribunal. Si nous ne recevons pas de confirmation que votre Demande de modification a été retirée et que vous acceptez de respecter la suspension des procédures à l'égard des Entités Sears Canada et le Contrôleur avant le 8 décembre, nous avons l'intention de nous adresser directement à l'honorable juge Martin Dallaire et de faire les représentations nécessaires. Nous nous réservons d'ailleurs le droit de produire la présente et la Lettre du 15 novembre, en cas de récurrence, afin de démontrer qu'il ne s'agit pas d'une première contravention à l'Ordonnance initiale de votre part.

Si vous désirez obtenir la levée des suspensions des procédures dans le contexte de vos Actions collectives, nous vous invitons à vous adresser à la Cour LACC et d'obtenir une ordonnance à cet effet, le tout conformément au paragraphe 14 de l'Ordonnance initiale.

Cordialement,

A handwritten signature in blue ink, appearing to be "Chantal Cléroux".

Chantal Cléroux, adjointe juridique  
Arad Mojtahedi  
Avocat

AM/

**APPENDIX “H”  
(see attached)**

**[Translation]**

---

**From:** Rodrigo, Nick [mailto:nrodrigo@dwpv.com]  
**Sent:** June 26, 2017 10:28 PM  
**To:** 'David Bourgoïn'  
**Subject:** RE: Sears Canada CCA Stay of Proceedings

Yes, Corbeil (subsidiary of Sears) is one of the "Applicants" within the meaning of the order and is covered by the stay of proceedings.

---

**From:** David Bourgoïn [mailto:dbourgoïn@bga-law.com]  
**Sent:** June 26, 2017 10:24 PM  
**To:** Rodrigo, Nick  
**Subject:** Re: Sears Canada CCA Stay of Proceedings

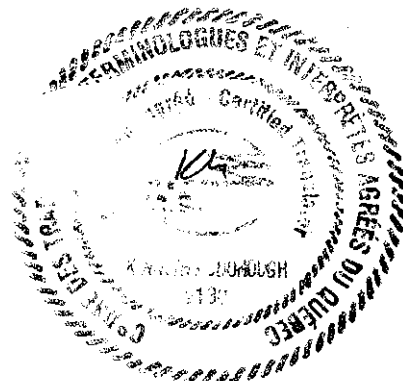
But Corbeil is in the process of reorganizing like Sears? I had read and heard that about Sears, but nothing about Corbeil.

Sent from my Samsung Galaxy smart phone.

----- Original Message -----

**From:** "Rodrigo, Nick" nrodrigo@dwpv.com>  
**Date:** 17-06-26 10:21 PM (GMT-05:00)  
**To:** David Bourgoïn <dbourgoïn@bga-law.com>  
**Subject:** RE: Sears Canada CCA Stay of Proceedings

I think so, but I have to consult one of our experts in bankruptcy and insolvency tomorrow. I do not know whether the Superior Court has the power to stay a proceeding before a Court of Appeal. I will let you know tomorrow!



---

**From:** David Bourgoïn [<mailto:dbourgoïn@bga-law.com>]  
**Sent:** June 26, 2017 8:26 PM  
**To:** Rodrigo, Nick  
**Subject:** Re: Sears Canada CCA Stay of Proceedings

Corbeil, too?

Corbeil's appeal is therefore stayed?

David

Sent from my Samsung Galaxy smart phone,

----- Original Message -----

**From:** "Rodrigo, Nick" [nrodrigo@dwpv.com](mailto:nrodrigo@dwpv.com)>  
**Date:** 17-06-26 8:19 PM (GMT-05:00)  
**To:** David Bourgoïn <[dbourgoïn@bga-law.com](mailto:dbourgoïn@bga-law.com)>  
**Subject:** Sears Canada CCA Stay of Proceedings

Hi David;

As you have probably already heard, last Thursday Sears applied for court protection under the *Companies' Creditors Arrangement Act* in order to facilitate its operational, commercial, financial and administrative reorganization. Further to an order issued by the Ontario Superior Court of Justice (a copy of which is attached), all judicial proceedings against Sears Canada and Corbeil Électrique are stayed until July 22. I learned about this myself when reading the newspapers on the weekend.

I do not know whether Sears will survive the process, will be refinanced, will be sold or will be wound up. However, I have been instructed to cease any activity in these matters throughout the duration of the stay ordered by the court. The examination scheduled for next week are therefore cancelled. I hope that they will be able to take place shortly after July 22, but it obviously depends on the outcome of the process.

We apologize for any inconvenience this situation may cause you.

Nick

Davies logo

Nick Rodrigo | [Bio](#)



1501 McGill College Ave., Suite 2600 T 514 841 6548  
Montreal, Québec Canada H3A 3N9 F 514 841 6499  
[nrodrigo@dwpv.com](mailto:nrodrigo@dwpv.com)

DAVIES WARD PHILLIPS & VINEBERG S.E.N.C.R.L., s.r.l./LLP

---

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ORIGINAL DOCUMENT(S) FOLLOW

**Schmitt, Alexander**

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**From:** Rodrigo, Nick <nrodrigo@dwpv.com>  
**Sent:** June-26-17 10:28 PM  
**To:** 'David Bourgoin'  
**Subject:** RE: Sears Canada ACC Suspension des procédures

Oui, Corbeil (filiale de Sears) est un des « Applicants » dans le sens de l'ordonnance et est couvert par la suspension des procédures.

---

**De :** David Bourgoin [<mailto:dbourgoin@bga-law.com>]  
**Envoyé :** June 26, 2017 10:24 PM  
**À :** Rodrigo, Nick  
**Objet :** Re: Sears Canada ACC Suspension des procédures

Mais Corbeil est en processus de réorganisation comme Sears?

J'avais lu et entendu pour Sears, mais rien sur Corbeil.

Envoyé depuis mon téléphone intelligent Samsung Galaxy.

----- Message d'origine -----

**De :** "Rodrigo, Nick" <[nrodrigo@dwpv.com](mailto:nrodrigo@dwpv.com)>  
**Date :** 17-06-26 10:21 PM (GMT-05:00)  
**À :** David Bourgoin <[dbourgoin@bga-law.com](mailto:dbourgoin@bga-law.com)>  
**Objet :** RE: Sears Canada ACC Suspension des procédures

Je pense que oui, mais je dois consulter un de nos experts dans le domaine de faillite et insolvabilité demain. Je ne sais pas si un Cour supérieure a le pouvoir de suspendre une instance devant un Cour d'appel. Je vais t'aviser demain!

---

**De :** David Bourgoin [<mailto:dbourgoin@bga-law.com>]  
**Envoyé :** June 26, 2017 8:26 PM  
**À :** Rodrigo, Nick  
**Objet :** Re: Sears Canada ACC Suspension des procédures

Corbeil également?

L'appel de Corbeil est donc suspendu?

David

Envoyé depuis mon téléphone intelligent Samsung Galaxy.

----- Message d'origine -----

De : "Rodrigo, Nick" <[nrodrigo@dwpv.com](mailto:nrodrigo@dwpv.com)>  
Date : 17-06-26 8:19 PM (GMT-05:00)  
À : David Bourgoin <[dbourgoin@bga-law.com](mailto:dbourgoin@bga-law.com)>  
Objet : Sears Canada ACC Suspension des procédures

Bonjour David;

Comme vous en avez probablement déjà entendu parler, jeudi dernier Sears a demandé la protection judiciaire en vertu de la Loi sur les arrangements avec les créanciers des compagnies, pour faciliter sa réorganisation opérationnelle, commerciale, financière et administrative. Suite à l'ordonnance rendue par la Cour supérieure de l'Ontario (copie ci-jointe), toutes les procédures judiciaires contre Sears et Corbeil Électrique sont suspendu jusqu'au 22 juillet. Je l'ai moi-même appris en lisant les journaux en fin de semaine.

Je n'ai aucune connaissance si Sears va survivre ce processus ou sera refinancer, vendue ou mise en liquidation. Toutefois, mes instructions sont de cessez toute activité dans ces dossiers pendant la durée de la suspension prononcée par le tribunal. Les interrogatoires prévus pour la semaine prochaine sont donc annulés. J'espère qu'ils pourront avoir lieu quelques temps après le 22 juillet, mais évidemment cela dépendra sur l'issue du processus.

Nous nous excusons de tout inconvénient que cette situation peut vous causer.

Nick



Nick Rodrigo | Bio

1501, av. McGill College, Suite 2600  
Montréal (Québec) Canada H3A 3N9

T 514 841 6548  
F 514 841 6499  
[nrodrigo@dwpv.com](mailto:nrodrigo@dwpv.com)

DAVIES WARD PHILLIPS & VINEBERG S.E.N.C.R.L., s.r.l./LLP

---

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**APPENDIX “T”  
(see attached)**

[Translation]

**From:** Rodrigo, Nick [mailto:nrodrigo@dwpv.com]  
**Sent:** September 21, 2017 4:35 PM  
**To:** Chantale Mongrain; bgamache@bga-law.com; dbourgoin@bga-law.com; Groleau, Jean-Philippe; mftozzi@jeanssonnelaw.ca; gliemay@lavery.ca; mbixi@lavery.ca; dobrien@obrienavocats.qc.ca; jfpare@obrienavocats.qc.ca  
**Subject:** François Routhier c. Corbeil électrique inc. et al. - C.S.: 500-06-000709-143  
**Attachments:** Endorsement of Hainey J. dated July 13 2017 (2).pdf  
Issued Order - Suspension of Special Payments (July 13, 2017).pdf  
Initial Order (Issued and Entered).pdf  
Amended and Restated Initial Order (July 13, 2017).pdf  
MTL\_DOCUMENTS-#2437391-v1- Lettre\_du\_21\_septembre\_2017\_à\_l'\_Honorable\_Pierre\_Nollet, j.s.c. Re François\_Routhier\_c Corbeil\_électrique\_inc et\_al\_.PDF

Good day, Ms. Mongrain;

Would you kindly send the attached letter to Justice Nollet (along with its attachments)?

Best regards,

Nick Rodrigo



Davies logo and letterhead

1501 McGill College Avenue, 26<sup>th</sup> Floor  
Montreal, Quebec H3A 3N9

September 21, 2017

Nick Rodrigo  
T: 514.841.6548  
F: 514.841.6499  
nrodrigo@dwpv.com

Our file: 249097

**BY EMAIL**

The Honourable Pierre Nollet, j.s.c.  
Montreal Courthouse  
1 Notre-Dame St. East  
Montreal, Quebec H2Y 1B6

Dear Justice Nollet,

**Subject: François Routhier v Corbeil électrique inc. et al  
500-06-000709-143**

As you have probably already been informed, Sears Canada applied for court protection under the *Companies' Creditors Arrangement Act* in order to facilitate its operational, commercial, financial and administrative reorganization. Further to an order issued by the Ontario Superior Court of Justice (a copy of which is attached), all judicial proceedings against Sears Canada and Corbeil Électrique have been stayed, including the above-noted matter. An extension of the stay of proceedings until October 6, 2017 has been ordered by the Superior Court (see copy of the documents attached).

At this stage, we are not in a position to know whether Sears or Corbeil will survive the process, will be refinanced, will be sold or will be wound up. However, we have been instructed to cease any activity in this matter throughout the duration of the stay ordered by the court. Depending on the outcome of the process, and to the extent that it is appropriate, we hope that the matter may be reactivated shortly after October 6.

We apologize for any inconvenience that this situation may cause the Court and our confrères. Please inform the undersigned if the Court requires additional information or a formal application for a stay.

Yours sincerely,

(signed)  
DAVIES WARD PHILLIPS & VINEBERG LLP

Per: Nick Rodrigo

NR/db  
Encl.



ORIGINAL DOCUMENT(S) FOLLOW

**Schmitt, Alexander**

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**From:** Rodrigo, Nick <nrodrigo@dwpv.com>  
**Sent:** September-21-17 4:35 PM  
**To:** Chantale Mongrain; bgamache@bga-law.com; dbourgoin@bga-law.com; Groleau, Jean-Philippe; mftozzi@jeansonnelaw.ca; glemay@lavery.ca; mbrixi@lavery.ca; dobrien@obrienavocats.qc.ca; jfpere@obrienavocats.qc.ca  
**Subject:** François Routhier c. Corbeil électrique inc. et al. - C.S.: 500-06-000709-143  
**Attachments:** Endorsement of Hailey J. dated July 13 2017 (2).pdf; Issued Order - Suspension of Special Payments (July 13, 2017).pdf; Initial Order (Issued and Entered).pdf; Amended and Restated Initial Order (July 13, 2017).pdf; MTL\_DOCUMENTS-#2437391-v1-Lettre\_du\_21\_septembre\_2017\_à\_l'Honorable\_Pierre\_Nollet\_j\_c\_s\_Re\_François\_Routhier\_c\_Corbeil\_électrique\_inc\_et\_al.PDF

Bonjour Mme Mongrain;

Auriez-vous l'amabilité de transmettre la lettre ci-jointe au juge Nollet (ainsi que ses pièces jointes)?

Meilleures salutations,

Nick Rodrigo



1501, avenue McGill College, 26<sup>e</sup> étage  
Montréal (Québec) H3A 3N9  
dwpv.com

Le 21 septembre 2017

Nick Rodrigo  
T 514.841.6548  
F 514.841.6499  
nrodrigo@dwpv.com

Notre Dossier : 249097

**PAR COURRIEL**

L'Honorable Pierre Nollet, j.c.s.  
Palais de Justice de Montréal  
1 rue Notre-Dame Est  
Montréal, Québec H2Y 1B6

**Objet : François Routhier c. Corbeil électrique inc. et al  
500-06-000709-143**

Monsieur le juge,

Comme vous en avez probablement déjà été informé, Sears Canada a demandé la protection judiciaire en vertu de la *Loi sur les arrangements avec les créanciers des compagnies*, pour faciliter sa réorganisation opérationnelle, commerciale, financière et administrative. Suite à l'ordonnance rendue par la Cour supérieure de l'Ontario (dont copie est jointe), toutes les procédures judiciaires contre Sears Canada et Corbeil Électrique ont été suspendues, incluant le dossier mentionné en rubrique. Une prolongation de la suspension des procédures jusqu'au 6 octobre prochain a été prononcée par la Cour supérieure (voir copie des documents ci-joints).

À ce stade-ci, nous ne sommes pas en mesure de savoir si Sears ou Corbeil survivra au processus, sera refinancé, vendue ou mise en liquidation. Toutefois, nos instructions sont de cesser toute activité dans ce dossier pendant la durée de la suspension prononcée par le tribunal. Dépendamment de l'issue du processus, et dans la mesure où cela sera opportun, nous espérons que le dossier pourra être réactivé peu de temps après le 6 octobre.

Nous nous excusons de tout inconvénient que cette situation peut causer à la Cour, ainsi qu'à nos confrères. Si la Cour exige des informations supplémentaires ou une demande formelle de suspension, veuillez en informer le soussigné.

Veillez agréer, cher Monsieur le juge, l'expression de nos sentiments distingués.

DAVIES WARD PHILLIPS & VINEBERG S.E.N.C.R.L., s.r.l.

A handwritten signature in blue ink, appearing to read "Nick Rodrigo". The signature is fluid and cursive, with the first name "Nick" and the last name "Rodrigo" clearly distinguishable.

Par : Nick Rodrigo

NR/db

p. j.





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



THE HONOURABLE MR. JUSTICE HAINEY

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THURSDAY, THE 22<sup>ND</sup>  
 DAY OF JUNE, 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**”)

**AMENDED AND RESTATED INITIAL ORDER**

**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 thereto (collectively, the “**Wong Affidavit**”), and the pre-filing report dated June 22, 2017 of FTI Consulting Canada Inc. (“**FTI**”), in its capacity as the proposed Monitor of the Applicants (the “**Pre-Filing Report**”), and on hearing the submissions of counsel to the Applicants and SearsConnect (the “**Partnership**”, and collectively with the Applicants, the “**Sears Canada**”

**Entities**”), counsel to the Board of Directors (the “**Board of Directors**”) of Sears Canada Inc. (“**SCI**”) and the Special Committee of the Board of Directors (the “**Special Committee**”) of SCI, counsel to FTI, counsel to Wells Fargo Capital Finance Corporation Canada (the “**DIP ABL Agent**”), as administrative agent under the DIP ABL Credit Agreement (as defined herein), and counsel to GACP Finance Co., LLC (the “**DIP Term Agent**”), as administrative agent under the DIP Term Credit Agreement (as defined herein), Koskie Minsky LLP as counsel for Store Catalogue Retiree Group, counsel for the Financial Services Commission of Ontario, and on reading the consent of FTI to act as the Monitor.

### **SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

### **APPLICATION**

2. **THIS COURT ORDERS AND DECLARES** that the Applicants are companies to which the CCAA applies. Although not an Applicant, the Partnership shall enjoy the benefits of the protections and authorizations provided by this Order.

### **PLAN OF ARRANGEMENT**

3. **THIS COURT ORDERS** that the Applicants, individually or collectively, shall have the authority to file and may, subject to further Order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the “**Plan**”).

### **POSSESSION OF PROPERTY AND OPERATIONS**

4. **THIS COURT ORDERS** that the Sears Canada Entities shall remain in possession and control of their respective current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”). For greater certainty, the “**Property**” includes all inventory, assets, undertakings and property of the Sears Canada Entities in the possession or control of the Hometown Dealers (as defined in the Wong Affidavit) and all inventory, assets, undertakings and property of the Sears Canada

Entities in the possession or control of the Corbeil Franchisees (as defined in the Wong Affidavit). Subject to further Order of this Court, the Sears Canada Entities shall continue to carry on business in a manner consistent with the preservation of the value of their business (the “**Business**”) and Property. The Sears Canada Entities shall each be authorized and empowered to continue to retain and employ the employees, independent contractors, advisors, consultants, agents, experts, accountants, counsel and such other persons (collectively, “**Assistants**”) currently retained or employed by them, with liberty, subject to the terms of the Definitive Documents (as defined herein) to retain such further Assistants, as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. **THIS COURT ORDERS** that the Sears Canada Entities shall be entitled to continue to utilize the central cash management services currently in place as described in the Wong Affidavit, or, with the consent of the Monitor, the DIP ABL Agent on behalf of the DIP ABL Lenders (as defined herein) and the DIP Term Agent on behalf of the DIP Term Lenders (as defined herein), replace it with another substantially similar central cash management services (the “**Cash Management System**”) and that any present or future bank or other institution providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Sears Canada Entities of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Sears Canada Entities, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System; provided, however, that no bank or other institution providing such Cash Management System shall be obliged to extend any overdraft credit, on an aggregate net basis, directly or indirectly in connection therewith and further provided that, to the extent any overdraft occurs, on an aggregate net basis, the Sears Canada Entities shall make arrangements to repay such overdraft forthwith.

6. **THIS COURT ORDERS** that the Sears Canada Entities, subject to availability under, and in accordance with the terms of the DIP Facilities (as defined herein) and the Definitive Documents, and subject to further Order of this Court, shall be entitled but not required to pay the following expenses whether incurred prior to, on or after this Order to the extent that such expenses are incurred and payable by the Sears Canada Entities:

- (a) all outstanding and future wages, salaries, commissions, employee and retiree benefits (including, without limitation, medical, dental, life insurance and similar benefit plans or arrangements), pension benefits or contributions, vacation pay, expenses, and director fees and expenses, payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements (but not including termination or severance payments), and all other payroll, pension and benefits processing and servicing expenses;
- (b) all outstanding and future amounts owing to or in respect of Persons working as independent contractors in connection with the Business;
- (c) all outstanding or future amounts owing in respect of customer rebates, refunds, discounts or other amounts on account of similar customer programs or obligations;
- (d) all outstanding or future amounts related to honouring customer obligations, whether existing before or after the date of this Order, including customer financing, product warranties, pre-payments, deposits, gift cards, Sears Club programs (including redemptions of Sears Club points) and other customer loyalty programs, offers and benefits, in each case incurred in the ordinary course of business and consistent with existing policies and procedures;
- (e) the fees and disbursements of any Assistants retained or employed by the Sears Canada Entities at their standard rates and charges; and
- (f) with the consent of the Monitor, amounts owing for goods or services actually supplied to the Sears Canada Entities prior to the date of this Order by:

- (i) logistics or supply chain providers, including customs brokers and freight forwarders, fuel providers, repair, maintenance and parts providers, and security and armoured truck carriers, and including amounts payable in respect of customs and duties for goods;
- (ii) providers of information, internet, and other technology, including e-commerce providers and related services;
- (iii) providers of credit, debit and gift card processing related services; and
- (iv) other third party suppliers up to a maximum aggregate amount of \$25 million, if, in the opinion of the Sears Canada Entities, the supplier is critical to the business and ongoing operations of the Sears Canada Entities.

7. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein and subject to the terms of the Definitive Documents, the Sears Canada Entities shall be entitled but not required to pay all reasonable expenses incurred by them in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order and any other Order of this Court, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors' and officers' insurance), maintenance (including environmental remediation) and security services; and
- (b) payment for goods or services actually supplied to the Sears Canada Entities following the date of this Order.

8. **THIS COURT ORDERS** that the Sears Canada Entities shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from the Sears Canada Entities' employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;

- (b) all goods and services taxes, harmonized sales taxes or other applicable sales taxes (collectively, “Sales Taxes”) required to be remitted by the Sears Canada Entities in connection with the sale of goods and services by the Sears Canada Entities, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order;
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business, workers’ compensation or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Sears Canada Entities; and
- (d) taxes under the *Income Tax Act* (Canada) or other relevant taxing statutes to the extent that such taxing statutes give rise to statutory deemed trust amounts in favour of the Crown in right of Canada or any Province thereof or any political subdivision thereof or any other taxation authority.

9. **THIS COURT ORDERS** that, except as specifically permitted herein, the Sears Canada Entities are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by any one of the Sears Canada Entities to any of their creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of the Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business or pursuant to this Order or any further Order of this Court.

#### **RESTRUCTURING**

10. **THIS COURT ORDERS** that the Sears Canada Entities shall, subject to such requirements as are imposed by the CCAA, and subject to the terms of the Definitive Documents, have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of their Business or operations, and to dispose of redundant or non-material assets not exceeding \$2 million in any one transaction or \$5 million in the aggregate in any series of related transactions, provided that, with respect to leased premises, the Sears Canada Entities may, subject to the requirements of the CCAA and paragraphs 11 to 13 herein, vacate, abandon or quit the whole (but not part of) and may permanently (but not temporarily) cease, downsize or shut down any of their Business or operations in respect of any leased premises;
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as the relevant Sears Canada Entity deems appropriate; and
- (c) pursue all avenues of refinancing, restructuring, selling and reorganizing the Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing, restructuring, sale or reorganization,

all of the foregoing to permit the Sears Canada Entities to proceed with an orderly restructuring of the Sears Canada Entities and/or the Business (the “**Restructuring**”).

#### **REAL PROPERTY LEASES**

11. **THIS COURT ORDERS** that until a real property lease is disclaimed or resiliated in accordance with the CCAA, the Sears Canada Entities shall pay, without duplication, all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under its lease, but for greater certainty, excluding accelerated rent or penalties, fees or other charges arising as a result of the insolvency of any or all of the Sears Canada Entities or the making of this Order) or as otherwise may be negotiated between the applicable Sears Canada Entity and the landlord from time to time (“**Rent**”), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

12. **THIS COURT ORDERS** that the Sears Canada Entities shall provide each of the relevant landlords with notice of the relevant Sears Canada Entity's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the entitlement of a Sears Canada Entity to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the relevant Sears Canada Entity, or by further Order of this Court upon application by the Sears Canada Entities on at least two (2) days' notice to such landlord and any such secured creditors. If any of the Sears Canada Entities disclaims or resiliates the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer or resiliation of the lease shall be without prejudice to the relevant Sears Canada Entity's claim to the fixtures in dispute.

13. **THIS COURT ORDERS** that if a notice of disclaimer or resiliation is delivered pursuant to Section 32 of the CCAA by any of the Sears Canada Entities, then: (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the relevant Sears Canada Entity and the Monitor 24 hours' prior written notice; and (b) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the relevant Sears Canada Entity in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

**NO PROCEEDINGS AGAINST THE SEARS CANADA ENTITIES, THE BUSINESS OR THE PROPERTY**

14. **THIS COURT ORDERS** that until and including July 22, 2017, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the



Sears Canada Entities or the Monitor or their respective employees and representatives acting in such capacities, or affecting the Business or the Property, except with the written consent of the Sears Canada Entities and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Sears Canada Entities or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

15. **THIS COURT ORDERS** that during the Stay Period, no Person having any agreements or arrangements with the owners, operators, managers or landlords of commercial shopping centres or other commercial properties (including retail, office and industrial (warehouse) properties) in which there is located a store, office or warehouse owned or operated by the Sears Canada Entities shall take any Proceedings or exercise any rights or remedies under such agreements or arrangements that may arise upon and/or as a result of the making of this Order, the insolvency of, or declarations of insolvency by, any or all of the Sears Canada Entities, or as a result of any steps taken by the Sears Canada Entities pursuant to this Order and, without limiting the generality of the foregoing, no Person shall terminate, accelerate, suspend, modify, determine or cancel any such arrangement or agreement or be entitled to exercise any rights or remedies in connection therewith.

16. **THIS COURT ORDERS** that during the Stay Period, no Person having any agreements or arrangements with the Hometown Dealers or the Corbeil Franchisees shall take any Proceedings or exercise any rights or remedies under such agreements or arrangements that may arise upon and/or as a result of the making of this Order, the insolvency of, or declarations of insolvency by, any or all of the Sears Canada Entities, or as a result of any steps taken by the Sears Canada Entities pursuant to this Order and, without limiting the generality of the foregoing, no Person shall terminate, accelerate, suspend, modify, determine or cancel any such arrangement or agreement or be entitled to exercise any rights or remedies in connection therewith.

17. **THIS COURT ORDERS** that during the Stay Period all rights and remedies, of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of the Sears Canada Entities or the Monitor or their respective employees and representatives acting in

such capacities, or affecting the Business or the Property, are hereby stayed and suspended, except with the written consent of the Sears Canada Entities and the Monitor, or leave of this Court, provided that nothing in this Order shall: (a) empower the Sears Canada Entities to carry on any business that the Sears Canada Entities are not lawfully entitled to carry on; (b) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA; (c) prevent the filing of any registration to preserve or perfect a security interest; (d) prevent the registration of a claim for lien; (e) prevent any holder of a valid and enforceable right of first refusal, option to purchase or other similar right in respect of any real property from being entitled to exercise all such rights; or (f) empower the Sears Canada Entities to fail to comply with their obligations under leases (other than the payment of rent on a twice-monthly basis, in accordance with paragraph 11 herein), operating agreements or similar agreements for the period from and after the commencement of this proceeding.

#### **NO INTERFERENCE WITH RIGHTS**

18. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, lease, sublease, licence or permit in favour of or held by the Sears Canada Entities, except with the written consent of the Sears Canada Entities and the Monitor, or leave of this Court. Without limiting the foregoing, no right, option, remedy, and/or exemption in favour of the relevant Sears Canada Entity shall be or shall be deemed to be negated, suspended, waived and/or terminated as a result of this Order.

#### **CONTINUATION OF SERVICES**

19. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Sears Canada Entities or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all trademark license and other intellectual property, computer software, communication and other data services, centralized banking services, payroll and benefit services, insurance, warranty services, transportation services, freight services, security and armoured truck carrier services, utility, customs clearing, warehouse and logistics services or other services to the Business or the Sears Canada Entities are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply or license of such goods, services, trademarks and other

intellectual property as may be required by the Sears Canada Entities, and that the Sears Canada Entities shall be entitled to the continued use of the trademarks and other intellectual property currently licensed to, used or owned by the Sears Canada Entities, premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Sears Canada Entities in accordance with normal payment practices of the Sears Canada Entities or such other practices as may be agreed upon by the supplier or service provider and each of the Sears Canada Entities and the Monitor, or as may be ordered by this Court.

#### **NON-DEROGATION OF RIGHTS**

20. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Sears Canada Entities. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

#### **KEY EMPLOYEE RETENTION PLAN**

21. **THIS COURT ORDERS** that the Key Employee Retention Plan (the “**KERP**”), as described in the Wong Affidavit, is hereby approved and the Sears Canada Entities are authorized to make payments contemplated thereunder in accordance with the terms and conditions of the KERP.

22. **THIS COURT ORDERS** that the key employees referred to in the KERP (the “**Key Employees**”) shall be entitled to the benefit of and are hereby granted the following charges on the Property, which charges shall not exceed: (a) an aggregate amount of \$4.6 million (the “**KERP Priority Charge**”) to secure the first \$4.6 million payable to the Key Employees under the KERP; and (b) an aggregate amount of \$4.6 million (the “**KERP Subordinated Charge**”) to secure any other payments to the Key Employees under the KERP. The KERP Priority Charge and the KERP Subordinated Charge shall have the priority set out in paragraphs 47, 48 and 50 hereof.

**APPROVAL OF FINANCIAL ADVISOR AGREEMENT**

23. **THIS COURT ORDERS** that the agreement dated May 15, 2017 engaging BMO Nesbitt Burns Inc. (the “**Financial Advisor**”) as financial advisor to SCI and attached as Confidential Appendix C to the Pre-Filing Report (the “**Financial Advisor Agreement**”), and the retention of the Financial Advisor under the terms thereof, is hereby ratified and approved and SCI is authorized and directed *nunc pro tunc* to make the payments contemplated thereunder in accordance with the terms and conditions of the Financial Advisor Agreement.

24. **THIS COURT ORDERS** that the Financial Advisor shall be entitled to the benefit of and is hereby granted a charge (the “**FA Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$3.3 million, as security for the fees and disbursements payable under the Financial Advisor Agreement, both before and after the making of this Order in respect of these proceedings. The FA Charge shall have the priority set out in paragraphs 47, 48 and 50 hereof.

**PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

25. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Sears Canada Entities with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Sears Canada Entities whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Sears Canada Entities, if one is filed, is sanctioned by this Court or is refused by the creditors of the Sears Canada Entities or this Court.

**DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE**

26. **THIS COURT ORDERS** that the Sears Canada Entities shall jointly and severally indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Sears Canada Entities after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or

liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

27. **THIS COURT ORDERS** that the directors and officers of the Sears Canada Entities shall be entitled to the benefit of and are hereby granted the following charges on the Property, which charges shall not exceed: (a) an aggregate amount of \$44 million (the "**Directors' Priority Charge**"); and (b) an aggregate amount of \$19.5 million (the "**Directors' Subordinated Charge**"), respectively, and in each case, as security for the indemnity provided in paragraph 26 of this Order. The Directors' Priority Charge and the Directors' Subordinated Charge shall have the priority set out in paragraphs 47, 48 and 50 hereof.

28. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary: (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Priority Charge and the Directors' Subordinated Charge; and (b) the Sears Canada Entities' directors and officers shall only be entitled to the benefit of the Directors' Priority Charge and the Directors' Subordinated Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 26 of this Order.

#### **APPOINTMENT OF MONITOR**

29. **THIS COURT ORDERS** that FTI is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the Business and financial affairs of the Sears Canada Entities with the powers and obligations set out in the CCAA or set forth herein and that the Sears Canada Entities and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Sears Canada Entities pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

30. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Sears Canada Entities' receipts and disbursements;

- (b) liaise with the Sears Canada Entities and the Assistants and, if determined by the Monitor to be necessary, the Hometown Dealers and Corbeil Franchisees, with respect to all matters relating to the Property, the Business, the Restructuring and such other matters as may be relevant to the proceedings herein;
- (c) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, the Restructuring and such other matters as may be relevant to the proceedings herein;
- (d) assist the Sears Canada Entities, to the extent required by the Sears Canada Entities, in their dissemination of financial and other information to the DIP ABL Agent, the DIP ABL Lenders, the DIP Term Agent, the DIP Term Lenders and each of their respective counsel and financial advisors, pursuant to and in accordance with the Definitive Documents;
- (e) advise the Sears Canada Entities in their preparation of the Sears Canada Entities' cash flow statements and any reporting required by the Definitive Documents, which information shall be reviewed with the Monitor and delivered to the DIP ABL Agent, the DIP ABL Lenders, the DIP Term Agent, the DIP Term Lenders and each of their respective counsel and financial advisors, pursuant to and in accordance with the Definitive Documents;
- (f) advise the Sears Canada Entities in their development of the Plan and any amendments to the Plan;
- (g) assist the Sears Canada Entities, to the extent required by the Sears Canada Entities, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (h) have full and complete access to the Property (including any Property in the possession of the Hometown Dealers and the Corbeil Franchisees), including the premises, books, records, data, including data in electronic form, and other financial documents of the Sears Canada Entities, to the extent that is necessary to adequately

assess the Business and the Sears Canada Entities' financial affairs or to perform its duties arising under this Order;

- (i) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;
- (j) assist the Sears Canada Entities, to the extent required by the Sears Canada Entities, with any matters relating to any foreign proceeding commenced in relation to any of the Sears Canada Entities, including retaining independent legal counsel, agents, experts, accountants, or such other persons as the Monitor deems necessary or desirable respecting the exercise of this power; and
- (k) perform such other duties as are required by this Order or by this Court from time to time.

31. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

32. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of

any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

33. **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Sears Canada Entities, the DIP ABL Agent, the DIP ABL Lenders, the DIP Term Agent and the DIP Term Lenders with information provided by the Sears Canada Entities in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Sears Canada Entities is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Sears Canada Entities may agree.

34. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

35. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, counsel to the Sears Canada Entities and counsel to the Board of Directors and the Special Committee shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, whether incurred prior to or subsequent to the date of this Order, by the Sears Canada Entities as part of the costs of these proceedings. The Sears Canada Entities are hereby authorized and directed to pay the accounts of the Monitor, counsel to the Monitor, counsel to the Sears Canada Entities and counsel to the Board of Directors and the Special Committee on a weekly basis and, in addition, the Sears Canada Entities are hereby authorized to pay to the Monitor, counsel to the Monitor, counsel to the Sears Canada Entities and counsel to the Board of Directors and the Special Committee, retainers in the aggregate amount of \$700,000, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

36. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.



37. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, counsel to the Sears Canada Entities and counsel to the Board of Directors and the Special Committee shall be entitled to the benefit of and are hereby granted a charge (the “**Administration Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$5 million, as security for their professional fees and disbursements incurred at their respective standard rates and charges, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 47, 48 and 50 hereof.

#### **DIP FINANCING**

38. **THIS COURT ORDERS** that the Sears Canada Entities are hereby authorized and empowered to obtain and borrow or guarantee, as applicable, on a joint and several basis, under:

- (a) the Senior Secured Superpriority Debtor-in-Possession Amended and Restated Credit Agreement dated as of June 22, 2017 and attached to the Wong Affidavit as Exhibit K, among the Sears Canada Entities, the DIP ABL Agent and the lenders from time to time party thereto (the “**DIP ABL Lenders**”) (as may be amended, restated, supplemented and/or modified, subject to approval of this Court in respect of any amendment that the Monitor determines to be material, the “**DIP ABL Credit Agreement**”), in order to finance the Sears Canada Entities’ working capital requirements and other general corporate purposes and capital expenditures, all in accordance with the Definitive Documents, provided that borrowings under DIP ABL Credit Agreement shall not exceed \$300 million unless permitted by further Order of this Court (the “**DIP ABL Credit Facility**”); and
- (b) the Senior Secured Superpriority Credit Agreement dated as of June 22, 2017 and attached to the Wong Affidavit as Exhibit K, among the Sears Canada Entities, the DIP Term Agent and the lenders from time to time party thereto (the “**DIP Term Lenders**”) (as may be amended, restated, supplemented and/or modified, subject to approval of this Court in respect of any amendment that the Monitor determines to be material, the “**DIP Term Credit Agreement**”), in order to finance the Sears Canada Entities’ working capital requirements and other general corporate purposes and capital expenditures, all in accordance with the Definitive Documents, provided that borrowings under the DIP Term Credit Agreement shall not exceed \$150 million

unless permitted by further Order of this Court (the “**DIP Term Credit Facility**”, and together with the DIP ABL Credit Facility, the “**DIP Facilities**”).

39. **THIS COURT ORDERS** that the DIP Facilities shall be on the terms and subject to the conditions set forth in the DIP ABL Credit Agreement, the DIP Term Credit Agreement and the other Definitive Documents.

40. **THIS COURT ORDERS** that the Sears Canada Entities are hereby authorized and empowered to execute and deliver the DIP ABL Credit Agreement, the DIP Term Credit Agreement and such mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, and including any schedules (as amended and updated from time to time) thereto, the “**Definitive Documents**”), as are contemplated by the DIP ABL Credit Agreement and the DIP Term Credit Agreement or as may be reasonably required by the DIP ABL Agent on behalf of the DIP ABL Lenders and the DIP Term Agent on behalf of the DIP Term Lenders pursuant to the terms thereof, as applicable, and the Sears Canada Entities are hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP ABL Agent, the DIP ABL Lenders, the DIP Term Agent and the DIP Term Lenders under and pursuant to the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

41. **THIS COURT ORDERS** that the DIP ABL Agent and the DIP ABL Lenders shall be entitled to the benefit of and are hereby granted a charge (the “**DIP ABL Lenders’ Charge**”) on the Property as security for any and all Obligations (as defined in the DIP ABL Credit Agreement) other than the Prepetition Obligations (as defined in the DIP ABL Credit Agreement) (including on account of principal, interest, fees, expenses and other liabilities, and the aggregate of all such obligations, the “**DIP ABL Obligations**”), which DIP ABL Lenders’ Charge shall be in the aggregate amount of the DIP ABL Obligations outstanding at any given time under the DIP ABL Credit Agreement. The DIP ABL Lenders’ Charge shall not secure an obligation that exists before this Order is made. The DIP ABL Lenders’ Charge shall have the priority set out in paragraphs 47, 48 and 50 hereof.

42. **THIS COURT ORDERS** that the DIP Term Agent and the DIP Term Lenders shall be entitled to the benefit of and are hereby granted a charge (the “**DIP Term Lenders’ Charge**”) on the Property as security for any and all Obligations (as defined in DIP Term Credit Agreement)

(including on account of principal, interest, fees, expenses and other liabilities, and the aggregate of all such obligations, the “**DIP Term Obligations**”), which DIP Term Lenders’ Charge shall be in the aggregate amount of the DIP Term Obligations outstanding at any given time under the DIP Term Credit Agreement. The DIP Term Lenders’ Charge shall not secure an obligation that exists before this Order is made. The DIP Term Lenders’ Charge shall have the priority set out in paragraphs 47, 48 and 50 hereof.

43. [Intentionally deleted.]

44. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

- (a) the DIP ABL Agent on behalf of the DIP ABL Lenders, as applicable, may take such steps from time to time as they may deem necessary or appropriate to file, register, record or perfect the DIP ABL Lenders’ Charge, the DIP ABL Credit Agreement or any of the other Definitive Documents;
- (b) the DIP Term Agent on behalf of the DIP Term Lenders, as applicable, may take such steps from time to time as they may deem necessary or appropriate to file, register, record or perfect the DIP Term Lenders’ Charge, the DIP Term Credit Agreement or any of the other Definitive Documents;
- (c) upon the occurrence of an event of default under the DIP ABL Credit Agreement, the other related Definitive Documents or the DIP ABL Lenders’ Charge, the DIP ABL Agent and the DIP ABL Lenders, as applicable, may, subject to the provisions of the DIP ABL Credit Agreement with respect to the giving of notice or otherwise, and in accordance with the DIP ABL Credit Agreement, the other related Definitive Documents and the DIP ABL Lenders’ Charge, as applicable, cease making advances to the Sears Canada Entities, make demand, accelerate payment and give other notices; provided that, the DIP ABL Agent and the DIP ABL Lenders must apply to this Court on seven (7) days’ prior written notice (which may include the service of materials in connection with such an application to this Court) to the Sears Canada Entities, the DIP Term Agent, the DIP Term Lenders and the Monitor, to enforce against or exercise any other rights and remedies with respect to the Sears Canada Entities or any of the Property (including to set off and/or consolidate any amounts

owing by the DIP ABL Agent and the DIP ABL Lenders to the Sears Canada Entities against the obligations of the Sears Canada Entities to the DIP ABL Agent and the DIP ABL Lenders under the DIP ABL Credit Agreement, the other related Definitive Documents or the DIP ABL Lenders' Charge), to appoint a receiver, receiver and manager or interim receiver, or to seek a bankruptcy order against the Sears Canada Entities and to appoint a trustee in bankruptcy of the Sears Canada Entities;

- (d) upon the occurrence of an event of default under the DIP Term Credit Agreement, the other related Definitive Documents or the DIP Term Lenders' Charge, the DIP Term Agent and the DIP Term Lenders, as applicable, may, subject to the provisions of the DIP Term Credit Agreement with respect to the giving of notice or otherwise, and in accordance with the DIP Term Credit Agreement, the other related Definitive Documents and the DIP Term Lenders' Charge, as applicable, cease making advances to the Sears Canada Entities, make demand, accelerate payment and give other notices; provided that, the DIP Term Agent and the DIP Term Lenders must apply to this Court on seven (7) days' prior written notice (which may include the service of materials in connection with such an application to this Court) to the Sears Canada Entities, the DIP ABL Agent, the DIP ABL Lenders and the Monitor, to enforce against or exercise any other rights and remedies with respect to the Sears Canada Entities or any of the Property (including to set off and/or consolidate any amounts owing by the DIP Term Agent and the DIP Term Lenders to the Sears Canada Entities against the obligations of the Sears Canada Entities to the DIP Term Agent and the DIP Term Lenders under the DIP Term Credit Agreement, the other related Definitive Documents or the DIP Term Lenders' Charge), to appoint a receiver, receiver and manager or interim receiver, or to seek a bankruptcy order against the Sears Canada Entities and to appoint a trustee in bankruptcy of the Sears Canada Entities; and
- (e) the foregoing rights and remedies of the DIP ABL Agent, the DIP ABL Lenders, the DIP Term Agent and the DIP Term Lenders shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Sears Canada Entities or the Property.

45. **THIS COURT ORDERS AND DECLARES** that the DIP ABL Agent, the DIP ABL Lenders, the DIP Term Agent and the DIP Term Lenders shall be treated as unaffected in any plan of arrangement or compromise filed by the Sears Canada Entities or any of them under the CCAA, or any proposal filed by the Sears Canada Entities or any of them under the *Bankruptcy and Insolvency Act* of Canada (the “**BIA**”), with respect to any advances made under the DIP ABL Credit Agreement, the DIP Term Credit Agreement and the other Definitive Documents.

46. **THIS COURT ORDERS AND DECLARES** that this Order is subject to provisional execution and that if any of the provisions of this Order in connection with the DIP ABL Credit Agreement, the DIP Term Credit Agreement, the other Definitive Documents, the DIP ABL Lenders’ Charge or the DIP Term Lenders’ Charge shall subsequently be stayed, modified, varied, amended, reversed or vacated in whole or in part (collectively, a “**Variation**”) whether by subsequent order of this Court on or pending an appeal from this Order, such Variation shall not in any way impair, limit or lessen the priority, protections, rights or remedies of the DIP ABL Agent, the DIP ABL Lenders, the DIP Term Agent and the DIP Term Lenders whether under this Order (as made prior to the Variation), under the DIP ABL Credit Agreement, the DIP Term Credit Agreement and the other Definitive Documents, with respect to any advances made prior to the DIP ABL Agent, the DIP ABL Lenders, the DIP Term Agent or the DIP Term Lenders being given notice of the Variation and the DIP ABL Agent, the DIP ABL Lenders, the DIP Term Agent and the DIP Term Lenders shall be entitled to rely on this Order as issued (including, without limitation, the DIP ABL Lenders’ Charge and the DIP Term Lenders’ Charge) for all advances so made.

#### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

47. **THIS COURT ORDERS** that the priorities of the Administration Charge, the FA Charge, the DIP ABL Lenders’ Charge, the DIP Term Lenders’ Charge, the Directors’ Priority Charge, the Directors’ Subordinated Charge, the KERP Priority Charge and the KERP Subordinated Charge (collectively, the “**Charges**”), as among them, with respect to ABL Priority Collateral (as defined in the Intercreditor Agreement dated March 20, 2017 and attached as Exhibit J to the Wong Affidavit) shall be as follows:

First – Administration Charge, to the maximum amount of \$5 million, and the FA Charge, to the maximum amount of \$3.3 million, on a *pari passu* basis;

Second – KERP Priority Charge, to the maximum amount of \$4.6 million;

Third – Directors' Priority Charge, to the maximum amount of \$44 million;

Fourth – DIP ABL Lenders' Charge, to the maximum amount of the quantum of the DIP ABL Obligations at the relevant time;

Fifth – the DIP Term Lenders' Charge, to the maximum amount of the quantum of the DIP Term Obligations at the relevant time;

Sixth – KERP Subordinated Charge, to the maximum amount of \$4.6 million; and

Seventh – the Directors' Subordinated Charge, to the maximum amount of \$19.5 million.

48. **THIS COURT ORDERS** that the priorities of the Charges as among them, with respect to all Property other than the ABL Priority Collateral shall be as follows:

First – Administration Charge, to the maximum amount of \$5 million, and the FA Charge, to the maximum amount of \$3.3 million, on a *pari passu* basis;

Second – KERP Priority Charge, to the maximum amount of \$4.6 million;

Third – Directors' Priority Charge, to the maximum amount of \$44 million;

Fourth – DIP Term Lenders' Charge, to the maximum amount of the quantum of the DIP Term Obligations at the relevant time;

Fifth – DIP ABL Lenders' Charge, to the maximum amount of the quantum of the DIP ABL Obligations at the relevant time;

Sixth – KERP Subordinated Charge, to the maximum amount of \$4.6 million; and

Seventh – the Directors' Subordinated Charge, to the maximum amount of \$19.5 million.

49. **THIS COURT ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as

against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

50. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property, and such Charges shall rank in priority to all other security interests, trusts (including constructive trusts), liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (including without limitation any deemed trust that may be created under the Ontario *Pension Benefits Act*) (collectively, “**Encumbrances**”) other than (a) any Person with a properly perfected purchase money security interest under the *Personal Property Security Act* (Ontario) or such other applicable provincial legislation that has not been served with notice of this Order; and (b) statutory super-priority deemed trusts and liens for unpaid employee source deductions.

51. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Sears Canada Entities shall not grant any Encumbrances over any of the Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Sears Canada Entities also obtain the prior written consent of the Monitor, the DIP ABL Agent on behalf of the DIP ABL Lenders, the DIP Term Agent on behalf of the DIP Term Lenders and the other beneficiaries of affected Charges, or further Order of this Court.

52. **THIS COURT ORDERS** that the Charges, the DIP ABL Credit Agreement, the DIP Term Credit Agreement, and the other Definitive Documents shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the “**Chargees**”) thereunder shall not otherwise be limited or impaired in any way by: (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) that binds the Sears Canada Entities, and notwithstanding any provision to the contrary in any Agreement:

- (i) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the DIP ABL Credit Agreement, the DIP Term Credit Agreement or the other Definitive Documents shall create or be deemed to constitute a breach by the Sears Canada Entities of any Agreement to which it is a party;
- (ii) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Sears Canada Entities entering into the DIP ABL Credit Agreement and the DIP Term Credit Agreement, the creation of the Charges, or the execution, delivery or performance of the other Definitive Documents; and
- (iii) the payments made by the Sears Canada Entities pursuant to this Order, the DIP ABL Credit Agreement, the DIP Term Credit Agreement or the other Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

53. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the relevant Sears Canada Entity's interest in such real property leases.

54. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order, the L/C Collateral Account (as defined in the DIP ABL Credit Agreement) shall be deemed to be subject to a lien, security, charge and security interest in favour of the DIP ABL Agent solely for the reimbursement obligation of SCI related to the letters of credit issued under the Wells Fargo Credit Agreement which remain undrawn from and after the Comeback Motion (as defined herein). The Charges as they may attach to the L/C Collateral Account, including by operation of law or otherwise: (a) shall rank junior in priority to the lien, security, charge and security interest in favour of the DIP ABL Agent in respect of the L/C Collateral Account; and (b) shall attach to the L/C Collateral Account only to the extent of the rights, if any, of any Sears Canada Entity to the return of any cash from the L/C Collateral Account in accordance with the DIP ABL Credit Agreement.

#### **CORPORATE MATTERS**

55. **THIS COURT ORDERS** that SCI be and is hereby relieved of any obligation to call and hold an annual meeting of its shareholders until further Order of this Court.



56. **THIS COURT ORDERS** that SCI be and is hereby relieved of any obligation to appoint any new directors until further Order of this Court.

#### **SERVICE AND NOTICE**

57. **THIS COURT ORDERS** that the Monitor shall: (a) without delay, publish in The Globe and Mail (National Edition) and La Presse a notice containing the information prescribed under the CCAA; and (b) within five days after the date of this Order, (i) make this Order publicly available in the manner prescribed under the CCAA, (ii) send or cause to be sent, in the prescribed manner, a notice to every known creditor who has a claim against the Sears Canada Entities of more than \$1,000 (excluding individual employees, former employees with pension and/or retirement savings plan entitlements, and retirees and other beneficiaries who have entitlements under any pension or retirement savings plans), and (iii) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder, provided that the Monitor shall not make the claims, names and addresses of the individuals who are creditors publicly available.

58. **THIS COURT ORDERS** that the Monitor shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in this proceeding (the “**Service List**”). The Monitor shall post the Service List, as may be updated from time to time, on the Monitor’s Website (as defined herein) as part of the public materials to be made available thereon in relation to this proceeding. Notwithstanding the foregoing, the Monitor shall have no liability in respect of the accuracy of or the timeliness of making any changes to the Service List.

59. **THIS COURT ORDERS** that any employee of any of the Sears Canada Entities that receives a notice of termination from any of the Sears Canada Entities shall be deemed to have received such notice of termination by no more than the seventh day following the date such notice of termination is delivered, if such notice of termination is sent by ordinary mail, courier or registered mail.

60. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List

website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05, this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: [cfcanada.fticonsulting.com/searscanada](http://cfcanada.fticonsulting.com/searscanada) (the “**Monitor’s Website**”).

61. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Sears Canada Entities and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Sears Canada Entities’ creditors or other interested parties at their respective addresses as last shown on the records of the Sears Canada Entities and that any such service or distribution by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

62. **THIS COURT ORDERS** that the Applicants, the Monitor, the Financial Advisor, the DIP Term Agent on behalf of the DIP Term Lenders and the DIP ABL Agent on behalf of the DIP ABL Lenders, and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Applicants’ creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the Electronic Commerce Protection Regulations, Reg. 81000-2-175 (SOR/DORS).

#### **COMEBACK MOTION**

63. **THIS COURT ORDERS** that the comeback motion shall be heard on July 13, 2017 (the “**Comeback Motion**”).

**GENERAL**

64. **THIS COURT ORDERS** that the Sears Canada Entities or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

65. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Sears Canada Entities, the Business or the Property.

66. **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 Sears Canada Entities, 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 Sears Canada Entities 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 Sears Canada Entities and the Monitor and their respective agents in carrying out the terms of this Order.

67. **THIS COURT ORDERS** that each of the Applicants and the Monitor be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada, including acting as the foreign representative of the Applicants to apply to the United States Bankruptcy Court for relief pursuant to Chapter 15 of the *United States Bankruptcy Code*, 11 U.S.C. §§ 101-1515, as amended, and to act as foreign representative in respect of any such proceedings and any ancillary relief in respect thereto, and to take such other steps as may be authorized by the Court.

68. **THIS COURT ORDERS** that any interested party (including the Sears Canada Entities and the Monitor) may apply to this Court to vary or amend this Order at the Comeback Motion

on not less than seven (7) calendar days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

69. **THIS COURT ORDERS** that Confidential Appendix B and Confidential Appendix C to the Pre-Filing Report shall be and are hereby sealed, kept confidential and shall not form part of the public record pending further Order of this Court.

70. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

A handwritten signature in cursive script, appearing to read "Haines J.", written over a horizontal line.

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

JUL 13 2017

PER / PAR:

Handwritten initials "pl" in cursive script.

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. (collectively, the "Applicants")

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
(Commercial List)

Proceeding commenced at Toronto

**AMENDED AND RESTATED INITIAL ORDER**

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

Marc Wasserman (LSUC #: 44066M)  
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Jeremy Dacks (LSUC #: 41851R)  
Tel: 416.862.4923

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

Lawyers for the Applicants



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.

Applicants

July 13, 2017

I am satisfied that this motion should be granted on the terms of the attached amended and restated Initial Order and the attached order suspending the special payments, the Supplemental Plan Payments and the PRB Plan Payments and approving the Fee Sheet and extending the Stay period to October 4, 2017.

Ontario  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

Proceeding commenced at Toronto

**MOTION RECORD OF THE APPLICANTS**

(Stay Extension, Suspension of Special Payments and other Post-Retirement Benefits, Approval of SISP, Amended and Restated Initial Order)

**OSLER, HOSKIN & HARCOURT LLP**

P.O. Box 50, 1 First Canadian Place  
Toronto, ON M5X 1B8

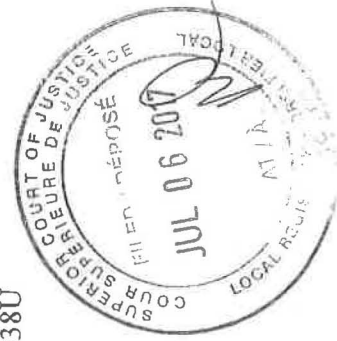
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Karin Sachar LSUC# 59944E  
Tel: 416.862.5949  
Fax: 416.862.6666

Lawyers for the Applicants



~~That~~ <sup>(2)</sup> their orders were  
 Not approved and I have concluded  
 That they are appropriate  
 I am also satisfied that  
 The SISP, as amended  
 today, should be  
 approved. Although it  
 was approved by certain  
 of the landlords, with  
 my assistance, it has  
 been amended and  
~~the issues that were~~ <sup>(4)</sup>  
 the issues that were  
 in dispute have  
 been resolved by  
 me.  
 The SISP is therefore  
 approved.

I am also satisfied  
 That Confidential Appendix  
 B to the 7:10 P.M.



(3)

of The Monitor contains  
commercially sensitive  
information and shall  
remain sealed and not  
form part of the public  
record pending further  
Order of the Court on the  
Applicants' motion for a  
Judgment Approval Order  
that is scheduled to be  
heard on July 18, 2017.

Hainey J.



ONTARIO  
 SUPERIOR COURT OF JUSTICE  
 COMMERCIAL LIST



THE HONOURABLE MR.  
 JUSTICE HAINEY

)  
 )  
 )

THURSDAY, THE 13<sup>TH</sup>  
 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”)

**ORDER**

**(Suspension of Special Payments, Supplemental Plan Payments and PRB Plan Payments, Approval of the Term Sheet and Stay Extension)**

THIS MOTION, made by the Applicants pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “CCAA”), for an order, *inter alia*: (i) authorizing the suspension of the Special Payments (as defined below); (ii) approving the suspension of the Supplemental Plan Payments (as defined below); (iii) approving the suspension of the PRB Plan Payments (as defined below); (iv) declaring that the directors, officers, officials and agents of the Applicants and SearsConnect (the “Partnership” and collectively with the Applicants, the “Sears Canada Entities”) shall not incur any liability as a result of the failure of the Sears Canada Entities to make any of the Special Payments during the Stay Period (as

defined below), and during any extension of same; (v) approving the Term Sheet (as defined below); and (vi) extending the Stay Period to and including October 4, 2017, and certain related relief, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of the Applicants, the Affidavit of Billy Wong sworn July 5, 2017 including the exhibits thereto (the “**Second Wong Affidavit**”), the First Report of FTI Consulting Canada Inc., in its capacity as Monitor (the “**Monitor**”), and the Supplement to the First Report of the Monitor (the “**Supplemental Report**”), filed, and on hearing the submissions of respective counsel for the Sears Canada Entities, counsel to the Monitor, counsel to the Board of Directors and the Special Committee of the Board of Directors of Sears Canada Inc., counsel to Wells Fargo Capital Finance Corporation Canada as administrative agent under the DIP ABL Credit Agreement, counsel to GACP Finance Co., LLC as administrative agent under the DIP Term Credit Agreement, and such other counsel as were present, no one else appearing although duly served as appears from the Affidavits of Service of Sonja Pavic sworn July 6, 2017, filed:

#### **SERVICE AND DEFINITIONS**

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 any capitalized term used and not defined herein shall have the meaning ascribed thereto in the Second Wong Affidavit.

#### **SUSPENSION OF SPECIAL PAYMENTS**

3. THIS COURT ORDERS that the obligation of the Sears Canada Entities to make special payments (whether pursuant to the Ontario *Pension Benefits Act*, RSO 1990, c. P-8 and regulations made thereunder or to the terms of the Sears Pension Plan) in respect of the defined benefit component of the Sears Pension Plan (such payments being the “**Special Payments**”), shall be suspended effective on and after October 1, 2017, for the duration of the Sears Canada Entities’ CCAA proceedings (the “**CCAA Proceedings**”), subject to further Order of this Court. For greater certainty, the obligations of the Sears Canada Entities to make Special Payments prior to October 1, 2017 are expressly subject to the terms set forth in the Term Sheet, and the

suspension of Special Payments hereunder does not constitute a disclaimer or termination by the Sears Canada Entities of any component of the Sears Pension Plan.

4. THIS COURT ORDERS that for the duration of the CCAA Proceedings, no Person (as defined in the Initial Order), including employees and former employees of the Sears Canada Entities (or the surviving spouse of any such person) entitled to a benefit under the defined benefit component of the Sears Pension Plan (whether or not such member was represented by a union when the member was employed by the Sears Canada Entities) (the “**Retirees**”) or the Superintendent of Financial Services, shall commence any action or other proceeding in connection with the suspension of the Special Payments or because the Sears Canada Entities have not made the Special Payments.

5. THIS COURT ORDERS that the Sears Canada Entities and each of their respective directors, officers, officials, and agents shall not incur any obligation or liability, whether by way of debt, damages for breach of any duty whether statutory, fiduciary, common law or otherwise, or for breach of trust, nor shall any trust be imposed, whether express, implied, constructive, resulting, deemed or otherwise, as a result of the suspension of the Special Payments in accordance with the terms of this Order.

6. THIS COURT ORDERS that if any claim, lien, charge or trust, including deemed trust, arises as a result of the suspension of the Special Payments, no such claim, lien, charge or trust, including deemed trust, shall have priority over the Charges (as defined in the Initial Order) in these CCAA Proceedings, or in any subsequent receivership, interim receivership or bankruptcy of the Sears Canada Entities.

#### **SUSPENSION OF SUPPLEMENTAL PLAN PAYMENTS**

7. THIS COURT ORDERS that the obligation of the Sears Canada Entities to make (i) any payments in respect of the Supplemental Plan to the Post-2010 SP Pensioners and (ii) any payment required in respect of any SP Shortfall Amounts in respect of the Pre-2010 SP Pensioners (collectively, such payments being the “**Supplemental Plan Payments**”), shall be suspended effective on and after October 1, 2017, for the duration of the CCAA Proceedings, subject to further Order of this Court. For greater certainty, the obligations of the Sears Canada Entities to make Supplemental Plan Payments prior to October 1, 2017 are expressly subject to

the terms set forth in the Term Sheet, and the suspension of Supplemental Plan Payments, hereunder does not constitute a disclaimer or termination by the Sears Canada Entities of the Supplemental Plan.

8. THIS COURT ORDERS that for the duration of the CCAA Proceedings, no Person, including employees and former employees of the Sears Canada Entities (or the surviving spouse of any such person) entitled to a benefit under the Supplemental Plan (whether or not such member was represented by a union when the member was employed by the Sears Canada Entities) shall commence any action or other proceeding in connection with the suspension of the Supplemental Plan Payments or because the Sears Canada Entities have not made the Supplemental Plan Payments.

#### **SUSPENSION OF PRB PLAN PAYMENTS**

9. THIS COURT ORDERS that the obligation of the Sears Canada Entities to make any payments in respect of the post-retirement health and dental benefits under the PRB Plan (such payments being the “**PRB Health and Dental Payments**”), shall be suspended effective on and after October 1, 2017, for all claims submitted and received after such date, for the duration of the CCAA Proceedings, subject to further Order of this Court. For greater certainty, the obligations of the Sears Canada Entities to make PRB Health and Dental Payments prior to October 1, 2017 are expressly subject to the terms set forth in the Term Sheet, and the suspension of PRB Health and Dental Payments, hereunder does not constitute a disclaimer or termination by the Sears Canada Entities of the PRB Plan.

10. THIS COURT ORDERS that the obligation of the Sears Canada Entities to make any payments in respect of the life insurance benefits under the PRB Plan, including premiums for life insurance coverage (such payments, together with the PRB Health and Dental Payments, the “**PRB Plan Payments**”), shall be suspended effective on and after October 1, 2017, for the duration of the CCAA Proceedings, subject to further Order of this Court. For greater certainty, the obligations of the Sears Canada Entities to make PRB Plan Payments prior to October 1, 2017 are expressly subject to the terms set forth in the Term Sheet, and the suspension of the PRB Plan Payments hereunder does not constitute a disclaimer or termination by the Sears Canada Entities of the PRB Plan.

11. THIS COURT ORDERS that for the duration of the CCAA Proceedings, no Person, including the Retirees and surviving spouses who have coverage with respect to post-retirement health and dental benefits and/or with respect to life insurance benefits under the PRB Plan (whether or not such member was represented by a union when the member was employed by the Sears Canada Entities) shall commence any action or other proceeding in connection with the suspension of the PRB Plan Payments or due to the Sears Canada Entities having not made the PRB Plan Payments.

#### **APPROVAL OF TERM SHEET**

12. THIS COURT ORDERS that the term sheet attached as Appendix “A” to the Supplemental Report (the “Term Sheet”) between: (a) the Sears Canada Entities; (b) the Superintendent of Financial Services, as Administrator of the Pension Benefits Guarantee Fund; (c) Koskie Minsky LLP, as Representative Counsel and on behalf of the Representatives (as each such term is defined in the Representative Counsel Order for Pensions and Post-Retirement Benefits issued by this Court in the CCAA Proceedings on July 13, 2017); (d) the Representatives; (e) Ursel Phillips Fellows Hopkinson LLP, as Employee Representative Counsel and on behalf of the Employee Representatives (as each such term is defined in the Employee Representative Counsel Order issued by this Court in the CCAA Proceedings on July 13, 2017); and (f) the Employee Representatives, is hereby approved and the parties thereto shall comply with their obligations thereunder.

#### **EXTENSION OF STAY PERIOD**

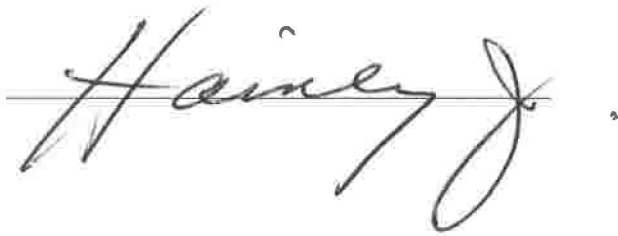
13. THIS COURT ORDERS that the Stay Period (as defined in paragraph 14 of the Initial Order) is hereby extended from July 22, 2017 until and including October 4, 2017.

#### **GENERAL**

14. THIS COURT ORDERS that this Order shall have full force and effect in all provinces and territories in Canada.

15. 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 of America, 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.

A handwritten signature in cursive script, appearing to read "Hainey J.", written over a horizontal line.

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

JUL 13 2017

PER / PAR:

Handwritten initials "pl" in cursive script.



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. (collectively, the "Applicants")

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
(Commercial List)

Proceeding commenced at Toronto

**ORDER**

(Suspension of Special Payments, Supplemental Plan Payments  
and PRB Plan Payments, Approval of the Term Sheet and Stay  
Extension) **331**

**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

**APPENDIX “J”  
(see attached)**

**333**  
[Translation]

**From:** Bienz, Dorothy [mailto:dbienz@dwpv.com] On Behalf Of Rodrigo, Nick<nrodrigo@dwpv.com>  
**Sent:** September 26, 2017 2:46 PM  
**To:** dbourgoin@bga-law.com; lthibaudeau@lavery.ca; guy.poitras@gowlings.com;  
'maudren@audrenrolland.com'  
**Subject:** Karine Tremblay c. Sears Canada Inc. et al. 150-06-000010-173  
**Attachments:** MTL\_DOCUMENTS-#2438632-v1-  
Lettre\_du\_26\_septembre\_2017\_à\_l\_Honorable\_Juge\_Martin\_Dallaire\_j.c.s. -  
Karine\_Tremblay\_c\_Sears\_Canada\_Inc\_et\_al\_150-06-0000.PDF  
Endorsement of Hainey J. dated July 13 2017 (2).pdf  
Issued Order - Suspension of Special Payments (July 13, 2017).pdf  
Initial Order (Issued and Entered).pdf  
Amended and Restated Initial Order (July 13, 2017).pdf

Please see the attached documents. Thank you,



Davies logo and letterhead

1501 McGill College Avenue, 26<sup>th</sup> Floor  
Montreal, Quebec H3A 3N9

September 26, 2017

Nick Rodrigo  
T: 514.841.6548  
F: 514.841.6499  
nrodrigo@dwpv.com

Our file: 260218

**BY EMAIL**

The Honourable Martin Dallaire, j.s.c.  
Chicoutimi Courthouse  
227 Racine St. East  
Chicoutimi, Quebec G7H 7B4

Dear Justice Dallaire,

**Subject: Karine Tremblay v Sears Canada Inc. et al  
150-06-000010-173**

We are writing you further to the Order dated September 21, 2017 by the Honourable Robert Pidgeon, Associate Chief Judge in the above-noted matter. As you have probably already been informed, Sears Canada applied for court protection under the *Companies' Creditors Arrangement Act* in order to facilitate its operational, commercial, financial and administrative reorganization. Further to an order issued by the Ontario Superior Court of Justice (a copy of which is attached), all judicial proceedings against Sears Canada have been stayed, including the above-noted matter. An extension of the stay of proceedings until October 6, 2017 has been ordered by the Superior Court (see copy of the documents attached).

At this stage, we are not in a position to know whether Sears will survive the process, will be refinanced, will be sold or will be wound up. However, we have been instructed to cease any activity in this matter throughout the duration of the stay ordered by the court. Depending on the outcome of the process, and to the extent that it is appropriate, we hope that the matter may be reactivated shortly after October 6.

We apologize for any inconvenience that this situation may cause the Court and our confrères. Please inform the undersigned if the Court requires additional information or a formal application for a stay.

Yours sincerely,

(signed)  
DAVIES WARD PHILLIPS & VINEBERG LLP

Per: Nick Rodrigo

NR/db  
Encl.

cc Mtre David Bourgoin (*BGA Barristers & Solicitors*)  
Mtre Luc Hervé Thibaudeau (*Lavery, De Billy*)  
Mtre Guy Poitras (*Gowling WLG (Canada)*)  
Mtre Marie Audren (*Audren Rolland*)



ORIGINAL DOCUMENT(S) FOLLOW

**Schmitt, Alexander**

---

**From:** Bienz, Dorothy <dbienz@dwpv.com> on behalf of Rodrigo, Nick <nrodrigo@dwpv.com>  
**Sent:** September-26-17 2:46 PM  
**To:** dbourgoin@bga-law.com; lthibaudeau@lavery.ca; guy.poitras@gowlings.com; 'maudren@audrenrolland.com'  
**Subject:** Karine Tremblay c. Sears Canada Inc. et al. 150-06-000010-173  
**Attachments:** MTL\_DOCUMENTS-#2438632-v1-Lettre\_du\_26\_septembre\_2017\_à\_l'Honorable\_Juge\_Martin\_Dallaire\_\_j\_c\_s\_-\_Karine\_Tremblay\_c\_Sears\_Canada\_Inc\_\_et\_al\_\_150-06-0000.PDF; Endorsement of Hainey J. dated July 13 2017 (2).pdf; Issued Order - Suspension of Special Payments (July 13, 2017).pdf; Initial Order (Issued and Entered).pdf; Amended and Restated Initial Order (July 13, 2017).pdf

[Veuillez voir les documents ci-joints.](#)

Merci,



1501, avenue McGill College, 26<sup>e</sup> étage  
 Montréal (Québec) H3A 3N9  
 dwpv.com

Le 26 septembre 2017

Nick Rodrigo  
 T 514.841.6548  
 F 514.841.6499  
 nrodrigo@dwpv.com

Notre Dossier : 260218

L'Honorable Martin Dallaire, j.c.s.  
 Palais de Justice de Chicoutimi  
 227 rue Racine Est  
 Chicoutimi (Québec) G7H 7B4

**Objet : Karine Tremblay c. Sears Canada Inc. et al.**  
**C.S. : 150-06-000010-173**

Monsieur le juge,

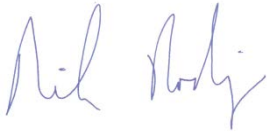
Nous vous écrivons suite à l'Ordonnance daté du 21 septembre 2017 par l'Honorable Robert Pidgeon, juge en chef associé dans le dossier cité en rubrique. Vous en avez probablement déjà été informé, Sears Canada a demandé la protection judiciaire en vertu de la *Loi sur les arrangements avec les créanciers des compagnies*, pour faciliter sa réorganisation opérationnelle, commerciale, financière et administrative. Suite à l'ordonnance rendue par la Cour supérieure de l'Ontario (dont copie est jointe), toutes les procédures judiciaires contre Sears Canada ont été suspendues, incluant le dossier mentionné en rubrique. Une prolongation de la suspension des procédures jusqu'au 6 octobre prochain a été prononcée par la Cour supérieure (voir copie des documents ci-joints).

À ce stade-ci, nous ne sommes pas en mesure de savoir si Sears survivra au processus, sera refinancé, vendue ou mise en liquidation. Toutefois, nos instructions sont de cesser toute activité dans ce dossier pendant la durée de la suspension prononcée par le tribunal. Dépendamment de l'issue du processus, et dans la mesure où cela sera opportun, nous espérons que le dossier pourra être réactivé peu de temps après le 6 octobre.

Nous nous excusons de tout inconfort que cette situation peut causer à la Cour, ainsi qu'à nos confrères. Si la Cour exige des informations supplémentaires ou une demande formelle de suspension, veuillez en informer le soussigné.

Veillez agréer, cher Monsieur le juge, l'expression de nos sentiments distingués.

DAVIES WARD PHILLIPS & VINEBERG S.E.N.C.R.L., s.r.l.



Par : Nick Rodrigo

NR/db

p. j.

cc Me David Bourgoïn (*BGA Avocats*)  
Me Luc Hervé Thibaudeau (*Lavery, De Billy*)  
Me Guy Poitras (*Gowling WLG (Canada)*)  
Me Marie Audren (*Audren Rolland*)





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



THE HONOURABLE MR.

JUSTICE HAINEY

)  
)  
)

THURSDAY, THE 22<sup>ND</sup>

DAY OF JUNE, 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**”)

**AMENDED AND RESTATED INITIAL ORDER**

**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 thereto (collectively, the “**Wong Affidavit**”), and the pre-filing report dated June 22, 2017 of FTI Consulting Canada Inc. (“**FTI**”), in its capacity as the proposed Monitor of the Applicants (the “**Pre-Filing Report**”), and on hearing the submissions of counsel to the Applicants and SearsConnect (the “**Partnership**”, and collectively with the Applicants, the “**Sears Canada**

**Entities**”), counsel to the Board of Directors (the “**Board of Directors**”) of Sears Canada Inc. (“**SCI**”) and the Special Committee of the Board of Directors (the “**Special Committee**”) of SCI, counsel to FTI, counsel to Wells Fargo Capital Finance Corporation Canada (the “**DIP ABL Agent**”), as administrative agent under the DIP ABL Credit Agreement (as defined herein), and counsel to GACP Finance Co., LLC (the “**DIP Term Agent**”), as administrative agent under the DIP Term Credit Agreement (as defined herein), Koskie Minsky LLP as counsel for Store Catalogue Retiree Group, counsel for the Financial Services Commission of Ontario, and on reading the consent of FTI to act as the Monitor.

### **SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

### **APPLICATION**

2. **THIS COURT ORDERS AND DECLARES** that the Applicants are companies to which the CCAA applies. Although not an Applicant, the Partnership shall enjoy the benefits of the protections and authorizations provided by this Order.

### **PLAN OF ARRANGEMENT**

3. **THIS COURT ORDERS** that the Applicants, individually or collectively, shall have the authority to file and may, subject to further Order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the “**Plan**”).

### **POSSESSION OF PROPERTY AND OPERATIONS**

4. **THIS COURT ORDERS** that the Sears Canada Entities shall remain in possession and control of their respective current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”). For greater certainty, the “**Property**” includes all inventory, assets, undertakings and property of the Sears Canada Entities in the possession or control of the Hometown Dealers (as defined in the Wong Affidavit) and all inventory, assets, undertakings and property of the Sears Canada

Entities in the possession or control of the Corbeil Franchisees (as defined in the Wong Affidavit). Subject to further Order of this Court, the Sears Canada Entities shall continue to carry on business in a manner consistent with the preservation of the value of their business (the “**Business**”) and Property. The Sears Canada Entities shall each be authorized and empowered to continue to retain and employ the employees, independent contractors, advisors, consultants, agents, experts, accountants, counsel and such other persons (collectively, “**Assistants**”) currently retained or employed by them, with liberty, subject to the terms of the Definitive Documents (as defined herein) to retain such further Assistants, as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. **THIS COURT ORDERS** that the Sears Canada Entities shall be entitled to continue to utilize the central cash management services currently in place as described in the Wong Affidavit, or, with the consent of the Monitor, the DIP ABL Agent on behalf of the DIP ABL Lenders (as defined herein) and the DIP Term Agent on behalf of the DIP Term Lenders (as defined herein), replace it with another substantially similar central cash management services (the “**Cash Management System**”) and that any present or future bank or other institution providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Sears Canada Entities of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Sears Canada Entities, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System; provided, however, that no bank or other institution providing such Cash Management System shall be obliged to extend any overdraft credit, on an aggregate net basis, directly or indirectly in connection therewith and further provided that, to the extent any overdraft occurs, on an aggregate net basis, the Sears Canada Entities shall make arrangements to repay such overdraft forthwith.

6. **THIS COURT ORDERS** that the Sears Canada Entities, subject to availability under, and in accordance with the terms of the DIP Facilities (as defined herein) and the Definitive Documents, and subject to further Order of this Court, shall be entitled but not required to pay the following expenses whether incurred prior to, on or after this Order to the extent that such expenses are incurred and payable by the Sears Canada Entities:

- (a) all outstanding and future wages, salaries, commissions, employee and retiree benefits (including, without limitation, medical, dental, life insurance and similar benefit plans or arrangements), pension benefits or contributions, vacation pay, expenses, and director fees and expenses, payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements (but not including termination or severance payments), and all other payroll, pension and benefits processing and servicing expenses;
- (b) all outstanding and future amounts owing to or in respect of Persons working as independent contractors in connection with the Business;
- (c) all outstanding or future amounts owing in respect of customer rebates, refunds, discounts or other amounts on account of similar customer programs or obligations;
- (d) all outstanding or future amounts related to honouring customer obligations, whether existing before or after the date of this Order, including customer financing, product warranties, pre-payments, deposits, gift cards, Sears Club programs (including redemptions of Sears Club points) and other customer loyalty programs, offers and benefits, in each case incurred in the ordinary course of business and consistent with existing policies and procedures;
- (e) the fees and disbursements of any Assistants retained or employed by the Sears Canada Entities at their standard rates and charges; and
- (f) with the consent of the Monitor, amounts owing for goods or services actually supplied to the Sears Canada Entities prior to the date of this Order by:

- (i) logistics or supply chain providers, including customs brokers and freight forwarders, fuel providers, repair, maintenance and parts providers, and security and armoured truck carriers, and including amounts payable in respect of customs and duties for goods;
- (ii) providers of information, internet, and other technology, including e-commerce providers and related services;
- (iii) providers of credit, debit and gift card processing related services; and
- (iv) other third party suppliers up to a maximum aggregate amount of \$25 million, if, in the opinion of the Sears Canada Entities, the supplier is critical to the business and ongoing operations of the Sears Canada Entities.

7. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein and subject to the terms of the Definitive Documents, the Sears Canada Entities shall be entitled but not required to pay all reasonable expenses incurred by them in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order and any other Order of this Court, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors' and officers' insurance), maintenance (including environmental remediation) and security services; and
- (b) payment for goods or services actually supplied to the Sears Canada Entities following the date of this Order.

8. **THIS COURT ORDERS** that the Sears Canada Entities shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from the Sears Canada Entities' employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;

- (b) all goods and services taxes, harmonized sales taxes or other applicable sales taxes (collectively, “**Sales Taxes**”) required to be remitted by the Sears Canada Entities in connection with the sale of goods and services by the Sears Canada Entities, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order;
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business, workers’ compensation or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Sears Canada Entities; and
- (d) taxes under the *Income Tax Act* (Canada) or other relevant taxing statutes to the extent that such taxing statutes give rise to statutory deemed trust amounts in favour of the Crown in right of Canada or any Province thereof or any political subdivision thereof or any other taxation authority.

9. **THIS COURT ORDERS** that, except as specifically permitted herein, the Sears Canada Entities are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by any one of the Sears Canada Entities to any of their creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of the Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business or pursuant to this Order or any further Order of this Court.

#### **RESTRUCTURING**

10. **THIS COURT ORDERS** that the Sears Canada Entities shall, subject to such requirements as are imposed by the CCAA, and subject to the terms of the Definitive Documents, have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of their Business or operations, and to dispose of redundant or non-material assets not exceeding \$2 million in any one transaction or \$5 million in the aggregate in any series of related transactions, provided that, with respect to leased premises, the Sears Canada Entities may, subject to the requirements of the CCAA and paragraphs 11 to 13 herein, vacate, abandon or quit the whole (but not part of) and may permanently (but not temporarily) cease, downsize or shut down any of their Business or operations in respect of any leased premises;
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as the relevant Sears Canada Entity deems appropriate; and
- (c) pursue all avenues of refinancing, restructuring, selling and reorganizing the Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing, restructuring, sale or reorganization,

all of the foregoing to permit the Sears Canada Entities to proceed with an orderly restructuring of the Sears Canada Entities and/or the Business (the “**Restructuring**”).

#### **REAL PROPERTY LEASES**

11. **THIS COURT ORDERS** that until a real property lease is disclaimed or resiliated in accordance with the CCAA, the Sears Canada Entities shall pay, without duplication, all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under its lease, but for greater certainty, excluding accelerated rent or penalties, fees or other charges arising as a result of the insolvency of any or all of the Sears Canada Entities or the making of this Order) or as otherwise may be negotiated between the applicable Sears Canada Entity and the landlord from time to time (“**Rent**”), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.



12. **THIS COURT ORDERS** that the Sears Canada Entities shall provide each of the relevant landlords with notice of the relevant Sears Canada Entity's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the entitlement of a Sears Canada Entity to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the relevant Sears Canada Entity, or by further Order of this Court upon application by the Sears Canada Entities on at least two (2) days' notice to such landlord and any such secured creditors. If any of the Sears Canada Entities disclaims or resiliates the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer or resiliation of the lease shall be without prejudice to the relevant Sears Canada Entity's claim to the fixtures in dispute.

13. **THIS COURT ORDERS** that if a notice of disclaimer or resiliation is delivered pursuant to Section 32 of the CCAA by any of the Sears Canada Entities, then: (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the relevant Sears Canada Entity and the Monitor 24 hours' prior written notice; and (b) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the relevant Sears Canada Entity in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

**NO PROCEEDINGS AGAINST THE SEARS CANADA ENTITIES, THE BUSINESS OR THE PROPERTY**

14. **THIS COURT ORDERS** that until and including July 22, 2017, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the

Sears Canada Entities or the Monitor or their respective employees and representatives acting in such capacities, or affecting the Business or the Property, except with the written consent of the Sears Canada Entities and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Sears Canada Entities or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

15. **THIS COURT ORDERS** that during the Stay Period, no Person having any agreements or arrangements with the owners, operators, managers or landlords of commercial shopping centres or other commercial properties (including retail, office and industrial (warehouse) properties) in which there is located a store, office or warehouse owned or operated by the Sears Canada Entities shall take any Proceedings or exercise any rights or remedies under such agreements or arrangements that may arise upon and/or as a result of the making of this Order, the insolvency of, or declarations of insolvency by, any or all of the Sears Canada Entities, or as a result of any steps taken by the Sears Canada Entities pursuant to this Order and, without limiting the generality of the foregoing, no Person shall terminate, accelerate, suspend, modify, determine or cancel any such arrangement or agreement or be entitled to exercise any rights or remedies in connection therewith.

16. **THIS COURT ORDERS** that during the Stay Period, no Person having any agreements or arrangements with the Hometown Dealers or the Corbeil Franchisees shall take any Proceedings or exercise any rights or remedies under such agreements or arrangements that may arise upon and/or as a result of the making of this Order, the insolvency of, or declarations of insolvency by, any or all of the Sears Canada Entities, or as a result of any steps taken by the Sears Canada Entities pursuant to this Order and, without limiting the generality of the foregoing, no Person shall terminate, accelerate, suspend, modify, determine or cancel any such arrangement or agreement or be entitled to exercise any rights or remedies in connection therewith.

17. **THIS COURT ORDERS** that during the Stay Period all rights and remedies, of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of the Sears Canada Entities or the Monitor or their respective employees and representatives acting in

such capacities, or affecting the Business or the Property, are hereby stayed and suspended, except with the written consent of the Sears Canada Entities and the Monitor, or leave of this Court, provided that nothing in this Order shall: (a) empower the Sears Canada Entities to carry on any business that the Sears Canada Entities are not lawfully entitled to carry on; (b) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA; (c) prevent the filing of any registration to preserve or perfect a security interest; (d) prevent the registration of a claim for lien; (e) prevent any holder of a valid and enforceable right of first refusal, option to purchase or other similar right in respect of any real property from being entitled to exercise all such rights; or (f) empower the Sears Canada Entities to fail to comply with their obligations under leases (other than the payment of rent on a twice-monthly basis, in accordance with paragraph 11 herein), operating agreements or similar agreements for the period from and after the commencement of this proceeding.

#### **NO INTERFERENCE WITH RIGHTS**

18. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, lease, sublease, licence or permit in favour of or held by the Sears Canada Entities, except with the written consent of the Sears Canada Entities and the Monitor, or leave of this Court. Without limiting the foregoing, no right, option, remedy, and/or exemption in favour of the relevant Sears Canada Entity shall be or shall be deemed to be negated, suspended, waived and/or terminated as a result of this Order.

#### **CONTINUATION OF SERVICES**

19. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Sears Canada Entities or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all trademark license and other intellectual property, computer software, communication and other data services, centralized banking services, payroll and benefit services, insurance, warranty services, transportation services, freight services, security and armoured truck carrier services, utility, customs clearing, warehouse and logistics services or other services to the Business or the Sears Canada Entities are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply or license of such goods, services, trademarks and other

intellectual property as may be required by the Sears Canada Entities, and that the Sears Canada Entities shall be entitled to the continued use of the trademarks and other intellectual property currently licensed to, used or owned by the Sears Canada Entities, premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Sears Canada Entities in accordance with normal payment practices of the Sears Canada Entities or such other practices as may be agreed upon by the supplier or service provider and each of the Sears Canada Entities and the Monitor, or as may be ordered by this Court.

#### **NON-DEROGATION OF RIGHTS**

20. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Sears Canada Entities. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

#### **KEY EMPLOYEE RETENTION PLAN**

21. **THIS COURT ORDERS** that the Key Employee Retention Plan (the “**KERP**”), as described in the Wong Affidavit, is hereby approved and the Sears Canada Entities are authorized to make payments contemplated thereunder in accordance with the terms and conditions of the KERP.

22. **THIS COURT ORDERS** that the key employees referred to in the KERP (the “**Key Employees**”) shall be entitled to the benefit of and are hereby granted the following charges on the Property, which charges shall not exceed: (a) an aggregate amount of \$4.6 million (the “**KERP Priority Charge**”) to secure the first \$4.6 million payable to the Key Employees under the KERP; and (b) an aggregate amount of \$4.6 million (the “**KERP Subordinated Charge**”) to secure any other payments to the Key Employees under the KERP. The KERP Priority Charge and the KERP Subordinated Charge shall have the priority set out in paragraphs 47, 48 and 50 hereof.

**APPROVAL OF FINANCIAL ADVISOR AGREEMENT**

23. **THIS COURT ORDERS** that the agreement dated May 15, 2017 engaging BMO Nesbitt Burns Inc. (the “**Financial Advisor**”) as financial advisor to SCI and attached as Confidential Appendix C to the Pre-Filing Report (the “**Financial Advisor Agreement**”), and the retention of the Financial Advisor under the terms thereof, is hereby ratified and approved and SCI is authorized and directed *nunc pro tunc* to make the payments contemplated thereunder in accordance with the terms and conditions of the Financial Advisor Agreement.

24. **THIS COURT ORDERS** that the Financial Advisor shall be entitled to the benefit of and is hereby granted a charge (the “**FA Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$3.3 million, as security for the fees and disbursements payable under the Financial Advisor Agreement, both before and after the making of this Order in respect of these proceedings. The FA Charge shall have the priority set out in paragraphs 47, 48 and 50 hereof.

**PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

25. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Sears Canada Entities with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Sears Canada Entities whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Sears Canada Entities, if one is filed, is sanctioned by this Court or is refused by the creditors of the Sears Canada Entities or this Court.

**DIRECTORS’ AND OFFICERS’ INDEMNIFICATION AND CHARGE**

26. **THIS COURT ORDERS** that the Sears Canada Entities shall jointly and severally indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Sears Canada Entities after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or

liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

27. **THIS COURT ORDERS** that the directors and officers of the Sears Canada Entities shall be entitled to the benefit of and are hereby granted the following charges on the Property, which charges shall not exceed: (a) an aggregate amount of \$44 million (the "**Directors' Priority Charge**"); and (b) an aggregate amount of \$19.5 million (the "**Directors' Subordinated Charge**"), respectively, and in each case, as security for the indemnity provided in paragraph 26 of this Order. The Directors' Priority Charge and the Directors' Subordinated Charge shall have the priority set out in paragraphs 47, 48 and 50 hereof.

28. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary: (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Priority Charge and the Directors' Subordinated Charge; and (b) the Sears Canada Entities' directors and officers shall only be entitled to the benefit of the Directors' Priority Charge and the Directors' Subordinated Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 26 of this Order.

#### **APPOINTMENT OF MONITOR**

29. **THIS COURT ORDERS** that FTI is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the Business and financial affairs of the Sears Canada Entities with the powers and obligations set out in the CCAA or set forth herein and that the Sears Canada Entities and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Sears Canada Entities pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

30. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Sears Canada Entities' receipts and disbursements;

- (b) liaise with the Sears Canada Entities and the Assistants and, if determined by the Monitor to be necessary, the Hometown Dealers and Corbeil Franchisees, with respect to all matters relating to the Property, the Business, the Restructuring and such other matters as may be relevant to the proceedings herein;
- (c) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, the Restructuring and such other matters as may be relevant to the proceedings herein;
- (d) assist the Sears Canada Entities, to the extent required by the Sears Canada Entities, in their dissemination of financial and other information to the DIP ABL Agent, the DIP ABL Lenders, the DIP Term Agent, the DIP Term Lenders and each of their respective counsel and financial advisors, pursuant to and in accordance with the Definitive Documents;
- (e) advise the Sears Canada Entities in their preparation of the Sears Canada Entities' cash flow statements and any reporting required by the Definitive Documents, which information shall be reviewed with the Monitor and delivered to the DIP ABL Agent, the DIP ABL Lenders, the DIP Term Agent, the DIP Term Lenders and each of their respective counsel and financial advisors, pursuant to and in accordance with the Definitive Documents;
- (f) advise the Sears Canada Entities in their development of the Plan and any amendments to the Plan;
- (g) assist the Sears Canada Entities, to the extent required by the Sears Canada Entities, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (h) have full and complete access to the Property (including any Property in the possession of the Hometown Dealers and the Corbeil Franchisees), including the premises, books, records, data, including data in electronic form, and other financial documents of the Sears Canada Entities, to the extent that is necessary to adequately

assess the Business and the Sears Canada Entities' financial affairs or to perform its duties arising under this Order;

- (i) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;
- (j) assist the Sears Canada Entities, to the extent required by the Sears Canada Entities, with any matters relating to any foreign proceeding commenced in relation to any of the Sears Canada Entities, including retaining independent legal counsel, agents, experts, accountants, or such other persons as the Monitor deems necessary or desirable respecting the exercise of this power; and
- (k) perform such other duties as are required by this Order or by this Court from time to time.

31. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

32. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of



any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

33. **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Sears Canada Entities, the DIP ABL Agent, the DIP ABL Lenders, the DIP Term Agent and the DIP Term Lenders with information provided by the Sears Canada Entities in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Sears Canada Entities is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Sears Canada Entities may agree.

34. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

35. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, counsel to the Sears Canada Entities and counsel to the Board of Directors and the Special Committee shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, whether incurred prior to or subsequent to the date of this Order, by the Sears Canada Entities as part of the costs of these proceedings. The Sears Canada Entities are hereby authorized and directed to pay the accounts of the Monitor, counsel to the Monitor, counsel to the Sears Canada Entities and counsel to the Board of Directors and the Special Committee on a weekly basis and, in addition, the Sears Canada Entities are hereby authorized to pay to the Monitor, counsel to the Monitor, counsel to the Sears Canada Entities and counsel to the Board of Directors and the Special Committee, retainers in the aggregate amount of \$700,000, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

36. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

37. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, counsel to the Sears Canada Entities and counsel to the Board of Directors and the Special Committee shall be entitled to the benefit of and are hereby granted a charge (the “**Administration Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$5 million, as security for their professional fees and disbursements incurred at their respective standard rates and charges, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 47, 48 and 50 hereof.

#### **DIP FINANCING**

38. **THIS COURT ORDERS** that the Sears Canada Entities are hereby authorized and empowered to obtain and borrow or guarantee, as applicable, on a joint and several basis, under:

- (a) the Senior Secured Superpriority Debtor-in-Possession Amended and Restated Credit Agreement dated as of June 22, 2017 and attached to the Wong Affidavit as Exhibit K, among the Sears Canada Entities, the DIP ABL Agent and the lenders from time to time party thereto (the “**DIP ABL Lenders**”) (as may be amended, restated, supplemented and/or modified, subject to approval of this Court in respect of any amendment that the Monitor determines to be material, the “**DIP ABL Credit Agreement**”), in order to finance the Sears Canada Entities’ working capital requirements and other general corporate purposes and capital expenditures, all in accordance with the Definitive Documents, provided that borrowings under DIP ABL Credit Agreement shall not exceed \$300 million unless permitted by further Order of this Court (the “**DIP ABL Credit Facility**”); and
- (b) the Senior Secured Superpriority Credit Agreement dated as of June 22, 2017 and attached to the Wong Affidavit as Exhibit K, among the Sears Canada Entities, the DIP Term Agent and the lenders from time to time party thereto (the “**DIP Term Lenders**”) (as may be amended, restated, supplemented and/or modified, subject to approval of this Court in respect of any amendment that the Monitor determines to be material, the “**DIP Term Credit Agreement**”), in order to finance the Sears Canada Entities’ working capital requirements and other general corporate purposes and capital expenditures, all in accordance with the Definitive Documents, provided that borrowings under the DIP Term Credit Agreement shall not exceed \$150 million

unless permitted by further Order of this Court (the “**DIP Term Credit Facility**”, and together with the DIP ABL Credit Facility, the “**DIP Facilities**”).

39. **THIS COURT ORDERS** that the DIP Facilities shall be on the terms and subject to the conditions set forth in the DIP ABL Credit Agreement, the DIP Term Credit Agreement and the other Definitive Documents.

40. **THIS COURT ORDERS** that the Sears Canada Entities are hereby authorized and empowered to execute and deliver the DIP ABL Credit Agreement, the DIP Term Credit Agreement and such mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, and including any schedules (as amended and updated from time to time) thereto, the “**Definitive Documents**”), as are contemplated by the DIP ABL Credit Agreement and the DIP Term Credit Agreement or as may be reasonably required by the DIP ABL Agent on behalf of the DIP ABL Lenders and the DIP Term Agent on behalf of the DIP Term Lenders pursuant to the terms thereof, as applicable, and the Sears Canada Entities are hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP ABL Agent, the DIP ABL Lenders, the DIP Term Agent and the DIP Term Lenders under and pursuant to the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

41. **THIS COURT ORDERS** that the DIP ABL Agent and the DIP ABL Lenders shall be entitled to the benefit of and are hereby granted a charge (the “**DIP ABL Lenders’ Charge**”) on the Property as security for any and all Obligations (as defined in the DIP ABL Credit Agreement) other than the Prepetition Obligations (as defined in the DIP ABL Credit Agreement) (including on account of principal, interest, fees, expenses and other liabilities, and the aggregate of all such obligations, the “**DIP ABL Obligations**”), which DIP ABL Lenders’ Charge shall be in the aggregate amount of the DIP ABL Obligations outstanding at any given time under the DIP ABL Credit Agreement. The DIP ABL Lenders’ Charge shall not secure an obligation that exists before this Order is made. The DIP ABL Lenders’ Charge shall have the priority set out in paragraphs 47, 48 and 50 hereof.

42. **THIS COURT ORDERS** that the DIP Term Agent and the DIP Term Lenders shall be entitled to the benefit of and are hereby granted a charge (the “**DIP Term Lenders’ Charge**”) on the Property as security for any and all Obligations (as defined in DIP Term Credit Agreement)

(including on account of principal, interest, fees, expenses and other liabilities, and the aggregate of all such obligations, the “**DIP Term Obligations**”), which DIP Term Lenders’ Charge shall be in the aggregate amount of the DIP Term Obligations outstanding at any given time under the DIP Term Credit Agreement. The DIP Term Lenders’ Charge shall not secure an obligation that exists before this Order is made. The DIP Term Lenders’ Charge shall have the priority set out in paragraphs 47, 48 and 50 hereof.

43. [Intentionally deleted.]

44. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

- (a) the DIP ABL Agent on behalf of the DIP ABL Lenders, as applicable, may take such steps from time to time as they may deem necessary or appropriate to file, register, record or perfect the DIP ABL Lenders’ Charge, the DIP ABL Credit Agreement or any of the other Definitive Documents;
- (b) the DIP Term Agent on behalf of the DIP Term Lenders, as applicable, may take such steps from time to time as they may deem necessary or appropriate to file, register, record or perfect the DIP Term Lenders’ Charge, the DIP Term Credit Agreement or any of the other Definitive Documents;
- (c) upon the occurrence of an event of default under the DIP ABL Credit Agreement, the other related Definitive Documents or the DIP ABL Lenders’ Charge, the DIP ABL Agent and the DIP ABL Lenders, as applicable, may, subject to the provisions of the DIP ABL Credit Agreement with respect to the giving of notice or otherwise, and in accordance with the DIP ABL Credit Agreement, the other related Definitive Documents and the DIP ABL Lenders’ Charge, as applicable, cease making advances to the Sears Canada Entities, make demand, accelerate payment and give other notices; provided that, the DIP ABL Agent and the DIP ABL Lenders must apply to this Court on seven (7) days’ prior written notice (which may include the service of materials in connection with such an application to this Court) to the Sears Canada Entities, the DIP Term Agent, the DIP Term Lenders and the Monitor, to enforce against or exercise any other rights and remedies with respect to the Sears Canada Entities or any of the Property (including to set off and/or consolidate any amounts

owing by the DIP ABL Agent and the DIP ABL Lenders to the Sears Canada Entities against the obligations of the Sears Canada Entities to the DIP ABL Agent and the DIP ABL Lenders under the DIP ABL Credit Agreement, the other related Definitive Documents or the DIP ABL Lenders' Charge), to appoint a receiver, receiver and manager or interim receiver, or to seek a bankruptcy order against the Sears Canada Entities and to appoint a trustee in bankruptcy of the Sears Canada Entities;

- (d) upon the occurrence of an event of default under the DIP Term Credit Agreement, the other related Definitive Documents or the DIP Term Lenders' Charge, the DIP Term Agent and the DIP Term Lenders, as applicable, may, subject to the provisions of the DIP Term Credit Agreement with respect to the giving of notice or otherwise, and in accordance with the DIP Term Credit Agreement, the other related Definitive Documents and the DIP Term Lenders' Charge, as applicable, cease making advances to the Sears Canada Entities, make demand, accelerate payment and give other notices; provided that, the DIP Term Agent and the DIP Term Lenders must apply to this Court on seven (7) days' prior written notice (which may include the service of materials in connection with such an application to this Court) to the Sears Canada Entities, the DIP ABL Agent, the DIP ABL Lenders and the Monitor, to enforce against or exercise any other rights and remedies with respect to the Sears Canada Entities or any of the Property (including to set off and/or consolidate any amounts owing by the DIP Term Agent and the DIP Term Lenders to the Sears Canada Entities against the obligations of the Sears Canada Entities to the DIP Term Agent and the DIP Term Lenders under the DIP Term Credit Agreement, the other related Definitive Documents or the DIP Term Lenders' Charge), to appoint a receiver, receiver and manager or interim receiver, or to seek a bankruptcy order against the Sears Canada Entities and to appoint a trustee in bankruptcy of the Sears Canada Entities; and
- (e) the foregoing rights and remedies of the DIP ABL Agent, the DIP ABL Lenders, the DIP Term Agent and the DIP Term Lenders shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Sears Canada Entities or the Property.

45. **THIS COURT ORDERS AND DECLARES** that the DIP ABL Agent, the DIP ABL Lenders, the DIP Term Agent and the DIP Term Lenders shall be treated as unaffected in any plan of arrangement or compromise filed by the Sears Canada Entities or any of them under the CCAA, or any proposal filed by the Sears Canada Entities or any of them under the *Bankruptcy and Insolvency Act* of Canada (the “**BIA**”), with respect to any advances made under the DIP ABL Credit Agreement, the DIP Term Credit Agreement and the other Definitive Documents.

46. **THIS COURT ORDERS AND DECLARES** that this Order is subject to provisional execution and that if any of the provisions of this Order in connection with the DIP ABL Credit Agreement, the DIP Term Credit Agreement, the other Definitive Documents, the DIP ABL Lenders’ Charge or the DIP Term Lenders’ Charge shall subsequently be stayed, modified, varied, amended, reversed or vacated in whole or in part (collectively, a “**Variation**”) whether by subsequent order of this Court on or pending an appeal from this Order, such Variation shall not in any way impair, limit or lessen the priority, protections, rights or remedies of the DIP ABL Agent, the DIP ABL Lenders, the DIP Term Agent and the DIP Term Lenders whether under this Order (as made prior to the Variation), under the DIP ABL Credit Agreement, the DIP Term Credit Agreement and the other Definitive Documents, with respect to any advances made prior to the DIP ABL Agent, the DIP ABL Lenders, the DIP Term Agent or the DIP Term Lenders being given notice of the Variation and the DIP ABL Agent, the DIP ABL Lenders, the DIP Term Agent and the DIP Term Lenders shall be entitled to rely on this Order as issued (including, without limitation, the DIP ABL Lenders’ Charge and the DIP Term Lenders’ Charge) for all advances so made.

#### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

47. **THIS COURT ORDERS** that the priorities of the Administration Charge, the FA Charge, the DIP ABL Lenders’ Charge, the DIP Term Lenders’ Charge, the Directors’ Priority Charge, the Directors’ Subordinated Charge, the KERP Priority Charge and the KERP Subordinated Charge (collectively, the “**Charges**”), as among them, with respect to ABL Priority Collateral (as defined in the Intercreditor Agreement dated March 20, 2017 and attached as Exhibit J to the Wong Affidavit) shall be as follows:

First – Administration Charge, to the maximum amount of \$5 million, and the FA Charge, to the maximum amount of \$3.3 million, on a *pari passu* basis;

Second – KERP Priority Charge, to the maximum amount of \$4.6 million;

Third – Directors' Priority Charge, to the maximum amount of \$44 million;

Fourth – DIP ABL Lenders' Charge, to the maximum amount of the quantum of the DIP ABL Obligations at the relevant time;

Fifth – the DIP Term Lenders' Charge, to the maximum amount of the quantum of the DIP Term Obligations at the relevant time;

Sixth – KERP Subordinated Charge, to the maximum amount of \$4.6 million; and

Seventh – the Directors' Subordinated Charge, to the maximum amount of \$19.5 million.

48. **THIS COURT ORDERS** that the priorities of the Charges as among them, with respect to all Property other than the ABL Priority Collateral shall be as follows:

First – Administration Charge, to the maximum amount of \$5 million, and the FA Charge, to the maximum amount of \$3.3 million, on a *pari passu* basis;

Second – KERP Priority Charge, to the maximum amount of \$4.6 million;

Third – Directors' Priority Charge, to the maximum amount of \$44 million;

Fourth – DIP Term Lenders' Charge, to the maximum amount of the quantum of the DIP Term Obligations at the relevant time;

Fifth – DIP ABL Lenders' Charge, to the maximum amount of the quantum of the DIP ABL Obligations at the relevant time;

Sixth – KERP Subordinated Charge, to the maximum amount of \$4.6 million; and

Seventh – the Directors' Subordinated Charge, to the maximum amount of \$19.5 million.

49. **THIS COURT ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as

against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

50. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property, and such Charges shall rank in priority to all other security interests, trusts (including constructive trusts), liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (including without limitation any deemed trust that may be created under the Ontario *Pension Benefits Act*) (collectively, “**Encumbrances**”) other than (a) any Person with a properly perfected purchase money security interest under the *Personal Property Security Act* (Ontario) or such other applicable provincial legislation that has not been served with notice of this Order; and (b) statutory super-priority deemed trusts and liens for unpaid employee source deductions.

51. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Sears Canada Entities shall not grant any Encumbrances over any of the Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Sears Canada Entities also obtain the prior written consent of the Monitor, the DIP ABL Agent on behalf of the DIP ABL Lenders, the DIP Term Agent on behalf of the DIP Term Lenders and the other beneficiaries of affected Charges, or further Order of this Court.

52. **THIS COURT ORDERS** that the Charges, the DIP ABL Credit Agreement, the DIP Term Credit Agreement, and the other Definitive Documents shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the “**Chargees**”) thereunder shall not otherwise be limited or impaired in any way by: (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) that binds the Sears Canada Entities, and notwithstanding any provision to the contrary in any Agreement:



- (i) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the DIP ABL Credit Agreement, the DIP Term Credit Agreement or the other Definitive Documents shall create or be deemed to constitute a breach by the Sears Canada Entities of any Agreement to which it is a party;
- (ii) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Sears Canada Entities entering into the DIP ABL Credit Agreement and the DIP Term Credit Agreement, the creation of the Charges, or the execution, delivery or performance of the other Definitive Documents; and
- (iii) the payments made by the Sears Canada Entities pursuant to this Order, the DIP ABL Credit Agreement, the DIP Term Credit Agreement or the other Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

53. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the relevant Sears Canada Entity's interest in such real property leases.

54. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order, the L/C Collateral Account (as defined in the DIP ABL Credit Agreement) shall be deemed to be subject to a lien, security, charge and security interest in favour of the DIP ABL Agent solely for the reimbursement obligation of SCI related to the letters of credit issued under the Wells Fargo Credit Agreement which remain undrawn from and after the Comeback Motion (as defined herein). The Charges as they may attach to the L/C Collateral Account, including by operation of law or otherwise: (a) shall rank junior in priority to the lien, security, charge and security interest in favour of the DIP ABL Agent in respect of the L/C Collateral Account; and (b) shall attach to the L/C Collateral Account only to the extent of the rights, if any, of any Sears Canada Entity to the return of any cash from the L/C Collateral Account in accordance with the DIP ABL Credit Agreement.

#### **CORPORATE MATTERS**

55. **THIS COURT ORDERS** that SCI be and is hereby relieved of any obligation to call and hold an annual meeting of its shareholders until further Order of this Court.

56. **THIS COURT ORDERS** that SCI be and is hereby relieved of any obligation to appoint any new directors until further Order of this Court.

#### **SERVICE AND NOTICE**

57. **THIS COURT ORDERS** that the Monitor shall: (a) without delay, publish in The Globe and Mail (National Edition) and La Presse a notice containing the information prescribed under the CCAA; and (b) within five days after the date of this Order, (i) make this Order publicly available in the manner prescribed under the CCAA, (ii) send or cause to be sent, in the prescribed manner, a notice to every known creditor who has a claim against the Sears Canada Entities of more than \$1,000 (excluding individual employees, former employees with pension and/or retirement savings plan entitlements, and retirees and other beneficiaries who have entitlements under any pension or retirement savings plans), and (iii) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder, provided that the Monitor shall not make the claims, names and addresses of the individuals who are creditors publicly available.

58. **THIS COURT ORDERS** that the Monitor shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in this proceeding (the “**Service List**”). The Monitor shall post the Service List, as may be updated from time to time, on the Monitor’s Website (as defined herein) as part of the public materials to be made available thereon in relation to this proceeding. Notwithstanding the foregoing, the Monitor shall have no liability in respect of the accuracy of or the timeliness of making any changes to the Service List.

59. **THIS COURT ORDERS** that any employee of any of the Sears Canada Entities that receives a notice of termination from any of the Sears Canada Entities shall be deemed to have received such notice of termination by no more than the seventh day following the date such notice of termination is delivered, if such notice of termination is sent by ordinary mail, courier or registered mail.

60. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List

website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05, this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: [cfcanada.fticonsulting.com/searscanada](http://cfcanada.fticonsulting.com/searscanada) (the “**Monitor’s Website**”).

61. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Sears Canada Entities and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Sears Canada Entities’ creditors or other interested parties at their respective addresses as last shown on the records of the Sears Canada Entities and that any such service or distribution by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

62. **THIS COURT ORDERS** that the Applicants, the Monitor, the Financial Advisor, the DIP Term Agent on behalf of the DIP Term Lenders and the DIP ABL Agent on behalf of the DIP ABL Lenders, and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Applicants’ creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the Electronic Commerce Protection Regulations, Reg. 81000-2-175 (SOR/DORS).

#### **COMEBACK MOTION**

63. **THIS COURT ORDERS** that the comeback motion shall be heard on July 13, 2017 (the “**Comeback Motion**”).

**GENERAL**

64. **THIS COURT ORDERS** that the Sears Canada Entities or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

65. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Sears Canada Entities, the Business or the Property.

66. **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 Sears Canada Entities, 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 Sears Canada Entities 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 Sears Canada Entities and the Monitor and their respective agents in carrying out the terms of this Order.

67. **THIS COURT ORDERS** that each of the Applicants and the Monitor be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada, including acting as the foreign representative of the Applicants to apply to the United States Bankruptcy Court for relief pursuant to Chapter 15 of the *United States Bankruptcy Code*, 11 U.S.C. §§ 101-1515, as amended, and to act as foreign representative in respect of any such proceedings and any ancillary relief in respect thereto, and to take such other steps as may be authorized by the Court.

68. **THIS COURT ORDERS** that any interested party (including the Sears Canada Entities and the Monitor) may apply to this Court to vary or amend this Order at the Comeback Motion

on not less than seven (7) calendar days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

69. **THIS COURT ORDERS** that Confidential Appendix B and Confidential Appendix C to the Pre-Filing Report shall be and are hereby sealed, kept confidential and shall not form part of the public record pending further Order of this Court.

70. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

A handwritten signature in cursive script, appearing to read "Haines J.", written over a horizontal line.

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

JUL 13 2017

PER / PAR:

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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. (collectively, the "Applicants")

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
(Commercial List)

Proceeding commenced at Toronto

**AMENDED AND RESTATED INITIAL ORDER**

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

Marc Wasserman (LSUC #: 44066M)  
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Michael De Lellis (LSUC #: 48038U)  
Tel: 416.862.5997

Lawyers for the Applicants



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.

Applicants

July 13, 2017

*I am satisfied that this motion should be granted on the terms of the attached amended and restated Initial Order and the attached order suspending the special payments, the Supplemental Plan Payments and the PRB Plan Payments and approving the Teague Sheek and extending the Stay pending to October 4, 2017.*

Ontario  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

Proceeding commenced at Toronto

**MOTION RECORD OF THE APPLICANTS**

(Stay Extension, Suspension of Special Payments and other Post-Retirement Benefits, Approval of SISF, Amended and Restated Initial Order)

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Lawyers for the Applicants







(3)

of The Monitor contains  
commercially sensitive  
information and shall  
remain sealed and not  
form part of the public  
record pending further  
Order of the Court on the  
Applicants' motion for a  
Judgment Approval Order  
that is scheduled to be  
heard on July 18, 2017.

Hainey J.



ONTARIO  
 SUPERIOR COURT OF JUSTICE  
 COMMERCIAL LIST



THE HONOURABLE MR.  
 JUSTICE HAINEY

)  
 )  
 )

THURSDAY, THE 13<sup>TH</sup>  
 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**”)

**ORDER**

**(Suspension of Special Payments, Supplemental Plan Payments and PRB Plan Payments, Approval of the Term Sheet and Stay Extension)**

THIS MOTION, made by the Applicants pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), for an order, *inter alia*: (i) authorizing the suspension of the Special Payments (as defined below); (ii) approving the suspension of the Supplemental Plan Payments (as defined below); (iii) approving the suspension of the PRB Plan Payments (as defined below); (iv) declaring that the directors, officers, officials and agents of the Applicants and SearsConnect (the “**Partnership**” and collectively with the Applicants, the “**Sears Canada Entities**”) shall not incur any liability as a result of the failure of the Sears Canada Entities to make any of the Special Payments during the Stay Period (as

defined below), and during any extension of same; (v) approving the Term Sheet (as defined below); and (vi) extending the Stay Period to and including October 4, 2017, and certain related relief, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of the Applicants, the Affidavit of Billy Wong sworn July 5, 2017 including the exhibits thereto (the “**Second Wong Affidavit**”), the First Report of FTI Consulting Canada Inc., in its capacity as Monitor (the “**Monitor**”), and the Supplement to the First Report of the Monitor (the “**Supplemental Report**”), filed, and on hearing the submissions of respective counsel for the Sears Canada Entities, counsel to the Monitor, counsel to the Board of Directors and the Special Committee of the Board of Directors of Sears Canada Inc., counsel to Wells Fargo Capital Finance Corporation Canada as administrative agent under the DIP ABL Credit Agreement, counsel to GACP Finance Co., LLC as administrative agent under the DIP Term Credit Agreement, and such other counsel as were present, no one else appearing although duly served as appears from the Affidavits of Service of Sonja Pavic sworn July 6, 2017, filed:

#### **SERVICE AND DEFINITIONS**

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 any capitalized term used and not defined herein shall have the meaning ascribed thereto in the Second Wong Affidavit.

#### **SUSPENSION OF SPECIAL PAYMENTS**

3. THIS COURT ORDERS that the obligation of the Sears Canada Entities to make special payments (whether pursuant to the Ontario *Pension Benefits Act*, RSO 1990, c. P-8 and regulations made thereunder or to the terms of the Sears Pension Plan) in respect of the defined benefit component of the Sears Pension Plan (such payments being the “**Special Payments**”), shall be suspended effective on and after October 1, 2017, for the duration of the Sears Canada Entities’ CCAA proceedings (the “**CCAA Proceedings**”), subject to further Order of this Court. For greater certainty, the obligations of the Sears Canada Entities to make Special Payments prior to October 1, 2017 are expressly subject to the terms set forth in the Term Sheet, and the

suspension of Special Payments hereunder does not constitute a disclaimer or termination by the Sears Canada Entities of any component of the Sears Pension Plan.

4. THIS COURT ORDERS that for the duration of the CCAA Proceedings, no Person (as defined in the Initial Order), including employees and former employees of the Sears Canada Entities (or the surviving spouse of any such person) entitled to a benefit under the defined benefit component of the Sears Pension Plan (whether or not such member was represented by a union when the member was employed by the Sears Canada Entities) (the “**Retirees**”) or the Superintendent of Financial Services, shall commence any action or other proceeding in connection with the suspension of the Special Payments or because the Sears Canada Entities have not made the Special Payments.

5. THIS COURT ORDERS that the Sears Canada Entities and each of their respective directors, officers, officials, and agents shall not incur any obligation or liability, whether by way of debt, damages for breach of any duty whether statutory, fiduciary, common law or otherwise, or for breach of trust, nor shall any trust be imposed, whether express, implied, constructive, resulting, deemed or otherwise, as a result of the suspension of the Special Payments in accordance with the terms of this Order.

6. THIS COURT ORDERS that if any claim, lien, charge or trust, including deemed trust, arises as a result of the suspension of the Special Payments, no such claim, lien, charge or trust, including deemed trust, shall have priority over the Charges (as defined in the Initial Order) in these CCAA Proceedings, or in any subsequent receivership, interim receivership or bankruptcy of the Sears Canada Entities.

#### **SUSPENSION OF SUPPLEMENTAL PLAN PAYMENTS**

7. THIS COURT ORDERS that the obligation of the Sears Canada Entities to make (i) any payments in respect of the Supplemental Plan to the Post-2010 SP Pensioners and (ii) any payment required in respect of any SP Shortfall Amounts in respect of the Pre-2010 SP Pensioners (collectively, such payments being the “**Supplemental Plan Payments**”), shall be suspended effective on and after October 1, 2017, for the duration of the CCAA Proceedings, subject to further Order of this Court. For greater certainty, the obligations of the Sears Canada Entities to make Supplemental Plan Payments prior to October 1, 2017 are expressly subject to

the terms set forth in the Term Sheet, and the suspension of Supplemental Plan Payments, hereunder does not constitute a disclaimer or termination by the Sears Canada Entities of the Supplemental Plan.

8. THIS COURT ORDERS that for the duration of the CCAA Proceedings, no Person, including employees and former employees of the Sears Canada Entities (or the surviving spouse of any such person) entitled to a benefit under the Supplemental Plan (whether or not such member was represented by a union when the member was employed by the Sears Canada Entities) shall commence any action or other proceeding in connection with the suspension of the Supplemental Plan Payments or because the Sears Canada Entities have not made the Supplemental Plan Payments.

#### **SUSPENSION OF PRB PLAN PAYMENTS**

9. THIS COURT ORDERS that the obligation of the Sears Canada Entities to make any payments in respect of the post-retirement health and dental benefits under the PRB Plan (such payments being the “**PRB Health and Dental Payments**”), shall be suspended effective on and after October 1, 2017, for all claims submitted and received after such date, for the duration of the CCAA Proceedings, subject to further Order of this Court. For greater certainty, the obligations of the Sears Canada Entities to make PRB Health and Dental Payments prior to October 1, 2017 are expressly subject to the terms set forth in the Term Sheet, and the suspension of PRB Health and Dental Payments, hereunder does not constitute a disclaimer or termination by the Sears Canada Entities of the PRB Plan.

10. THIS COURT ORDERS that the obligation of the Sears Canada Entities to make any payments in respect of the life insurance benefits under the PRB Plan, including premiums for life insurance coverage (such payments, together with the PRB Health and Dental Payments, the “**PRB Plan Payments**”), shall be suspended effective on and after October 1, 2017, for the duration of the CCAA Proceedings, subject to further Order of this Court. For greater certainty, the obligations of the Sears Canada Entities to make PRB Plan Payments prior to October 1, 2017 are expressly subject to the terms set forth in the Term Sheet, and the suspension of the PRB Plan Payments hereunder does not constitute a disclaimer or termination by the Sears Canada Entities of the PRB Plan.

11. THIS COURT ORDERS that for the duration of the CCAA Proceedings, no Person, including the Retirees and surviving spouses who have coverage with respect to post-retirement health and dental benefits and/or with respect to life insurance benefits under the PRB Plan (whether or not such member was represented by a union when the member was employed by the Sears Canada Entities) shall commence any action or other proceeding in connection with the suspension of the PRB Plan Payments or due to the Sears Canada Entities having not made the PRB Plan Payments.

**APPROVAL OF TERM SHEET**

12. THIS COURT ORDERS that the term sheet attached as Appendix “A” to the Supplemental Report (the “Term Sheet”) between: (a) the Sears Canada Entities; (b) the Superintendent of Financial Services, as Administrator of the Pension Benefits Guarantee Fund; (c) Koskie Minsky LLP, as Representative Counsel and on behalf of the Representatives (as each such term is defined in the Representative Counsel Order for Pensions and Post-Retirement Benefits issued by this Court in the CCAA Proceedings on July 13, 2017); (d) the Representatives; (e) Ursel Phillips Fellows Hopkinson LLP, as Employee Representative Counsel and on behalf of the Employee Representatives (as each such term is defined in the Employee Representative Counsel Order issued by this Court in the CCAA Proceedings on July 13, 2017); and (f) the Employee Representatives, is hereby approved and the parties thereto shall comply with their obligations thereunder.

**EXTENSION OF STAY PERIOD**

13. THIS COURT ORDERS that the Stay Period (as defined in paragraph 14 of the Initial Order) is hereby extended from July 22, 2017 until and including October 4, 2017.

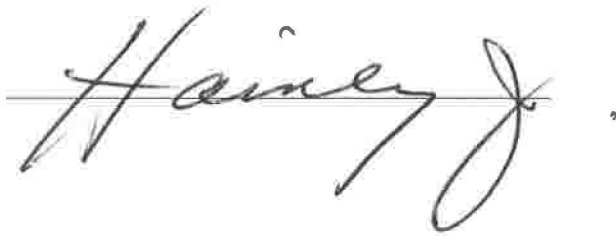
**GENERAL**

14. THIS COURT ORDERS that this Order shall have full force and effect in all provinces and territories in Canada.

15. 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 of America, 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.

A handwritten signature in cursive script, appearing to read "Hainey J.", written over a horizontal line.

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

JUL 13 2017

PER / PAR:

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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. (collectively, the "Applicants")

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
(Commercial List)

Proceeding commenced at Toronto

**ORDER**

(Suspension of Special Payments, Supplemental Plan Payments  
and PRB Plan Payments, Approval of the Term Sheet and Stay  
Extension) **380**

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

Lawyers for the Applicants

**APPENDIX "K"**  
**(see attached)**

[TRANSLATION]

December 8, 2017

Sent by email ([manon.tremblay@judex.qc.ca](mailto:manon.tremblay@judex.qc.ca))

The Honourable Martin Dallaire  
Justice of the Superior Court of Québec  
Courthouse  
227 Racine St. East  
Chicoutimi, Quebec G7H 7B4



Barristers &amp; Solicitors / Patent &amp; Trade-mark Agents

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Your reference  
150-06-000010-173

Our reference  
1000299972

Justice Dallaire,

**Karine Tremblay v Centre Hi-Fi Chicoutimi et al (Court Record: 150-06-000010-173)**

We are counsel for FTI Consulting Canada Inc. in its capacity as Monitor of Sears Canada Inc. (hereinafter "**Sears Canada**"), Corbeil Électrique Inc. (hereinafter "**Corbeil**") and their affiliates (hereinafter "**Monitor**").

We are hereby writing you regarding the *Application for Leave to Amend for Authorization to Institute a Class Action* by the Plaintiff dated November 29, 2017 in the aforementioned matter (hereinafter the "**Application to Amend**"). Consequently, this letter is in response to your letter dated December 1, 2017, a copy thereof was sent to us by Mtre. Rodrigo.

As you probably know, on June 22, 2017, the Ontario Superior Court of Justice (Commercial List) (the "**CCAA Court**") issued an initial order, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36 (the "**CCAA**") in the matter bearing the Court number CV-17-11846-00CL (the "**Initial Order**") in respect of Sears Canada, Corbeil, 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., 3339611 Canada Inc. and Sears Canada LP (together, the "**Sears Canada Entities**").

Paragraph 14 of the Initial Order provides for the stay of proceedings in respect of the Sears Canada Entities and the Monitor. In addition, section 25 of the Initial Order also provides for the stay of proceedings in respect of the directors and officers of the Sears Canada Entities. The Initial Order has been amended several times since in order to extend the Stay Period in favour of the Sears Canada Entities, which Stay Period has been extended until January 22, 2018 and remains in effect.



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During October and November 2017, Mtre. Gamache contacted the Monitor in order to obtain certain information. Since that time, he has been informed, including by a letter sent by the undersigned dated November 16, 2017, of the stay of proceedings in respect of the Sears Canada Entities, their directors and the Monitor. We asked Mtre. Gamache to comply with the Initial Order and to await authorization of a claims process by the CCAA Court in order to submit thereunder any claim against the Sears Canada Entities.

On November 29, 2017, we were informed by Mtre. Rodrigo that Mtres. Gamache and Bourgoïn committed a glaring breach of the Initial Order by attempting to add the Monitor and the directors of Sears Canada as defendants in this Matter. On the same day, the Monitor filed a notice of stay of proceeding in this matter and in the related class action matters involving Mtres Gamache and Bourgoïn.

On December 4, we once again asked Mtres. Gamache and Bourgoïn to comply with the stay of proceedings in respect of Sears Canada, Corbeil and the Monitor and to withdraw their Application to Amend prior to December 7, 2017. Alternatively, we invited them to apply to the CCAA Court to have the stays of proceedings lifted, the whole in accordance with paragraph 14 of the Initial Order. This letter remains as of yet unanswered.

Given the role of the Monitor as an officer appointed by the CCAA Court, we propose that we attend the conference call on December 21 in order to make the necessary representations. We are at the disposal of the Court in this regard.

Sincerely yours,

Norton Rose Fulbright Canada LLP

Per:

(signed)

Arad Mojtahedi  
Associate

AM/cc

Copy: Mtre. David Bourgoïn – BGA Barristers & Solicitors  
Mtre. Benoit Gamache – Cabinet BG Avocats Inc.  
Mtre. Guy Poitras – Gowling WLG  
Mtre. Marie Audren and Mtre. Emanuelle Rolland – Audren Rolland  
Mtre. Luc Thibaudeau – Lavery de Billy  
Mtre. Nick Rodrigo – Davies Ward Phillips & Vineberg  
Mtre. Sean Zweig – Bennett Jones  
Mtre. Sandra Abitan and Mtre. Julien Morissette – Osler, Hoskin & Harcourt  
Mtre. Virginie Gauthier and Mtre. Alan Mersky – Norton Rose Fulbright Canada



ORIGINAL DOCUMENT(S) FOLLOW

**Schmitt, Alexander**

---

**From:** Cleroux, Chantal on behalf of Mojtahedi, Arad  
**Sent:** December-08-17 3:24 PM  
**To:** manon.tremblay@judex.qc.ca  
**Cc:** dbourgoin@bga-law.com; bgamache@bga-law.com; guy.poitras@gowlingwlg.com; maudren@audrenrolland.com; erolland@audrenrolland.com; lthibaudeau@lavery.ca; nrodrigo@dwpv.com; zweigs@bennettjones.com; sabitan@osler.com; jmorissette@osler.com; Gauthier, Virginie; Merskey, Alan  
**Subject:** Karine Tremblay c. Centre Hi-Fi Chicoutimi et al  
**Attachments:** CAN\_DMS\_109793880\_v1\_lettre au juge Dallaire.PDF

Bonjour Mme Tremblay,

Nous vous demandons de bien vouloir remettre la lettre ci-jointe à l'honorable juge Dallaire.

Meilleures salutations.

**Arad Mojtahedi**

Avocat  
Associate

Norton Rose Fulbright Canada S.E.N.C.R.L., s.r.l. / LLP  
1, Place Ville Marie, Bureau 2500, Montréal, QC, H3B 1R1, Canada  
T: +1 514.847.4582 | F: +1 514 286 5474  
[arad.mojtahedi@nortonrosefulbright.com](mailto:arad.mojtahedi@nortonrosefulbright.com)

**NORTON ROSE FULBRIGHT**

Le 8 décembre 2017

Transmis par courriel (*manon.tremblay@judex.qc.ca*)

L'honorable Martin Dallaire  
 Juge de la Cour supérieure du Québec  
 Palais de justice  
 227, rue Racine Est  
 Chicoutimi (Québec) G7H 7B4

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Votre référence  
 150-06-000010-173

Notre référence  
 1000299972

### **Karine Tremblay c. Centre Hi-Fi Chicoutimi et al (150-06-000010-173)**

Monsieur le Juge Dallaire,

Nous sommes les procureurs de FTI Consulting Canada Inc., en sa qualité de Contrôleur de Sears Canada Inc. (ci-après « **Sears Canada** »), Corbeil Électrique Inc. (ci-après « **Corbeil** ») et leurs filiales (ci-après le « **Contrôleur** »).

Nous vous écrivons la présente en relation avec la *Demande pour permission de modifier la demande pour autorisation d'exercer une action collective* de la Demanderesse datée du 29 novembre 2017 dans le dossier mentionné en titre (ci-après la « **Demande de modification** »). Conséquemment, la présente fait suite à votre lettre du 1<sup>er</sup> décembre 2017, dont une copie nous a été acheminée par Me Rodrigo.

Comme vous le savez probablement, le 22 juin 2017, la Cour supérieure de l'Ontario (Rôle commercial) (ci-après la « **Cour LACC** ») a rendu une ordonnance initiale conformément à la *Loi sur les arrangements avec les créanciers des compagnies*, L.R.C. 1985, c. C-36 dans le dossier portant le numéro de Cour CV-17-11846-00CL (ci-après l'« **Ordonnance initiale** ») à l'égard de Sears Canada, Corbeil, 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., 3339611 Canada Inc. et Sears Canada LP (ci-après les « **Entités Sears Canada** »).

Le paragraphe 14 de l'Ordonnance initiale prévoit la suspension des procédures à l'égard des Entités Sears Canada et du Contrôleur. De plus, le paragraphe 25 de l'Ordonnance initiale prévoit également la suspension des procédures à l'égard des administrateurs et dirigeants des Entités Sears Canada. L'Ordonnance initiale a été amendée à plusieurs reprises depuis, de manière à proroger la Période de suspension en faveur des Entités Sears Canada, laquelle a été prorogée jusqu'au 22 janvier 2018, et demeure sujette à prorogation.

Durant les mois d'octobre et novembre 2017, Me Gamache a contacté le Contrôleur afin d'obtenir certaines informations. Dès lors, il a été informé, incluant par une lettre envoyée par le soussigné en date du 16 novembre 2017, de la suspension des procédures à l'égard des Entités Sears Canada, de leurs administrateurs et du Contrôleur. Nous avons ainsi invité Me Gamache à respecter l'Ordonnance initiale et à attendre l'autorisation



Le 8 décembre 2017

d'un processus de réclamation par la Cour LACC afin d'y soumettre toute réclamation contre les Entités Sears Canada.

Or, le 29 novembre 2017, nous avons été informés par Me Rodrigo que Mes Gamache et Bourgoïn ont contrevenu de façon flagrante à l'Ordonnance initiale par leur tentative d'ajouter le Contrôleur et les administrateurs de Sears Canada comme défendeurs dans le présent dossier. Le même jour, le Contrôleur a déposé des avis de suspension des procédures dans le présent dossier et dans les dossiers d'action collective connexes impliquant Mes Gamache et Bourgoïn.

Le 4 décembre dernier, nous avons à nouveau demandé à Mes Gamache et Bourgoïn de respecter la suspension des procédures à l'égard de Sears Canada, Corbeil et le Contrôleur et de retirer leur Demande de modification avant le 7 décembre 2017. Alternativement, nous les avons invités à s'adresser à la Cour LACC afin d'obtenir une ordonnance pour la levée de suspension des procédures, le tout conformément au paragraphe 14 de l'Ordonnance initiale. Cette missive demeure à ce jour sans réponse.

Étant donné le rôle du Contrôleur en tant qu'officier nommé par la Cour LACC, nous proposons d'assister à la conférence téléphonique du 21 décembre prochain afin d'y faire les représentations nécessaires. Nous sommes à la disposition du Tribunal à cet égard.

Nous vous remercions et vous prions d'agréer, monsieur le Juge Dallaire, l'expression de nos meilleurs sentiments.

Norton Rose Fulbright Canada S.E.N.C.R.L., s.r.l.

Par :

A handwritten signature in blue ink that reads "Arad Mojtahedi".

Arad Mojtahedi  
Avocat

AM/cc

Copie : Me David Bourgoïn – BGA Avocats  
Me Benoit Gamache – Cabinet BG Avocats Inc.  
Me Guy Poitras – Gowling WLG  
Me Marie Audren et Me Emanuelle Rolland – Audren Rolland  
Me Luc Thibaudeau – Lavery de Billy  
Me Nick Rodrigo – Davies Ward Phillips & Vineberg  
Me Sean Zweig – Bennett Jones  
Me Sandra Abitan et Me Julien Morissette – Osler, Hoskin & Harcourt  
Me Virginie Gauthier et Me Alan Mersky – Norton Rose Fulbright Canada

**APPENDIX “L”  
(see attached)**



67 Sainte-Ursule, Québec, Québec G1R 4E7  
4725, Metropolitan East, Suite 207, Montreal, Québec H1R 0C1

**David Bourgoin, attorney**  
Direct Line: 418 523-4222  
Fax: 418 692-5695  
[dbourgoin@bga-law.com](mailto:dbourgoin@bga-law.com)

**BY EMAIL**

Quebec, December 12, 2017

**The Honourable Martin Dallaire (J.S.C.)**  
CHICOUTIMI COURTHOUSE  
227 Racine Street East  
Chicoutimi, Quebec G7H 7B4

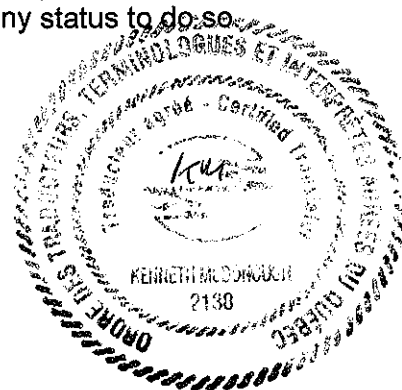
Re: Karine Tremblay  
v.: Centre Hi-Fi Chicoutimi et als  
Court No.: 150-06-000010-173  
O/F: BGA-0070-4

Dear Sir:

We have taken due note of Mtre Arad Mojtahedi's request to participate in the conference call of December 21 and we are not opposed to it as long as our colleague formalizes his clients' status in this matter beforehand.

Moreover, we consider it inappropriate for our colleague to plead his clients' position in writing without having been authorized by the court and without any status to do so.

I look forward to receiving a follow-up from you.



Yours truly,

(signed)

David Bourgoin  
**BGA Barristers & Solicitors LLP**  
DB/st

c.c.: Mtre. Guy Poitras / *Gowling WLG (Canada) LLP*  
Mtre. Marie Audren – Mtre. Emanuelle Rolland / *Audren Rolland LLP*  
Mtre. Luc Thibaudeau / *Lavery De Billy*  
Mtre. Nicholas Rodrigo / *Davies Ward Philips & Vineberg*  
Mtre. Arad Mojtahedi / *Norton Rose Fulbright Canada*  
Mtre. Benoît Gamache / *BG LAW FIRM INC.*



ORIGINAL DOCUMENT(S) FOLLOW

**Schmitt, Alexander**

---

**From:** Sonia Tremblay <stremblay@bga-law.com>  
**Sent:** December-12-17 9:46 AM  
**To:** manon.tremblay@judex.qc.ca  
**Cc:** Benoit Gamache; guy.poitras@gowlingwlg.com; maudren@audrenrolland.com; erolland@audrenrolland.com; lthibaudeau@lavery.ca; nrodrigo@dwpv.com; Mojtahedi, Arad  
**Subject:** RE: Karine Tremblay c. Centre Hi-Fi Chicoutimi et al  
**Attachments:** LETTRE 12 DÉCEMBRE 2017.pdf

Mme Tremblay,

Voir lettre ci-jointe.

Espérant le tout conforme.



**Sonia Tremblay**  
**Adjointe de Me David Bourgoin**  
**BGA Avocats s.e.n.c.r.l.**  
67, Sainte-Ursule  
Québec (Quebec) G1R 4E7  
Tél. / tel. : (418) 692-5137  
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[stremblay@bga-law.com](mailto:stremblay@bga-law.com)

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---

**De :** Cleroux, Chantal [<mailto:chantal.cleroux@nortonrosefulbright.com>] **De la part de** Mojtahedi, Arad

**Envoyé :** 8 décembre 2017 15:24

**À :** [manon.tremblay@judex.qc.ca](mailto:manon.tremblay@judex.qc.ca)

**Cc :** David Bourgoin <[dbourgoin@bga-law.com](mailto:dbourgoin@bga-law.com)>; Benoit Gamache <[bgamache@bga-law.com](mailto:bgamache@bga-law.com)>; [guy.poitras@gowlingwlg.com](mailto:guy.poitras@gowlingwlg.com); [maudren@audrenrolland.com](mailto:maudren@audrenrolland.com); [erolland@audrenrolland.com](mailto:erolland@audrenrolland.com); [lthibaudeau@lavery.ca](mailto:lthibaudeau@lavery.ca); [nrodrigo@dwpv.com](mailto:nrodrigo@dwpv.com); [zweigs@bennettjones.com](mailto:zweigs@bennettjones.com); [sabitan@osler.com](mailto:sabitan@osler.com); [jmorissette@osler.com](mailto:jmorissette@osler.com); Gauthier, Virginie <[virginie.gauthier@nortonrosefulbright.com](mailto:virginie.gauthier@nortonrosefulbright.com)>; Merskey, Alan <[alan.merskey@nortonrosefulbright.com](mailto:alan.merskey@nortonrosefulbright.com)>

**Objet :** Karine Tremblay c. Centre Hi-Fi Chicoutimi et al

Bonjour Mme Tremblay,

Nous vous demandons de bien vouloir remettre la lettre ci-jointe à l'honorable juge Dallaire.

Meilleures salutations.

**Arad Mojtahedi**  
Avocat  
Associate

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**NORTON ROSE FULBRIGHT**

*Le droit à l'échelle mondiale*  
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**David Bourgoin, avocat**  
Ligne directe : 418 523-4222  
Télécopieur : 418 692-5695  
[dbourgoin@bga-law.com](mailto:dbourgoin@bga-law.com)

**PAR COURRIEL**

Québec, le 12 décembre 2017

**L'honorable Martin Dallaire (j.c.s.)**  
PALAIS DE JUSTICE DE CHICOUTIMI  
227, rue Racine Est  
Chicoutimi (Québec) G7H 7B4

Objet : Karine Tremblay  
c. : Centre Hi-Fi Chicoutimi et als.  
No de Cour : 150-06-000010-173  
N/D : BGA-0070-4

---

Monsieur le Juge,

Nous avons pris bonne note de la demande de Me Arad Mojtahedi de participer à la conférence téléphonique du 21 décembre prochain et nous ne nous y opposons pas, pour autant que notre collègue officialise au préalable le statut de ses clients dans le présent dossier.

Nous considérons d'ailleurs inapproprié que notre collègue plaide la position de ses clients par écrit sans y avoir été autorisé par le tribunal et sans aucun statut pour ce faire.



Dans l'attente de votre suivi, je vous prie d'agréer, Monsieur le Juge, mes salutations distinguées.

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke extending to the right.

David Bourgoïn  
**BGA Avocats s.e.n.c.r.l.**  
DB/st

c.c. : Me Guy Poitras / *Gowling WLG (Canada) S.E.N.C.R.L., s.r.l.*  
Me Marie Audren - Me Emanuelle Rolland / *Audren Rolland S.E.N.C.R.L.*  
Me Luc Thibaudeau / *Lavery De Billy*  
Me Nicholas Rodrigo / *Davies Ward Philips & Vineberg*  
Me Arad Mojtahedi / *Norton Rose Fulbright Canada*  
Me Benoît Gamache / *Cabinet BG Avocat inc.*

**APPENDIX “M”  
(see attached)**

December 15, 2017

Sent by email ([manon.tremblay@judex.qc.ca](mailto:manon.tremblay@judex.qc.ca))

The Honourable Martin Dallaire  
Justice of the Superior Court of Québec  
Courthouse  
227 Racine St. East  
Chicoutimi, Quebec G7H 7B4

**NORTON ROSE FULBRIGHT**

Barristers & Solicitors / Patent & Trade-mark Agents

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Your reference  
150-06-000010-173

Our reference  
1000299972

Justice Dallaire,

***Karine Tremblay v Centre Hi-Fi Chicoutimi et al (150-06-000010-173)***

This letter is in response to the letter from Mtre. David Bourgoïn dated December 12, 2017, sent in connection with the aforementioned matter.

First, contrary to what Mtre. Bourgoïn wrote, there is nothing inappropriate about notifying the Court that an initial order has been issued pursuant to the *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36 (the "CCAA") in respect of the parties against which the plaintiff is attempting to institute actions when there is an order to stay all proceedings against those entities.

As an officer of justice appointed by the Ontario Superior Court of Justice, FTI Consulting Canada Inc., in its capacity as Monitor of Sears Canada Inc. and on its own behalf, has the status required to participate in the conference call on December 21 with the objective of informing the Court and the parties involved in this matter of the existence and effects of the orders issued by the Ontario Superior Court of Justice pursuant to the CCAA. It is particularly important that the Court be notified that, if the Plaintiff wishes to institute proceedings against a party in respect of which an order of stay of proceedings has been issued pursuant to the CCAA, an application to have the stay of proceedings lifted must be filed with the Ontario Superior Court of Justice, which is holding the proceedings pursuant to the CCAA.

Furthermore, neither Sears Canada Inc. nor FTI Consulting Canada Inc. is for the moment party to the aforementioned proceedings, since the Application for Leave to Amend for Authorization to Institute a Class Action was not allowed.

Notwithstanding the foregoing, should the Court be of the opinion that FTI Consulting Canada Inc. must formalize its status by filing an Answer<sup>1</sup> in connection with this matter, we will do so.

Sincerely yours,

\_\_\_\_\_

<sup>1</sup> Translator's note: in Quebec civil law, an *answer* is equivalent to a *notice of appearance*



Norton Rose Fulbright Canada LLP  
Per:

(signed)

Arad Mojtahedi  
Associate

AM/cc

Copy: Mtre. David Bourgoïn – *BGA Avocats*  
Mtre. Benoit Gamache – *BG Law Firm Inc.*  
Mtre. Guy Poitras – *Gowling WLG*  
Mtre. Marie Audren and Mtre. Emanuelle Rolland – *Audren Rolland*  
Mtre. Luc Thibaudeau – *Lavery de Billy*  
Mtre. Nick Rodrigo – *Davies Ward Phillips & Vineberg*  
Mtre. Sean Zweig – *Bennett Jones*  
Mtre. Sandra Abitan, Mtre. Éric Préfontaine and Mtre. Julien Morissette – *Osler, Hoskin & Harcourt*  
Mtre. Julie Himo, Mtre. Virginie Gauthier and Mtre. Alan Mersky – *Norton Rose Fulbright Canada*



ORIGINAL DOCUMENT(S) FOLLOW

**Schmitt, Alexander**

---

**From:** Cleroux, Chantal on behalf of Mojtahedi, Arad  
**Sent:** December-15-17 4:31 PM  
**To:** manon.tremblay@judex.qc.ca  
**Cc:** dbourgoin@bga-law.com; bgamache@cabinetbg.ca; guy.poitras@gowlingwlg.com; maudren@audrenrolland.com; erolland@audrenrolland.com; lthibaudeau@lavery.ca; nrodrigo@dwpv.com; sabitan@osler.com; eprefontaine@osler.com; jmorissette@osler.com; zweigs@bennettjones.com; Himo, Julie; Gauthier, Virginie; Merskey, Alan  
**Subject:** RE: Karine Tremblay c. Centre Hi-Fi Chicoutimi et al (150-06-000010-173)  
**Attachments:** CAN\_DMS\_109891167\_v1\_Lettre au juge Dallaire.PDF

Re-bonjour,

Veillez ignorer notre courriel précédent qui vous fut envoyé par erreur. Vous trouverez ci-joint la lettre qui aurait dû être transmise.

Nos excuses.

Merci.

**Chantal Cléroux**

Adjointe juridique  
Legal Assistant  
de / to Vanessa Rochester, Dominique Noël, Arad Mojtahedi

Norton Rose Fulbright Canada LLP / S.E.N.C.R.L., s.r.l.  
1, Place Ville Marie, Bureau 2500, Montréal, QC, H3B 1R1, Canada  
T: +1 514.847.4653 | F: +1 514.286.5474  
[chantal.cleroux@nortonrosefulbright.com](mailto:chantal.cleroux@nortonrosefulbright.com)

**NORTON ROSE FULBRIGHT**

---

**De :** Cleroux, Chantal **De la part de** Mojtahedi, Arad ([arad.mojtahedi@nortonrosefulbright.com](mailto:arad.mojtahedi@nortonrosefulbright.com))

**Envoyé :** 15 décembre 2017 16:14

**À :** 'manon.tremblay@judex.qc.ca'

**Cc :** 'dbourgoin@bga-law.com'; 'bgamache@cabinetbg.ca'; 'guy.poitras@gowlingwlg.com'; 'maudren@audrenrolland.com'; 'erolland@audrenrolland.com'; 'lthibaudeau@lavery.ca'; 'nrodrigo@dwpv.com'; 'sabitan@osler.com'; 'eprefontaine@osler.com'; 'jmorissette@osler.com'; 'zweigs@bennettjones.com'; Himo, Julie; Gauthier, Virginie; Merskey, Alan

**Objet :** Karine Tremblay c. Centre Hi-Fi Chicoutimi et al (150-06-000010-173)

Bonjour Mme Tremblay,

Nous vous demandons de bien vouloir remettre notre lettre ci-jointe à l'honorable juge Dallaire.

Meilleures salutations.

**Chantal Cléroux**

Adjointe juridique  
Legal Assistant  
de / to Vanessa Rochester, Dominique Noël, Arad Mojtahedi

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**NORTON ROSE FULBRIGHT**

Le 15 décembre 2017

**Transmis par courriel** (*manon.tremblay@judex.qc.ca*)

L'honorable Martin Dallaire  
Juge de la Cour supérieure du Québec  
Palais de justice  
227, rue Racine Est  
Chicoutimi (Québec) G7H 7B4

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**Arad Mojtahedi**  
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[arad.mojtahedi@nortonrosefulbright.com](mailto:arad.mojtahedi@nortonrosefulbright.com)

Votre référence  
150-06-000010-173

Notre référence  
1000299972

### ***Karine Tremblay c. Centre Hi-Fi Chicoutimi et al (150-06-000010-173)***

Monsieur le Juge Dallaire,

La présente fait suite à la lettre de Me David Bourgoïn en date du 12 décembre 2017 transmise dans l'affaire mentionnée en titre.

D'abord, contrairement à ce qu'écrit Me Bourgoïn, il n'y a rien d'inapproprié dans le fait d'aviser par écrit la cour du fait qu'une ordonnance initiale a été rendue aux termes de la Loi sur les arrangements avec les créanciers des compagnies, L.R.C. 1985, c. 36 (« LACC ») eu égard à des parties contre qui la demanderesse tente d'exercer des recours alors qu'il y a une ordonnance de suspension de toutes procédures contre ces entités.

À titre d'officier de justice nommé par la Cour supérieure de l'Ontario, FTI Consulting Canada Inc., en sa qualité de Contrôleur de Sears Canada Inc. et en son nom personnel, a le statut requis afin de participer à la conférence téléphonique du 21 décembre prochain dans le but d'éclairer le tribunal et les parties impliquées dans le présent dossier de l'existence et des effets des ordonnances émises par la Cour supérieure de l'Ontario en vertu de la LACC. Il importe notamment que le tribunal soit avisé que dans la mesure où la demanderesse désire exercer des procédures contre une partie à l'égard de laquelle une ordonnance de suspension de procédures a été rendue aux termes de la LACC, une demande de faire lever la suspension des procédures doit être soumise à la Cour supérieure de l'Ontario qui est saisie des procédures aux termes de la LACC.

De plus, ni Sears Canada inc. ni FTI Consulting Canada Inc ne sont pour le moment parties aux procédures mentionnées en titre, puisque la demande pour permission de modifier la demande pour autorisation d'exercer une action collective n'a pas été accueillie.

Nonobstant ce qui précède, dans la mesure où la cour devait être d'avis que FTI Consulting Canada Inc. doit officialiser son statut par le dépôt d'une réponse dans le présent dossier, nous le ferons.

Veillez agréer, monsieur le Juge Dallaire, l'expression de nos sentiments les plus distingués,



Le 15 décembre 2017

Norton Rose Fulbright Canada S.E.N.C.R.L., s.r.l.

Par :



Arad Mojtahedi  
Avocat

AM/cc

Copie : Me David Bourgoïn – *BGA Avocats*  
Me Benoit Gamache – *Cabinet BG Avocats Inc.*  
Me Guy Poitras – *Gowling WLG*  
Me Marie Audren et Me Emanuelle Rolland – *Audren Rolland*  
Me Luc Thibaudeau – *Lavery de Billy*  
Me Nick Rodrigo – *Davies Ward Phillips & Vineberg*  
Me Sean Zweig – *Bennett Jones*  
Me Sandra Abitan, Me Éric Préfontaine et Me Julien Morissette – *Osler, Hoskin & Harcourt*  
Me Julie Himo, Me Virginie Gauthier et Me Alan Mersky – *Norton Rose Fulbright Canada*

**APPENDIX "N"**  
**(see attached)**

**Johanne Roberge**

---

**De:** Johanne Roberge  
**Envoyé:** Thursday, December 14, 2017 11:22 AM  
**À:** Johanne Roberge  
**Objet:** TR: Class Action Proceedings against Am-Cam Électroménagers Inc.  
**Pièces jointes:** #11723964-v1-Lettre à Me David Bourgoin.PDF; CAN\_DMS\_109624802\_v1\_Monitor\_s Certificate (Corbeil) filed November 27, ....pdf; Approval & Vesting Order of Hainey, J. (Corbeil) 04Oct17.pdf

**De :** Johanne Roberge **De la part de** Jean-François Forget  
**Envoyé :** Tuesday, November 28, 2017 3:40 PM  
**À :** [dbourgoin@bga-law.com](mailto:dbourgoin@bga-law.com)  
**Cc :** [anthony@amiel.ca](mailto:anthony@amiel.ca); Guy P. Martel; Jean-François Forget  
**Objet :** Class Action Proceedings against Am-Cam Électroménagers Inc.

Cher confrère,

Veuillez vous référer à la lettre ci-jointe.

Meilleures salutations,

Jean-François Forget

Avocat  
Lawyer

Direct : +1 514 397 3072  
Mobile: +1 514 979 3482  
[jfforget@stikeman.com](mailto:jfforget@stikeman.com)

**Jean-François Forget**  
Direct: 514 397 3072  
Fax: 514 397 3419  
E-mail: jfforget@stikeman.com

November 28, 2017  
File No.: 142426-1001

**Without Prejudice  
By Email**

Me David Bourgoïn  
BGA Avocats s.e.n.c.r.l.  
67, rue Sainte-Ursule  
Bureau 2000  
Montréal, QC H3B 4L8

**Re: Class Action Proceedings against Am-Cam Électroménagers Inc.  
Quebec Superior Court no. 500-06-000709-143**

Dear Colleague:

We represent the interests of Am-Cam Électroménagers Inc. (hereinafter, "**ACEI**") who has mandated us to send you the present letter in the context of the Originating Application in a Class Action dated November 9, 2017 your office has served on ACEI on behalf of the class members (the "**Application**").

We wish to inform you of certain facts and draw your attention to several erroneous allegations contained in the Application, namely at paragraphs 13, 75 and 78 to 85, whereby you seek to hold ACEI liable for the obligations of another defendant, Corbeil Électrique Inc. ("**Corbeil**").

On June 22, 2017, the Sears Canada Group (as defined in the Initial Order) which includes Corbeil, sought and obtained an order (as amended and restated on July 13, 2017, the "**Initial Order**") under the Companies' Creditors Arrangement Act (the "**CCAA**") from the Ontario Superior Court of Justice. Amongst other developments in this process, on October 13, 2017, the Honourable Mr. Justice Hainey granted an Order extending the Stay Period to January 22, 2018.

In the Application, you refer, namely at paragraph 78 and exhibit P-18, to a sale transaction by which ACEI has acquired the assets of Corbeil by way of an Asset Purchase Agreement between Corbeil as seller, ACEI as buyer, Distinctive Appliances Inc. as guarantor and Sears Canada Inc. as intervenor, dated October 1, 2017 (the "**APA**").

In the context of the CCAA proceedings involving Corbeil (and the Sears Canada Group as a whole), the APA was subject to an approval and vesting order by the Ontario Superior Court, which order was rendered on October 4, 2017 (the "**Approval and Vesting Order**"). You will find enclosed a copy of this Order.

As indicated in the Application, at paragraph 82, the APA specifically excludes "*any liabilities in relation to any class action proceedings or legal claims with respect to extended warranties offered in connection with the operations of the Acquired Business prior to the Closing Time*" (section 2.3 (d) of the APA). See also sections 2.4 (a) and 2.4 (l) of the APA which provide for the "Excluded Liabilities".

The closing of the APA occurred on November 25, 2017 (the "**Closing**"), as appears from a copy of the Monitor's Certificate (as defined in the Approval and Vesting Order, enclosed).

## Stikeman Elliott

Contrary to the allegation at paragraph 79 of the Application, Corbeil – not AECI – has operated the business since the APA was executed on October 1, 2017 until the Closing, as per the terms of the APA (see section 8.2).

Further, the Approval and Vesting Order provides explicitly that, after the APA Closing and upon the delivery of the Monitor's Certificate, all of Corbeil's right, title and interest in and to the Purchased Assets (as defined in the APA) shall vest absolutely in ACEI "*free and clear of and from [...] financial or monetary claims*". For greater certainty, the Court ordered "*that all of the Claims and Encumbrances [as defined in the Approval and Vesting Order] affecting or relating to the Purchased Assets are [...] expunged and discharged as against the Purchased Assets*". We refer you to paragraph 5 of the enclosed Approval and Vesting Order.

It follows that the allegations contained at paragraphs 83 to 85 are erroneous and/or without merit. ACEI is not in any way liable for the conduct alleged in the Application.

In any event, the class action in the Quebec Superior Court file no. 500-06-000709-143 was not authorized against AECI.

In light of the above, the class members have no right of action against it. In good faith, ACEI would accept a discontinuance of suit without costs. Please advise us of the class members' acceptance of the foregoing and undertaking to proceed with the required application to discontinue the proceedings against ACEI **within 5 business days** of reception of the present letter, failing which our instructions are to have these proceedings dismissed forthwith and claim ACEI's costs.

The present letter is sent without admission and under strict reserve of all of ACEI's rights and recourses.

We trust the above to be satisfactory and we remain available to discuss the foregoing.

Sincerely yours,

  
Jean-François Forget  
JFF/

Encl. Approval and Vesting Order, dated October 4, 2017  
Monitor's Certificate, dated November 25, 2017

c.c. Anthony Amiel, Am-Cam Électroménagers Inc.  
Guy Martel, Stikeman Elliott



NOV 27 2017

LOCAL REGISTRAR / GREFFIER LOCAL

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**”)

**MONITOR'S CERTIFICATE**

**RECITALS**

A. All undefined terms in this Monitor's Certificate have the meanings ascribed to them in the Order of the Court dated October 4, 2017 (the “**Approval and Vesting Order**”) approving the Asset Purchase Agreement between Corbeil Électrique Inc. (the “**Seller**”), as Seller, Am-Cam Électroménagers Inc. (the “**Buyer**”) as Buyer, Distinctive Appliances Inc. (the “**Guarantor**”) as Guarantor and Sears Canada Inc. (“**Sears Canada**”) as intervenor, a copy of which is attached as Exhibit “A” to the Affidavit of Billy Wong dated October 1, 2017 (the “**APA**”).

B. Pursuant to the Approval and Vesting Order the Court approved the APA and provided for the vesting in the Buyer of the Seller's right, title and interest in and to the Purchased Assets (as defined in the APA), which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Monitor to the Buyer and the Seller of a certificate confirming (i) all conditions to Closing have been satisfied or waived by the Buyer and the Seller, as applicable; and (ii) the cash portion of the Purchase Price and all applicable sales and transfer Taxes payable (each as defined in the APA) by the Buyer to the Seller have been received by the Monitor.

THE MONITOR CERTIFIES the following:

1. All conditions to Closing have been satisfied or waived by the Buyer and the Seller, as applicable; and
2. The cash portion of the Purchase Price and all applicable sales and transfer Taxes payable by the Buyer to the Seller have been received by the Monitor.

This Monitor's Certificate was delivered by the Monitor at 12:01 am [TIME] on November 25, 2017 [DATE].

FTI CONSULTING CANADA INC., in its capacity as Court-appointed Monitor of Sears Canada Inc., et al. and not in its personal or corporate capacity

Per: Paul Bishop  
Name: PAUL BISHOP  
Title: SENIOR MANAGING DIRECTOR



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.E.  
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 L.T.D., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611  
CANADA INC.

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

Applicants

*Ontario*  
**SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**  
Proceeding commenced at Toronto

**MONITOR'S CERTIFICATE**  
(Corbeil)

**NORTON ROSE FULBRIGHT CANADA LLP**

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Lawyers for the Monitor



ONTARIO  
 SUPERIOR COURT OF JUSTICE  
 COMMERCIAL LIST

THE HONOURABLE MR.	)	WEDNESDAY, THE 4 <sup>TH</sup>
	)	
JUSTICE HAINEY	)	DAY OF OCTOBER, 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”)

APPROVAL AND VESTING ORDER  
 (Corbeil Électrique Inc.)

THIS MOTION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. c-36, as amended (the “CCAA”) for an order, *inter alia*, approving: (i) the sale transaction (the “Transaction”) contemplated by an Asset Purchase Agreement between Corbeil Électrique Inc. (the “Seller”) as Seller, Am-Cam Électroménagers Inc. (the “Buyer”) as Buyer, Distinctive Appliances Inc. (the “Guarantor”) as Guarantor and Sears Canada Inc. (“Sears Canada”) as intervenor, dated October 1, 2017 (the “APA”) and certain related relief, and (ii) vesting in and to the Buyer all right, title and interest of the Seller in and to the Purchased Assets (as defined in the APA), was heard this day at 330 University Avenue, Toronto, Ontario.



ON READING the Notice of Motion of the Applicants, the Affidavit of Billy Wong sworn on October 1, 2017 including the exhibits thereto, and the Third Report of FTI Consulting Canada Inc., in its capacity as Monitor (the “**Monitor**”), filed, and on hearing the submissions of respective counsel for the Applicants, the Monitor, the Buyer, the DIP ABL Agent, the DIP Term Agent and such other counsel as were present, no one else appearing although duly served as appears from the Affidavits of Service of Ana Chalupa and Waleed Malik sworn October 2, 2017, filed:

### **SERVICE AND DEFINITIONS**

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 any capitalized term used and not defined herein shall have the meaning ascribed thereto in the Amended and Restated Initial Order in these proceedings dated June 22, 2017 (the “**Initial Order**”), or in the APA, as applicable.

### **APPROVAL OF THE APA**

3. THIS COURT ORDERS AND DECLARES that the entering into of the Transaction by the Seller and Sears Canada (as intervenor) is hereby approved and ratified and that the execution of the APA by the Seller and Sears Canada (as intervenor), is hereby authorized, approved and ratified with such minor amendments as the Seller (with the consent of the Monitor after consultation with the DIP Lenders) and the Buyer may agree to in writing. The Seller is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Buyer and the Monitor shall be authorized to take such additional steps in furtherance of its responsibilities under the APA and this Order, and shall not incur any liability as a result thereof.
4. THIS COURT ORDERS AND DECLARES that on Closing, the Monitor shall hold back from the Purchase Price an amount of five million dollars (\$5,000,000) (the “**Holdback Amount**”) in escrow, such amount to be held by the Monitor in trust and dealt with as follows: if the net amount based on the calculations set forth in Sections 3.5(a) to 3.5(e) of the APA is owed by the Seller to the Buyer (the “**Final Negative Adjustment**”), as determined by the Seller and the Buyer,

or the Independent Auditor, as the case may be, the Monitor, on behalf of the Seller, will wire transfer the amount from the Holdback Amount that is the lesser of (i) the amount of the Final Negative Adjustment, and (ii) the Holdback Amount, to the Buyer within two (2) Business Days after the Settlement Date.

5. THIS COURT ORDERS AND DECLARES that upon the delivery of a Monitor's certificate to the Buyer substantially in the form attached as Schedule "A" hereto (the "**Monitor's Certificate**"), all of the Seller's right, title and interest in and to the Purchased Assets, excluding any SCI IT Assets subject to the Information Technology Agreement, as amended, with Sears Roebuck and Co., shall vest absolutely in the Buyer, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise in respect of the Purchased Assets (collectively, the "**Claims**"), including, without limiting the generality of the foregoing:

- (a) any and all encumbrances or charges created by Order of this Court, including the Administration Charge, the FA Charge, the KERP Priority Charge, the Directors' Priority Charge, the DIP ABL Lenders' Charge, the DIP Term Lenders' Charge, the KERP Subordinated Charge and the Directors' Subordinated Charge (as such terms are defined in the Initial Order) and any other charges hereafter granted by this Court in these proceedings (collectively, the "**CCAA Charges**");
- (b) any and all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario), the *Register of Personal and Movable Real Rights* or any other personal property registry system; and

(all of which are collectively referred to as the "**Encumbrances**", which term shall not include the Permitted Encumbrances listed on Schedule "B" hereto), and, for greater certainty, this Court orders that all of the Claims and Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

6. THIS COURT ORDERS that upon the registration in the Canadian Intellectual Property Office of a certified copy of this Order, the applicable Registrar is hereby directed to transfer all of the Seller's right, title and interest in and to the Purchased Assets that consist of the Intellectual

Property (excluding as SCI Assets the intellectual property subject to the Trademark License Agreement, as amended, with Sears Roebuck and Co.) and applications and registration listed in Schedule "D" hereto, to the Buyer as described in the APA, free and clear of and from any and all Claims.

7. THIS COURT ORDERS that from and after the delivery of the Monitor's Certificate, all Claims and Encumbrances shall attach to the Purchase Price (except for the Holdback Amount as described in paragraph 5 above) (the "**Closing Purchase Price**"), with the same priority as they had with respect to the Purchased Assets immediately prior to the Closing Date of the Transaction, as if the Transaction had not been completed. Upon the Settlement Date (as defined in the APA), all Claims and Encumbrances shall attach to any amount of the Holdback Amount retained by the Seller (the "**Remaining Holdback Amount**", and together with the Closing Purchase Price, the "**Net Proceeds**"), with the same priority as they had with respect to the Purchased Assets immediately prior to the Closing Date of the Transaction, as if the Transaction had not been completed.

8. THIS COURT ORDERS that, to the extent that obligations remain owing by the Applicants under the DIP ABL Credit Agreement and/or the DIP Term Credit Agreement, the Monitor be and is hereby authorized and directed to distribute, on behalf of the Applicants: (i) on the day of filing the Monitor's Certificate or as soon as practicable thereafter, the Closing Purchase Price, and (ii) on the Settlement Date, the Remaining Holdback Amount, if any, in partial repayment of amounts then owing by the Applicants under the DIP ABL Credit Agreement or the DIP Term Credit Agreement, as applicable, in such amounts as agreed to by the DIP ABL Agent and the DIP Term Agent, as applicable, or if no such applicable agreement can be reached, on further Order of the Court (a "**Distribution**").

9. THIS COURT ORDERS that any Distribution made pursuant to this Order shall be and shall be deemed to be made free and clear of all Claims and Encumbrances.

10. 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) in respect of any of the Applicants and

any bankruptcy order issued pursuant to any such applications; or

- (c) any assignment in bankruptcy made in respect of any of the Applicants;

any distribution permitted by paragraph 8 above shall be binding on any trustee in bankruptcy or receiver that may be appointed in respect of any of the Applicants and shall not be void or voidable by creditors of any of the Applicants, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

11. THIS COURT ORDERS that, if all obligations of the Applicants under the DIP ABL Credit Agreement or the DIP Term Credit Agreement have been satisfied in full the Monitor shall be entitled to retain the Net Proceeds or any remaining portion thereof on behalf of the Applicants to be dealt with by further Order of the Court.

12. THIS COURT ORDERS AND DIRECTS the Monitor to file with the Court a copy of the Monitor's Certificate, forthwith after delivery thereof in accordance with the terms of the APA.

### GENERAL PROVISIONS

13. THIS COURT ORDERS that, pursuant to clause 7(3) of the Canada Personal Information Protection and Electronic Documents Act, the Seller or the Monitor shall be authorized and permitted to disclose and transfer to the Buyer all human resources and payroll information in the Seller's records pertaining to the Employees (as defined in the APA), including personal information of those Employees. The Buyer shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Seller.

14. 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) in respect of the Seller and any bankruptcy order issued pursuant to any such applications; or

(c) any assignment in bankruptcy made in respect of the Seller;

the vesting of the Purchased Assets in the Buyer pursuant to this Order shall be binding on any trustee in bankruptcy or receiver that may be appointed in respect of the Seller and shall not be void or voidable by creditors of the Seller, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

15. THIS COURT ORDERS THAT (i) on or after the Closing Date, Corbeil shall be permitted to execute and file articles of amendments or such other documents or instruments as may be required to change its corporate and business names in accordance with the APA, and such articles, documents or other instruments shall be deemed to have been duly authorized, valid and effective and shall be accepted by the applicable Governmental Authority without the requirement (if any) of obtaining director or shareholder approval pursuant to any federal or provincial legislation.

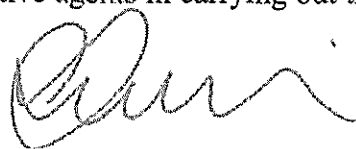
16. THIS COURT ORDERS that Confidential Appendix "C" to the Third Report of the Monitor and the schedules to and other financial information contained in the APA shall be and is hereby sealed, kept confidential and shall not form part of the public record pending further Order of this Court.

17. 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 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.

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

OCT 05 2017

PER / PAI:

C. Irwin  
Registrar



## SCHEDULE "A"

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")

## MONITOR'S CERTIFICATE

## RECITALS

A. All undefined terms in this Monitor's Certificate have the meanings ascribed to them in the Order of the Court dated October 9, 2017 (the "Approval and Vesting Order") approving the Asset Purchase Agreement between Corbeil Électrique Inc. (the "Seller") as Seller, Am-Cam Électroménagers Inc. (the "Buyer") as Buyer, Distinctive Appliances Inc. (the "Guarantor") as Guarantor and Sears Canada Inc. ("Sears Canada") as intervenor, a copy of which is attached as Exhibit "A" to the Affidavit of Billy Wong dated October 1, 2017.

B. Pursuant to the Approval and Vesting Order the Court approved the APA and provided for the vesting in the Buyer of the Seller's right, title and interest in and to the Purchased Assets (as defined in the APA), which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Monitor to the Buyer and the Seller of a certificate confirming (i) all conditions to Closing have been satisfied or waived by the Buyer and the Seller, as applicable; and (ii) the

cash portion of the Purchase Price and all applicable sales and transfer Taxes payable (each as defined in the APA) by the Buyer to the Seller have been received by the Monitor.

THE MONITOR CERTIFIES the following:

- 1. All conditions to Closing have been satisfied or waived by the Buyer and the Seller, as applicable; and
- 2. The cash portion of the Purchase Price and all applicable sales and transfer Taxes payable by the Buyer to the Seller have been received by the Monitor.

This Monitor's Certificate was delivered by the Monitor at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

**FTI CONSULTING CANADA INC.**, in its capacity as Court-appointed Monitor of Sears Canada Inc., et al. and not in its personal or corporate capacity

Per: \_\_\_\_\_  
Name:  
Title:

**SCHEDULE "B"**  
**PERMITTED ENCUMBRANCES**


**"Permitted Encumbrances"** means:



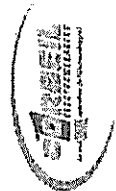
- (i) inchoate statutory liens for Taxes, assessments, governmental or utility charges or levies not due as at the Closing Date (including the Encumbrances of public utilities, workers, suppliers of materials, builders, contractors, architects and unpaid vendors of moveable property);
- (ii) rights of equipment lessors pursuant to Assumed Contracts and Personal Property Leases;
- (iii) any privilege in favour of any lessor, licensor or permitter for rent to become due or for other obligations or acts, the performance of which is required under any Assumed Contract;
- (iv) any rights of expropriation, access or use or any other similar rights conferred or reserved by Applicable Law;
- (v) any easements, servitudes or rights-of-way in favour of any Governmental Authority, any private or public utility, any railway company or any adjoining owner;
- (vi) the provisions of all by-laws, regulations, ordinances and similar instruments relating to development and zoning of the Leased Property;
- (vii) all Off-Title Compliance Matters;
- (viii) the Encumbrances which the Real Property Leases and/or any Leased Property are stated to be subject to or bound by pursuant to the terms of the Real Property Leases;
- (ix) any ground lease, emphyteutic lease, head lease or other lease which is superior to any Real Property Lease (each a "Head Lease"), any Encumbrances or other rights in favour of the applicable landlord contained in any Head Lease, and any Encumbrances which the Head Leases and/or leasehold interests created thereby are stated to be subject to or bound by pursuant to the terms of the applicable Head Lease;
- (x) all Encumbrances affecting a Landlord's freehold interest in any Leased Property; and
- (xi) all Encumbrances listed on Schedule 1.1(vvvv) of the APA.


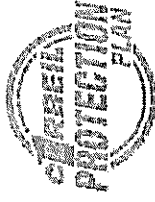
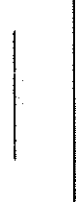



SCHEDULE "D"  
INTELLECTUAL PROPERTY


LEGEND:

- P = Pending Mark (not registered yet)
- R = Registered Mark
- D = Design Feature in mark

Status	Design Feature	TRADEMARK	FRENCH/ENGLISH EQUIVALENT REGISTERED (if applicable)	REGISTRATION NUMBER	FILING DATE	REG. DATE	OWNER OF THE MARK	NEXT DUE DATE (M/D/Y)	DESIGN (if applicable)	MARKS AND/OR SERVICES COVERED BY MARK
R		CABINALTO		1,629,747 TMA950,959	6/05/2013	9/30/2016	CORBEIL ELECTRIQUE INC	9/30/2031	_____	GOODS Cl. 20: Kitchen Cabinets
R		CABIVIA		1,629,745 TMA950,962	6/05/2013	9/30/2016	CORBEIL ELECTRIQUE INC	9/30/2031	_____	GOODS Cl. 20: Kitchen Cabinets
R		CORBEIL APPLIANCES		0,813,296 TMA480,117	5/23/1996	8/11/1997	CORBEIL ELECTRIQUE INC.	8/11/2027	_____	SERVICES CL.35: Retail business operation of home appliances, electronic devices and accessories, extended warranty service and after-sales service.
R	D	CORBEIL APPLIANCES & Dessin		0,826,026 TMA488,467	10/16/1996	1/28/1998	CORBEIL ELECTRIQUE INC.	1/28/2028		SERVICES CL.35: Retail business operation of home appliances, electronic devices and accessories, extended warranty service and after-sales service.

R	D	CORBEIL APPLIANCES THE ONLY TRUE APPLIANCE SPECIALIST! 1 AND DESIGN	Corbeil Electroménagers Le Seul Vrai Spécialiste De L'électroménager & Design	1,218,866 TMA694,137	6/2/20-04	8/15/2007	CORBEIL ELECTRIQUE INC.	8/15/2022		SERVICES CL.35 ET CL.36 : Operation of a retail business selling household electrical appliances, electronic accessories, extended warranty plans and customer service.
R		CORBEIL ÉLECTRIQUE		0,807,404 TMA476,453	3/19/1996	5/20/1997	CORBEIL ELECTRIQUE INC.	5/20/2027	_____	SERVICES CL.35: Retail business operation of home appliances, electronic devices and accessories, extended warranty service and after-sales service.
R		CORBEIL ÉLECTROMÉNAGERS		0,813,295 TMA480,039	5/23/1996	8/11/1997	CORBEIL ELECTRIQUE INC.	8/11/2027	_____	SERVICES CL.35: Retail business operation of home appliances, electronic devices and accessories, extended warranty service and after-sales service.
R	D	CORBEIL ÉLECTROMÉNAGERS & DESSIN		0,826,025 TMA488,468	10/16/1996	1/28/1998	CORBEIL ELECTRIQUE INC.	1/28/2028		SERVICES CL.35: Retail business operation of home appliances, electronic devices and accessories, extended warranty service and after-sales service.
R	D	CORBEIL ÉLECTROMÉNAGERS LE SEUL VRAI SPÉCIALISTE DE L'ÉLECTROMÉNAGER & DESIGN	Corbeil Appliances The Only True Appliance Specialist & Design	1,218,990 TMA696,621	6/2/2004	9/17/2007	CORBEIL ELECTRIQUE INC.	9/17/2022		SERVICES CL.35 ET CL.36: Operation of a retail business selling household electrical appliances, electronic accessories, extended warranty plans and customer service.

R	D	CORBAIL ÉLECTROMÉNAGERS LE SPÉCIALISTE DE L'ÉLECTROMÉNAGER! & DESIGN		1,093,722 TMA592,376	2/27/2001	10/16/2003	CORBAIL ELECTRIQUE INC.	10/16/2018		SERVICES CL.35: Commercial operation of retail sales of appliances, electronic devices and accessories; extended warranty service and customer service.
R	D	CORBAIL PROTECTION PLAN & DESIGN	Plan Protection Corbeil & Design	1,205,650 TMA702,230	2/3/2004	12/4/2007	CORBAIL ELECTRIQUE INC.	12/4/2022		SERVICES CL.36 : Extended warranty plans for appliances.
R		CUCINORA		1,629,746 TMA950,961	6/05/2013	09/30/2016	CORBAIL ELECTRIQUE INC.	03/13/2032		GOODS CL.20: Kitchen Cabinets
R	D	ELLIPSE CORBEIL & DESIGN		1,733,698 TMA965,555	06/19/2015	03/13/2017	CORBAIL ELECTRIQUE INC.	09/30/2031		GOODS CL.11: refrigerators, freezers, range hoods
R	D	LE SEUL VRAI SPÉCIALISTE DE L'ÉLECTROMÉNAGER & DESIGN	The Only True Appliance Specialist & Design	1,205,649 TMA654,397	2/3/2004	12/6/2005	CORBAIL ELECTRIQUE INC.	12/6/2020		SERVICES CL.35 ET CL.36 : Operation of a retail business selling household electrical appliances, electronic appliances and accessories, extended warranty plans and customer service
R	D	PLAN PROTECTION CORBEIL & DESIGN	Corbeil Protection Plan & Design	1,205,651 TMA706,588	2/3/2004	2/5/2008	CORBAIL ELECTRIQUE INC.	2/5/2023		SERVICES CL.36 : Extended warranty plans for appliances.

R	D	THE ONLY TRUE APPLIANCE SPECIALIST & DESIGN	Le Seul Vrai Spécialiste De L'électroménager & Design	1,205,648 TMA670,580	2/3/2004	8/21/2006	CORBELL ELECTRIQUE INC.	8/21/2021		SERVICES CL.35 ET CL.36 : Operation of a retail business selling household electrical appliances, electronic accessories, extended warranty plans and customer service in connection with the aforementioned services
		BOUTIQUE CORBEIL H2O		1,207,951 TMA688667	02/24/2004	05/31/2007	CORBELL ELECTRIQUE INC.	05/31/2022		SERVICES CL.35 ET CL.42: Retail store services specializing in the sale of water coolers, water filtration systems and filters.

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.

Applicants

*Ontario*  
**SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**ORDER  
APPROVAL AND VESTING ORDER**  
(Corbeil Électrique Inc.)

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Lawyers for the Applicants



**TAB 3**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR.	)	MONDAY, THE 22 <sup>nd</sup>
JUSTICE HAINEY	)	DAY OF JANUARY, 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**”)

**ORDER**

THIS MOTION, made by FTI Consulting Canada Inc., in its capacity as monitor (the “**Monitor**”), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. c-36, as amended (the “**CCAA**”) for an order (i) declaring the Tremblay Plaintiffs (as defined below) to have breached certain provisions of the initial order granted in these proceedings on June 22, 2017, as amended and restated on July 13, 2017 (the “**Initial Order**”) and (ii) restraining and enjoining the Tremblay Plaintiffs and the plaintiffs in each of the Warranty Class Actions (as defined below) during the Stay Period, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of the Monitor, the Tenth Report of the Monitor, filed, and on hearing the submissions of respective counsel for the Applicants, the Monitor, the directors of Sears Canada Inc., the Warranty Plaintiffs, and such other counsel as were present, no one else appearing although duly served as appears from the Affidavit of Service of ● sworn ●, 2017,

1. THIS COURT ORDERS that any capitalized term used and not defined herein shall have the meaning ascribed thereto in the Initial Order.

2. THIS COURT ORDERS AND DECLARES that the plaintiffs (the “**Tremblay Plaintiffs**”) in the class action styled as *Karine Tremblay v. Centre Hi-Fi Chicoutimi, et al.* (Superior Court of Quebec File Number: 150-06-000010-173) (the “**Tremblay Action**”) have failed to comply with and breached paragraphs 14, 17 and 25 of the Initial Order.

3. THIS COURT ORDERS that the Tremblay Plaintiffs, and the plaintiffs in each of the following further class actions styled as:

(a) *Luc Cantin and Francois Routhier v. Ameublements Tanguay Inc. et al.* (Superior Court of Quebec File Number: 500-06-000709-143);

(b) *Lise Ostiguy v. Sears Canada Inc.* (Superior Court of Quebec File Number: 500-06-000537-106); and

(c) *Jacques Fillion v. Corbeil Électrique Inc.* (Superior Court of Quebec File Number: 500-06-000535-100)

are restrained and enjoined for the duration of the Stay Period from commencing or continuing any step, action, enforcement process or proceeding (including without limitation the Tremblay

Plaintiffs' *Demande pour Permission de Modifier La Demande pour Autorisation d'Exercer une Action Collective* dated November 29, 2017) that would be in contravention of the Initial Order (including without limitation, paragraphs 14, 17, and 25 thereof), or any other Order of this Court.

4. THIS COURT ORDERS that the Monitor shall be entitled to the costs of this motion in an amount of \$ \_\_\_\_\_, payable forthwith by the Tremblay Plaintiffs.

#### **GENERAL**

5. THIS COURT ORDERS that this Order shall have full force and effect in all provinces and territories in Canada.

6. 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, including without limitation the Superior Court of Quebec, to give effect to this Order and to assist the Sears Canada Entities, 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 Sears Canada Entities 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 Sears Canada Entities and the Monitor and their respective agents in carrying out the terms of this Order.

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**ORDER**

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Lawyers for FTI Consulting Canada Inc., in its  
capacity as Monitor

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., et al.

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

Proceeding commenced at TORONTO

**MOTION RECORD OF THE MONITOR  
(Motion for a Restraining Order)  
(returnable January 22, 2017)**

**NORTON ROSE FULBRIGHT CANADA LLP**

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