

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

B E T W E E N:

1291079 ONTARIO LIMITED

Plaintiff

- and -

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

Defendants

Proceeding under the Class Proceedings Act, 1992

**SUPPLEMENTARY RECORD OF THE DEFENDANTS WILLIAM C. CROWLEY, WILLIAM R.
HARKER, DONALD CAMPBELL ROSS, EPHRAIM J. BIRD, JAMES MCBURNEY and
DOUGLAS CAMPBELL**

COMPENDIUM OF CROSS-EXAMINATION TRANSCRIPTS

(MOTION FOR CERTIFICATION RETURNABLE APRIL 17-18, 2019)

April 12, 2019

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Campbell

TO: **SERVICE LIST**

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- A. Cross-Examination of Mr. James Kay on March 29, 2018
- B. Cross-Examination of Mr. Andy Seretis on March 29, 2018
- C. Exhibit 1 to the Examination of James Kay

In the Matter Of:
1291079 Ontario Limited v.
Sears Canada Inc., et al.

JAMES KAY
March 29, 2019



77 King Street West, Suite 2020
Toronto, ON M5K 1A2
1.888.525.6666 | 416.413.7755

1 Court File No. 4114/15

2
3 ONTARIO

4 SUPERIOR COURT OF JUSTICE

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15 DEBORAH E. ROSATI, R. RAJA KHANNA, JAMES MCBURNEY
16 and DOUGLAS CAMPBELL

17 Defendants

18
19 -----
20 --- This is the Cross-Examination of JAMES KAY, on
21 his affidavit sworn January 18, 2019, taken at the
22 offices of Neesons Court Reporting, 77 King Street
23 West, Suite 2020, Toronto, Ontario, on the 29th day
24 of March, 2019.

25 -----

1 A P P E A R A N C E S:

2

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4 & STEPHEN GAUDREAU, Esq.,

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6

7 DEREK RONDE, Esq., for the Defendants

8 & JOHN PICONE, Esq., William Crowley,

9 & JOSEPH HAMALIUK, Esq., William R. Harker,

10 Donald Campbell Ross,

11 Ephraim J. Bird, James

12 McBurney and Douglas

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17 & SANDY LOCKHART, Esq.,

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22 REPORTED BY: Deana Santedicola, RPR, CRR, CSR

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I N D E X

WITNESS: JAMES KAY

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**The following list of undertakings, advisements
and refusals is meant as a guide only for the
assistance of counsel and no other purpose**

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and appear on the following pages: 7:20, 18:18,
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I N D E X (Cont'd)

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NO.	DESCRIPTION	PAGE/LINE NO.
1	(FOR IDENTIFICATION):	
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1 -- Upon commencing at 10:08 a.m.

2

3 JAMES KAY; Sworn.

4 CROSS-EXAMINATION BY MR. RONDE:

5 1 Q. So this is the examination of
6 Mr. James, Jim, Kay --

7 A. James is fine or Jim is fine,
8 whatever you like.

9 2 Q. -- on March 28th, 2019.
10 Mr. Brzezinski, if we could perhaps
11 take care of some preliminary matters.

12 MR. BRZEZINSKI: Go ahead.

13 MR. RONDE: I think, first, you wanted
14 to -- you had mentioned to me off the record that
15 there was a correction that you wanted to do to, or
16 wanted to report in respect of Mr. Kay's affidavit.

17 MR. BRZEZINSKI: Yes, let's do it now.

18 There is a correction to be made to Mr.
19 Kay's affidavit. At page 2 of his affidavit,
20 paragraph 7, the words immediately before "the
21 Hometown Dealers," that date of June 22nd, 2017, is
22 not correct. It will be corrected by this date,
23 March 17, 2015.

24 MR. RONDE: And just for additional
25 clarity, that is the January 18th, 2019, affidavit?

1 I think it is on the first page.

2 MR. BRZEZINSKI: Yes.

3 MR. PICONE: Which is in the motion
4 record at tab 1 on page 9.

5 MR. BRZEZINSKI: Yes.

6 BY MR. RONDE:

7 3 Q. And in respect of -- just to make
8 sure that this examination goes smoothly, I just
9 want to make sure I know what is in front or what
10 materials you have today.

11 I understand that Mr. Horkins from our
12 office was in touch and asked you to bring -- or
13 sent an email and asked you to make sure that you
14 brought all the motion records. I just wanted to
15 make sure that they are accessible to Mr. Kay?

16 MR. BRZEZINSKI: We have his material
17 that he swore, and that is the only relevant
18 material that I believe is appropriate for him to
19 be cross-examined on.

20 MR. RONDE: Okay, and do you have the
21 supplementary affidavit -- or, sorry, the
22 supplementary motion record dated March 11, 2019?

23 MR. BRZEZINSKI: Yes.

24 MR. RONDE: Are you taking the position
25 that that material is not -- that Mr. Kay cannot be

1 cross-examined on it?

2 MR. BRZEZINSKI: He can be
3 cross-examined on the issues relating to the
4 certification.

5 MR. RONDE: Okay.

6 MR. BRZEZINSKI: That is my answer.

7 MR. RONDE: Just to be clear, you
8 actually had said that the material that he swore
9 was the only relevant material that you thought was
10 appropriate for him to be cross-examined on.

11 MR. BRZEZINSKI: Yes.

12 MR. RONDE: Do you stand by that?

13 MR. BRZEZINSKI: Yes, unless there are
14 documents that you want to put to him that are
15 relevant to the certification motion.

16 MR. RONDE: I would like to take you to
17 that supplementary motion record.

18 MR. BRZEZINSKI: Yes.

19 BY MR. RONDE:

20 4 Q. And I guess the first question is,
21 in your affidavit, Mr. Kay, did you include a
22 litigation plan or a plan of proceeding?

23 A. Yes, I believe I did.

24 5 Q. Okay. And if we look at the
25 supplementary record, the supplementary motion

1 record, at exhibit or tab "A" or Exhibit "A" to
2 Mr. Seretis' affidavit there is a document called
3 the "Plaintiff's Amended Litigation Plan."

4 MR. BRZEZINSKI: Here it is.

5 BY MR. RONDE:

6 Q. Have you seen this document
7 before, sir?

8 A. Yes, I have.

9 Q. And could you explain to me what
10 this document is?

11 R/F MR. BRZEZINSKI: Don't answer. It says
12 what it is.

13 BY MR. RONDE:

14 Q. And does this litigation plan
15 purport to amend the litigation plan that you have
16 included in your initial affidavit?

17 R/F MR. BRZEZINSKI: Don't answer that.
18 That is a legal issue.

19 BY MR. RONDE:

20 Q. So you can't tell me what the
21 purpose of this document is?

22 MR. BRZEZINSKI: We have already
23 answered that.

24 BY MR. RONDE:

25 Q. And at tab B, Exhibit "B" there,

1 there is a black-lined version that appears.

2 A. Yes.

3 11 Q. And it is my understanding that
4 that's a black-lined version of the previous tab.

5 A. Yes.

6 12 Q. Have you read Mr. Seretis'
7 affidavit?

8 A. Yes.

9 13 Q. If you could go to tab C, and that
10 is on page 23 of the supplementary motion record,
11 there is a document called the "Amended and
12 Restated Settlement Agreement." Do you see that,
13 sir?

14 A. Yes.

15 14 Q. Have you seen this document
16 before?

17 A. Yes.

18 15 Q. It purports to be, I think, an
19 agreement between 1291079 Ontario Inc. in its
20 capacity as a Representative Plaintiff, and that is
21 who you are here representing today, correct?

22 A. Correct.

23 16 Q. And if you go to page 28 and 29 of
24 the motion record.

25 A. Yes.

1 17 Q. Is that your signature, sir?

2 A. Yes, it is.

3 18 Q. And you executed this document on
4 behalf of that corporation?

5 A. Yes, I did.

6 19 Q. All right. And that corporation
7 seeks to be the Representative Plaintiff in the
8 proposed class proceeding that we are dealing with
9 today?

10 A. Yes.

11 20 Q. If I could take you to tab D, are
12 you familiar with this document?

13 A. Yes.

14 21 Q. It says it is a Fresh as Amended
15 Statement of Claim, and that is your understanding
16 of what it is?

17 A. Yes.

18 22 Q. And the Plaintiff in that case or
19 the Statement of Claim is 1291079 Ontario Limited,
20 and that is your company, as we have confirmed?

21 A. Yes.

22 23 Q. So this is a Statement of Claim
23 that, the Fresh as Amended Statement of Claim that
24 you or your company has brought?

25 A. My counsel prepared it, and as

1 such, I approved it.

2 24 Q. Okay. Actually, have you been
3 cross-examined before, Mr. Kay?

4 A. Yes.

5 25 Q. I would like to go over just some
6 sort of initial -- I don't know if they would be
7 guidelines or just in respect of our process.

8 First of all, I would like to say if
9 you need a break, please let me know. If you need
10 to step away for a minute, just advise or let your
11 counsel know, and we can certainly deal with that.

12 Secondly, in respect of any questions
13 that I may ask -- and I apologize if this is
14 repetitive from your previous examinations, but if
15 you could allow me to finish any of the questions
16 and then answer afterwards.

17 If you do have any questions in respect
18 of clarifying a question, certainly you can let me
19 know or your counsel can let me know.

20 I think, as we have confirmed, that you
21 are the representative of 1291079 Ontario Limited
22 for the purposes of this Class proceeding?

23 A. Yes.

24 26 Q. And you swore an affidavit on
25 January 18th, 2019, in respect of this matter, and

1 just for ease of reference, it would be tab 2 of
2 the January 18, 2019 motion record?

3 A. Yes.

4 27 Q. So you are familiar with this
5 affidavit?

6 A. Yes.

7 28 Q. That is your signature at the last
8 page, on page 18 of the record?

9 A. Yes, it is.

10 29 Q. 1291079 Ontario Limited -- and I
11 think in your affidavit, at paragraph 1, you make
12 reference to it as 129. I think that may be an
13 easier way to identify the company, so I'll either
14 refer to it as the Representative Plaintiff or as
15 129. If you have any questions, please let me
16 know.

17 A. That's fine.

18 30 Q. 1291079 Ontario Inc., is it still
19 an active company?

20 A. It is active, but it is not
21 actively doing business.

22 31 Q. Okay. When did it last actively
23 do business?

24 A. Sometime in 2013, late 2013.

25 32 Q. In 2013. And I understand that

1 you terminated your agreement with Sears in 2013.
2 Was that the last, I guess, activity concerning
3 that company?

4 A. Yes.

5 33 Q. And you are the president of the
6 company?

7 A. Yes.

8 34 Q. And who are the directors and
9 officers of the company?

10 A. Myself and my wife.

11 35 Q. And who are the shareholders of
12 the company?

13 A. Myself and my wife.

14 36 Q. Would you agree that you are the
15 person who controls the decision-making in respect
16 of that company?

17 A. Yes.

18 37 Q. And that company operated a Sears
19 Hometown Store?

20 A. Yes, it did.

21 38 Q. When did it start operating that
22 store?

23 A. 129 was -- I don't remember the
24 exact date, probably 2004 or 2006 -- no, more than
25 -- no, way -- no, sorry. I apologize. We bought

1 the corporation from the previous owners, so I
2 don't -- I can't remember exactly when they started
3 it.

4 39 Q. Okay, so you essentially bought it
5 as a going concern that operated a Sears Hometown
6 Store?

7 A. Yes.

8 40 Q. You acquired it as a share
9 purchase rather than an asset purchase?

10 A. Correct.

11 41 Q. And when was that acquisition?

12 A. That acquisition was in 2006.

13 42 Q. 2006, so you operated the company
14 for roughly seven years, from 2006 to 2013?

15 A. Yes.

16 43 Q. And that company presumably had
17 inventory and assets in 2013. What has happened to
18 those assets?

19 A. They were liquidated.

20 44 Q. And when you say "liquidated,"
21 what do you mean?

22 A. Scrapped, basically.

23 45 Q. Did you sell any of the assets of
24 the company?

25 A. We sold assets that were required

1 to maintain the business because Sears brought in
2 another owner, so we sold some store fixtures and
3 things like that that had no value to us at all,
4 which left us with basically nothing anyways. So
5 whatever was remaining was pretty much meaningless.

6 46 Q. Well, what about the inventory? I
7 understand from these stores that there was
8 inventory in respect of the retail location. What
9 happened to that material?

10 A. Sears owned all the inventory.

11 47 Q. Okay.

12 A. The only exception to that is the
13 spare parts, and that was included in the sale. We
14 sold those to the owner that was taking over.

15 48 Q. And what were the proceeds?

16 A. Of that sale?

17 49 Q. Yes.

18 A. Approximately \$20,000.

19 50 Q. And did that remain with the
20 company?

21 A. It was used to pay debt, yes.

22 51 Q. So are there any assets in the
23 company anymore?

24 A. No.

25 52 Q. Are there any liabilities?

1 A. No.

2 53 Q. The company does not have any
3 ongoing revenue?

4 A. No.

5 54 Q. And presumably, doesn't have any
6 ongoing expenses either?

7 A. No.

8 55 Q. Are you still filing corporate
9 returns in respect of the company?

10 A. We are.

11 56 Q. I'm sorry, did you have a --

12 A. Correction. We are not filing --
13 no, the corporation, our accountant filed it as not
14 being in business, so we don't file actual
15 corporate returns every year.

16 57 Q. Okay. Could I have a copy of the
17 last corporate return that you filed?

18 MR. BRZEZINSKI: Do you have that?

19 THE DEPONENT: I should, yeah.

20 U/T MR. BRZEZINSKI: Yes.

21 BY MR. RONDE:

22 58 Q. And could I have those returns
23 since 2013?

24 R/F MR. BRZEZINSKI: No. You'll get the
25 last one.

1 BY MR. RONDE:

2 59 Q. And, sorry, when you were saying
3 corporate returns, you are referring to tax
4 returns?

5 A. Yes.

6 60 Q. And do you do financial statements
7 for your company?

8 A. No.

9 61 Q. When was the last financial
10 statement you have done for it?

11 A. 2013.

12 62 Q. May I have a copy of that
13 financial statement?

14 A. I believe it is in -- it is
15 already part of the package.

16 63 Q. Okay. And if it hasn't been
17 produced, you'll produce it?

18 U/T MR. BRZEZINSKI: If it hasn't been
19 produced.

20 THE DEPONENT: Yes.

21 BY MR. RONDE:

22 64 Q. I understand that there was a --
23 and I may be -- I don't want to put words in your
24 mouth here, but I understand that the Sears
25 Hometown Store was only one part of your business,

1 and you also had an awnings business. Is that
2 correct?

3 A. Yes.

4 65 Q. Did they share a space?

5 A. Yes.

6 66 Q. But were they separate
7 corporations?

8 A. Yes.

9 67 Q. And what has happened to that
10 business?

11 R/F MR. BRZEZINSKI: Don't answer that.

12 BY MR. RONDE:

13 68 Q. If you are no longer involved in
14 this business, what do you currently do for a
15 living?

16 A. I am the President of Tebulo
17 Industrial Robotics.

18 69 Q. What sort of company is that?

19 A. We supply robotic automation to,
20 primarily, the steel industry and the wood
21 manufacturing industry.

22 70 Q. And how many employees?

23 R/F MR. BRZEZINSKI: Don't answer.

24 MR. RONDE: That is a refusal?

25 MR. BRZEZINSKI: Yes.

1 BY MR. RONDE:

2 71 Q. And you said you were president
3 and CEO, or did you just say president?

4 A. Just president.

5 72 Q. Do you own the company?

6 A. No, I do not.

7 73 Q. As president, do you devote your
8 full-time attention to that company?

9 A. Yes.

10 74 Q. Do you have any corporate
11 resolutions in respect of 129, regarding engaging
12 this litigation?

13 U/A MR. BRZEZINSKI: I am going to take
14 that under advisement.

15 BY MR. RONDE:

16 75 Q. I would like that produced if
17 there are.

18 U/A MR. BRZEZINSKI: We'll take that under
19 advisement.

20 BY MR. RONDE:

21 76 Q. So it would be a fair
22 characterization to say that 129 has no money, has
23 no assets?

24 A. Yes.

25 77 Q. And you understand that if 129, in

1 the course of this litigation, if there is an
2 adverse costs award -- if Sears is successful and
3 there is an adverse costs award, that the company
4 would be liable for it?

5 A. Yes.

6 78 Q. Where was the head office of that
7 company?

8 A. 716 Dundas Street, Woodstock,
9 Ontario.

10 79 Q. Is that still the head office of
11 the company? Actually, do you know what, I'll take
12 a step back on that question.

13 A. Okay.

14 80 Q. Was 716 Dundas, was that the
15 retail location?

16 A. Yes.

17 81 Q. Okay. So its head office was the
18 retail location?

19 A. Yes.

20 82 Q. And it has continued to be -- the
21 head office of the company continues to be the
22 retail location?

23 A. No.

24 83 Q. Then what is currently the head
25 office of the company?

1 A. I suppose it would be 451 Parrott
2 Place.

3 84 Q. Like the bird plus a "t"?

4 A. Like Harry Parrott, who was a
5 member of parliament.

6 85 Q. Okay, and is that your home?

7 A. Yes.

8 86 Q. To your knowledge, have you
9 personally guaranteed the obligations of the
10 company to Sears through your Dealership Agreement?

11 MR. BRZEZINSKI: Refused.

12 I'm sorry, can you repeat that
13 question?

14 BY MR. RONDE:

15 87 Q. Under the Dealer Agreement or any
16 agreement, is there any personal guarantee of you
17 personally guaranteeing the obligations of the
18 corporation?

19 MR. BRZEZINSKI: Sorry, you can answer
20 that.

21 THE DEPONENT: No.

22 MR. BRZEZINSKI: I'm sorry, I misheard
23 it, Counsel.

24 BY MR. RONDE:

25 88 Q. Not a problem.

1 And are you aware of any attempts by
2 the company to seek funding in respect of this
3 Class Action litigation?

4 A. Could you define what funding
5 would mean?

6 89 Q. Well, to pay for the costs of
7 doing the litigation, to pay for your lawyers, and
8 to indemnify the company in respect of any adverse
9 costs award?

10 A. To support the litigation, there
11 were other dealer stores, other dealer store owners
12 who put some money up originally, for the original
13 retainer, and that's it.

14 90 Q. When you say "the original
15 retainer," is that in respect of the -- and I think
16 we'll call it the 2013 Wishart Act Class Action?

17 A. Yes.

18 91 Q. But in respect of this litigation
19 at hand, the Oppression Class Action, are you aware
20 of any attempts by the company to seek funding for
21 that litigation?

22 A. No.

23 92 Q. Are your lawyers indemnifying you?

24 R/F MR. BRZEZINSKI: Don't answer that.

25 BY MR. RONDE:

1 93 Q. Did you seek funding from the
2 Class Proceeding Fund?

3 A. No.

4 94 Q. Did you seek funding from any
5 third party funding provider?

6 A. No.

7 95 Q. If there is an adverse costs award
8 against the company, how does 129 intend on paying
9 that amount?

10 R/F MR. BRZEZINSKI: Don't answer.

11 BY MR. RONDE:

12 96 Q. If you are successful in this
13 Class Action, would 129 be dividending or paying
14 out any successful award to its shareholders?

15 A. I don't know.

16 MR. RONDE: Just if I could go off the
17 record for a moment.

18 (DISCUSSION OFF THE RECORD.)

19 BY MR. RONDE:

20 97 Q. I would like to get an idea of --
21 we were talking about -- I call it the Wishart Act
22 Class Action, and you refer to that in your
23 affidavit at paragraph 5. If you could flip that
24 up, it is on page 9 of your motion record.

25 A. Yes.

1 98 Q. And paragraph 5 says:

2 "The Franchise Action was
3 commenced on July 5, 2015. Attached
4 as Exhibit 'A' is a copy of the
5 Fresh as Amended Statement of Claim
6 in the Franchise Action."

7 So if we can flip to tab "A."

8 A. Yes.

9 99 Q. The only Defendant in that Class
10 Action as of March 8th, 2016, was Sears Canada
11 Inc.?

12 MR. BRZEZINSKI: That is what it says,
13 Counsel.

14 BY MR. RONDE:

15 100 Q. I'm asking as a question.
16 Regardless of what it says, I would like to get his
17 understanding of the proceeding.

18 A. Yes.

19 101 Q. The claim was commenced on July
20 5th, 2013. That was ultimately certified as a
21 Class Action?

22 A. Yes, it was.

23 102 Q. And in respect of that
24 certification, you swore an affidavit in that
25 proceeding for the certification motion?

1 A. Yes.

2 103 Q. You were cross-examined in respect
3 of that as well?

4 A. Yes.

5 104 Q. And in that case, if we go to tab
6 "A" again, the claim was for \$100,000, for damages
7 not exceeding \$100,000?

8 MR. BRZEZINSKI: Million.

9 BY MR. RONDE:

10 105 Q. Sorry, I wish it was \$100,000. We
11 might be able to --

12 MR. BRZEZINSKI: We wouldn't be here.

13 BY MR. RONDE:

14 106 Q. We could all chip in. Thank you
15 for your correction.

16 They were seeking damages of 100
17 million dollars; is that correct?

18 A. Yes.

19 107 Q. And there were a multitude of
20 claims, I guess, under that proceeding; and you
21 agree with me it is breach of contract?

22 A. Yes.

23 108 Q. And that there was a breach of
24 section 3 and section 7 of the Wishart Act, and
25 that would be the duty of good faith and fair

1 dealing?

2 A. Yes.

3 109 Q. And statutory misrepresentations
4 under section 7?

5 A. Yes.

6 110 Q. You were also looking at or were
7 claiming damages in respect of statutory breaches
8 under other franchise statutes?

9 A. Yes.

10 111 Q. And alternatively, looking for
11 compensation and restitution for unjust enrichment
12 in the amount of the same, 100 million dollars?

13 A. Yes.

14 112 Q. And there's -- not to short-sell
15 it, there are other damages or other relief sought,
16 as well, in your claim?

17 A. Yes.

18 113 Q. In respect of the 100 million
19 dollar figure that you included in your affidavit
20 here, how was that figure arrived at?

21 R/F MR. BRZEZINSKI: Don't answer that.

22 BY MR. RONDE:

23 114 Q. Was there ever an expert
24 determination of that figure?

25 R/F MR. BRZEZINSKI: Don't answer that.

1 BY MR. RONDE:

2 115 Q. Was there ever a damages report
3 produced in that litigation?

4 R/F MR. BRZEZINSKI: Don't answer that.

5 BY MR. RONDE:

6 116 Q. Was there ever a production of
7 financial information in that case?

8 MR. BRZEZINSKI: Don't answer.

9 Hold on. I don't know the answer to that, Counsel.

10 Do you know the answer to that?

11 THE DEPONENT: Financial information
12 from my company?

13 MR. BRZEZINSKI: Is that what you mean?
14 From the Plaintiff?

15 BY MR. RONDE:

16 117 Q. From your company or any of the
17 other Class members.

18 A. Yes.

19 118 Q. So in respect of that, had
20 documentary production occurred in that case?

21 A. I don't understand that term.

22 119 Q. Well, had you sworn an affidavit
23 of documents in that litigation?

24 A. Yes.

25 120 Q. And so you had produced documents

1 to the other side for the purposes of the hearing
2 of the case?

3 A. Yes, we produced all of our
4 financials for the time.

5 121 Q. And did you produce other
6 documents as well?

7 A. Yes.

8 122 Q. And did you receive productions
9 from Sears as well?

10 A. Yes.

11 123 Q. Was there a mediation in that
12 case?

13 A. Yes.

14 124 Q. The mediation, I can fairly
15 assume, was not successful?

16 A. Correct.

17 125 Q. Do you roughly know how many Class
18 members were there in the Wishart Act Class Action?

19 A. Approximately 350.

20 126 Q. Were there any opt-outs?

21 A. None that I know of.

22 127 Q. I am going to take you to
23 paragraph 9 of your affidavit.

24 MR. BRZEZINSKI: Sorry, what page is
25 that on, Counsel?

1 MR. RONDE: It is on page 10 of the
2 motion record.

3 MR. BRZEZINSKI: We have it.

4 BY MR. RONDE:

5 128 Q. So at paragraph 9 it says:

6 "The franchise action alleged
7 that the Dealer Agreement creates a
8 franchisor/franchisee relationship
9 between the Hometown Dealers and
10 Sears that is subject to the Wishart
11 Act and other provincial
12 legislation."

13 There was never any judicial finding in
14 respect of that issue, correct?

15 R/F MR. BRZEZINSKI: Don't answer that.

16 BY MR. RONDE:

17 129 Q. And you didn't go to trial on that
18 issue, did you?

19 A. No.

20 130 Q. And Sears indicated in a Statement
21 of Defence that it disagrees with your claim?

22 A. Yes.

23 131 Q. And in respect of paragraph 10,
24 about the statutory duty of fair dealing, you would
25 agree with me there was no legal determination on

1 that issue either?

2 R/F MR. BRZEZINSKI: Don't answer that.

3 BY MR. RONDE:

4 132 Q. And you didn't go to trial on that
5 issue?

6 A. No.

7 133 Q. And Sears disagreed with you on
8 that issue?

9 A. Yes.

10 134 Q. You would agree with me that it
11 was possible that the franchise Class Action could
12 have been unsuccessful?

13 R/F MR. BRZEZINSKI: Don't answer.

14 BY MR. RONDE:

15 135 Q. The claims were speculative; there
16 was no judicial finding?

17 R/F MR. BRZEZINSKI: Don't answer that.

18 BY MR. RONDE:

19 136 Q. There was no guarantee of success?

20 R/F MR. BRZEZINSKI: Don't answer that.

21 BY MR. RONDE:

22 137 Q. And your counsel explained that to
23 you?

24 R/F MR. BRZEZINSKI: Don't answer that.

25 BY MR. RONDE:

1 138 Q. Could I take you to paragraph 29
2 of your motion record. That would be page 15 of
3 the motion record, paragraph 29 of your affidavit.

4 A. Yes, I've got it.

5 139 Q. I would like to look at 29 (a)
6 there. You have the proposed common issue that
7 says:

8 "Are the Class members
9 'complainants' within the meaning of
10 section 238(d) of the Canada
11 Business Corporations Act [...] in
12 respect of the claims made in the
13 action as against the defendants,
14 and each of them?"

15 And that is the common issue you are
16 proposing, correct?

17 A. Yes.

18 140 Q. And paragraph 32, just over on the
19 next page, says:

20 "Each Class member is an
21 individual contingent creditor of
22 Sears through their respective
23 claims in the Franchise Action."

24 So it is your view that all the Class
25 members are individual contingent creditors?

1 R/F MR. BRZEZINSKI: Don't answer.

2 BY MR. RONDE:

3 141 Q. Well, that is what you say at
4 paragraph 32, correct?

5 R/F MR. BRZEZINSKI: It is a legal issue.
6 Don't answer that.

7 MR. RONDE: If it is a legal issue, why
8 is it in an affidavit?

9 MR. BRZEZINSKI: He is giving
10 background.

11 MR. RONDE: He is giving background to
12 a legal issue?

13 MR. BRZEZINSKI: He is giving
14 background. That specific question is a legal
15 question.

16 BY MR. RONDE:

17 142 Q. If it is a legal question, do you
18 want to strike that from -- if it is a legal point,
19 would you like to strike that from the affidavit as
20 being argumentative?

21 MR. BRZEZINSKI: Your question is a
22 legal question.

23 MR. RONDE: Please let me finish my
24 sentences.

25 MR. BRZEZINSKI: Go ahead.

1 BY MR. RONDE:

2 143 Q. What does "contingent" mean in
3 paragraph 32?

4 R/F MR. BRZEZINSKI: Don't answer that.

5 BY MR. RONDE:

6 144 Q. When you wrote "contingent," what
7 did you mean by "contingent"?

8 R/F MR. BRZEZINSKI: Don't answer that.

9 BY MR. RONDE:

10 145 Q. You would agree that no judgment
11 has been obtained in respect of being a creditor?
12 They are not judgment creditors?

13 A. I don't understand the terminology
14 there.

15 146 Q. Okay, but you understood what an
16 individual contingent creditor is?

17 R/F MR. BRZEZINSKI: Don't answer that.

18 BY MR. RONDE:

19 147 Q. Have those creditors -- have the
20 Class members obtained a judgment against Sears?

21 A. No.

22 148 Q. So it is still speculative as to
23 whether Sears breached its contract with you?

24 R/F MR. BRZEZINSKI: Don't answer that.

25 BY MR. RONDE:

1 149 Q. And it is still speculative
2 whether there was breach of the duty of good faith
3 and fair dealing by Sears?

4 R/F MR. BRZEZINSKI: Don't answer that.

5 BY MR. RONDE:

6 150 Q. I would like to take you to
7 Exhibit "C" to Mr. Seretis' affidavit. That is the
8 Amended and Restated Settlement Agreement.

9 You had indicated that you are familiar
10 with this document, correct?

11 A. Yes.

12 151 Q. And that you had, in fact,
13 executed it on behalf of 129?

14 A. Yes.

15 152 Q. And it says there that you
16 executed it in your capacity as Representative
17 Plaintiff?

18 A. Yes.

19 153 Q. And that is a Representative
20 Plaintiff in respect of both the Wishart Act Class
21 Action and this Class Action?

22 A. Yes.

23 154 Q. You are not the Representative
24 Plaintiff in this Class Action.

25 MR. BRZEZINSKI: He is the proposed

1 Representative Plaintiff.

2 BY MR. RONDE:

3 155 Q. Right. It doesn't say "proposed
4 Representative Plaintiff" there, does it?

5 MR. BRZEZINSKI: It says what it says.

6 BY MR. RONDE:

7 156 Q. So there has been no finding by a
8 Court that you are, in fact, the Representative
9 Plaintiff?

10 MR. BRZEZINSKI: In which action?

11 MR. RONDE: In this action that we are
12 here today.

13 MR. BRZEZINSKI: Correct.

14 MR. RONDE: That is one of the issues
15 that will be heard at the certification hearing?

16 MR. BRZEZINSKI: Yes.

17 BY MR. RONDE:

18 157 Q. But you executed this agreement as
19 of December 14th, 2018, as the Representative
20 Plaintiff in this action?

21 A. Yes.

22 158 Q. And this says "Amended and
23 Restated Settlement Agreement." What is it an
24 amendment to?

25 R/F MR. BRZEZINSKI: Don't answer.

1 BY MR. RONDE:

2 159 Q. And what is it a restatement to?

3 R/F MR. BRZEZINSKI: Don't answer.

4 BY MR. RONDE:

5 160 Q. Can I have production of any other
6 settlement agreements that were entered into?

7 R/F MR. BRZEZINSKI: Refused.

8 BY MR. RONDE:

9 161 Q. When were those settlement
10 agreements entered into?

11 R/F MR. BRZEZINSKI: Refused.

12 BY MR. RONDE:

13 162 Q. Who were those agreements between?

14 R/F MR. BRZEZINSKI: Refused.

15 BY MR. RONDE:

16 163 Q. What are the contents of those
17 agreements?

18 R/F MR. BRZEZINSKI: Refused.

19 MR. FAITH: Could we just have the
20 basis of the refusal?

21 MR. BRZEZINSKI: Settlement
22 discussions, privileged.

23 MR. RONDE: Well, how could it be
24 settlement discussions if you actually had a
25 settlement agreement?

1 MR. BRZEZINSKI: The settlement
2 agreement is available. It is on the record.
3 Everything else --

4 MR. RONDE: It is a settlement
5 agreement. This implies that there is more one
6 agreement.

7 MR. BRZEZINSKI: It implies there were
8 settlement discussions, which are not permissible
9 to be addressed.

10 MR. RONDE: No, actually, it doesn't
11 imply that at all. It says that it was amended and
12 restated. It implies previous settlement
13 agreements.

14 R/F MR. BRZEZINSKI: We take that as
15 settlement discussions and as privileged, and we
16 are not going to answer any questions on that.

17 BY MR. RONDE:

18 164 Q. It says "amended and restated."
19 How many times was it amended?

20 R/F MR. BRZEZINSKI: We are not going to
21 answer that.

22 BY MR. RONDE:

23 165 Q. How many times was it restated?

24 R/F MR. BRZEZINSKI: We are not going to
25 answer that.

1 MR. RONDE: Why won't you provide that
2 information?

3 MR. BRZEZINSKI: Because it is
4 settlement privilege.

5 MR. RONDE: If this entire thing is
6 settlement privilege, why are you providing the
7 final agreement?

8 MR. BRZEZINSKI: That is the final
9 agreement; that is why.

10 MR. RONDE: And that isn't privileged,
11 in your view?

12 MR. BRZEZINSKI: Of course not.

13 MR. RONDE: Okay.

14 MR. BRZEZINSKI: It is an agreement.

15 MR. RONDE: But the other things were
16 agreements as well?

17 MR. BRZEZINSKI: The others were
18 negotiations.

19 BY MR. RONDE:

20 166 Q. I would like to take you to the
21 first recital there. If you can read that, it
22 says:

23 "WHEREAS the [...]"

24 And do you see where I am talking when
25 I say "recitals"?

1 A. Yes.

2 167 Q. And they are not numbered, but
3 I'll be referring to them numerically. If there
4 are any questions, certainly let me know, and we'll
5 try to read them out.

6 A. Okay.

7 168 Q. On the recitals, on the first
8 recital it says:

9 "WHEREAS the Representative
10 Plaintiff in its capacity as class
11 representative commenced (i) on or
12 about July 5, 2013, a class action
13 lawsuit, bearing court file number
14 3769/13 CP, against SCI and Sears
15 Roebuck and Co. (collectively, the
16 'Wishart Class Action Defendants'),
17 for, among other things, breach of
18 contract and breaches under the
19 Arthur Wishart Act [...] which class
20 action was certified pursuant to a
21 decision of the Ontario Superior
22 Court of Justice released on
23 September 8, 2014 (the 'Wishart
24 Class Action')."

25 And to confirm here, there was no Class

1 Action certified as against Sears Roebuck and
2 Company?

3 A. Correct.

4 169 Q. Right, so there is a mistake in
5 this agreement?

6 MR. BRZEZINSKI: In the recital?

7 MR. RONDE: Yes.

8 MR. BRZEZINSKI: Quite frankly,
9 Counsel, I don't know. I'll have to look at it. I
10 think Sears Roebuck was a Defendant, a party at one
11 time.

12 MR. RONDE: Well, I can refer you to
13 the Fresh as Amended Statement of Claim that we
14 have actually already looked at, that doesn't have
15 Sears as a Defendant.

16 You would agree with me that they are
17 not a Defendant?

18 MR. BRZEZINSKI: At this time, they are
19 not a Defendant.

20 BY MR. RONDE:

21 170 Q. What does "at this time" mean?
22 Were they ever a Defendant?

23 A. Yes.

24 MR. BRZEZINSKI: Yes, they were.

25 BY MR. RONDE:

1 171 Q. Okay, and they were dropped as a
2 Defendant?

3 A. I wasn't privy to the
4 conversations.

5 172 Q. Okay.

6 A. But yes, there was a discussion
7 with the Court, with the Judge.

8 MR. BRZEZINSKI: They were a Defendant
9 at one time.

10 MR. RONDE: But they are not now?

11 MR. BRZEZINSKI: No.

12 BY MR. RONDE:

13 173 Q. Okay. And then continuing that
14 recital describing the Representative Plaintiff in
15 its capacity as a Class representative commenced on
16 or about October, and this is the sub (ii):

17 "on or about October 21, 2015,
18 a class action lawsuit, bearing
19 court file number 4114/15 CP,
20 against SCI, Sears Holding
21 Corporation, ESL Investments and the
22 Directors and Officers (as defined
23 below) (collectively [defined as]
24 the 'Oppression Class Action
25 Defendants'), for, among other

1 things, oppression under the Canada
2 Business Corporations Act (the
3 'Oppression Class Action', and
4 collectively with the Wishart Class
5 Action, the 'Class Actions')."

6 And that is your understanding of how
7 things have developed?

8 R/F MR. BRZEZINSKI: Don't answer.

9 BY MR. RONDE:

10 174 Q. You were not a class
11 Representative Plaintiff yet in respect of what is
12 defined here as the Oppression Class Action?

13 MR. BRZEZINSKI: We have told you that
14 already.

15 BY MR. RONDE:

16 175 Q. Right. That is still an issue
17 that has to be addressed?

18 MR. BRZEZINSKI: We have told you that
19 already.

20 MR. RONDE: So that is a yes?

21 MR. BRZEZINSKI: That is a yes.

22 BY MR. RONDE:

23 176 Q. And your counsel, Sotos and Blaney
24 McMurtry, they haven't -- they are not Class
25 counsel yet, are they? They are proposed Class

1 counsel, correct?

2 MR. BRZEZINSKI: Do you know?

3 THE DEPONENT: I don't.

4 MR. BRZEZINSKI: That's it. He doesn't
5 know.

6 BY MR. RONDE:

7 177 Q. So you don't -- you have brought a
8 100 million dollar or 80 million dollar proposed
9 Class Action, and you don't know whether your
10 counsel can be considered Class counsel yet?

11 MR. BRZEZINSKI: That is a legal issue;
12 you know that.

13 MR. RONDE: I don't know that.

14 MR. BRZEZINSKI: Well, we know that.

15 MR. RONDE: What I do know is that
16 there are serious responsibilities for a
17 Representative Plaintiff, particularly in a Class
18 Action with these stakes, and I would assume that
19 there would be some basic knowledge of simple facts
20 concerning that litigation.

21 MR. BRZEZINSKI: Thank you --

22 BY MR. RONDE:

23 178 Q. So are you saying that you have no
24 knowledge whether your lawyers are Class counsel or
25 not?

1 A. Okay, let me answer that.

2 179 Q. Okay.

3 A. It is my understanding that they
4 are the Class counsel. We filed the Wishart Act
5 Class Action first.

6 180 Q. Okay.

7 A. And then because Sears was going
8 out of business, we filed the Oppression claim.

9 181 Q. Right.

10 A. So in my understanding, they
11 carried on as Class counsel. I have -- I don't see
12 where the -- I don't understand where the problem
13 is from your side --

14 182 Q. Okay.

15 A. -- or your question.

16 183 Q. Do you understand the upcoming
17 motion in this, what the purpose of the upcoming
18 motion in this litigation is, in -- I believe it is
19 April 17th.

20 Do you know what the purpose of that
21 motion is?

22 A. I have a basic understanding of it
23 as a non-legal person, yes.

24 184 Q. And what is that understanding?

25 A. That we are claiming that ESL,

1 Eddie Lampert, all the Defendants and the directors
2 of the corporation stripped the company of
3 assets --

4 R/F MR. BRZEZINSKI: No, don't answer.
5 He doesn't understand, obviously.

6 MR. RONDE: Well --

7 MR. BRZEZINSKI: He doesn't understand.

8 THE DEPONENT: In non-legal parlance --

9 MR. BRZEZINSKI: Don't go on.

10 THE DEPONENT: Okay, sorry.

11 BY MR. RONDE:

12 185 Q. So if I can direct your attention
13 to the third recital. You still have that in front
14 of you?

15 A. Yes.

16 186 Q. Okay, thank you. It says:

17 "AND WHEREAS on December 8,
18 2017, the Court issued a claims
19 procedure order (the 'Claims Order')
20 requiring certain creditors with
21 claims against the Sears Canada
22 Entities to file proof of their
23 claim with the Monitor by the Claims
24 Bar Date [...]"

25 And I would like to -- you didn't

1 include a copy of the claims order with your
2 affidavit, did you?

3 MR. BRZEZINSKI: I don't think he did.

4 THE DEPONENT: I don't think so.

5 BY MR. RONDE:

6 187 Q. I would like to provide you with a
7 document.

8 MR. BRZEZINSKI: Before you mark it as
9 an exhibit, perhaps the witness should be given an
10 opportunity to identify if he has ever seen it
11 before.

12 THE DEPONENT: (Witness reviews
13 document.)

14 No, I haven't seen that.

15 MR. BRZEZINSKI: We'll agree to have it
16 marked for identification purposes.

17 MR. RONDE: Okay.

18 BY MR. RONDE:

19 188 Q. Counsel, is it your understanding
20 that this is the claims order that is referenced in
21 the document that you included in your --

22 MR. BRZEZINSKI: I haven't read this
23 particular document, but I presume you wouldn't
24 have handed it to me if it wasn't an accurate copy
25 of the order.

1 MR. RONDE: And we'll call that Exhibit
2 No. 1, and you have --

3 MR. BRZEZINSKI: For identification
4 purposes.

5 EXHIBIT NO. 1 (FOR IDENTIFICATION):
6 Claims Order Procedure.

7 BY MR. RONDE:

8 189 Q. And I understand that this
9 document -- sorry, maybe I'll actually give it to
10 you so you can look at it. My apologies.

11 My understanding of this document is
12 this is the procedure in respect of filing proofs
13 of claim against the Sears Defendants.

14 Did you file proofs of claim?

15 MR. BRZEZINSKI: We filed on his
16 behalf.

17 MR. RONDE: And when you say you, who
18 is --

19 MR. BRZEZINSKI: Counsel, Blaney
20 McMurtry.

21 BY MR. RONDE:

22 190 Q. Did you have any participation in
23 that process?

24 A. No, I did not.

25 191 Q. So you had never approved the

1 filings?

2 A. I relied on my counsel.

3 192 Q. Okay, did you have any discussions
4 with your counsel on that issue?

5 A. Yeah.

6 MR. BRZEZINSKI: Don't -- go ahead.

7 THE DEPONENT: Sorry.

8 MR. BRZEZINSKI: That's okay.

9 BY MR. RONDE:

10 193 Q. Sorry, and what was your answer
11 there?

12 R/F MR. BRZEZINSKI: Yeah, he answered that
13 he did, but I am not going to let him answer as to
14 the nature of those discussions.

15 BY MR. RONDE:

16 194 Q. Okay. Did you review the proofs
17 of claim before they were submitted?

18 R/F MR. BRZEZINSKI: What is the relevance
19 of this? We are not going to let him answer that.

20 MR. RONDE: I think the relevance is
21 quite clear that you are relying on the decision by
22 the Monitor that was based on the proofs of claim,
23 and you are relying on that for the purposes of
24 attempting to establish damages in the Oppression
25 action. It is entirely relevant.

1 It is our view, and we have
2 consistently put it on the record by way of
3 correspondence by myself and by Mr. Faith -- and
4 you may have seen this correspondence -- in which
5 we take the position that the merits of the
6 underlying Wishart Act Class Action are entirely
7 relevant to the Oppression analysis and that that
8 should be taken into account.

9 And that is why it is relevant, and we
10 are entitled to explore it. You included this
11 agreement, if I may say. This agreement was
12 included by Mr. Seretis in his affidavit. I would
13 assume that because it was included and because it
14 was executed by Mr. Kay that it is important to
15 your case. And we see how it flows through to both
16 the notice of motion and to the amended pleadings.

17 So I, quite frankly, do not understand
18 any objection in respect of relevance here.

19 MR. BRZEZINSKI: The Class Proceeding
20 Act is a procedural statute. It doesn't deal or
21 address any of the merits of the case. A
22 certification motion is simply a procedural motion.
23 You don't have the ability to ask -- or you have
24 the ability, you can certainly ask whatever you
25 want, but it is inappropriate to ask questions on

1 the substantive issues, and certainly, the
2 calculation of damages or the issue of damages is a
3 substantive issue.

4 R/F We are not answering the question.

5 MR. RONDE: And I am going to
6 fundamentally disagree with that proposition that
7 you have put forth simply because you have included
8 it in your notice of motion as a proposed common
9 issue. You have included it in your pleadings.
10 And whether there is an analysis of the merits of
11 the underlying class proceeding is directly
12 relevant to the process that the parties have to
13 follow.

14 There has to be discovery on those
15 issues. There has to be notice of those issues.
16 There have to be expert reports on those issues,
17 and all of those have to be reflected in the
18 litigation plan. We don't see that in the
19 litigation plan. So it is fundamentally relevant
20 because it informs the entire process.

21 Are you still taking the position that
22 it is not relevant?

23 MR. BRZEZINSKI: Yes.

24 BY MR. RONDE:

25 195 Q. So did you file a proof of claim

1 in respect --

2 MR. BRZEZINSKI: He already answered
3 that.

4 BY MR. RONDE:

5 196 Q. And sorry, to be clear, what was
6 the answer?

7 MR. BRZEZINSKI: Yes.

8 BY MR. RONDE:

9 197 Q. Okay. Can I get production of
10 that proof of claim?

11 R/F MR. BRZEZINSKI: It is irrelevant, no.

12 BY MR. RONDE:

13 198 Q. And I understand, if we go to
14 Schedule "C" of this claims procedure order -- and
15 you can certainly turn to it. It is approximately
16 halfway through the document.

17 And Counsel, to the extent --

18 MR. BRZEZINSKI: Yes, we see it.

19 BY MR. RONDE:

20 199 Q. Okay, sorry, Counsel, to the
21 extent to which you can assist in terms of pointing
22 him to it, that is certainly fine.

23 It says "Documentation" on the third
24 page of that, and it asked to provide to the
25 Monitor:

1 "[...] all particulars of the
2 Claim and supporting documentation,
3 including amount, and description of
4 transaction(s) or agreement(s), or
5 legal breach(es) giving rise to the
6 Claim, including any claims
7 assignment/transfer agreement or
8 similar document, if applicable, and
9 amount of invoices, particulars of
10 all credits, discounts, etc.,
11 claimed, description of the
12 security, if any, granted by the
13 affected Debtor to the Claimant and
14 estimated value of such security."

15 Did you provide documentation?

16 R/F MR. BRZEZINSKI: Don't answer.

17 BY MR. RONDE:

18 200 Q. May we have a copy of the
19 documentation provided?

20 R/F MR. BRZEZINSKI: No.

21 BY MR. RONDE:

22 201 Q. Did you review this, review the
23 proof of claim that was submitted?

24 A. I believe the proof of claim was
25 our Class Action.

1 202 Q. Okay, so you didn't review any
2 particular proof of claim form?

3 A. Not the particular details, no. I
4 relied on my counsel.

5 203 Q. And did you execute those forms on
6 behalf of the Representative Plaintiff?

7 There is a certification part under
8 number 5 there. Did you execute that?

9 MR. BRZEZINSKI: Do you remember?

10 THE DEPONENT: I don't, I don't
11 remember.

12 BY MR. RONDE:

13 204 Q. Can I get an undertaking as to
14 whether you did?

15 R/F MR. BRZEZINSKI: No.

16 BY MR. RONDE:

17 205 Q. You did proofs of claim with
18 respect to both the Wishart Class Action proceeding
19 and the matter that we are dealing with here, the
20 Oppression Class Action?

21 R/F MR. BRZEZINSKI: Don't answer that.

22 BY MR. RONDE:

23 206 Q. Well, I am going to take you back
24 to tab C.

25 MR. BRZEZINSKI: Yes.

1 BY MR. RONDE:

2 207 Q. And the recital number 5 says:

3 "AND WHEREAS the Representative
4 Plaintiff filed proofs of claims in
5 respect of each of the Class Actions
6 [...]"

7 So is that what you did? Did you file
8 proofs of claim with respect to each of the Class
9 Actions?

10 U/T MR. BRZEZINSKI: We'll give you an
11 undertaking to advise you as to whether we filed
12 one or two.

13 BY MR. RONDE:

14 208 Q. So there is a chance that this
15 statement may be wrong?

16 MR. BRZEZINSKI: No.

17 MR. RONDE: Well, as I understand, this
18 was executed, correct, by 129?

19 MR. BRZEZINSKI: It was.

20 BY MR. RONDE:

21 209 Q. You wouldn't execute something
22 that you didn't read, would you?

23 R/F MR. BRZEZINSKI: Don't answer that.

24 BY MR. RONDE:

25 210 Q. And you wouldn't execute something

1 that you didn't believe to be true, correct?

2 R/F MR. BRZEZINSKI: Don't answer that.

3 BY MR. RONDE:

4 211 Q. It actually says here, if you read
5 the rest of the provision, that there were two
6 separate amounts claimed.

7 Was this done separately or done as a
8 joint submission?

9 MR. BRZEZINSKI: We have already
10 advised you that we will look through our records
11 and provide you information as to whether there
12 were one or two --

13 MR. RONDE: And I retain the right to
14 ask follow-up questions in respect of that,
15 including to continue this examination at a later
16 date, once we get that information.

17 MR. BRZEZINSKI: We will dispute that.

18 MR. RONDE: I don't know why you would
19 dispute something when we actually asked for the
20 production of this material ahead of examination.

21 MR. BRZEZINSKI: It is irrelevant.

22 MR. RONDE: Well, if it is irrelevant,
23 you have undertaken to do it. I am not -- I think
24 you are being incredibly difficult here.

25 MR. BRZEZINSKI: No, I think I'm being

1 legally accurate and correct.

2 BY MR. RONDE:

3 212 Q. So it is your position that this
4 amended and restated settlement agreement is
5 relevant, but we can't ask any questions about it?

6 MR. BRZEZINSKI: You can ask questions
7 with respect to what it says but not go behind it,
8 and only if the party knows and understands the
9 issues and if they are not legal issues and if they
10 are relevant to the issues in the certification
11 motion. And if you give me a little more time,
12 I'll think of something else.

13 MR. RONDE: Right, so it is your
14 position that -- you know what, I think we'll move
15 on.

16 MR. BRZEZINSKI: Good.

17 BY MR. RONDE:

18 213 Q. In respect of that -- I guess it
19 would be recital number 5 there -- it says:

20 "[...] the Representative
21 Plaintiff filed proofs of claims in
22 respect of [...] the Wishart Act
23 Class Action, [for] \$101,100,446.77
24 [...]"

25 How was that amount arrived at?

1 R/F MR. BRZEZINSKI: Don't answer.

2 BY MR. RONDE:

3 214 Q. Were there any financial
4 statements provided as part of that?

5 R/F MR. BRZEZINSKI: Don't answer.

6 BY MR. RONDE:

7 215 Q. And were there any damages reports
8 included?

9 R/F MR. BRZEZINSKI: Don't answer.

10 BY MR. RONDE:

11 216 Q. What steps did 129 do to make a
12 determination of that figure?

13 R/F MR. BRZEZINSKI: Don't answer.

14 BY MR. RONDE:

15 217 Q. You would agree with me that
16 figure is higher than the figure claimed in the
17 Wishart Class Action in the Statement of Claim?

18 A. Yes.

19 218 Q. Okay. And it says there
20 "contingent and unliquidated claims"; what is your
21 understanding of what "contingent" meant?

22 R/F MR. BRZEZINSKI: Don't answer.

23 BY MR. RONDE:

24 219 Q. Is it meant that it is
25 speculative?

1 R/F MR. BRZEZINSKI: Don't answer.

2 BY MR. RONDE:

3 220 Q. And in respect of "unliquidated,"
4 my understanding of unliquidated is it has not been
5 ascertained. Is that your understanding?

6 R/F MR. BRZEZINSKI: Don't answer.

7 BY MR. RONDE:

8 221 Q. So you have no understanding of
9 what "contingent" or "unliquidated claim" meant?

10 MR. BRZEZINSKI: He hasn't answered the
11 question.

12 BY MR. RONDE:

13 222 Q. Right, you won't answer that
14 question, but this is in a document that you
15 executed?

16 MR. BRZEZINSKI: That's correct. You
17 know those are legal issues.

18 MR. RONDE: I am entitled to explore
19 what this document is about.

20 MR. BRZEZINSKI: And we are entitled to
21 refuse.

22 MR. RONDE: You are entitled to refuse,
23 but you did include it in your affidavit material,
24 correct?

25 MR. BRZEZINSKI: Correct.

1 MR. RONDE: So you thought it was
2 important?

3 MR. BRZEZINSKI: Don't cross-examine
4 me.

5 MR. RONDE: Right, well, I am only
6 getting answers from you, apparently.

7 MR. BRZEZINSKI: Well, because these
8 are legal issues that this witness is incapable,
9 unable, and is improperly asked. So he is not
10 going to answer those legal issues.

11 BY MR. RONDE:

12 223 Q. So you also submitted a proof of
13 claim on behalf -- in the case of the Oppression
14 Class Action, and that is in respect of this case
15 that we are dealing with today?

16 MR. BRZEZINSKI: I'm sorry, what is the
17 question?

18 BY MR. RONDE:

19 224 Q. It says there:

20 "[...] the Representative
21 Plaintiff filed proofs of claims in
22 respect of each of the Class Actions
23 [...]"

24 And then it says "[...] in the case of
25 the Oppression Class Action [...]", and that refers

1 to the case that we are here for today, correct?

2 MR. BRZEZINSKI: Yes.

3 THE DEPONENT: Yes.

4 BY MR. RONDE:

5 225 Q. And you filed that claim on behalf
6 of the Class?

7 MR. BRZEZINSKI: He did.

8 THE DEPONENT: Yes.

9 BY MR. RONDE:

10 226 Q. Right, so that is not an
11 individual 509 million dollar claim that you have?

12 A. No.

13 227 Q. No, it is on behalf of all of the
14 Class members?

15 A. I represent the Class, yes.

16 228 Q. So it is your position that you
17 represent the Class?

18 A. Yes.

19 229 Q. Okay. And that is the Class in
20 the Oppression Class Action?

21 A. Yes.

22 230 Q. How was that 509 million dollar
23 figure arrived at?

24 R/F MR. BRZEZINSKI: Don't answer.

25 BY MR. RONDE:

1 231 Q. Were there financial statements?
2 R/F MR. BRZEZINSKI: Don't answer.
3 BY MR. RONDE:
4 232 Q. Were there damages reports?
5 R/F MR. BRZEZINSKI: Don't answer.
6 BY MR. RONDE:
7 233 Q. Could we have those provided in
8 respect of any of the proofs of claim?
9 R/F MR. BRZEZINSKI: No.
10 BY MR. RONDE:
11 234 Q. That 509 million dollar figure,
12 that is in excess of what is being claimed in the
13 Oppression Class Action, correct?
14 MR. BRZEZINSKI: Yes.
15 BY MR. RONDE:
16 235 Q. And the Oppression Class Action, I
17 understand, was originally for not an amount
18 exceeding \$100,000?
19 MR. BRZEZINSKI: Million.
20 BY MR. RONDE:
21 236 Q. 100 million dollars.
22 MR. BRZEZINSKI: That is what it says.
23 BY MR. RONDE:
24 237 Q. Right. Can you explain to me why
25 it is 509 million, five times the amount?

1 R/F MR. BRZEZINSKI: Don't answer that.

2 BY MR. RONDE:

3 238 Q. These figures, so a total of over
4 600 million dollars' worth of claims, were provided
5 to the Monitor?

6 MR. BRZEZINSKI: I'm sorry, what was?

7 BY MR. RONDE:

8 239 Q. 600 million dollars' worth of
9 proofs of claim were submitted to the Monitor; is
10 that correct?

11 R/F MR. BRZEZINSKI: Irrelevant. Don't
12 answer.

13 BY MR. RONDE:

14 240 Q. If I can take you to page 25 of
15 the motion record, that is the second page of this
16 settlement agreement.

17 It is the first full recital there, and
18 it says:

19 "AND WHEREAS, the Monitor, SCI,
20 and the Representative Plaintiff
21 [...]"

22 The "Representative Plaintiff" there is
23 you, correct?

24 A. Yes.

25 Q. "[...] have agreed on the

1 treatment of the Class Action claims
2 for the purpose of voting on, and
3 receiving distributions pursuant to,
4 a Plan."

5 So what was your understanding of what
6 that provision meant?

7 R/F MR. BRZEZINSKI: Don't answer that.

8 BY MR. RONDE:

9 241 Q. You would agree with me that the
10 purpose of the settlement agreement was to
11 determine what distributions Class members were to
12 receive?

13 MR. BRZEZINSKI: Whatever it says.

14 BY MR. RONDE:

15 242 Q. Well, I would like to know what
16 the witness thought when he executed the agreement
17 on behalf of 129.

18 R/F MR. BRZEZINSKI: Don't answer that.

19 BY MR. RONDE:

20 243 Q. And I would like to know what he
21 thought on behalf of the Class members he was
22 purporting to bind with this agreement.

23 MR. BRZEZINSKI: The agreement says
24 what it says.

25 BY MR. RONDE:

1 244 Q. It is your view that this
2 agreement is binding, correct? It is binding on
3 you and 129?

4 A. I believe it is binding, yes.

5 245 Q. And you executed it on behalf of
6 Class members, so it is your view that it is
7 binding on Class members as well?

8 A. Yes.

9 246 Q. I'll take you to paragraph 2 or
10 section 2. It says:

11 "Class Action Claim Value: In
12 the event a Plan is implemented, the
13 Representative Plaintiff in the
14 Wishart Class Action, on its own
15 behalf and on behalf of all other
16 class members in the Wishart Class
17 Action, shall have a Proven Affected
18 Unsecured Claim against the Wishart
19 Class Action Defendants of
20 \$80,000,000."

21 Do you know how that 80 million dollars
22 was determined?

23 R/F MR. BRZEZINSKI: Don't answer.

24 BY MR. RONDE:

25 247 Q. Do you have any records or

1 correspondence in regards to how that 80 million
2 dollar was arrived at?

3 R/F MR. BRZEZINSKI: Do not answer.

4 BY MR. RONDE:

5 248 Q. I would like those records
6 provided.

7 R/F MR. BRZEZINSKI: Refused.

8 BY MR. RONDE:

9 249 Q. And there is a capitalized term,
10 so I assume it is a defined term, of "proven
11 affected unsecured claim." What is a proven
12 affected unsecured claim?

13 R/F MR. BRZEZINSKI: Don't answer.

14 BY MR. RONDE:

15 250 Q. And how was it proven?

16 R/F MR. BRZEZINSKI: Don't answer.

17 BY MR. RONDE:

18 251 Q. What does "proven" mean?

19 R/F MR. BRZEZINSKI: Don't answer.

20 BY MR. RONDE:

21 252 Q. I would like to understand how
22 this agreement works, and my understanding is that
23 paragraph 3 provides some sort of guidance.

24 And you have read paragraph 3 there?

25 A. Yes.

1 253 Q. You are familiar with this because
2 you executed it?

3 A. Yes.

4 254 Q. Right. It says:
5 "Treatment for Distribution
6 Purposes: In the event a Plan is
7 implemented, the Representative
8 Plaintiff shall only be entitled to
9 receive, in its capacity as
10 Representative Plaintiff, out of
11 Estate Litigation Proceeds, if any,
12 a distribution based on its Proven
13 Affected Unsecured Claim; provided,
14 however, that, (i) the
15 Representative Plaintiff shall not
16 be entitled to receive, or
17 participate in, any distribution on
18 the first \$10,000,000 of Estate
19 Litigation Proceeds (the 'Class
20 Action Dividend'); and (ii) the
21 Upfront Payment (as defined below)
22 shall be treated as an advance
23 payment on the Class Action Dividend
24 and shall be credited against any
25 Class Action Dividend that the

1 Representative Plaintiff would
2 otherwise be entitled to receive out
3 of Estate Litigation Proceeds
4 pursuant to this Agreement. The
5 Upfront Payment is non-refundable in
6 the event that there are no Estate
7 Litigation Proceeds."

8 So just to break this down, to make
9 sure that we have an understanding of this, under
10 the sub (i) there, it says:

11 "the Representative Plaintiff
12 shall not be entitled to receive, or
13 participate in, any distribution on
14 the first \$10,000,000 of Estate
15 Litigation Proceeds (the 'Class
16 Action Dividend')."

17 So I am going to put a proposition to
18 you, and as my understanding; you can tell me if
19 I'm wrong. It is that all the Class members in
20 both Class proceedings are not entitled to
21 participate in the first 10 million dollars that
22 comes into the estate litigation proceeds?

23 R/F MR. BRZEZINSKI: Don't answer.

24 It says what it says.

25 BY MR. RONDE:

1 255 Q. But this is an agreement that you
2 made?

3 R/F MR. BRZEZINSKI: Go ahead. He is not
4 answering.

5 BY MR. RONDE:

6 256 Q. What is the Class Action dividend?
7 What does that refer to?

8 R/F MR. BRZEZINSKI: Don't answer.

9 That is irrelevant.

10 BY MR. RONDE:

11 257 Q. And the upfront payment, you
12 received an -- or under this plan you are to
13 receive an upfront payment of \$334,495; is that
14 correct?

15 MR. BRZEZINSKI: It says what it says.

16 BY MR. RONDE:

17 258 Q. Is that correct?

18 R/F MR. BRZEZINSKI: It says what it says.

19 Don't answer the question.

20 BY MR. RONDE:

21 259 Q. Is this payment to be shared among
22 Class members?

23 R/F MR. BRZEZINSKI: Don't answer the
24 question.

25 BY MR. RONDE:

1 260 Q. Are you keeping it yourself?
2 R/F MR. BRZEZINSKI: Don't answer.
3 BY MR. RONDE:
4 261 Q. Is it to pay for legal fees?
5 R/F MR. BRZEZINSKI: Don't answer.
6 BY MR. RONDE:
7 262 Q. Is it to pay for adverse cost
8 awards?
9 R/F MR. BRZEZINSKI: Don't answer.
10 BY MR. RONDE:
11 263 Q. And it says that the amount is to
12 be paid to your counsel; is that correct? That is
13 your understanding of what you agreed to?
14 MR. BRZEZINSKI: It says what it says.
15 BY MR. RONDE:
16 264 Q. So I'm asking you are you keeping
17 the upfront payment?
18 R/F MR. BRZEZINSKI: Don't answer.
19 BY MR. RONDE:
20 265 Q. Did the Class members approve that
21 that this was going to be an upfront payment?
22 R/F MR. BRZEZINSKI: Don't answer that.
23 BY MR. RONDE:
24 266 Q. Did the Class members approve that
25 you submitted a claim for 80 million dollars?

1 R/F MR. BRZEZINSKI: Don't answer.

2 BY MR. RONDE:

3 267 Q. And in respect of paragraph 4 --
4 actually, sorry, I'll move to paragraph 5, and it
5 says:

6 "No Other Claim: The
7 Representative Plaintiff, on its
8 behalf and on behalf of all other
9 Class Action Plaintiffs, agrees, if
10 a Plan is implemented, not to assert
11 or pursue any further or other claim
12 against the Sears Canada Entities or
13 any of their assets other than its
14 entitlement to receive the Class
15 Action Dividend and the Upfront
16 Payment."

17 So you purported to not assert or
18 pursue any claims against Sears Canada and those
19 entities by way of this agreement?

20 R/F MR. BRZEZINSKI: If it says that, that
21 is what it is.

22 Don't answer anything further on that.

23 BY MR. RONDE:

24 268 Q. And it says:

25 "While the Representative

1 Plaintiff, on its behalf and on
2 behalf of all other Class Action
3 Plaintiffs, agrees that it shall not
4 require any discovery, production or
5 payment from the Sears Canada
6 Entities [...]"

7 I take it that you, on behalf of Class
8 members, the Class Action Plaintiffs, waived any
9 right to discovery, production, or payment from the
10 Sears Canada entities?

11 R/F MR. BRZEZINSKI: It says what it says.
12 Don't answer further questions.

13 BY MR. RONDE:

14 269 Q. And you did this on behalf of the
15 Oppression Class Action Plaintiffs as well?

16 MR. BRZEZINSKI: He signed it the way
17 he signed it.

18 BY MR. RONDE:

19 270 Q. Okay. And paragraph 7 says:
20 "Treatment for Voting Purposes:
21 The Monitor, SCI and the
22 Representative Plaintiff agree that
23 the Representative Plaintiff shall
24 not be entitled to vote on a Plan."

25 Is it your understanding that the Class

1 members or the Class Action Plaintiffs can still
2 vote on plans?

3 R/F MR. BRZEZINSKI: Don't answer that.

4 BY MR. RONDE:

5 271 Q. Did you provide notice to the
6 Class of this settlement?

7 R/F MR. BRZEZINSKI: Don't answer.

8 BY MR. RONDE:

9 272 Q. Do you know if your counsel is
10 receiving any funds or payment as a result of this
11 settlement?

12 R/F MR. BRZEZINSKI: Don't answer that
13 question.

14 BY MR. RONDE:

15 273 Q. I would like to take you to
16 paragraph 10, which says:

17 "No Findings: Nothing in this
18 Agreement shall constitute an
19 admission by SCI or a finding by the
20 Monitor concerning any alleged
21 conduct of the defendants to the
22 Class Actions."

23 And the "defendants to the Class
24 Actions," you would agree that includes my clients?

25 MR. BRZEZINSKI: I'm sorry, who are

1 your clients?

2 MR. RONDE: You can give it
3 specifically.

4 MR. PICONE: The former directors.

5 MR. BRZEZINSKI: Do you know?

6 THE DEPONENT: I don't know.

7 BY MR. RONDE:

8 274 Q. You would agree with me that they
9 are Defendants in the Class Action? You are
10 bringing a Class Action, right?

11 A. Yes.

12 275 Q. You sued certain people?

13 A. Yes.

14 276 Q. You sued the former directors?

15 A. Yes.

16 277 Q. So you would agree with me they
17 are Defendants in this Class Action, the Oppression
18 Class Action?

19 A. Yes.

20 278 Q. Right, so the agreement doesn't
21 constitute an admission or a finding concerning
22 alleged conduct of the Defendants, my client?

23 MR. BRZEZINSKI: It appears to say
24 that.

25 BY MR. RONDE:

1 279 Q. I would like to take you to
2 paragraph 12, and it says:

3 "Representation of
4 Representative Plaintiff:"

5 And you read this provision, sir?

6 A. Yes.

7 280 Q. All right, it says:

8 "The Representative Plaintiff
9 represents and warrants that:

10 (a) it has the authority to enter
11 into, execute and deliver this
12 Agreement on behalf of all Class
13 Action Plaintiffs."

14 How do you have that authority?

15 R/F MR. BRZEZINSKI: Don't answer.

16 BY MR. RONDE:

17 281 Q. Did you speak to the proposed
18 Class members in the Oppression Class Action and
19 get their authority?

20 R/F MR. BRZEZINSKI: Don't answer that
21 question.

22 BY MR. RONDE:

23 282 Q. Was it done written or orally?

24 R/F MR. BRZEZINSKI: Don't answer that
25 question.

1 MR. RONDE: I would like to know the
2 objection to that.

3 MR. BRZEZINSKI: Irrelevant.

4 BY MR. RONDE:

5 283 Q. Okay. And you have also
6 represented and warranted:

7 "that no further or other
8 consent is required for the
9 Representative Plaintiff to enter
10 into, execute and deliver this
11 Agreement on behalf of all Class
12 Action Plaintiffs."

13 Is that your belief?

14 R/F MR. BRZEZINSKI: Don't answer that.

15 BY MR. RONDE:

16 284 Q. So you don't believe that there
17 has to be approval by the Court in respect of this
18 document?

19 R/F MR. BRZEZINSKI: He hasn't answered
20 that, and he is not going to.

21 BY MR. RONDE:

22 285 Q. Okay. And it says that the
23 Representative Plaintiffs represents and warrants
24 that:

25 "the terms of this Agreement

1 and the effects thereof have been
2 fully explained to the Class Action
3 Plaintiffs."

4 Did you explain the terms of the
5 agreement and the effects thereof to the Class
6 Action Plaintiffs?

7 MR. BRZEZINSKI: There is only one
8 Class Action Plaintiff.

9 MR. RONDE: It says "Class Action
10 Plaintiffs."

11 MR. BRZEZINSKI: There is only one
12 Class Action Plaintiff.

13 BY MR. RONDE:

14 286 Q. Right, but you had executed this
15 in your capacity as class representative? You have
16 executed this agreement on behalf of the Class?

17 A. Correct.

18 MR. BRZEZINSKI: Yes.

19 BY MR. RONDE:

20 287 Q. Right.

21 MR. BRZEZINSKI: He is the Class
22 representative.

23 MR. RONDE: Right, but it says
24 "Representative Plaintiff" as the person who is
25 making the representations and warranties.

1 Are you saying he is making a
2 representation in respect of getting consent from
3 himself?

4 MR. BRZEZINSKI: It says what it says,
5 Counsel.

6 MR. RONDE: Well, Counsel, just because
7 you don't like it doesn't mean I don't get an
8 answer. I need to know if here was authority to do
9 this.

10 R/F MR. BRZEZINSKI: Whether I like it or I
11 don't like it, your question is irrelevant.

12 BY MR. RONDE:

13 288 Q. If I can take you to the Schedule
14 "A" to this agreement, if you flip to page 30.

15 MR. BRZEZINSKI: Yes.

16 BY MR. RONDE:

17 289 Q. "Class Action Plaintiffs" is
18 defined as:

19 "[...] all corporations,
20 partnerships, and individuals
21 carrying on business as 'Sears
22 Hometown' stores any time after July
23 5, 2011 pursuant to a standard
24 dealer agreement with SCI under the
25 Class Actions."

1 MR. BRZEZINSKI: Yes.

2 BY MR. RONDE:

3 290 Q. So you would agree with me when it
4 says Class Action Plaintiffs, it doesn't mean just
5 the Representative Plaintiff?

6 MR. BRZEZINSKI: That is what the
7 agreement says. It says what it says.

8 BY MR. RONDE:

9 291 Q. So you are saying -- and I just
10 want to be absolutely clear -- that you fully
11 explained the terms of this agreement to all
12 individuals defined as Class Action Plaintiffs in
13 this agreement?

14 R/F MR. BRZEZINSKI: Refused.

15 BY MR. RONDE:

16 292 Q. And 12 (d), it says:

17 "the Class Action Plaintiffs
18 have received the benefit of counsel
19 in order to fully understand the
20 terms of this Agreement and their
21 effects."

22 So can you explain to me how the Class
23 Action Plaintiffs received the benefit of Counsel?

24 R/F MR. BRZEZINSKI: Don't answer the
25 question.

1 BY MR. RONDE:

2 293 Q. Did they receive independent
3 counsel?

4 R/F MR. BRZEZINSKI: Don't answer the
5 question.

6 BY MR. RONDE:

7 294 Q. Did they receive counsel from the
8 proposed Class counsel, which includes Mr.
9 Brzezinski's firm and Sotos LLP?

10 R/F MR. BRZEZINSKI: Don't answer.

11 BY MR. RONDE:

12 295 Q. In paragraph 13, in respect of the
13 "Binding Effect," it says:

14 "Binding Effect: This
15 Agreement shall be binding upon, and
16 enure to the benefit of the
17 Representative Plaintiff [...]"
18 That is you, correct?

19 A. Correct.

20 296 Q. Right, and "the Class Action
21 Plaintiffs" -- and we have seen it is anyone that
22 was a Hometown Dealer under that time period as
23 defined in Schedule "A," correct?

24 R/F MR. BRZEZINSKI: Don't answer anything.

25 BY MR. RONDE:

1 Q. And "[...] SCI, and the
2 Monitor, and their respective
3 successors and assigns."
4 So it is your view this is binding
5 on --

6 R/F MR. BRZEZINSKI: He hasn't expressed
7 the view, and I am not letting him answer the
8 question.

9 MR. RONDE: Well, he executed an
10 agreement that says that exact thing, and I just
11 want to confirm that he knows what he executed. I
12 would think that is important.

13 MR. BRZEZINSKI: I am sure you think
14 that, but we are still refusing.

15 BY MR. RONDE:

16 297 Q. Okay, so I take your view that you
17 don't believe it is important as to whether he
18 knows whether this is a binding agreement or not on
19 Class members?

20 MR. BRZEZINSKI: That is an excellent
21 point that you should raise before the judge.

22 MR. RONDE: I am raising it on
23 cross-examination because I saw this document in
24 your materials.

25 R/F MR. BRZEZINSKI: That doesn't give you

1 free reign to ask whatever question you want to.
2 Keep it relevant to the certification motion.

3 BY MR. RONDE:

4 298 Q. Paragraph 14 under "Parties of
5 Interest," under the second sentence, it says:

6 "Nothing in this Agreement
7 shall be construed to create any
8 rights or obligations except amongst
9 the parties hereto [...]"

10 You would agree that my clients, the
11 former directors, are not party to this agreement?

12 R/F MR. BRZEZINSKI: Don't answer that
13 that.

14 MR. RONDE: I would like to take a
15 brief break. Thank you.

16 (DISCUSSION OFF THE RECORD.)

17 MR. RONDE: If we could take a brief
18 five or ten-minute break.

19 Mr. Kay, I would ask you not to speak
20 to your counsel with respect to the content of your
21 testimony while you are on break, and I trust that
22 Counsel will not do that. Thank you.

23 MR. BRZEZINSKI: We won't. Thank you.

24 -- RECESSED AT 11:28 A.M.

25 -- RESUMED AT 11:44 A.M.

1 BY MR. RONDE:

2 299 Q. So we are back on the record at
3 approximately 11:45.

4 Just sort of a question going back, and
5 I just want to -- I apologize if there is some
6 repetition, but we had asked the question as to
7 whether there were opt-outs or not, and I think
8 there was some uncertainty concerning that
9 question.

10 You said you didn't believe so, but I
11 would ask for an undertaking to confirm whether or
12 not there were opt-outs and how many?

13 U/A MR. BRZEZINSKI: We'll take that under
14 advisement.

15 MR. RONDE: Okay, and that is in
16 respect of the Wishart Act Class Action.

17 MR. BRZEZINSKI: The first one, okay.

18 MR. RONDE: Yes.

19 MR. BRZEZINSKI: Yes, we'll take that
20 under advisement.

21 BY MR. RONDE:

22 300 Q. Thank you.

23 And we had asked a question in respect
24 of if there was any indemnity provided by --
25 specifically, we asked in respect of Counsel, in

1 respect of any sort of third party funder or in
2 respect of the class proceedings fund, and we would
3 just ask generally if 129 is being indemnified with
4 respect to either of the Class Actions by anyone at
5 all, and if so, to advise who and the terms of such
6 indemnity?

7 MR. BRZEZINSKI: The answer is no.

8 BY MR. RONDE:

9 301 Q. Your answer is no, there is no
10 indemnity?

11 A. Correct.

12 302 Q. Thank you.

13 MR. LOCKHART: For the record, I think
14 that was an answer from the deponent rather than
15 from Mr. Brzezinski.

16 THE COURT REPORTER: The first part was
17 from Mr. Brzezinski.

18 BY MR. RONDE:

19 303 Q. And in respect of tab C, the
20 settlement agreement, I would like to ask you, Mr.
21 Kay, what is your understanding of the consequences
22 if you breach any of the warranties that you have
23 made in that agreement?

24 R/F MR. BRZEZINSKI: Don't answer.

25 BY MR. RONDE:

1 304 Q. If I could have you turn to your
2 own affidavit, and specifically tab K.

3 MR. BRZEZINSKI: K?

4 BY MR. RONDE:

5 305 Q. K, page 184 of the motion record.

6 A. Yes.

7 306 Q. So this is your or 129's, I guess,
8 proposed litigation plan for the Oppression Class
9 Action?

10 A. Yes.

11 307 Q. And you have reviewed this
12 document?

13 A. Yes.

14 308 Q. And did you --

15 MR. BRZEZINSKI: To be fair to the
16 witness, it has been amended.

17 MR. RONDE: Okay, but I am asking in
18 respect of this.

19 MR. BRZEZINSKI: Fine.

20 BY MR. RONDE:

21 309 Q. And it was your view, I guess, at
22 the time you swore the affidavit in January of
23 2019, of how you proposed the litigation to
24 proceed?

25 A. The procedure of the litigation,

1 in my opinion, is something that is predetermined
2 by the Court or -- I didn't write this. This was
3 provided to me by counsel.

4 310 Q. Okay.

5 A. But I understood it.

6 311 Q. Did you have input into it?

7 A. No.

8 312 Q. If I could take you to tab C of
9 your affidavit.

10 MR. BRZEZINSKI: Oh, of his affidavit,
11 sorry.

12 MR. RONDE: Yes, sorry, tab C, and I'll
13 give you the page number for reference purposes.
14 It is page 84.

15 MR. BRZEZINSKI: Yes, we have it.

16 BY MR. RONDE:

17 313 Q. And just to be clear, the matter
18 was -- this order certifying this as a Class
19 Action, the order was made on September 8th, 2014?

20 A. Apparently, yes.

21 314 Q. So that is September 2014, and the
22 matter was stayed, as I understand -- and I think
23 you included in your affidavit the stay order -- it
24 was stayed on March 29th, 2016?

25 MR. BRZEZINSKI: Can you take us to

1 that?

2 MR. RONDE: I believe it is at tab G.

3 MR. BRZEZINSKI: Yes, page 130.

4 BY MR. RONDE:

5 315 Q. Just to be clear, after it was
6 certified, you as Representative Plaintiff, you
7 sought to move the matter forward to obtain a
8 judgment against Sears?

9 A. Yes.

10 316 Q. And you used your best efforts?

11 A. Yes.

12 317 Q. As a Representative Plaintiff,
13 okay.

14 And it was stayed on -- and I have it
15 on March 29th, 2016, and that is about a year and a
16 half after it was certified?

17 A. Yes.

18 318 Q. At the time it was stayed, you
19 didn't have a trial date?

20 A. I don't remember.

21 319 Q. If I can get an undertaking in
22 respect of that answer.

23 MR. BRZEZINSKI: Why is that relevant?

24 MR. RONDE: The pace of the litigation
25 is relevant.

1 R/F MR. BRZEZINSKI: Refused.

2 BY MR. RONDE:

3 320 Q. You had already mentioned you had
4 exchanged documents by March 29th, 2016?

5 A. Yes.

6 321 Q. Had you exchanged expert reports
7 in the litigation?

8 A. Not to my knowledge.

9 322 Q. So therefore, there hadn't been
10 any cross-examinations on expert reports?

11 A. On expert reports, no.

12 323 Q. Had examinations for discovery
13 taken place?

14 A. Yes.

15 324 Q. Okay. Can we get a copy of the
16 examination for discovery in that matter?

17 R/F MR. BRZEZINSKI: No.

18 BY MR. RONDE:

19 325 Q. Can we have copies of the
20 documents that were exchanged in that matter?

21 R/F MR. BRZEZINSKI: No.

22 BY MR. RONDE:

23 326 Q. I guess you said there weren't
24 expert reports exchanged?

25 A. No.

1 327 Q. Okay. Were there any refusals
2 motions that had taken place in respect of the
3 examination for discovery?

4 R/F MR. BRZEZINSKI: Don't answer that. It
5 is totally irrelevant.

6 MR. RONDE: If we could just go off the
7 record for a moment.

8 (DISCUSSION OFF THE RECORD.)

9 MR. RONDE: Subject to any questions
10 arising out of undertakings, under advisements or
11 refusals, and any documents produced, those are our
12 questions.

13 I would like to thank you, Mr. Kay, for
14 attending today. I think we got you out just
15 before noon, so I think we are owed a bottle of
16 wine or something. Thanks very much.

17 MR. BRZEZINSKI: All right.

18

19 -- Adjourned at 11:56 a.m.

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REPORTER'S CERTIFICATE


I, DEANA SANTEDICOLA, RPR, CRR,
CSR, Certified Shorthand Reporter, certify:

That the foregoing proceedings were
taken before me at the time and place therein set
forth, at which time the witness was put under oath
by me;

That the testimony of the witness
and all objections made at the time of the
examination were recorded stenographically by me
and were thereafter transcribed;

That the foregoing is a true and
correct transcript of my shorthand notes so taken.

Dated this 31st day of March, 2019.



NEESON COURT REPORTING INC.

PER: DEANA SANTEDICOLA, RPR, CRR, CSR

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In the Matter Of:
1291079 Ontario Limited v.
Sears Canada Inc., et al.

ANDY SERETIS
March 29, 2019



77 King Street West, Suite 2020
Toronto, ON M5K 1A2
1.888.525.6666 | 416.413.7755

1 Court File No. 4114/15

2
3 ONTARIO

4 SUPERIOR COURT OF JUSTICE

5
6 B E T W E E N:

7 1291079 ONTARIO LIMITED

8 Plaintiff

9
10 - and -

11
12 SEARS CANADA INC., SEARS HOLDINGS CORPORATION, ESL
13 INVESTMENTS INC., WILLIAM C. CROWLEY, WILLIAM R.
14 HARKER, DONALD CAMPBELL ROSS, EPHRAIM J. BIRD,
15 DEBORAH E. ROSATI, R. RAJA KHANNA, JAMES MCBURNEY
16 and DOUGLAS CAMPBELL

17 Defendants

18
19 -----
20 --- This is the Cross-Examination of ANDY SERETIS,
21 on his affidavit sworn March 11, 2019, taken at the
22 offices of Neesons Court Reporting, 77 King Street
23 West, Suite 2020, Toronto, Ontario, on the 29th day
24 of March, 2019.

25 -----

1 A P P E A R A N C E S:

2

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22 REPORTED BY: Deana Santedicola, RPR, CRR, CSR

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I N D E X

WITNESS: ANDY SERETIS

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**The following list of undertakings, advisements
and refusals is meant as a guide only for the
assistance of counsel and no other purpose**

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and appear on the following pages: [NONE]

INDEX OF ADVISEMENTS

The questions/requests taken under advisement are
noted by U/A and appear on the following pages:
[NONE]

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NO.	DESCRIPTION	PAGE/LINE NO.
	(No exhibits marked.)	

1 -- Upon commencing at 12:10 p.m.

2

3 ANDY SERETIS; Sworn.

4 CROSS-EXAMINATION BY MR. RONDE:

5 1 Q. This is the examination of
6 Mr. Andy Seretis on March 28th, 2019.

7 Good afternoon, Mr. Seretis.

8 A. Good afternoon.

9 2 Q. Oh, sorry, it is the 29th today.
10 Mr. Seretis, if you could confirm you
11 have been sworn in.

12 A. I have, yes.

13 3 Q. And you are counsel to the
14 proposed Representative Plaintiff in this action?

15 A. Yes, our firm is, together with
16 our co-counsel, Blaney McMurtry.

17 4 Q. And you have been -- you weren't
18 here for the examination of Mr. Kay, but just to
19 ensure that there is some consistency in the terms
20 that we use, it is your understanding that there
21 was originally a Class Action, a franchise-based
22 Class Action brought back in 2013?

23 A. There was a Class Action brought
24 by the Plaintiff in this action back in 2013, yes.

25 5 Q. We have been calling that the

1 Wishart Act Class Action, so when I refer to the
2 Wishart Act Class Action, it would be in respect of
3 that claim.

4 A. I understand.

5 6 Q. And this claim -- sorry, the
6 matter at hand, I guess, would be the oppression,
7 what we are referring to as the Oppression Class
8 Action, just to keep the two separate.

9 A. That works.

10 7 Q. And in respect of the Wishart Act
11 Class Action, you were also counsel for 129 as the
12 Representative Plaintiff in that action as well?

13 A. Correct, our firm was, yes.

14 8 Q. But you were?

15 A. I was as well, yes.

16 9 Q. And you worked on the
17 certification hearing?

18 A. Yes, I did.

19 10 Q. And you worked on it subsequent to
20 the certification hearing, until it was eventually
21 stayed?

22 A. Yes, I never stopped working on
23 the file.

24 11 Q. Are you aware as to the extent to
25 which 129 has any corporate assets?

1 A. My understanding is that it
2 currently does not have any assets.

3 12 Q. And your firm has not indemnified
4 the Representative Plaintiff company in respect of
5 any potential future adverse cost award?

6 R/F MR. BRZEZINSKI: Don't answer.

7 BY MR. RONDE:

8 13 Q. You have had experience in class
9 actions before, Mr. Seretis, correct?

10 R/F MR. BRZEZINSKI: Don't answer. Don't
11 answer the question. It is irrelevant.

12 BY MR. RONDE:

13 14 Q. And you are aware that plaintiffs
14 in class actions have the potential to face adverse
15 cost awards by successful defendants?

16 R/F MR. BRZEZINSKI: Don't answer that.

17 BY MR. RONDE:

18 15 Q. In fact, you were counsel for Pet
19 Valu in respect of an adverse costs award awarded
20 against a Representative Plaintiff in a class
21 action brought against Pet Valu?

22 R/F MR. BRZEZINSKI: Don't answer.

23 BY MR. RONDE:

24 16 Q. I was on that case against you,
25 Mr. Seretis, in which we sought to enforce the

1 award against the individual, the owner of that
2 company. Do you recall that?

3 R/F MR. BRZEZINSKI: Don't answer.
4 Are you making speeches, or are you asking
5 questions?

6 MR. RONDE: I believe "Do you recall
7 that?" is a question.

8 MR. BRZEZINSKI: I think the preamble
9 before that was a rather lengthy speech.

10 MR. RONDE: Well, I am trying to advise
11 Mr. Seretis what I am referring to. That is part
12 and parcel of asking the questions.

13 It is my examination, sir, and I would
14 ask for you not to constantly interrupt it. We
15 have a stream of hundreds of refusals, I would say,
16 reasonably, right now on questions that directly
17 relate to the issues at hand, so there has already
18 been enough obstruction in respect of answers. I
19 would appreciate there not being anymore.

20 MR. BRZEZINSKI: Ask proper questions,
21 you won't get refusals.

22 BY MR. RONDE:

23 17 Q. Do you recall that case, sir?

24 R/F MR. BRZEZINSKI: Don't answer.

25 BY MR. RONDE:

1 18 Q. And do you recall that there was a
2 1.7 million dollar adverse costs award against the
3 Representative Plaintiff in that case?

4 R/F MR. BRZEZINSKI: Don't answer.

5 BY MR. RONDE:

6 19 Q. You were counsel. You understand
7 what I am referring to?

8 R/F MR. BRZEZINSKI: It is irrelevant, and
9 you know it.

10 Don't answer.

11 BY MR. RONDE:

12 20 Q. And you understand in respect of
13 the General Motors case that your firm worked on,
14 there was a multimillion dollar adverse cost award
15 against the Plaintiff?

16 R/F MR. BRZEZINSKI: Don't answer.
17 It is irrelevant, and you know it.

18 BY MR. RONDE:

19 21 Q. You would agree with me, sir, that
20 it would be important for a Representative
21 Plaintiff to have assets to be able to pay these
22 adverse cost awards?

23 R/F MR. BRZEZINSKI: Don't answer that
24 question. It is irrelevant.

25 BY MR. RONDE:

1 22 Q. Do you look to enforce cost awards
2 against your client when --

3 R/F MR. BRZEZINSKI: Don't answer that. It
4 is irrelevant.

5 BY MR. RONDE:

6 23 Q. I would like to take you to
7 Exhibit "C" to your affidavit. So this is an
8 exhibit to your affidavit; correct, sir?

9 A. Yes, it is.

10 24 Q. You swore this affidavit on about
11 March 11, 2019?

12 A. Yes, I did.

13 25 Q. And the purpose of this affidavit
14 was to include what you thought were relevant
15 materials for the purposes of the certification
16 motion?

17 R/F MR. BRZEZINSKI: What he thought is
18 irrelevant. It is what it is.

19 BY MR. RONDE:

20 26 Q. Are you going to answer the
21 question?

22 R/F MR. BRZEZINSKI: No, don't answer.

23 BY MR. RONDE:

24 27 Q. The Amended and Restated
25 Settlement Agreement, this is at tab C. How did

1 you obtain this document?

2 A. Our client, 129, is a party to the
3 agreement.

4 28 Q. Okay. And you are familiar with
5 this document? You have read it?

6 A. Yes, I have.

7 29 Q. Your client executed this
8 agreement, correct?

9 A. Yes, it did.

10 30 Q. Your firm or the other counsel,
11 2129, did they provide legal advice in respect of
12 the execution of this agreement?

13 R/F MR. BRZEZINSKI: Don't answer that.

14 BY MR. RONDE:

15 31 Q. Did you assist in the proof of
16 claims referred to in this agreement? Did you help
17 prepare those proofs of claim?

18 A. Sorry, which proof of claims?

19 32 Q. Well, I understand you have read
20 this agreement, correct?

21 A. I have, yes.

22 33 Q. I am going to refer you to the
23 fifth recital. It refers to proofs of claim being
24 submitted as part of the claims procedure process.

25 Are you familiar with that?

1 A. I am familiar with the proofs of
2 claims, yes.

3 34 Q. So you have seen those proofs of
4 claim?

5 A. Yes, I have.

6 35 Q. Did you help draft those proofs of
7 claim?

8 A. I'm sorry, did I assist the client
9 in preparing and filing the proof of claim? Is
10 that the question?

11 36 Q. Yes.

12 A. Yes.

13 37 Q. Okay, so you drafted the proofs of
14 claim?

15 R/F MR. BRZEZINSKI: I'm sorry, don't
16 answer that.

17 MR. RONDE: I think it is relevant that
18 this is a document that he included in his own
19 affidavit; and we are not allowed to explore its
20 contents, according to you?

21 MR. BRZEZINSKI: I have only refused
22 one question so far. You are presupposing.

23 Why don't you go ahead, and you'll see
24 if you are right.

25 BY MR. RONDE:

1 38 Q. So can you produce the proofs of
2 claim, sir?

3 R/F MR. BRZEZINSKI: That is not relevant.

4 BY MR. RONDE:

5 39 Q. In respect of the 101,100,446.77
6 figure for the claim under the Wishart Act, the
7 Wishart Class Action, can you tell me how that
8 figure was arrived at?

9 R/F MR. BRZEZINSKI: Don't answer.

10 BY MR. RONDE:

11 40 Q. Will you be answering any
12 questions concerning that issue?

13 MR. BRZEZINSKI: Which issue?

14 MR. RONDE: The issue of the valuation
15 of the claims.

16 MR. BRZEZINSKI: We will allow you to
17 read this material, and you can argue it in front
18 of Mr. Justice McEwen.

19 MR. RONDE: Thank you, sir, for
20 allowing me to read material that you have included
21 in your affidavit. I don't know what that means.

22 MR. BRZEZINSKI: It means that you have
23 the evidence that will be before the Court.

24 MR. RONDE: Right, so you will not be
25 answering questions concerning that?

1 MR. BRZEZINSKI: Questions that are
2 relevant and proper to the kind of motion that will
3 be before the Court will be answered.

4 BY MR. RONDE:

5 41 Q. So it is your view that the
6 valuation of the Class Action claims -- is that
7 relevant to that motion?

8 MR. BRZEZINSKI: I think what is in the
9 material as the common issues is what is relevant.

10 MR. RONDE: That is not an answer.

11 MR. BRZEZINSKI: That is the answer you
12 are going to get.

13 MR. RONDE: Right, so I am going to
14 take that as a refusal.

15 MR. BRZEZINSKI: Go ahead.

16 MR. RONDE: Is it a refusal?

17 R/F MR. BRZEZINSKI: It is.

18 BY MR. RONDE:

19 42 Q. And in respect of the 509 million
20 contingent and unliquidated claim in the Oppression
21 Class Action, can you tell me how that 509 million
22 dollar amount was arrived at?

23 R/F MR. BRZEZINSKI: Don't answer that. It
24 is irrelevant.

25 BY MR. RONDE:

1 43 Q. Can you explain the difference
2 between that amount and the amount claimed in the
3 oppression -- originally claimed in the oppression
4 Class Action, which I believe was 100 million?

5 R/F MR. BRZEZINSKI: Once again, that is
6 not a relevant question.

7 MR. RONDE: Well, there is a 400
8 million dollar difference that I think might be
9 important if we are going to be facing a claim in
10 respect of that, because it was an important enough
11 figure to be provided to the Monitor.

12 MR. BRZEZINSKI: I think what is
13 important is the settlement agreement as is
14 presented through the common issues.

15 MR. RONDE: Okay, but according to you,
16 we are not allowed to explore how that figure was
17 arrived at?

18 MR. BRZEZINSKI: The figure was arrived
19 at through settlement discussions.

20 MR. RONDE: But we don't know what
21 material was provided.

22 MR. BRZEZINSKI: The material that was
23 provided was part of the negotiations to arrive at
24 the settlement figure, so they are also privileged.

25 MR. RONDE: Right, but also proofs of

1 claim were provided, and that is not privileged,
2 submitting a proof of claim, correct?

3 MR. BRZEZINSKI: If you wish to ask the
4 Monitor for copies of proofs of claim, you can go
5 ahead, but it is irrelevant.

6 MR. RONDE: I can ask you because you
7 are a party to the litigation, and you made
8 reference to specific proofs of claim that were
9 provided, and now you are refusing. I don't
10 understand that refusal.

11 MR. BRZEZINSKI: Well, perhaps if I
12 explained it to you again. The only questions that
13 are relevant are relevant to the motion before the
14 Court, which is a motion for certification, where
15 the merits of the underlying claim are not
16 addressed or inquired to.

17 This is a question about settlement
18 privilege and a question about the underlying
19 merits, so it is being refused.

20 BY MR. RONDE:

21 44 Q. Okay, and I would like to take you
22 to your motion record at tab 1. This is your
23 amended notice of motion.

24 You are familiar with that, Mr.
25 Seretis?

1 A. I am, yes.

2 45 Q. This is different than the
3 original notice of motion that was brought in Mr.
4 Kay's -- or, sorry, in the motion in the original
5 motion record from January of 2019.

6 A. It is an amended notice of motion.

7 46 Q. Right.

8 And I am going to take you to 4(d).
9 That is new, correct? It is underlined. That is
10 an amendment?

11 A. That is one of the amendments,
12 yes.

13 47 Q. It says:

14 "In determining the
15 compensation [...]"

16 This is one of the common issues,
17 correct? This is a proposed common issue; am I
18 right?

19 A. That is a proposed common issue.

20 48 Q. Right, and it says:

21 "In determining the
22 compensation:

23 Is the quantum of such
24 compensation to be based on the
25 Plaintiffs's proven affected

1 unsecured claim against Sears Canada
2 Inc. of \$80,000,000, as agreed by
3 the court-appointed monitor in the
4 filing by Sears under the CCAA
5 [...]"

6 So you are relying on this amount as
7 determining the quantum of compensation. We want
8 to see if that is a viable common issue, and we are
9 allowed to examine those common issues.

10 So how was it a proven affected
11 unsecured claim? What is behind it? How was that
12 figure arrived at?

13 If you are going to rely on it, we are
14 entitled to know.

15 MR. BRZEZINSKI: We are relying on the
16 settlement agreement.

17 MR. RONDE: No, you are actually not
18 relying on the settlement agreement. It says you
19 are relying on the proven affected unsecured claim.

20 MR. BRZEZINSKI: That is out of the
21 settlement agreement, and you know it.

22 MR. RONDE: Do you propose changing
23 that to represent where you are getting it from, so
24 it is absolutely clear to all the parties where
25 this figure is coming up besides out of a hat of

1 the Monitor?

2 MR. BRZEZINSKI: It is an agreement
3 reached between the Monitor and the Representative
4 Plaintiff, the contents of which speak for
5 themselves.

6 BY MR. RONDE:

7 49 Q. You would agree with me, Mr.
8 Seretis, that 129 is a proposed Representative
9 Plaintiff? There hasn't been any finding by the
10 Court that he is a Representative Plaintiff or 129
11 is a Representative Plaintiff?

12 MR. BRZEZINSKI: In which action?

13 THE DEPONENT: Yes, in the oppression
14 action --

15 BY MR. RONDE:

16 50 Q. Yes.

17 A. -- the certification motion hasn't
18 happened yet, so he would be the proposed
19 Representative Plaintiff until such time as the
20 Class Action is certified.

21 51 Q. And is it your understanding that
22 as a proposed Representative Plaintiff, he has the
23 ability to bind the Class to a settlement?

24 R/F MR. BRZEZINSKI: What has that got to
25 do with anything?

1 BY MR. RONDE:

2 52 Q. Is it your position that this
3 settlement agreement binds the Class in the
4 oppression action in respect of its claim against
5 Sears?

6 R/F MR. BRZEZINSKI: The agreement speaks
7 for itself.

8 BY MR. RONDE:

9 53 Q. I would like to take you to
10 paragraph 8 on page 25 of the motion record, which
11 refers to the upfront payment.

12 You are aware of what the upfront
13 payment is?

14 A. Yes, I am.

15 54 Q. That is a payment to be made to
16 the Representative Plaintiff?

17 A. That is what it says. Well, to
18 clarify it is a payment to be made to counsel to
19 the Representative Plaintiff.

20 55 Q. So you were receiving those funds
21 under the agreement?

22 A. Well, paragraph 8 says what it
23 says.

24 56 Q. Okay, and I would like to know
25 your understanding. You included this. You

1 thought it was important. I'm entitled to explore
2 it.

3 So this money is going straight to
4 Sotos?

5 MR. BRZEZINSKI: The agreement says
6 what it says.

7 BY MR. RONDE:

8 57 Q. Well, it is unclear what the
9 agreement says. I would like to know. I would
10 like to get an understanding.

11 R/F MR. BRZEZINSKI: Refused.

12 BY MR. RONDE:

13 58 Q. I would like to take you to
14 paragraph 12, and it says:

15 "The Representative Plaintiff
16 represents and warrants that" -- and
17 I will take you down to d:

18 "The Class Action Plaintiffs
19 have received the benefit of counsel
20 in order to fully understand the
21 terms of this agreement and their
22 effects."

23 Did you or any other proposed Class
24 counsel provide advice to the Class Action
25 Plaintiffs in respect of the terms of the agreement

1 and their effects?

2 R/F MR. BRZEZINSKI: Don't answer that.

3 BY MR. RONDE:

4 59 Q. I am going to take you to your
5 first motion record dated January 18, 2019, and
6 Exhibit "F", please.

7 MR. BRZEZINSKI: Yes.

8 BY MR. RONDE:

9 60 Q. That is on page 127.

10 A. Okay.

11 61 Q. You know what, I'll strike that,
12 and we'll move on to something else.

13 Mr. Seretis, your firm has class action
14 experience; is that correct?

15 R/F MR. BRZEZINSKI: Don't answer that.

16 MR. RONDE: Well, I think the ability
17 of the Class counsel is a relevant issue in respect
18 of the 5.1 (e) test.

19 MR. BRZEZINSKI: Point me to that test,
20 please.

21 MR. RONDE: I'm not pointing you to any
22 test. You can look it up yourself under the class
23 proceedings act.

24 R/F MR. BRZEZINSKI: Refused.

25 BY MR. RONDE:

1 62 Q. So I am going to take it your firm
2 doesn't have class action experience?

3 R/F MR. BRZEZINSKI: It is a ridiculous
4 question. Don't answer that.

5 MR. RONDE: It is not a ridiculous
6 question. The ability of counsel to conduct this
7 proceeding is one of the factors within the test.

8 MR. BRZEZINSKI: I think your own
9 affidavit about the experience of Sotos speaks to
10 that issue.

11 MR. RONDE: Then why is this a
12 difficult question to answer?

13 MR. BRZEZINSKI: Because it is
14 irrelevant.

15 MR. RONDE: First of all, you have
16 said, you have pointed to what we have said, and
17 then you have said it is not relevant. It either
18 is one or the other.

19 BY MR. RONDE:

20 63 Q. So I am going to ask questions
21 about your experience, if you can tell me one or
22 another.

23 Did your firm work on the Pet Valu
24 Class Action?

25 R/F MR. BRZEZINSKI: Don't answer that.

1 BY MR. RONDE:

2 64 Q. It is my understanding that it
3 took roughly six years to have a motion for summary
4 judgment in that matter. Is that your
5 understanding?

6 R/F MR. BRZEZINSKI: Don't answer that.

7 BY MR. RONDE:

8 65 Q. And your firm worked on the
9 Quiznos Class Action; is that correct?

10 R/F MR. BRZEZINSKI: Don't answer that.

11 BY MR. RONDE:

12 66 Q. That was also settled several
13 years after the litigation; is that correct?

14 A. Don't answer that.

15 BY MR. RONDE:

16 67 Q. And in respect of General Motors,
17 that also took several years to get to trial,
18 correct?

19 R/F MR. BRZEZINSKI: Don't answer that.

20 BY MR. RONDE:

21 68 Q. You would agree with me that it is
22 reasonable for a class proceeding in which there
23 are substantial issues concerning the merits to
24 take at least a year to go to trial?

25 R/F MR. BRZEZINSKI: Irrelevant. Don't

1 answer .

2 BY MR. RONDE:

3 69 Q. And you would agree me that the
4 claims being brought by the Monitor, the litigation
5 trustee, and the pension administrator, they are
6 not Class Actions, are they?

7 R/F MR. BRZEZINSKI: Irrelevant.

8 BY MR. RONDE:

9 70 Q. So there are different procedural
10 requirements between this litigation and those
11 other three items of litigation, correct?

12 R/F MR. BRZEZINSKI: Don't answer that.

13 BY MR. RONDE:

14 71 Q. In those cases, the creditors are
15 not contingent creditors; is that correct?

16 R/F MR. BRZEZINSKI: Don't answer that.

17 BY MR. RONDE:

18 72 Q. And those cases don't have issues
19 to do with breach of contract or breach of the duty
20 of good faith under franchise or common law?

21 R/F MR. BRZEZINSKI: Don't answer that.

22 MR. RONDE: If we could have a couple
23 of minutes.

24 -- RECESSED AT 12:32 P.M.

25 -- RESUMED AT 12:35 P.M.

1 BY MR. RONDE:

2 73 Q. Thank you for that brief break.

3 Just a couple of further questions, and
4 then I'll turn it over to Mr. Faith.

5 To confirm -- and I would like to take
6 you to tab C of your affidavit or just make
7 reference to that, the amended and restated
8 settlement agreement.

9 Can you confirm for me that no notice
10 of this agreement has been given to-date to
11 proposed Class members in the Oppression Class
12 Action?

13 R/F MR. BRZEZINSKI: Don't answer that. It
14 is irrelevant.

15 BY MR. RONDE:

16 74 Q. And you can confirm to me that no
17 Court has approved this agreement to date?

18 MR. BRZEZINSKI: Yes.

19 THE DEPONENT: And I will add, I
20 believe it is part of the plan of proceeding.

21 BY MR. RONDE:

22 75 Q. And the plan of proceeding has --

23 MR. BRZEZINSKI: Has not happened,
24 though.

25 MR. RONDE: Right, thank you.

1 And subject to any questions that arise
2 out of refusals, undertakings, or under
3 advisements, which we reserve our right to continue
4 examination on, I'm going to turn this over to my
5 friend, Mr. Faith.

6 CROSS-EXAMINATION BY MR. FAITH:

7 76 Q. You have refused to provide
8 information underlying the Wishart Class Action
9 settlement with the Monitor in this examination?

10 MR. BRZEZINSKI: Yes, we have.

11 BY MR. FAITH:

12 77 Q. And you have said, as the basis
13 for that refusal, that this is settlement privilege
14 information?

15 MR. BRZEZINSKI: Yes.

16 BY MR. FAITH:

17 78 Q. And I take it that there is no
18 current plan to waive that privilege at any time in
19 this proceeding, in the oppression Class
20 proceeding?

21 MR. BRZEZINSKI: If there is, it would
22 be as a result of discussions with the Monitor.

23 MR. FAITH: But there is no plan as of
24 now, that you are aware of, to waive privilege?

25 MR. BRZEZINSKI: The Monitor hasn't

1 contacted us at this point in time to ask for a
2 waiver.

3 BY MR. FAITH:

4 79 Q. So you are not aware of any plan
5 to waive privilege over the settlement discussions
6 leading to the settlement with the Monitor?

7 MR. BRZEZINSKI: Not as of today, no.

8 BY MR. FAITH:

9 80 Q. Now, I understand, Mr. Seretis,
10 that you would have seen a letter from our firm
11 dated February 28th, 2019, from me, regarding our
12 position on certification; do you recall that
13 letter?

14 A. If you have a copy of it, I'll be
15 happy to look at it.

16 81 Q. I do.

17 Do you have our responding motion
18 record?

19 MR. GAUDREAU: I have it on my laptop
20 but not printed.

21 MR. BRZEZINSKI: I think we have a copy
22 here.

23 BY MR. FAITH:

24 82 Q. You have a copy?

25 Our responding motion record on the

1 motion for certification dated March 15, 2019.

2 Under tab 1-B is our letter dated February 28th,
3 2019.

4 If you look at page 2 of that letter,
5 page 27 of the record, we asked the question -- and
6 you will see that in the third full paragraph:

7 "Does 129 intend to challenge
8 at the joint trial the advice and
9 assumptions on which the directors
10 relied on assessing the merits of
11 the 2013 Class Action?"

12 Do you recall seeing that part of the
13 letter?

14 A. I do see that.

15 83 Q. And your firm responded on March
16 8th that it does not intend to litigate the
17 underlying 2013 claim at the joint trial.

18 Do you remember Mr. Sterns responding?

19 A. Yes, I do.

20 84 Q. And that email is at tab C of the
21 same document.

22 A. Yes.

23 85 Q. Page 30 of the record.

24 And your answer, just to be clear, was
25 contained in the third paragraph. And I say

1 "yours" as your firm's answer, provided by
2 Mr. Sterns, in which he said:

3 "We do not intend to litigate
4 the underlying claim in the dealer
5 class action in the Joint Trial, nor
6 do we believe it necessary or
7 appropriate for your clients to do
8 so."

9 And you recall that response?

10 A. I see the response, yes.

11 86 Q. I want to be clear, and I believe
12 we have made it clear to you in the past, that we
13 will be asserting the fact that the board of
14 directors received advice about the 2013 Wishart
15 Act Class Action, and we would be relying on the
16 reasonableness of that advice; you know that?

17 MR. BRZEZINSKI: Do you know that?

18 THE DEPONENT: I mean, I haven't seen a
19 Statement of Defence or anything of that nature. I
20 know what you are -- I know you have said that now.

21 BY MR. FAITH:

22 87 Q. Well, we have indicated that in
23 the past, but I am telling you that now as well.

24 And just to give you a sense of what
25 part of that advice was, if you look at tab D of

1 our responding motion record, at the record page
2 53.

3 MR. BRZEZINSKI: Yes, we see it.
4 Are you talking about the solvency
5 test?

6 BY MR. FAITH:

7 88 Q. That's right.

8 So this is the officer's certificate by
9 the then Chief Financial Officer, E.J. Bird,
10 providing the certificate under section 42 of the
11 CBCA to the board of directors of Sears Canada; do
12 you see that?

13 A. I do see that, yes.

14 89 Q. One item that was certified as
15 part of that certificate appears on page 53 of the
16 record under 5(a) of the certificate, in which
17 Mr. Bird provides that:

18 "[...] it is unlikely that the
19 Corporation will be required to make
20 payment in respect of any contingent
21 liability within a reasonably
22 foreseeable period."

23 You see that there? I have read out a
24 portion of that paragraph, but you see the portion
25 I have read?

1 MR. BRZEZINSKI: We see it.

2 BY MR. FAITH:

3 90 Q. And again, we are telling you now,
4 and we have told you before, we'll be relying on
5 the reasonableness of advice provided, such as this
6 advice, that there was no merit to the 2013 Wishart
7 Class Action that would warrant a reserve.

8 MR. BRZEZINSKI: We see this document
9 completely differently than you do.

10 BY MR. FAITH:

11 91 Q. All right, but that will be our
12 position.

13 And my question is, will you be
14 asserting evidence in the joint trial to rebut the
15 reasonableness of any opinion that the board of
16 directors received as to the merits of the 2013
17 Wishart Class Action?

18 MR. BRZEZINSKI: When we see it, we'll
19 deal with it.

20 BY MR. FAITH:

21 92 Q. So you can't say at this point
22 that you will not provide evidence as to the merits
23 of the 2013 Wishart Class Action at the joint
24 trial?

25 MR. BRZEZINSKI: We can't say anything

1 until we see the evidence that you have or the
2 defence that you led.

3 MR. FAITH: It is possible that you
4 will?

5 MR. BRZEZINSKI: We don't know.

6 MR. FAITH: You don't know whether it
7 is possible?

8 MR. BRZEZINSKI: We don't know anything
9 until you give us your defence.

10 BY MR. FAITH:

11 93 Q. So I'll put it a different way.

12 You cannot undertake at this date that
13 you will not be introducing evidence as to the
14 merits of the 2013 Wishart Class Action at the
15 joint trial in this matter?

16 MR. BRZEZINSKI: We cannot comment on a
17 hypothetical issue, and we will not comment on a
18 hypothetical issue.

19 MR. FAITH: Thank you. Those are my
20 questions.

21 MR. BRZEZINSKI: Thanks.

22 MR. RONDE: Thank you very much, Mr.
23 Seretis. We appreciate your time.

24 And I think we may have already
25 mentioned it, but subject to any of the

1 undertakings and refusals and under advisements and
2 any questions that might arise, that concludes Mr.
3 Seretis' examination.

4 Thank you very much for your time.

5 MR. BRZEZINSKI: Thank you all.

6

7 -- Adjourned at 12:44 p.m.

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REPORTER'S CERTIFICATE

I, DEANA SANTEDICOLA, RPR, CRR,
CSR, Certified Shorthand Reporter, certify:

That the foregoing proceedings were
taken before me at the time and place therein set
forth, at which time the witness was put under oath
by me;

That the testimony of the witness
and all objections made at the time of the
examination were recorded stenographically by me
and were thereafter transcribed;

That the foregoing is a true and
correct transcript of my shorthand notes so taken.

Dated this 31st day of March, 2019.



NEESON COURT REPORTING INC.

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EXHIBIT No. 1
ON THE EXAMINATION OF
James Kay IS
1291079 Ont. V Sears Canada
HELD ON March 29, 2019

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

NEESON COURT REPORTING INC. ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST



THE HONOURABLE MR.
JUSTICE HAINEY

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FRIDAY, THE 8th
DAY OF DECEMBER, 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")

CLAIMS PROCEDURE ORDER

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 establishing a claims procedure for the identification and quantification of certain claims against (i) the Applicants and SearsConnect (collectively, the "Sears Canada Entities") and (ii) the current and former directors and officers of the Sears Canada Entities, 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 December 1, 2017 including the exhibits thereto, the Eighth 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, Pension Representative Counsel (as defined below), Employee Representative Counsel (as defined below), the Pension Plan Administrator (as defined below), the Superintendent (as defined below), and such other counsel as were present, no one else appearing although duly served as appears from the Affidavits of Service of Justine Erickson sworn December 4, 2017,

SERVICE

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.

DEFINITIONS AND INTERPRETATION

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 as amended, restated, supplemented and/or modified from time to time (the "Initial Order").

3. THIS COURT ORDERS that for the purposes of this Order the following terms shall have the following meanings:

- (a) "Advisors" means, collectively, any actuarial, financial, legal and other advisors and assistants;
- (b) "Agent" means the contractual joint venture comprised of Gordon Brothers Canada ULC, Merchant Retail Solutions ULC, Tiger Capital Group, LLC and GA Retail Canada ULC;

- (c) “Agency Agreements” means: (i) the Amended and Restated Agency Agreement between Sears Canada Inc. and the Agent dated July 12, 2017 and amended and restated on July 14, 2017, and (ii) the Amended and Restated Agency Agreement between Sears Canada Inc. and the Agent dated October 10, 2017;
- (d) “Assessments” means Claims of Her Majesty the Queen in Right of Canada or of any Province or Territory or Municipality or any other taxation authority in any Canadian or foreign jurisdiction, including, without limitation, amounts which may arise or have arisen under any notice of assessment, notice of objection, notice of reassessment, notice of appeal, audit, investigation, demand or similar request from any taxation authority;
- (e) “Business Day” means a day, other than a Saturday, Sunday or statutory holiday, on which banks are generally open for business in Toronto, Ontario;
- (f) “CCAA Proceedings” means the CCAA proceedings commenced by the Applicants in the Court under Court File No. CV-17-11846-00CL;
- (g) “Claim” means:
 - (i) any right or claim of any Person against any of the Sears Canada Entities, whether or not asserted, including in connection with any indebtedness, liability or obligation of any kind whatsoever of any such Sears Canada Entity to such Person, in existence on the Filing Date, whether or not such right or claim is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured; disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present, future, known, or

unknown, by guarantee, surety or otherwise, and whether or not such right is executory or anticipatory in nature, including rights or claims with respect to any Assessment, Construction Claim, Warranty, any claim brought by any representative plaintiff on behalf of a class in a class action, or contract, or by reason of any equity interest, right of ownership of or title to property or assets or right to a trust or deemed trust (statutory, express, implied, resulting, constructive or otherwise), and any right or ability of any Person to advance a claim for contribution or indemnity or otherwise against any of the Sears Canada Entities with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the future, which right or claim, including in connection with indebtedness, liability or obligation, is based in whole or in part on facts that existed prior to the Filing Date, including for greater certainty any claim against any of the Sears Canada Entities for indemnification by any Director or Officer in respect of a D&O Claim (each, a “Pre-Filing Claim”, and collectively, the “Pre-Filing Claims”);

- (ii) any right or claim of any Sears Supplier against any of the Sears Canada Entities in connection with any non-payment by any such Sears Canada Entity to such Sears Supplier for goods or services supplied to such Sears Canada Entity on or after the Filing Date (each, a “Post-Filing Claim”, and collectively, the “Post-Filing Claims”);
- (iii) any right or claim of any Person against any of the Sears Canada Entities, including in connection with any indebtedness, liability or obligation of any

kind whatsoever of any such Sears Canada Entity to such Person, arising on or after the Filing Date, including without limitation rights or claims arising with respect to the restructuring, disclaimer, resiliation, termination or breach by such Sears Canada Entity on or after the Filing Date of any contract, lease or other agreement whether written or oral, but excluding any Post-Filing Claims (each, a “**Restructuring Period Claim**”, and collectively, the “**Restructuring Period Claims**”); and

- (iv) any right or claim of any Person against one or more of the Directors and/or Officers howsoever arising, whether or not such right or claim is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present, future, known, or unknown, by guarantee, surety or otherwise, and whether or not such right is executory or anticipatory in nature, including any Assessments and any right or ability of any Person to advance a claim for contribution, indemnity or otherwise against any of the Directors and/or Officers with respect to any matter, action, cause or chose in action, however arising, for which any Director or Officer is alleged to be, by statute or otherwise by law or equity, liable to pay in his or her capacity as a Director or Officer (each a “**D&O Claim**”, and collectively, the “**D&O Claims**”),

including any Claim arising through subrogation against any Sears Canada Entity or Director or Officer, provided however that in any case “**Claim**” shall not include an Excluded Claim;

- (h) **“Claimant”** means any Person asserting a Claim, including without limitation any Construction Claimant, General Creditor Claimant, Landlord Claimant or Intercompany Claimant;
- (i) **“Claims Officer”** means the individuals designated by the Court pursuant to paragraph 62 of this Order;
- (j) **“Claims Process”** means the procedures outlined in this Order in connection with the solicitation and assertion of Claims against the Sears Canada Entities and/or the Directors and Officers;
- (k) **“Construction Claim”** means: (i) a Claim, including a D&O Claim, asserted under the trust provisions of applicable Provincial Lien Legislation or a Claim asserted against the holdback under applicable Provincial Lien Legislation; or (ii) a Claim secured in whole or in part by the registration of a builders’ or construction lien under applicable Provincial Lien Legislation against any real property that has been or is owned or leased by any of the Sears Canada Entities, or a Claim secured in whole or in part by any security held in connection with a Vacated or Discharged Lien;
- (l) **“Construction Claimant”** means a Person asserting a Construction Claim;
- (m) **“Construction Claims Bar Date”** means 5:00 p.m. on February 15, 2018;
- (n) **“Construction Claims Package”** means the document package consisting of a Notice of Construction Claim, a blank Notice of Dispute of Construction Claim, a Construction Contractor Instruction Letter, a Construction Sub-Contractor

Instruction Letter and such other materials as the Monitor, in consultation with the Sears Canada Entities, may consider appropriate or desirable;

- (o) **“Construction Contractor”** means a Construction Claimant contracting directly with the Sears Canada Entities or an agent of the Sears Canada Entities in connection with the improvement of any real property that has been or is owned or leased by any of the Sears Canada Entities;
- (p) **“Construction Contractor Instruction Letter”** means the instruction letter to Construction Contractors, substantially in the form attached as Schedule “M” hereto, regarding the Notice of Construction Claim, completion of a Notice of Dispute of Construction Claim by a Construction Contractor, and the Claims Process described herein, and directing such Construction Contractors to send a copy of the Notice of Construction Claim and the Construction Sub-Contractor Instruction Letter to all Construction Sub-Contractors with which such Construction Contractor has a direct contractual agreement or engagement in connection with the relevant improvement to any real property that has been or is owned or leased by any of the Sears Canada Entities;
- (q) **“Construction Sub-Contractor”** means a Construction Claimant not contracting directly with or employed directly by the Sears Canada Entities or an agent of the Sears Canada Entities but who supplied services, materials or work to an improvement to any real property that has been or is owned or leased by any of the Sears Canada Entities under an agreement (written or oral) or engagement with a Construction Contractor or under an agreement or engagement with another subcontractor of any level;

- (r) “**Construction Sub-Contractor Instruction Letter**” means the instruction letter to be sent by each Construction Contractor and Construction Sub-Contractor to all Construction Sub-Contractors with which each such Construction Contractor or Construction Sub-Contractor has a direct contractual agreement or engagement in connection with the relevant improvement, substantially in the form attached as Schedule “N” hereto, notifying such Construction Sub-Contractors that all Construction Claims in respect of their services as Construction Sub-Contractors shall be included in the Claim of the relevant Construction Contractor for the purposes of this Claims Process and directing such Construction Sub-Contractors to: (i) send a copy of the Notice of Construction Claim and the Construction Sub-Contractor Instruction Letter to all Construction Sub-Contractors with which such Construction Sub-Contractor has a direct contractual agreement or engagement in connection with the relevant improvement, and (ii) contact their Construction Contractor directly to determine and negotiate with their Construction Contractor any rights they may have with respect to any such Construction Contractor’s Construction Claim;
- (s) “**Court**” means the Ontario Superior Court of Justice (Commercial List);
- (t) “**D&O Claim Instruction Letter**” means the letter containing instructions for completing the D&O Proof of Claim form, substantially in the form attached as Schedule “D” hereto;
- (u) “**D&O Proof of Claim**” means the proof of claim to be filed by Claimants in connection with any D&O Claim, substantially in the form attached as Schedule “E” hereto, which shall include all supporting documentation in respect of such

D&O Claim; and for greater certainty, a “D&O Proof of Claim” shall include a D&O Proof of Claim filed online through the Monitor’s website;

- (v) “**Director**” means anyone who is or was or may be deemed to be or have been, whether by statute, operation of law or otherwise, a director or *de facto* director of any of the Sears Canada Entities, in such capacity;
- (w) “**Employee**” means any (i) active or inactive union or non-union employee of any one of the Sears Canada Entities on or after the Filing Date, including an employee of any one of the Sears Canada Entities who received notice of termination of employment dated on or after the Filing Date; and (ii) former employee of any one of the Sears Canada Entities who was terminated for cause at any time or who received notice of cessation of termination or severance payments dated on or after the Filing Date;
- (x) “**Employee Claim**” means a Claim, including a D&O Claim, that may be asserted by or on behalf of an Employee, and shall include any Employee Claim arising through subrogation;
- (y) “**Employee Claims Process**” means a claims process to be approved pursuant to a further Order of this Court that shall, among other things, set forth the procedure for the solicitation and assertion of Employee Claims against the Sears Canada Entities and/or the Directors and Officers;
- (z) “**Employee Letter**” means the letter from Employee Representative Counsel to be disseminated by the Monitor, in consultation with the Sears Canada Entities and Employee Representative Counsel, to all Employees represented by Employee

Representative Counsel advising, among other things, that their Employee Claims will be dealt with through a separate Employee Claims Process, which letter shall be substantially in the form attached hereto as Schedule "F";

- (aa) "Employee Representative Counsel" means Ursel Phillips Fellows Hopkinson LLP;
- (bb) "Employee Representative Counsel's Website" means <http://www.upfhlaw.ca/areas-of-practice/sears-canada-employees-and-former-employees/>;
- (cc) "Employee Representatives" means Paul Webber, Nancy Demeter, Sheena Wigglesworth, Barb Wilser and Darrin Whitney, or such other representatives as may be duly appointed by Employee Representative Counsel;
- (dd) "Excluded Claim" means any:
 - (i) Claim that may be asserted by any beneficiary of the Administration Charge, the FA Charge, the KERP Priority Charge, the Directors' Priority Charge, the KERP Subordinated Charge and the Directors' Subordinated Charge and any other charges granted by the Court in the CCAA Proceedings, with respect to such charges;
 - (ii) Claim by the Agent under the Agency Agreements;
 - (iii) Employee Claim;
 - (iv) Sears Pension Claim;

- (v) Other Pensioner Claim;
- (vi) Monitor Claim; and
- (vii) Claim that may be asserted by any of the Sears Canada Entities against any Directors and/or Officers;

and for greater certainty, shall include any Excluded Claim arising through subrogation;

- (ee) **"Filing Date"** means June 22, 2017;
- (ff) **"General Creditor Claim"** means a Claim, other than a Construction Claim or Intercompany Claim;
- (gg) **"General Creditor Claimant"** means a Person asserting a General Creditor Claim;
- (hh) **"General Creditor Claims Bar Date"** means 5:00 p.m. on March 2, 2018;
- (ii) **"General Creditor Claims Package"** means the document package which shall be disseminated by the Monitor to any potential General Creditor Claimant in accordance with the terms of this Order (including, if practicable, by way of email, where electronic addresses are known), consisting of the Notice to General Creditor Claimants, a blank Proof of Claim, a Proof of Claim Instruction Letter, a blank D&O Proof of Claim, and a D&O Claim Instruction Letter, and such other materials as the Monitor, in consultation with the Sears Canada Entities, may consider appropriate or desirable;

- (jj) “**General Creditor Post-Filing Claims Bar Date**” means 5:00 p.m. on April 2, 2018;
- (kk) “**General Creditor Restructuring Period Claims Bar Date**” means, in respect of a Restructuring Period Claim, the later of (i) 5:00 p.m. on the date that is 45 days after the date on which the Monitor sends a General Creditor Claims Package with respect to a Restructuring Period Claim and (ii) the General Creditor Claims Bar Date;
- (ll) “**Intercompany Claim**” means any Claim that may be asserted against any of the Sears Canada Entities by or on behalf of any of the Sears Canada Entities or any of their affiliated companies, partnerships, or other corporate entities (and for greater certainty, excluding any Claim that may be asserted against any of the Sears Canada Entities by or on behalf of Sears Holdings Corporation or any of its affiliated companies, partnerships or other corporate entities that are not Sears Canada Entities) and excluding any Monitor Claim;
- (mm) “**Intercompany Claimant**” means a Person asserting an Intercompany Claim;
- (nn) “**Landlord**” means a landlord under any real property lease or occupancy agreement for any of the Applicants’ leased premises;
- (oo) “**Landlord Claim**” means any Claim, including any D&O Claim, of a Landlord;
- (pp) “**Landlord Claimant**” means a Landlord asserting a Landlord Claim;
- (qq) “**Landlord Claims Bar Date**” means, in respect of a Landlord Claim, the later of (i) 5:00 p.m. on the date that is 45 days after the date on which the Monitor sends a

General Creditor Claims Package with respect to a Landlord Claim and (ii) 5:00 p.m. on April 2, 2018;

- (rr) **“Meeting”** means any meeting of the creditors of the Sears Canada Entities called for the purpose of considering and voting in respect of a Plan;
- (ss) **“Monitor Claim”** means a Claim, including a D&O Claim and any claim pursued in accordance with section 36.1 of the CCAA, that may be asserted by the Monitor;
- (tt) **“Monitor’s Website”** means <http://cfcanada.fticonsulting.com/searscanada/>;
- (uu) **“Monitor’s Intercompany Claims Report”** shall have the meaning set out in paragraph 60 herein;
- (vv) **“Notice of Construction Claim”** means the notice, substantially in the form attached as Schedule “K” hereto, advising each Construction Contractor of its Construction Claim (which shall, for greater certainty, be deemed to include the Construction Claims of all Construction Sub-Contractors who provided materials and/or services under an agreement with the Construction Contractor or another Construction Sub-Contractor of any level in connection with the improvement) as valued by the Sears Canada Entities with the assistance of the Monitor based on the books and records of the Sears Canada Entities;
- (ww) **“Notice of Dispute of Construction Claim”** means the notice, substantially in the form attached as Schedule “L” hereto, which may be delivered to the Monitor by a Construction Contractor or, where appropriate, by a Construction Sub-Contractor disputing a Notice of Construction Claim, with reasons for its dispute;

- (xx) “**Notice to General Creditor Claimants**” means the notice for publication by the Monitor, substantially in the form attached as Schedule “A” hereto, which shall include, without limitation: (i) a notice to all Claimants (that are not Sears Suppliers) with potential General Creditor Claims below \$1,000 that such Claimants will not be provided with a General Creditor Claims Package and should obtain a copy from the Monitor’s website or request a copy from the Monitor; (ii) a notice to holders of Warranties stating that no Proofs of Claim are required to be filed in connection with any potential Warranty Claim because all Proofs of Claim with respect to potential Warranty Claims will be deemed to be properly submitted by the Sears Canada Entities, based on the Sears Canada Entities’ books and records, on behalf of each Warranty holder, and (iii) a notice informing holders of gift cards and Sears Loyalty Points that all gift cards and Sears Loyalty Points will no longer be accepted by the Sears Canada Entities after January 21, 2018;
- (yy) “**Notice of Dispute of Revision or Disallowance**” means the form substantially in the form attached as Schedule “F” hereto;
- (zz) “**Notice of Revision or Disallowance**” means the form substantially in the form attached as Schedule “G” hereto;
- (aaa) “**Officer**” means anyone who is or was or may be deemed to be or have been, whether by statute, operation of law or otherwise, an officer or *de facto* officer of any of the Sears Canada Entities, in such capacity;
- (bbb) “**Order**” means this Claims Procedure Order;

- (ccc) **“Other Employee Letter”** means the letter from the Monitor to be disseminated by the Monitor, in consultation with the Sears Canada Entities, to Employees not represented by Employee Representative Counsel (provided that where such Employees are subject to union representation, the Monitor shall only be required to send such letter to the unions representing the unionized Employees) advising, among other things, that their Employee Claims will be dealt with through a separate Employee Claims Process, which letter shall be substantially in the form attached hereto as Schedule “H”;
- (ddd) **“Other Pensioner”** means any retiree and any current or former employee of the Sears Canada Entities with (i) entitlements under the Supplemental Plan, and any other pension or retirement plan of the Sears Canada Entities (not including the Sears Pension Plan), and/or (ii) other post-employment benefits entitlements;
- (eee) **“Other Pensioner Claim”** means a Claim, including a D&O Claim, that may be asserted by or on behalf of an Other Pensioner, and shall include any Other Pensioner Claim arising through subrogation;
- (fff) **“Pensioner”** means any Sears Pensioner or Other Pensioner;
- (ggg) **“Pensioner Claim”** means any Sears Pension Claim or Other Pensioner Claim;
- (hhh) **“Pensioner Claims Process”** means a claims process to be approved pursuant to a further Order of this Court that shall, among other things, set forth the procedure for the solicitation and assertion of Pensioner Claims against the Sears Canada Entities and/or the Directors and Officers;

With such other changes as may be agreed to by Pension Representative Counsel, the Pension Plan Administrator, the Sears Canada Entities and the Monitor - 16 -

(iii) **"Pensioner Letter"** means the letter from Pension Representative Counsel to be disseminated by Pension Representative Counsel, in consultation with the Sears Canada Entities, the Pension Plan Administrator (in respect of the Sears Pension Plan) and the Monitor, to all Pensioners advising, among other things, that their Pensioner Claims will be dealt with through a separate Pensioner Claims Process, which letter shall be substantially in the form attached hereto as Schedule "J";

(jjj) **"Pension Plan Administrator"** means Morneau Shepell Ltd. in its capacity as administrator of the Sears Pension Plan;

(kkk) **"Pension Plan Administrator Website"** means https://www.pensionwindups.morneaushepell.com/_private/select_plan.asp?DURL=/en/plan_info/srrp/plan_info.asp;

(lll) **"Pension Representative Counsel"** means Koskie Minsky LLP;

(mmm) **"Pension Representative Counsel's Website"** means <https://kmlaw.ca/cases/sears-canada/>;

(nnn) **"Pensioner Representatives"** means Bill Turner, Ken Eady and Larry Moore;

(ooo) **"Person"** means any individual, firm, corporation, limited or unlimited liability company, general or limited partnership, association, trust (including a real estate investment trust), unincorporated organization, joint venture, government or any agency or instrumentality thereof or any other entity;

(ppp) **"Plan"** means, as further defined in the Initial Order, any proposed plan of compromise or arrangement that may be filed in respect of any or all of the Sears

Canada Entities pursuant to the CCAA as the same may be amended, supplemented or restated from time to time in accordance the terms thereof;

- (qqq) “Pre-Filing Period” means the period prior to the Filing Date;
- (rrr) “Proof of Claim” means the proof of claim to be filed by General Creditor Claimants in respect of Pre-Filing Claims, Post-Filing Claims and Restructuring Period Claims, substantially in the form attached as Schedule “C” hereto; and for greater certainty, a “Proof of Claim” shall include a Proof of Claim filed online through the Monitor’s website;
- (sss) “Proof of Claim Instruction Letter” means the letter containing instructions for completing the Proof of Claim form, substantially in the form attached as Schedule “B” hereto;
- (ttt) “Provincial Lien Legislation” means the *Construction Lien Act*, R.S.O., 1990, c. C.30, the *Builders’ Lien Act*, R.S.A. 2000, c. B-7, the *Builders’ Lien Act*, R.S.N.S. 1989, c. 277, the *Mechanics’ Lien Act*, R.S.N.B. 1973, c. M-6, *The Builders’ Liens Act*, C.C.S.M. c. B91, the *Builders Lien Act*, S.B.C. 1997, c. 45, and any other similar provincial mechanics, builders or construction lien legislation in Canada;
- (uuu) “Restructuring Period” means the period on or after the Filing Date;
- (vvv) “Sears Loyalty Points” means any points issued and outstanding under the Sears Club Reward Program;

- (www) "Sears Pension Claim" means a Claim, including a D&O Claim, that may be asserted by or on behalf of a Sears Pensioner, Pension Representative Counsel, the Superintendent or the Pension Plan Administrator, and shall include any Sears Pension Claim arising through subrogation;
- (xxx) "Sears Pension Plan" means the Sears Canada Inc. Registered Retirement Plan (Reg. #0360065), a pension plan registered under the Ontario *Pension Benefits Act*, R.S.O. 1990, c. P.8 and *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) with a defined benefit component and a defined contribution component;
- (yyy) "Sears Pensioner" means any retiree and any current or former employee of the Sears Canada Entities with entitlements under the Sears Pension Plan;
- (zzz) "Sears Supplier" means any Person who has supplied goods or services to any Sears Canada Entity;
- (aaaa) "Superintendent" means the Ontario Superintendent of Financial Services as administrator of the Pension Benefits Guarantee Fund;
- (bbbb) "Supplemental Plan" means the Sears Canada Inc. Supplementary Retirement Plan, a non-registered supplemental pension plan maintained to provide benefits to eligible participants in the defined benefit component of the Sears Pension Plan;
- (cccc) "Vacated or Discharged Liens" means the builders' or construction liens previously registered against title to any real property that has been or is owned or leased by any of the Sears Canada Entities under applicable Provincial Lien Legislation and that have been vacated pursuant to previous court orders or discharged pursuant to agreements with applicable Construction Claimants, in each

case in accordance with the requirements under applicable Provincial Lien Legislation; and

(dddd) "Warranty" means a customer warranty provided by any one of the Sears Canada Entities, including any Sears Protection Agreement but excluding any manufacturer's warranty.

4. THIS COURT ORDERS that all references as to time herein shall mean local time in Toronto, Ontario, Canada, and any reference to an event occurring on a Business Day shall mean prior to 5:00 p.m. on such Business Day unless otherwise indicated herein, and any reference to an event occurring on a day that is not a Business Day shall mean the next following day that is a Business Day.

5. THIS COURT ORDERS that all references to the word "including" shall mean "including without limitation", all references to the singular herein include the plural, the plural include the singular, and any gender includes all genders.

GENERAL PROVISIONS

6. THIS COURT ORDERS that any Claim denominated in a foreign currency shall be converted to Canadian dollars at the Bank of Canada exchange rate in effect at the Filing Date. For reference, the exchange rate that will be applied to Claims denominated in U.S. dollars is 1.3241 CAD/USD.

7. THIS COURT ORDERS that notwithstanding any other provisions of this Order, the solicitation by the Monitor of Proofs of Claim and D&O Proofs of Claim, the delivery by the Monitor of Notices of Construction Claim, and the filing or deemed submission by any Claimant of any Proof of Claim or D&O Proof of Claim shall not, for that reason only, grant any Person any

rights, including without limitation, in respect of the nature, quantum and priority of its Claims or its standing in the CCAA Proceedings, except as specifically set out in this Order.

8. THIS COURT ORDERS that the Monitor, in consultation with the Sears Canada Entities and the applicable Directors and Officers in respect of any D&O Claim, is hereby authorized to use reasonable discretion as to the adequacy of compliance with respect to the manner in which any forms delivered hereunder are completed and executed and the time in which they are submitted, and may, where the Monitor, in consultation with the Sears Canada Entities and the applicable Directors and Officers in respect of any D&O Claim, is satisfied that a Claim has been adequately proven, waive strict compliance with the requirements of this Order, including in respect of the completion, execution and time of delivery of such forms; provided that it is recognized and understood that certain Claims will be contingent in nature and therefore will not contain particulars of such Claims that are not yet known as at the time they are filed.

9. THIS COURT ORDERS that amounts claimed in Assessments shall be subject to this Order and there shall be no presumption of validity or deeming of the amount due in respect of the Claim set out in any Assessment.

10. THIS COURT ORDERS that the Applicants shall return to Court to seek approval of an Employee Claims Process and a Pensioner Claims Process, which shall be developed in consultation with Employee Representative Counsel, Pension Representative Counsel, the Pension Plan Administrator, the Superintendent, and the Monitor, as appropriate.

MONITOR'S ROLE

11. THIS COURT ORDERS that, in addition to its prescribed rights, duties, responsibilities and obligations under the CCAA, the Initial Order and any other orders of the Court in the CCAA Proceedings, the Monitor is hereby directed and empowered to implement the Claims Process set

out herein and to take such other actions and fulfill such other roles as are authorized by this Order or incidental thereto.

12. THIS COURT ORDERS that the Monitor (i) shall have all of the protections given to it by the CCAA, the Initial Order, any other orders of the Court in the CCAA Proceedings, and this Order, or as an officer of the Court, including the stay of proceedings in its favour; (ii) shall incur no liability or obligation as a result of the carrying out of the provisions of this Order, including in respect of its exercise of discretion as to the completion, execution or time of delivery of any documents to be delivered hereunder, other than in respect of its gross negligence or wilful misconduct; (iii) shall be entitled to rely on the books and records of the Sears Canada Entities and any information provided by the Sears Canada Entities, all without independent investigation, provided that Intercompany Claims are subject to independent investigation by the Monitor as provided in paragraph 60 herein; and (iv) shall not be liable for any claims or damages resulting from any errors or omissions in such books, records or information.

13. THIS COURT ORDERS that: (a) the Sears Canada Entities, Officers, Directors, Employees, agents and representatives shall fully cooperate with the Monitor in the exercise of its powers and discharge of its duties and obligations under this Order, and (b) any credit insurers and factors that have: (i) offered services to vendors of the Sears Canada Entities; (ii) have acquired payables of the Sears Canada Entities to such vendors, and/or (iii) have drawn on letters of credit issued by any of the Sears Canada Entities in their favour to satisfy vendor claims as a result of any non-payment by any of the Sears Canada Entities, shall fully cooperate with the Monitor and the Sears Canada Entities by providing information to assist in the assessment of the quantum and validity of Claims.

EMPLOYEE REPRESENTATIVE COUNSEL'S ROLE

14. THIS COURT ORDERS that all Employees hired by the Applicants during the Restructuring Period shall be represented by Employee Representative Counsel pursuant to the Employee Representative Counsel Order dated July 13, 2017 *nunc pro tunc*, unless such Employees specifically notify Employee Representative Counsel that such Employees wish to opt-out of representation by the Employee Representatives and Employee Representative Counsel.
15. THIS COURT ORDERS that Darrin Whitney shall replace Sara Sawyer as an Employee Representative in these CCAA Proceedings, and that Employee Representative Counsel shall hereby be authorized to appoint any additional Employee Representatives as it deems necessary or desirable from time to time.
16. THIS COURT ORDERS that, in addition to the rights, duties, responsibilities and obligations granted to it under the Employee Representative Counsel Order dated July 13, 2017 and any other orders of the Court in the CCAA Proceedings, Employee Representative Counsel is hereby directed and empowered to assist in the establishment and implementation of an Employee Claims Process and the determination of the quantum and validity of Employee Claims for Employees represented by Employee Representative Counsel, in conjunction with the Sears Canada Entities and the Monitor, and to take such other actions and fulfill such other roles as are authorized by this Order or incidental thereto.
17. THIS COURT ORDERS that Employee Representative Counsel, the Employee Representatives and any Advisors retained by Employee Representative Counsel (i) shall have no personal liability or obligations as a result of the performance of its duties in carrying out the provisions of this Order, save and except for liability arising out of gross negligence or wilful misconduct; (ii) shall be entitled to rely on the books and records of the Sears Canada Entities and

any information provided by the Sears Canada Entities, all without independent investigation; and (iii) shall not be liable for any claims or damages resulting from any errors or omissions in such books, records or information.

18. THIS COURT ORDERS that the Sears Canada Entities and the Monitor shall cooperate with Employee Representative Counsel in the exercise of its powers and discharge of its duties and obligations under this Order.

PENSION REPRESENTATIVE COUNSEL'S ROLE

19. THIS COURT ORDERS that, in addition to the rights, duties, responsibilities and obligations granted to it under the Pension Representative Counsel Order dated July 13, 2017 and any other orders of the Court in the CCAA Proceedings, Pension Representative Counsel is hereby directed and empowered to assist in the establishment and implementation of a Pensioner Claims Process and the determination of the quantum and validity of Pensioner Claims in conjunction with the Sears Canada Entities, the Monitor, the Pension Plan Administrator and the Superintendent, and to take such other actions and fulfill such other roles as are authorized by this Order or incidental thereto.

20. THIS COURT ORDERS that Pension Representative Counsel, the Pensioner Representatives and any Advisors retained by Pension Representative Counsel (i) shall have no personal liability or obligations as a result of the performance of its duties in carrying out the provisions of this Order, save and except for liability arising out of gross negligence or wilful misconduct; (ii) shall be entitled to rely on the books and records of the Sears Canada Entities and any information provided by the Sears Canada Entities, all without independent investigation; and (iii) shall not be liable for any claims or damages resulting from any errors or omissions in such books, records or information.

21. THIS COURT ORDERS that the Sears Canada Entities and the Monitor shall cooperate with Pension Representative Counsel in the exercise of its powers and discharge of its duties and obligations under this Order and with the Pension Plan Administrator and Superintendent in carrying out its duties and obligations.

NOTICE OF CLAIMS AND CLAIMS PROCESS

22. THIS COURT ORDERS that as soon as practicable, but no later than 5:00 p.m. on December 20, 2017, the Monitor shall cause a Construction Claims Package to be sent to all known Construction Claimants who are Construction Contractors, as evidenced by the books and records of the Sears Canada Entities and at the respective last known addresses as recorded in the Sears Canada Entities' books and records or in the construction lien documentation registered on title to any real property that has been or is owned or leased by any of the Sears Canada Entities, as deemed appropriate by the Monitor with the assistance of the Sears Canada Entities. The Monitor and the Sears Canada Entities shall specify in the Notice of Construction Claim included in the Construction Claims Package the Construction Contractor's Construction Claim as valued by the Sears Canada Entities, in consultation with the Monitor, based on the books and records of the Sears Canada Entities.

23. THIS COURT ORDERS that the Notice of Construction Claim provided to each Construction Contractor shall be deemed to include the Construction Claims of all Construction Sub-Contractors under an agreement (written or oral) with the Construction Contractor or another Construction Sub-Contractor of any level in connection with the improvement to any real property that has been or is owned or leased by any of the Sears Canada Entities. Each Construction Contractor and Construction Sub-Contractor is hereby directed to forward forthwith a copy of the appropriate Notice of Construction Claim and the Construction Sub-Contractor Instruction Letter

to each Construction Sub-Contractor with which it has a direct contractual agreement or engagement in connection with the relevant improvement. Any dispute regarding a Construction Claim of a Construction Sub-Contractor is to be submitted through the Construction Contractor's Notice of Dispute of Construction Claim. For greater certainty, no Construction Sub-Contractor shall be required to submit a separate Notice of Dispute of Construction Claim in respect of its Construction Claim to the extent that such Construction Sub-Contractor's Construction Claim is captured by its Construction Contractor's Notice of Construction Claim or Notice of Dispute of Construction Claim. The Construction Sub-Contractor Instruction Letter shall direct all Construction Sub-Contractors to contact their Construction Contractor directly to review and submit any disputes with respect to their Construction Claims.

24. THIS COURT ORDERS that as soon as practicable, but no later than 5:00 p.m. on December 20, 2017, the Monitor shall cause a General Creditor Claims Package to be sent to:

- (a) each party that appears on the Service List or has requested a General Creditor Claims Package; and
- (b) any Person known to the Sears Canada Entities as potentially asserting a General Creditor Claim against any of the Sears Canada Entities (excluding any potential General Creditor Claimant with a potential General Creditor Claim below \$1,000 and that is not a Sears Supplier), as evidenced by and to the respective last known address recorded in the books and records of the Sears Canada Entities.

25. THIS COURT ORDERS that the Monitor shall cause the Notice to General Creditor Claimants to be published at least three (3) times in The Globe and Mail (National Edition) and La Presse, and in such other international publications and with such frequency as is determined by the Monitor in consultation with the Sears Canada Entities.

26. THIS COURT ORDERS that the Monitor shall cause the Notice to General Creditor Claimants, the Employee Letter, the Other Employee Letter, the Pensioner Letter and the General Creditor Claims Package to be posted to the Monitor's Website by no later than 5:00 p.m. on December 13, 2017.
27. THIS COURT ORDERS that the Monitor shall: (i) cause the Employee Letter to be sent to all Employees represented by Employee Representative Counsel, and (ii) cause the Other Employee Letter to be sent to Employees not represented by Employee Representative Counsel (provided that where such Employees are subject to union representation, the Monitor shall only send such letter to the unions representing the unionized Employees), as soon as practicable but no later than 5:00 p.m. on December 20, 2017.
28. THIS COURT ORDERS that the Applicants shall cause the Employee Letter, the Other Employee Letter and the Pensioner Letter to be posted to the my.sears.ca portal, as soon as practicable but no later than 5:00 p.m. on December 20, 2017.
29. THIS COURT ORDERS that Employee Representative Counsel shall cause the Employee Letter to be posted to Employee Representative Counsel's Website, as soon as practicable but no later than 5:00 p.m. on December 20, 2017.
30. THIS COURT ORDERS that Pension Representative Counsel shall (i) cause the Pensioner Letter to be sent to all Pensioners, and (ii) cause the Pensioner Letter to be posted to Pension Representative Counsel's Website, as soon as practicable but no later than 5:00 p.m. on December 20, 2017.

31. THIS COURT ORDERS that the Pension Plan Administrator shall cause the Pensioner Letter to be posted to the Pension Plan Administrator Website, as soon as practicable but no later than 5:00 p.m. on December 20, 2017.

32. THIS COURT ORDERS that to the extent any Claimant requests documents or information relating to the Claims Process prior to the General Creditor Claims Bar Date, the General Creditor Post-Filing Claims Bar Date, the General Creditor Restructuring Period Claims Bar Date, or the Landlord Claims Bar Date, as applicable, the Monitor shall forthwith send such Claimant a General Creditor Claims Package, and shall direct such Claimant to the documents posted on the Monitor's Website or otherwise respond to the request for documents or information as the Monitor, in consultation with the Sears Canada Entities, may consider appropriate in the circumstances. If the Sears Canada Entities or the Monitor become aware of any further General Creditor Claims after the mailing contemplated in paragraph 24, the Monitor shall forthwith send such potential General Creditor Claimant a General Creditor Claims Package or may direct such potential Claimant to the documents posted on the Monitor's Website.

33. THIS COURT ORDERS that to the extent any Construction Claimant requests documents or information relating to the Claims Process prior to the Construction Claims Bar Date, or if the Sears Canada Entities or the Monitor become aware of any further Construction Claims, the Monitor shall respond to the request for documents or information as the Monitor, in consultation with the Sears Canada Entities, may consider appropriate in the circumstances, and/or, if appropriate, shall send such Claimant a Construction Claims Package.

34. THIS COURT ORDERS that any notices of disclaimer or resiliation delivered after the date of this Order to potential General Creditor Claimants in connection with any action taken by the Sears Canada Entities to restructure, disclaim, resiliate, terminate or breach any contract, lease

or other agreement, whether written or oral, pursuant to the terms of the Initial Order, shall be accompanied by a General Creditor Claims Package.

35. THIS COURT ORDERS that the Claims Process and the forms of Notice to General Creditor Claimants, Proof of Claim Instruction Letter, D&O Claim Instruction Letter, Employee Letter, Other Employee Letter, Pensioner Letter, Proof of Claim, D&O Proof of Claim, Notice of Revision or Disallowance, Notice of Dispute of Revision or Disallowance, Notice of Construction Claim, Notice of Dispute of Construction Claim, Construction Contractor Instruction Letter, and Construction Sub-Contractor Instruction Letter are hereby approved, subject to any minor non-substantive changes to the forms as the Monitor and the Sears Canada Entities may consider necessary or desirable to be made from time to time.

36. THIS COURT ORDERS that the sending of the Construction Claims Package, the Construction Sub-Contractor Instruction Letter, the Employee Letter, the Other Employee Letter, the Pensioner Letter, and the General Creditor Claims Package to the applicable Persons as described above, and the publication of the Notice to General Creditor Claimants, in accordance with this Order, shall constitute good and sufficient service and delivery of notice of this Order, the Construction Claims Bar Date, the General Creditor Claims Bar Date, the General Creditor Post-Filing Claims Bar Date, the General Creditor Restructuring Period Claims Bar Date and the Landlord Claims Bar Date on all Persons who may be entitled to receive notice and who may wish to assert a Claim, and no other notice or service need be given or made and no other document or material need be sent to or served upon any Person in respect of this Order.

FILING OF PROOFS OF CLAIM

(A) Pre-Filing Claims

37. THIS COURT ORDERS that any General Creditor Claimant, excluding any Landlord Claimant, that intends to assert a Pre-Filing Claim or D&O Claim relating to the Pre-Filing Period shall file a Proof of Claim or D&O Proof of Claim, as applicable, with the Monitor on or before the General Creditor Claims Bar Date. Any General Creditor Claimant may file a Proof of Claim or D&O Proof of Claim through the online portal on the Monitor's website, and such Proof of Claim or D&O Proof of Claim shall be deemed to have been received by the Monitor as of the time it is submitted on the Monitor's website. For the avoidance of doubt, a Proof of Claim or D&O Proof of Claim, as applicable, must be filed by every such General Creditor Claimant in respect of every such Pre-Filing Claim or D&O Claim relating to the Pre-Filing Period, regardless of whether or not a legal proceeding in respect of such Pre-Filing Claim or D&O Claim has been previously commenced.

38. THIS COURT ORDERS that any General Creditor Claimant, excluding any Landlord Claimant, that does not file a Proof of Claim or D&O Proof of Claim, as applicable, so that such Proof of Claim or D&O Proof of Claim is received by the Monitor on or before the General Creditor Claims Bar Date, or such later date as the Monitor may agree in writing or the Court may otherwise direct:

- (a) be and is hereby forever barred, estopped and enjoined from asserting or enforcing any such Pre-Filing Claim or any such D&O Claim relating to the Pre-Filing Period and all such Pre-Filing Claims or D&O Claims shall be forever extinguished;
- (b) will not be permitted to vote at any Meeting on account of such Pre-Filing Claim(s) or D&O Claim(s) relating to the Pre-Filing Period;

- (c) will not be entitled to receive further notice with respect to the Claims Process or these proceedings unless the Monitor and/or the Sears Canada Entities become aware that such General Creditor Claimant has any other Claim; and
- (d) will not be permitted to participate in any distribution under any Plan on account of such Pre-Filing Claim(s) or D&O Claim(s).

(B) Post-Filing Claims

39. THIS COURT ORDERS that after the date of this Order, upon becoming aware of a potential Post-Filing Claim, the Monitor shall send a General Creditor Claims Package to the General Creditor Claimant in respect of such Post-Filing Claim in the manner provided for herein or may direct such potential Claimant to the documents posted on the Monitor's website.

40. THIS COURT ORDERS that any General Creditor Claimant, excluding any Landlord Claimant, that intends to assert a Post-Filing Claim shall file a Proof of Claim with the Monitor on or before the General Creditor Post-Filing Claims Bar Date. Any General Creditor Claimant, excluding any Landlord Claimant, may file a Proof of Claim through the online portal on the Monitor's website, and such Proof of Claim shall be deemed to have been received by the Monitor as of the time it is submitted on the Monitor's website.

41. THIS COURT ORDERS that any General Creditor Claimant, excluding any Landlord Claimant, that does not file a Proof of Claim in respect of a Post-Filing Claim so that such Proof of Claim is received by the Monitor on or before the General Creditor Post-Filing Claims Bar Date, or such later date as the Monitor may agree in writing or the Court may otherwise direct:

- (a) be and is hereby forever barred, estopped and enjoined from asserting or enforcing any such Post-Filing Claim and all such Post-Filing Claims shall be forever extinguished;
- (b) will not be permitted to vote at any Meeting on account of such Post-Filing Claim(s);
- (c) will not be entitled to receive further notice with respect to the Claims Process or these proceedings unless the Monitor and/or the Sears Canada Entities become aware that such General Creditor Claimant has any other Claim; and
- (d) will not be permitted to participate in any distribution under any Plan on account of such Post-Filing Claim(s).

(C) Restructuring Period Claims

42. THIS COURT ORDERS that after the date of this Order, upon becoming aware of a circumstance giving rise to a potential Restructuring Period Claim, the Monitor shall send a General Creditor Claims Package to the General Creditor Claimant in respect of such Restructuring Period Claim in the manner provided for herein or may direct such potential Claimant to the documents posted on the Monitor's Website.

43. THIS COURT ORDERS that any General Creditor Claimant, excluding any Landlord Claimant, that intends to assert a Restructuring Period Claim or D&O Claim relating to the Restructuring Period shall file a Proof of Claim or D&O Proof of Claim, as applicable, with the Monitor on or before the General Creditor Restructuring Period Claims Bar Date. Any General Creditor Claimant, excluding any Landlord Claimant, may file a Proof of Claim or D&O Proof of Claim through the online portal on the Monitor's website, and such Proof of Claim or D&O Proof

of Claim shall be deemed to have been received by the Monitor as of the time it is submitted on the Monitor's website. For the avoidance of doubt, a Proof of Claim or D&O Proof of Claim must be filed by every such General Creditor Claimant in respect of every such Restructuring Period Claim or D&O Claim relating to the Restructuring Period, regardless of whether or not a legal proceeding in respect of such Restructuring Period Claim or D&O Claim has been previously commenced.

44. THIS COURT ORDERS that any General Creditor Claimant, excluding any Landlord Claimant, that does not file a Proof of Claim or D&O Proof of Claim, as applicable, so that such Proof of Claim or D&O Proof of Claim is received by the Monitor on or before the General Creditor Restructuring Period Claims Bar Date, or such later date as the Monitor may agree in writing or the Court may otherwise direct:

- (a) be and is hereby forever barred, estopped and enjoined from asserting or enforcing any such Restructuring Period Claim or any such D&O Claim relating to the Restructuring Period and all such Restructuring Period Claims or D&O Claims shall be forever extinguished;
- (b) will not be permitted to vote at any Meeting on account of such Restructuring Period Claim(s) or D&O Claim(s);
- (c) will not be entitled to receive further notice with respect to the Claims Process or these proceedings unless the Monitor and/or the Sears Canada Entities become aware that such General Creditor Claimant has any other Claim; and
- (d) will not be permitted to participate in any distribution under any Plan on account of such Restructuring Period Claim(s) or D&O Claim(s).

(D) Landlord Claims

45. THIS COURT ORDERS that any Landlord Claimant that intends to assert a Landlord Claim shall file a Proof of Claim or D&O Proof of Claim, as applicable, with the Monitor on or before the Landlord Claims Bar Date. Any Landlord Claimant may file a Proof of Claim or D&O Proof of Claim through the online portal on the Monitor's website, and such Proof of Claim or D&O Proof of Claim shall be deemed to have been received by the Monitor as of the time it is submitted on the Monitor's website. For the avoidance of doubt, a Proof of Claim or D&O Proof of Claim, as applicable, must be filed by every Landlord Claimant in respect of every Landlord Claim, regardless of whether or not a legal proceeding in respect of such Claim has been previously commenced.

46. THIS COURT ORDERS that any Landlord Claimant that does not file a Proof of Claim or D&O Proof of Claim, as applicable, so that such Proof of Claim or D&O Proof of Claim is received by the Monitor on or before the Landlord Claims Bar Date, or such later date as the Monitor may agree in writing or the Court may otherwise direct:

- (a) be and is hereby forever barred, estopped and enjoined from asserting or enforcing any such Landlord Claim and all such Landlord Claims shall be forever extinguished;
- (b) will not be permitted to vote at any Meeting on account of such Landlord Claim(s);
- (c) will not be entitled to receive further notice with respect to the Claims Process or these proceedings unless the Monitor and/or the Sears Canada Entities become aware that such Landlord Claimant has any other Claim; and

- (d) will not be permitted to participate in any distribution under any Plan on account of such Landlord Claim(s).

47. THIS COURT ORDERS that the provisions of paragraphs 37, 38, 40, 41, and 43 to 46 herein shall not apply to Intercompany Claims or any Claims with respect to Warranties. Proofs of Claim for all Claims with respect to Warranties shall be deemed to have been properly submitted as Pre-Filing Claims or Restructuring Period Claims, as applicable, in accordance with the applicable requirements of this Order.

ADJUDICATION OF CLAIMS OTHER THAN INTERCOMPANY CLAIMS

48. THIS COURT ORDERS that, for greater certainty, the procedures outlined in paragraphs 49 to 59 herein shall not apply to the adjudication of Intercompany Claims.

Construction Claims

49. THIS COURT ORDERS that if a Construction Claimant disputes the amount of the Claim, including any D&O Claim, as set out in the Notice of Construction Claim, such Construction Claimant shall ensure that the Construction Contractor who received such Notice of Construction Claim shall deliver to the Monitor a Notice of Dispute of Construction Claim. All Notices of Dispute of Construction Claim must be received by the Monitor by no later than the Construction Claims Bar Date.

50. THIS COURT ORDERS that, in the event that a dispute raised in a Notice of Dispute of Construction Claim is not settled within a time period or in a manner satisfactory to the Monitor, in consultation with the Sears Canada Entities and the applicable Directors and Officers in respect of any D&O Claim included in a Notice of Dispute of Construction Claim, the Monitor shall refer the dispute raised in the Notice of Dispute of Construction Claim to a Claims Officer or the Court for adjudication at its election. For greater certainty, any party may file additional evidence,

documentation, reports or information on any hearing to resolve the issues raised in a Notice of Dispute of Construction Claim and no party will object to the filing of such additional evidence on the basis that such evidence, documentation, report or information was not included in the initial Notice of Construction Claim or Notice of Dispute of Construction Claim.

51. THIS COURT ORDERS that if a Construction Contractor does not deliver to the Monitor a completed Notice of Dispute of Construction Claim, and no other Notices of Dispute of Construction Claim have been received by the Monitor from any Construction Sub-Contractors in respect of such Claim, by the Construction Claims Bar Date disputing the Construction Claim as set out in a Notice of Construction Claim, then all Construction Claimants associated with such Notice of Construction Claim shall be deemed to have accepted the Construction Contractor's Construction Claim and no such Construction Claimant shall have any further right to dispute same.

52. THIS COURT ORDERS that the Monitor shall make reasonable efforts to promptly deliver a copy of any Notice of Dispute of Construction Claim that asserts a Construction Claim against any of the Directors and Officers to such named Directors and Officers.

General Creditor Proofs of Claim

53. THIS COURT ORDERS that the Monitor, in consultation with the Sears Canada Entities, shall review each Proof of Claim submitted in accordance with this Order and received on or before the General Creditor Claims Bar Date, the General Creditor Post-Filing Claims Bar Date, the General Creditor Restructuring Period Claims Bar Date, or the Landlord Claims Bar Date, as applicable, and shall accept, revise or reject each Claim set forth in each such Proof of Claim.

54. THIS COURT ORDERS that the Monitor shall make reasonable efforts to promptly deliver a copy of any D&O Proofs of Claim, Notices of Revision or Disallowance with respect to any

D&O Claim, and Notices of Dispute of Revision or Disallowance with respect to any D&O Claim, to the applicable Directors and Officers named therein.

55. THIS COURT ORDERS that the Monitor, in consultation with the Sears Canada Entities and the applicable Directors and Officers named in any D&O Proof of Claim, and any counsel for such Directors and Officers, shall review each D&O Proof of Claim submitted in accordance with this Order and received on or before the General Creditor Claims Bar Date, the General Creditor Restructuring Period Claims Bar Date or the Landlord Claims Bar Date, as applicable. The Monitor shall accept, revise or reject each Claim set forth in each such D&O Proof of Claim, provided that the Monitor shall not accept or revise any portion of a D&O Claim absent consent of the applicable Directors and Officers or further Order of the Court.

56. THIS COURT ORDERS that the Monitor shall notify the General Creditor Claimant who has delivered such Proof of Claim or D&O Proof of Claim, as applicable, that such Claim has been revised or rejected and the reasons therefor, by sending a Notice of Revision or Disallowance by no later than July 31, 2018 or such later date as ordered by the Court on application by the Monitor.

57. THIS COURT ORDERS that any General Creditor Claimant who intends to dispute a Notice of Revision or Disallowance hereof shall:

- (a) deliver a completed Notice of Dispute of Revision or Disallowance, along with the reasons for the dispute, to the Monitor by no later than thirty (30) days after the date on which the General Creditor Claimant is deemed to receive the Notice of Revision or Disallowance, or such other date as may be agreed to by the Monitor in writing (provided that any General Creditor Claimant may file such Notice of Dispute of Revision or Disallowance through the online portal on the Monitor's website, and such Notice of Dispute of Revision or Disallowance shall be deemed

to have been received by the Monitor as of the time it is submitted on the Monitor's website); and

- (b) in the event that a dispute raised in a Notice of Dispute of Revision or Disallowance is not settled within a time period or in a manner satisfactory to the Monitor, in consultation with the Sears Canada Entities and the applicable Directors and Officers in respect of any D&O Claim, the Monitor shall refer the dispute raised in the Notice of Dispute of Revision or Disallowance to a Claims Officer or the Court for adjudication at its election. For greater certainty, any party may file additional evidence, documentation, reports or information on any hearing to resolve the issues raised in a Notice of Dispute of Revision or Disallowance and no party will object to the filing of such additional evidence on the basis that such evidence, documentation, report or information was not included in the initial Proof of Claim, D&O Proof of Claim or Notice of Revision or Disallowance.

58. THIS COURT ORDERS that where a General Creditor Claimant that receives a Notice of Revision or Disallowance does not file a completed Notice of Dispute of Revision or Disallowance by the time set out in paragraph 57(a), such General Creditor Claimant's Claim or D&O Claim relating to such Claim shall be deemed to be as set out in the Notice of Revision or Disallowance and such General Creditor Claimant shall have no further right to dispute same.

59. THIS COURT ORDERS that the Monitor, in consultation with the Sears Canada Entities and the applicable Directors and Officers in respect of any D&O Claim, may refer any Claim to a Claims Officer or the Court for adjudication at its election by sending written notice to the applicable parties at any time.

INTERCOMPANY CLAIMS

60. THIS COURT ORDERS that the Monitor shall prepare a report to be served on the Service List and filed with the Court for the Court to consider, detailing its review of all Intercompany Claims and assessing in detail with reasonably sufficient particulars and analysis the validity and quantum of such Claims (the "Monitor's Intercompany Claims Report"). The Monitor's Intercompany Claims Report shall be served on or before the General Creditor Claims Bar Date, unless otherwise ordered by this Court on application by the Monitor and shall contain a recommendation with respect to the next steps to be taken, if any, with respect to the determination and adjudication of Intercompany Claims. For greater certainty, nothing in the Monitor's Intercompany Claims Report shall bind the Court with respect to its determination of the Intercompany Claims as the Court sees fit, including without limitation, the validity, priority or quantum of such Intercompany Claims.

61. THIS COURT ORDERS that each Intercompany Claim identified in the Monitor's Intercompany Claims Report shall be deemed to have been properly submitted through a Proof of Claim in respect of such Intercompany Claim by the Intercompany Claimant as if such Claim was a Pre-Filing Claim or Restructuring Period Claim, as applicable, in accordance with the requirements of this Order, and any Intercompany Claims not included in the Monitor's Intercompany Claims Report shall be deemed to be a General Creditor Claim barred pursuant to paragraph 38 of this Order.

CLAIMS OFFICER

62. THIS COURT ORDERS that the Hon. Mr. James Farley, Q.C., and such other Persons as may be appointed by the Court from time to time on application of the Monitor, in consultation with the Sears Canada Entities, be and are hereby appointed as Claims Officers for the Claims Process. The Monitor, in consultation with the Sears Canada Entities, is hereby permitted to seek

the Court's referral of a disputed Construction Claim to a Construction Lien Master, who shall be appointed as a Claims Officer hereunder, in accordance with applicable Provincial Lien Legislation.

63. THIS COURT ORDERS that a Claims Officer shall determine the validity and amount of disputed Claims in accordance with this Order and to the extent necessary may determine whether any Claim or part thereof constitutes an Excluded Claim and shall provide written reasons. A Claims Officer shall determine all procedural matters which may arise in respect of his or her determination of these matters, including the manner in which any evidence may be adduced. A Claims Officer shall have the discretion to determine by whom and to what extent the costs of any hearing before a Claims Officer shall be paid.

64. THIS COURT ORDERS that the Monitor, the General Creditor Claimant, the Sears Canada Entities and the applicable Directors and Officers in respect of any D&O Claim may, within ten (10) days of such party receiving notice of a Claims Officer's determination of the value of a General Creditor Claimant's Claim, appeal such determination or any other matter determined by the Claims Officer in accordance with paragraph 63 or otherwise to the Court by filing a notice of appeal, and the appeal shall be initially returnable for scheduling purposes within ten (10) days of filing such notice of appeal.

65. THIS COURT ORDERS that the Monitor, any Construction Claimant, including a Construction Sub-Contractor, the Sears Canada Entities and the applicable Directors and Officers in respect of any D&O Claim relating to a Construction Claim may, within ten (10) days of such party receiving notice of a Claims Officer's determination of the value of a Construction Contractor's Construction Claim, appeal such determination or any other matter determined by the Claims Officer in accordance with paragraph 63 or otherwise to the Court by filing a notice of

appeal, and the appeal shall be initially returnable for scheduling purposes within ten (10) days of filing such notice of appeal.

66. THIS COURT ORDERS that, if no party appeals the determination of value of a Claim by a Claims Officer in accordance with the requirements set out in paragraphs 64 and 65 above, the decision of the Claims Officer in determining the value of the Claim shall be final and binding upon the Sears Canada Entities, the Monitor, the applicable Directors and Officers in respect of a D&O Claim and the Claimant, and there shall be no further right of appeal, review or recourse to the Court from the Claims Officer's final determination of a Claim.

67. THIS COURT ORDERS that the provisions of paragraphs 62 to 66 herein shall not apply to Intercompany Claims.

NOTICE OF TRANSFEREES

68. THIS COURT ORDERS that, from the date of this Order until seven (7) days prior to the date fixed by the Court for any distribution in the CCAA Proceedings or any other proceeding, including a bankruptcy, leave is hereby granted to permit a Claimant to provide to the Monitor notice of assignment or transfer of a Claim to any third party, and that no assignment or transfer of a partial Claim shall be permitted.

69. THIS COURT ORDERS that, subject to the terms of any subsequent Order of this Court, if, after the Filing Date, the holder of a Claim transfers or assigns the whole of such Claim to another Person, neither the Monitor nor the Sears Canada Entities shall be obligated to give notice to or otherwise deal with the transferee or assignee of such Claim in respect thereof unless and until actual notice of transfer or assignment, together with satisfactory evidence of such transfer or assignment, shall have been received and acknowledged by the Monitor in writing and thereafter such transferee or assignee shall, for the purposes hereof, constitute the "Claimant" in respect of

the whole of such Claim. Any such transferee or assignee of a Claim shall be bound by any notices given or steps taken in respect of such Claim in accordance with this Order prior to receipt and acknowledgement by the Monitor of satisfactory evidence of such transfer or assignment. A transferee or assignee of a Claim takes the Claim subject to any rights of set-off to which the Sears Canada Entities and/or the applicable Directors and Officers may be entitled with respect to such Claim. For greater certainty, a transferee or assignee of a Claim is not entitled to set-off, apply, merge, consolidate or combine any Claim assigned or transferred to it against or on account or in reduction of any amounts owing by such Person to the Sears Canada Entities or the applicable Directors and Officers.

SERVICE AND NOTICE

70. THIS COURT ORDERS that the Monitor may, unless otherwise specified by this Order, serve and deliver or cause to be served and delivered the Construction Claims Package, the Employee Letter, the Other Employee Letter and the General Creditor Claims Package, and any letters, notices or other documents, to the appropriate Claimants, Employees, Pensioners, unions, or other interested Persons by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery, facsimile transmission or email to such Persons at the physical or electronic address, as applicable, last shown on the books and records of the Sears Canada Entities or, where applicable, as set out in such Claimant's Proof of Claim or D&O Proof of Claim.

71. THIS COURT ORDERS that Pension Representative Counsel may, unless otherwise specified by this Order, serve and deliver or cause to be served and delivered the Pensioner Letter, and any letters, notices or other documents, to the Pensioners by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery, facsimile transmission or email to such Persons

at the physical or electronic address, as applicable, last shown on the books and records of the Sears Canada Entities.

72. THIS COURT ORDERS that such service and delivery of any documents in connection with this Claims Process shall be deemed to have been received: (i) if sent by ordinary mail, on the third Business Day after mailing to an address within Ontario, the fifth Business Day after mailing to an address within Canada (other than within Ontario), and the tenth Business Day after mailing to an address internationally; (ii) if sent by courier or personal delivery, on the next Business Day following dispatch; and (iii) if delivered by facsimile transmission or email by 5:00 p.m. on a Business Day, on such Business Day and if delivered after 5:00 p.m. or other than on a Business Day, on the following Business Day.

73. THIS COURT ORDERS that any notice or communication required to be provided or delivered by a Claimant to the Monitor under this Order shall, unless otherwise specified in this Order, be in writing in substantially the form, if any, provided for in this Order and will be sufficiently given only if delivered by prepaid ordinary mail, registered mail, courier, personal delivery, facsimile transmission or email addressed to:

FTI Consulting Canada Inc., Sears Canada Monitor
TD Waterhouse Tower
79 Wellington Street West
Suite 2010, P.O. Box 104
Toronto, ON M5K 1G8

Attention: Sears Canada Claims Process
Email: searscanada@fticonsulting.com
Fax: 416-649-8101

Subject to paragraphs 37, 43 and 57(a) hereto, any such notice or communication delivered by a Claimant shall be deemed received upon actual receipt by the Monitor thereof during normal

business hours on a Business Day, or if delivered outside of normal business hours, the next Business Day.

74. THIS COURT ORDERS that if, during any period during which notices or other communications are being given pursuant to this Order, a postal strike or postal work stoppage of general application should occur, such notices or other communications sent by ordinary or registered mail and then not received shall not, absent further Order of this Court, be effective and notices and other communications given hereunder during the course of any such postal strike or work stoppage of general application shall only be effective if given by courier, personal delivery, facsimile transmission or email in accordance with this Order.

MISCELLANEOUS

75. THIS COURT ORDERS that the Sears Canada Entities, the Monitor, Employee Representative Counsel, Pension Representative Counsel, the Pension Plan Administrator and the Superintendent may from time to time apply to this Court to extend the time for any action which the Sears Canada Entities, the Monitor, Employee Representative Counsel, Pension Representative Counsel, the Pension Plan Administrator or the Superintendent is required to take if reasonably required to carry out its duties and obligations pursuant to this Order and for advice and directions concerning the discharge of its powers and duties under this Order or the interpretation or application of this Order.

76. THIS COURT ORDERS that nothing in this Order shall prejudice the rights and remedies of any Directors or Officers or other Persons under the Directors' Priority Charge, the Directors' Subordinated Charge or any applicable insurance policy or prevent or bar any Person from seeking recourse against or payment from the Sears Canada Entities' insurance or any Director's or Officer's liability insurance policy or policies that exist to protect or indemnify the Directors or

Officers or other Persons, whether such recourse or payment is sought directly by the Person asserting a Claim from the insurer or derivatively through the Director or Officer or any Sears Canada Entity; provided, however, that nothing in this Order shall create any rights in favour of such Person under any policies of insurance nor shall anything in this Order limit, remove, modify or alter any defence to such Claim available to the insurer pursuant to the provisions of any insurance policy or at law; and further provided that any Claim or portion thereof for which the Person receives payment directly from, or confirmation that he or she is covered by, the Sears Canada Entities' insurance or any Director's or Officer's liability insurance or other liability insurance policy or policies that exist to protect or indemnify the Directors or Officers or other Persons shall not be recoverable as against a Sears Canada Entity or Director or Officer as applicable.

77. THIS COURT ORDERS that this Order shall have full force and effect in all provinces and territories in Canada.

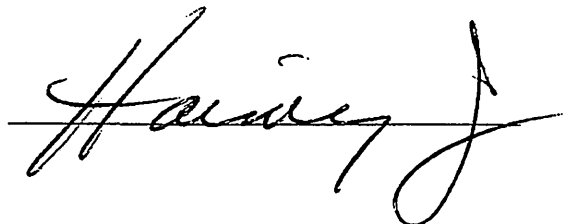
78. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative bodies, having jurisdiction in Canada or in the United States of America, to give effect to this Order and to assist the Sears Canada Entities, the Monitor and their respective agents in carrying 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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ON / BOOK NO:
LE / DANS LE REGISTRE NO:

DEC 08 2017

PER / PAR:

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SCHEDULE A
NOTICE TO CREDITORS AND OTHERS OF FILING OF CLAIMS AGAINST THE
SEARS CANADA ENTITIES AND/OR THEIR DIRECTORS AND OFFICERS

RE: NOTICE OF CLAIMS PROCESS AND CLAIMS BAR DATE IN *COMPANIES' CREDITORS ARRANGEMENT ACT* PROCEEDINGS 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., 4201731 CANADA INC., 168886 CANADA INC., 3339611 CANADA INC. and SEARSCONNECT (COLLECTIVELY, THE "SEARS CANADA ENTITIES")

PLEASE TAKE NOTICE that on [December 8], 2017, the Ontario Superior Court of Justice (Commercial List) issued an order (the "Claims Procedure Order") in the *Companies' Creditors Arrangement Act* proceedings of the Sears Canada Entities, commencing a claims procedure (the "Claims Process") for the purpose of identifying and determining all Claims against the Sears Canada Entities and their respective Directors and Officers (including former directors and officers). Capitalized terms used but not defined herein have the meanings ascribed to them in the Claims Procedure Order. Please review the Claims Procedure Order for the complete definitions of "Claim", "Pre-Filing Claim", "Restructuring Period Claim", "Post-Filing Claim", "Construction Claim", "Landlord Claim" and "D&O Claim" to which the Claims Process applies.

The Claims Procedure Order requires that all Persons who assert or wish to assert a Claim against the Sears Canada Entities, whether unliquidated, contingent or otherwise, and all Persons who assert a Claim against Directors or Officers of the Sears Canada Entities, MUST file a Proof of Claim or D&O Proof of Claim, as applicable, with FTI Consulting Canada Inc. in its capacity as Monitor of the Sears Canada Entities (the "Monitor") on or before 5:00 p.m. (Toronto time) on March 2, 2018 (or (i) in the case of a Restructuring Period Claim, on or before the applicable Restructuring Period Claims Bar Date, (ii) in the case of a Post-Filing Claim, on or before April 2, 2018, and (iii) in the case of a Landlord Claim, on or before the applicable Landlord Claims Bar Date).

Certain Claimants are exempted from the requirement to file a Proof of Claim or D&O Proof of Claim, as applicable, at this time including: (a) current or former employees of the Sears Canada Entities, whose Claims (of any type) are to be addressed in a future claims process being developed by the Sears Canada Entities and the Monitor, working in conjunction with Employee Representative Counsel, Pension Representative Counsel, the Pension Administrator and the Superintendent; (b) holders of Construction Claims, as Construction Contractors (as defined in the Claims Procedure Order) will be contacted by the Monitor in respect of such Construction Claims; and (c) holders of any customer warranty provided by a Sears Canada Entity for any Claim in respect of such warranty.

Please also take notice that effective as of January 21, 2018, Sears Loyalty Points and gift cards will no longer be honoured by the Sears Canada Entities.

The General Creditor Claims Bar Date is 5:00 p.m. (Toronto time) on March 2, 2018. Proofs of Claim in respect of Pre-Filing Claims against one or more of the Sears Canada Entities, and

D&O Proofs of Claim against any of the Directors and/or Officers of the Sears Canada Entities in respect of the Pre-Filing Period (*i.e.*, Claims arising prior to June 22, 2017), must be completed and filed with the Monitor on or before the General Creditor Claims Bar Date.

The General Creditor Restructuring Period Claims Bar Date is 5:00 pm (Toronto time) on the date that is the later of (i) 45 days after the date on which the Monitor sends a General Creditor Claims Package with respect to a Restructuring Period Claim and (ii) the General Creditor Claims Bar Date. Proofs of Claim and D&O Proofs of Claim in respect of Restructuring Period Claims must be completed and filed with the Monitor on or before the General Creditor Restructuring Period Claims Bar Date.

The General Creditor Post-Filing Claims Bar Date is 5:00 p.m. (Toronto time) on April 2, 2018. Proofs of Claim in respect of Post-Filing Claims (*i.e.*, claims for non-payment of goods or services supplied to a Sears Canada Entity on or after June 22, 2017) must be completed and filed with the Monitor on or before the General Creditor Post-Filing Claims Bar Date.

The Landlord Claims Bar Date is 5:00 pm (Toronto time) on the date that is the later of (i) 45 days after the date on which the Monitor sends a General Creditor Claims Package with respect to a Landlord Claim and (ii) April 2, 2018. Proofs of Claim and D&O Proofs of Claim in respect of Landlord Claims must be completed and filed with the Monitor on or before the Landlord Claims Bar Date.

Only Proofs of Claim and D&O Proofs of Claim actually received by the Monitor on or before 5:00 p.m. (Toronto time) on March 2, 2018 (or in the case of (i) a Restructuring Period Claim, on or before the Restructuring Period Claims Bar Date, (ii) in the case of a Post-Filing Claim, on or before the General Creditor Post-Filing Claims Bar Date, or (iii) in the case of a Landlord Claim, on or before the Landlord Claims Bar Date) will be considered filed on time.

FAILURE TO FILE A PROOF OF CLAIM OR D&O PROOF OF CLAIM SO IT IS RECEIVED BY THE APPLICABLE CLAIMS BAR DATE WILL RESULT IN YOUR CLAIM BEING BARRED AND EXTINGUISHED FOREVER.

Pursuant to the Claims Procedure Order, General Creditor Claims Packages, including the form of Proof of Claim and D&O Proof of Claim, will be sent by the Monitor to all known General Creditor Claimants with potential Claims above \$1,000, and to all Sears Suppliers.¹ A copy of the Claims Procedure Order, the General Creditor Claims Package (including copies of the Proof of Claim and D&O Proof of Claim forms), and other public information concerning these CCAA Proceedings may also be found at the Monitor's website at cfcanada.fticonsulting.com/searscanada.

Claimants can also, and are in fact strongly encouraged to, submit their Proofs of Claim or D&O Proofs of Claim, as applicable, at this website.

Claimants requiring further information or claim documentation, or who wish to submit a Proof of Claim or D&O Proof of Claim to the Monitor, may contact the Monitor at the following address:

FTI Consulting Canada Inc., Sears Canada Monitor

¹ This sentence to be deleted from all forms of Notice included in a General Creditor Claims Package.

TD Waterhouse Tower
79 Wellington Street West
Suite 2010, P.O. Box 104
Toronto, Ontario M5K 1G8

Attention: Sears Canada Claims Process

Tel.: 416-649-8113
Toll Free: 1-855-649-8113
Fax No.: 416-649-8101
Email: searscanada@fticonsulting.com

DATED this _____ day of December, 2017.

FTI Consulting Canada Inc.,
in its capacity as Court-appointed Monitor
of the Sears Canada Entities

SCHEDULE B
CLAIMANT'S GUIDE TO COMPLETING THE PROOF OF CLAIM FORM FOR
CLAIMS AGAINST THE SEARS CANADA ENTITIES¹

This Guide has been prepared to assist Claimants in filling out the Proof of Claim form for Claims against the Sears Canada Entities. If you have any additional questions regarding completion of the Proof of Claim form, please consult the Monitor's website at cfcanada.fticonsulting.com/searscanada or contact the Monitor, whose contact information is shown below.

Please note that this is a guide only, and that in the event of any inconsistency between the terms of this guide and the terms of the Claims Procedure Order made on [December 8], 2017 (the "Claims Procedure Order"), the terms of the Claims Procedure Order will govern. Unless otherwise defined, all capitalized terms used herein have the meanings given to them in the Claims Procedure Order.

A copy of the Claims Procedure Order and additional copies of the Proof of Claim form may be found at the Monitor's website. Claimants can, and are in fact strongly encouraged to, submit their Proof of Claim at the Monitor's website at cfcanada.fticonsulting.com/searscanada.

Note further that certain Claimants are exempted from the requirement to file a Proof of Claim or D&O Proof of Claim, as applicable, at this time including:

- (a) current or former employees of the Sears Canada Entities, whose Claims (of any type) are to be addressed in a future claims process being developed by the Sears Canada Entities and the Monitor, working in conjunction with Employee Representative Counsel, Pension Representative Counsel, the Pension Administrator and the Superintendent;
- (b) holders of Construction Claims, as Construction Contractors (as defined in the Claims Procedure Order) will be contacted by the Monitor in respect of such Construction Claims; and
- (c) holders of any customer warranty provided by a Sears Canada Entity, as the Sears Canada Entities will be deemed to have already filed Proofs of Claim on behalf of each warranty holder for the purposes of this Claims Process.

SECTION 1 – DEBTOR(S)

- 2 The full name of each Sears Canada Entity against which the Claim is asserted must be listed (see footnote 1 for complete list of Sears Canada Entities). If there are insufficient lines to record each such name, attach a separate schedule indicating the required information.

¹ The "Sears Canada Entities" are 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 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., 4201731 Canada Inc., 168886 Canada Inc., 3339611 Canada Inc., and SearsConnect.

SECTION 2(a) – CLAIMANT

- 1 A separate Proof of Claim must be filed by each legal entity or person asserting a Claim against the Sears Canada Entities, or any of them.
- 2 The Claimant shall include any and all Claims it asserts against the Sears Canada Entities, or any of them, in a single Proof of Claim.
- 3 The full legal name of the Claimant must be provided.
- 4 If the Claimant operates under a different name or names, please indicate this in a separate schedule in the supporting documentation.
- 5 If the Claim has been acquired via assignment or other transfer from another party, Section 2(b) must also be completed.
- 6 Unless the Claim is assigned or transferred, all future correspondence, notices, etc. regarding the Claim will be directed to the Claimant at the address indicated in this section.

SECTION 2(b) – PARTICULARS OF ORIGINAL CLAIMANT FROM WHOM YOU ACQUIRED CLAIM, IF APPLICABLE

- 1 If the Claimant acquired its Claim by assignment or other transfer from an original holder of the Claim, then Section 2(b) must be completed, and all documents evidencing the assignment must be attached.
- 2 The full legal name of the original holder of the Claim must be provided.
- 3 If the original holder of the Claim operates under a different name or names, please indicate this in a separate schedule in the supporting documentation.

SECTION 3 – AMOUNT AND TYPE OF CLAIM

Amount

- 1 If the Claim is a *Pre-Filing Claim* within the meaning of the Claims Procedure Order, then indicate the amount that each appropriate Sears Canada Entity was and still is indebted to the Claimant in the space reserved for Pre-Filing Claims in the “Amount of Claim” column, including interest up to and including June 22, 2017.
- 2 If the Claim is a *Restructuring Period Claim* within the meaning of the Claims Procedure Order, then indicate the Claim amount that each appropriate Sears Canada Entity was and still is indebted to the Claimant in the space reserved for Restructuring Period Claims in the “Amount of Claim” column (which is below the space reserved for Pre-Filing Claims).

For reference, a “**Restructuring Period Claim**” means any right or claim of any Person against any of the Sears Canada Entities, including in connection with any indebtedness,

liability, or obligation of any kind whatsoever of any such Sears Canada Entity to such Person arising on or after June 22, 2017, including without limitation rights or claims with respect to the restructuring, disclaimer, resiliation, termination or breach by such Sears Canada Entity on or after June 22, 2017 of any contract, lease or other agreement whether written or oral, but excluding any Post-Filing Claims.

- 3 If the Claim is a *Post-Filing Claim* within the meaning of the Claims Procedure Order, then indicate the Claim amount that each appropriate Sears Canada Entity was and still is indebted to the Claimant in the space reserved for Post-Filing Claims in the "Amount of Claim" column (which is below the space reserved for Restructuring Period Claims).

For reference "**Post-Filing Claim**" means any right or claim of any Sears Supplier against any of the Sears Canada Entities in connection with any non-payment by any such Sears Canada Entity to such Sears Supplier for goods or services supplied to such Sears Canada Entity on or after June 22, 2017.

- 4 If the Claim is a *Landlord Claim* within the meaning of the Claims Procedure Order, then indicate the amount of the Landlord Claim that is a Pre-Filing Claim, Restructuring Period Claim, or Post-Filing Claim, as applicable, in the space reserved for such Claims in the "Amount of Claim" column.
- 5 If there are insufficient lines to record each Claim amount, attach a separate schedule indicating the required information.

Currency

- 1 The amount of the Claim must be provided in the currency in which it arose.
- 2 Indicate the appropriate currency in the "Currency" column.
- 3 If the Claim is denominated in multiple currencies, use a separate line to indicate the Claim amount in each such currency. If there are insufficient lines to record these amounts, attach a separate schedule indicating the required information.
- 4 If necessary, currency will be converted in accordance with the Claims Procedure Order.

Whether Claim is Secured and Value of Security

- 1 Check the appropriate box if the Claim recorded on that line is a secured claim. If it is, indicate the value which you ascribe to the assets charged by your security in the adjacent column.
- 2 If the Claim is secured, on a separate schedule provide full particulars of the security, including the date on which the security was given, the value which you ascribe to the assets charged by your security and the basis for such valuation and attach a copy of the security documents evidencing the security.

SECTION 4 – SUPPORTING DOCUMENTATION

- 1 Attach to the Proof of Claim form all particulars of the Claim and supporting documentation, including amount, and description of transaction(s) or agreement(s), or legal breach(es) giving rise to the Claim, any claim assignment/transfer agreement or similar document, if applicable, the name of any guarantor(s) which has guaranteed the Claim, the amount of invoices, particulars of all credits, discounts, etc. claimed, as well as a description of the security, if any, granted by the affected Sears Canada Entity to the Claimant and the estimated value of such security.

SECTION 5 – CERTIFICATION

- 1 The person signing the Proof of Claim should:
 - (a) be the Claimant or authorized representative of the Claimant;
 - (b) have knowledge of all the circumstances connected with this Claim;
 - (c) assert the Claim against the Debtor(s) as set out in the Proof of Claim and certify all supporting documentation is attached; and
 - (d) have a witness to its certification.
- 2 By signing and submitting the Proof of Claim, the Claimant is asserting the Claim against each Sears Canada Entity named as a "Debtor" in the Proof of Claim.

SECTION 6 – FILING OF CLAIM

- 1 If your Claim is a Pre-Filing Claim within the meaning of the Claims Procedure Order (excluding, for greater certainty, any Pre-Filing Claim that may be asserted by a Landlord), the Proof of Claim MUST be returned to and received by the Monitor on or before 5:00 p.m. (Toronto time) on March 2, 2018 (the "General Creditor Claims Bar Date").
- 2 If your Claim is a Restructuring Period Claim within the meaning of the Claims Procedure Order (and see item 2 of Section 3 above for an excerpt of the relevant definition) (and excluding, for greater certainty, any Restructuring Period Claim that may be asserted by a Landlord), the Proof of Claim MUST be returned to and received by the Monitor by 5:00 p.m. (Toronto time) on the date (the "General Creditor Restructuring Period Claims Bar Date") that is the later of (i) the date that is 45 days after the date on which the Monitor sends a General Creditor Claims Package with respect to a Restructuring Period Claim and (ii) the General Creditor Claims Bar Date.
- 3 If your Claim is a Post-Filing Claim within the meaning of the Claims Procedure Order (and see item 3 of Section 3 above for an excerpt of the relevant definition) (and excluding, for greater certainty, any Post-Filing Claim that may be asserted by a Landlord), the Proof of Claim MUST be returned to and received by the Monitor on or before 5:00 p.m. (Toronto time) on April 2, 2018 (the "General Creditor Post-Filing Claims Bar Date").

- 4 If your Claim is a Landlord Claim within the meaning of the Claims Procedure Order (including, for greater certainty, any Pre-Filing Claim, Post-Filing Claim or Restructuring Period Claim of a Landlord), the Proof of Claim MUST be returned to and received by the Monitor by 5:00 p.m. (Toronto time) on the date (the "Landlord Claims Bar Date") that is the later of (i) the date that is 45 days after the date on which the Monitor sends a General Creditor Claims Package with respect to a Landlord Claim and (ii) April 2, 2018.
- 5 Claimants are strongly encouraged to complete and submit their Proof of Claim on the Monitor's online claims submission portal which can be found at cfcanada.fticonsulting.com/searscanada. If not submitted at the online portal, Proofs of Claim must be delivered to the Monitor by prepaid ordinary mail, registered mail, courier, personal delivery, facsimile transmission or email at the following address:

FTI Consulting Canada Inc., Sears Canada Monitor
TD Waterhouse Tower
79 Wellington Street West
Suite 2010, P.O. Box 104
Toronto, Ontario M5K 1G8

Attention: Sears Canada Claims Process

Fax No.: 416-649-8101

Email: searscanada@fticonsulting.com

Failure to file your Proof of Claim so that it is actually received by the Monitor on or before 5:00 p.m. (Toronto time) on the General Creditor Claims Bar Date, the General Creditor Restructuring Period Claims Bar Date, the General Creditor Post-Filing Claims Bar Date or the Landlord Claims Bar Date, as applicable, WILL result in your Claim being forever barred and you will be prevented from making or enforcing your Claim against the Sears Canada Entities. In addition, you shall not be entitled to further notice of and shall not be entitled to participate as a creditor in the Sears Canada Entities' CCAA proceedings.

**SCHEDULE C
PROOF OF CLAIM FORM
FOR CLAIMS AGAINST THE SEARS CANADA ENTITIES¹**

Note: Claimants are strongly encouraged to complete and submit their Proof of Claim on the Monitor's online claims submission portal which can be found at cfcanada.fticonsulting.com/searscanada.

1 NAME OF SEARS CANADA ENTITY OR ENTITIES (THE "DEBTOR(S)") THE CLAIM IS BEING MADE AGAINST:

Debtor(s): _____

2 (A) PARTICULARS OF CLAIMANT

Full Legal Name of Claimant: _____

Full Mailing Address of Claimant: _____

Telephone Number of Claimant: _____

Facsimile Number of Claimant: _____

E-mail Address of Claimant: _____

Attention (Contact Person): _____

¹ The "Sears Canada Entities" are 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 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., 4201731 Canada Inc., 168886 Canada Inc., 3339611 Canada Inc., and SearsConnect.

(B) PARTICULARS OF ORIGINAL CLAIMANT FROM WHOM YOU ACQUIRED CLAIM, IF APPLICABLE

- (i) Has the Claimant acquired this Claim by assignment? Yes No
- (ii) If yes, attach documents evidencing assignment and provide full particulars of the original Claimant from whom the Claim was acquired from:

Full Legal Name of original Claimant: _____

Full Mailing Address of original Claimant: _____

Telephone Number of original Claimant: _____

Facsimile Number of original Claimant: _____

E-mail Address of original Claimant: _____

Attention (Contact Person): _____

3 AMOUNT AND TYPE OF CLAIM

The Debtor was and still is indebted to the Claimant as follows:

Currency:	Amount of Pre-Filing Claim (including interest up to and including June 22, 2017) ² :	Whether Claim is Secured:	Value of Security Held, if any ³ :
_____	_____	Yes <input type="checkbox"/> No <input type="checkbox"/>	_____
_____	_____	Yes <input type="checkbox"/> No <input type="checkbox"/>	_____
_____	_____	Yes <input type="checkbox"/> No <input type="checkbox"/>	_____

² Interest accruing from the Filing Date (June 22, 2017) shall not be included in any Claim.

³ If the Claim is secured, provide full particulars of the security, including the date on which the security was given, the value for which you ascribe to the assets charged by your security, the basis for such valuation and attach a copy of the security documents evidencing the security. This information may be provided in a separate schedule, if necessary.

Currency:	Amount of Restructuring Period Claim:	Whether Claim is Secured:	Value of Security Held, if any:
_____	_____	Yes <input type="checkbox"/> No <input type="checkbox"/>	_____
_____	_____	Yes <input type="checkbox"/> No <input type="checkbox"/>	_____
_____	_____	Yes <input type="checkbox"/> No <input type="checkbox"/>	_____

Currency:	Amount of Post-Filing Claim:	Whether Claim is Secured:	Value of Security Held, if any:
_____	_____	Yes <input type="checkbox"/> No <input type="checkbox"/>	_____
_____	_____	Yes <input type="checkbox"/> No <input type="checkbox"/>	_____
_____	_____	Yes <input type="checkbox"/> No <input type="checkbox"/>	_____

4 DOCUMENTATION

Provide all particulars of the Claim and supporting documentation, including amount, and description of transaction(s) or agreement(s), or legal breach(es) giving rise to the Claim, including any claims assignment/transfer agreement or similar document, if applicable, and amount of invoices, particulars of all credits, discounts, etc. claimed, description of the security, if any, granted by the affected Debtor to the Claimant and estimated value of such security.

5 CERTIFICATION

I hereby certify that:	
(a)	I am the Claimant or authorized representative of the Claimant.
(b)	I have knowledge of all the circumstances connected with this Claim.
(c)	The Claimant asserts this Claim against the Debtor(s) as set out above.
(d)	Complete documentation in support of this Claim is attached.
Signature: _____	Witness: _____ (signature)
Name: _____	_____
Title: _____	(print)
Dated at _____ this ____ day of _____, 20__.	

6 FILING OF CLAIM AND APPLICABLE DEADLINES

For Pre-Filing Claims (except Pre-Filing Claims that may be asserted by a Landlord), this Proof of Claim must be returned to and received by the Monitor by 5:00 p.m. (Toronto time) on March 2, 2018 (the "General Creditor Claims Bar Date").

For Restructuring Period Claims (except Restructuring Period Claims that may be asserted by a Landlord), this Proof of Claim must be returned to and received by the Monitor by 5:00 p.m. (Toronto time) on the later of (i) the date that is 45 days after the date on which the Monitor sends a General Creditor Claims Package with respect to a Restructuring Period Claim and (ii) the General Creditor Claims Bar Date (the "General Creditor Restructuring Period Claims Bar Date").

For Post-Filing Claims (except Post-Filing Claims that may be asserted by a Landlord), this Proof of Claim must be returned to and received by the Monitor by 5:00 p.m. (Toronto time) on April 2, 2018 (the "General Creditor Post-Filing Claims Bar Date").

For Landlord Claims (including, for greater certainty, any Pre-Filing Claim, Post-Filing Claim or Restructuring Period Claim of a Landlord), this Proof of Claim must be returned to and received by the Monitor by 5:00 p.m. (Toronto time) on the later of (i) the date that is 45 days after the date on which the Monitor sends a General Creditor Claims Package with respect to a Landlord Claim and (ii) April 2, 2018 (the "Landlord Claims Bar Date").

In each case, completed forms must be delivered to the Monitor by prepaid ordinary mail, registered mail, courier, personal delivery, facsimile transmission or email at the following address:

FTI Consulting Canada Inc., Sears Canada Monitor
TD Waterhouse Tower
79 Wellington Street West
Suite 2010, P.O. Box 104
Toronto, Ontario M5K 1G8

Attention: Sears Canada Claims Process

Fax No.: 416-649-8101
Email: searscanada@fticonsulting.com

Alternatively, Claimants can, and in fact are strongly encouraged to, complete and submit their Proof of Claim on the Monitor's online claims submission portal which can be found at cfcanada.fticonsulting.com/searscanada.

Failure to file your Proof of Claim so that it is actually received by the Monitor on or before 5:00 p.m. (Toronto time) on the General Creditor Claims Bar Date, the General Creditor Restructuring Period Claims Bar Date, the General Creditor Post-Filing Claims Bar Date or the Landlord Claims Bar Date, as applicable, WILL result in your Claim being forever barred and you will be prevented from making or enforcing your Claim against the Sears Canada Entities. In addition, you shall not be entitled to further notice of and shall not be entitled to participate as a creditor in the Sears Canada Entities' CCAA proceedings.

SCHEDULE D
CLAIMANT'S GUIDE TO COMPLETING THE D&O PROOF OF CLAIM FORM
FOR CLAIMS AGAINST DIRECTORS AND/OR OFFICERS
OF THE SEARS CANADA ENTITIES¹

This Guide has been prepared to assist Claimants in filling out the D&O Proof of Claim form for Claims against the Directors and/or Officers (present and former) of the Sears Canada Entities. If you have any additional questions regarding completion of the D&O Proof of Claim, please consult the Monitor's website at cfcanada.fticonsulting.com/searscanada or contact the Monitor, whose contact information is shown below.

The D&O Proof of Claim form is for Claimants asserting a Claim against any Directors and/or Officers of the Sears Canada Entities, and NOT for Claims against the Sears Canada Entities themselves. For Claims against the Sears Canada Entities, please use the form titled "Proof of Claim Form for Claims against the Sears Canada Entities", which is available on the Monitor's website at cfcanada.fticonsulting.com/searscanada.

Please note that this is a guide only, and that in the event of any inconsistency between the terms of this guide and the terms of the Claims Procedure Order made on [December 8], 2017 (the "Claims Procedure Order"), the terms of the Claims Procedure Order will govern. Unless otherwise defined, all capitalized terms used herein have the meanings given to them in the Claims Procedure Order.

Additional copies of the D&O Proof of Claim form may be found at the Monitor's website. Claimants can, and are in fact strongly encouraged to, submit their D&O Proofs of Claim at the Monitor's website at cfcanada.fticonsulting.com/searscanada.

SECTION 1 – DEBTOR(S)

- 1 The full name of all the Directors and/or Officers (present and former) of the Sears Canada Entities against whom the Claim is asserted must be listed. If there are insufficient lines to record each such name, attach a separate schedule indicating the required information.

SECTION 2(a) – ORIGINAL CLAIMANT

- 1 A separate D&O Proof of Claim must be filed by each legal entity or person asserting a Claim against the Sears Canada Entities' Directors or Officers.
- 2 The Claimant shall include any and all D&O Claims it asserts against the Sears Canada Entities' Directors or Officers in a single D&O Proof of Claim.
- 3 The full legal name of the Claimant must be provided.

¹ The Sears Canada Entities" are Sears Canada Inc., Corbell Électrique Inc., S.L.H. Transport Inc., The Cut Inc., Sears Contact Services Inc., Inltium Logistics Services Inc., Inltium Commerce Labs Inc., Inltium Logistics Services Inc., Inltium Commerce Labs Inc., Inltium 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., 4201731 Canada Inc., 168886 Canada Inc., 3339611 Canada Inc., and SearsConnect.

- 4 If the Claimant operates under a different name or names, please indicate this in a separate schedule in the supporting documentation.
- 5 If the D&O Claim has been acquired from another party, Section 2(b) must also be completed.
- 6 Unless the D&O Claim is assigned or transferred, all future correspondence, notices, etc. regarding the Claim will be directed to the address and contact indicated in this section.

SECTION 2(b) – PARTICULARS OF ORIGINAL CLAIMANT FROM WHOM YOU ACQUIRED CLAIM, IF APPLICABLE

- 1 If the Claimant acquired its D&O Claim by assignment or other transfer, then Section 2(b) must be completed.
- 2 The full legal name of the original holder of the D&O Claim must be provided.
- 3 If the original holder of the D&O Claim operates under a different name or names, please indicate this in a separate schedule in the supporting documentation.

SECTION 3 – AMOUNT AND TYPE OF D&O CLAIM OF CLAIMANT AGAINST DEBTOR(S)

- 1 If the D&O Claim arose in respect of the period prior to June 22, 2017, then indicate the amount the Director(s) and/or Officer(s) was/were and still is/are indebted to the Claimant in the space reserved for D&O Claims in respect of the Pre-Filing Period in the "Amount of Claim" column, including interest up to and including June 22, 2017.²
- 2 If the D&O Claim arose in respect of the period on or after June 22, 2017, then indicate the amount the Director(s) and/or Officer(s) was/were and still is/are indebted to the Claimant in the space reserved for D&O Claims in respect of the Restructuring Period in the "Amount of Claim" column.
- 3 If there are insufficient lines to record each D&O Claim amount, attach a separate schedule indicating the required information.

CURRENCY

- 1 The amount of the D&O Claim must be provided in the currency in which it arose.
- 2 Indicate the appropriate currency in the Currency column.
- 3 If the D&O Claim is denominated in multiple currencies, use a separate line to indicate the Claim amount in each such currency. If there are insufficient lines to record these amounts, attach a separate schedule indicating the required information.
- 4 If necessary, currency will be converted in accordance with the Claims Procedure Order.

² Interest accruing from the Filing Date (June 22, 2017) shall not be included in any Claim.

SECTION 4 – DOCUMENTATION

- 1 Attach to the D&O Proof of Claim form all particulars of the Claim and supporting documentation, including amount and description of transaction(s) or agreement(s), and the legal basis for the D&O Claim against the specific Directors or Officers at issue.

SECTION 5 – CERTIFICATION

- 1 The person signing the D&O Proof of Claim should:
 - (a) be the Claimant or authorized representative of the Claimant;
 - (b) have knowledge of all the circumstances connected with this D&O Claim;
 - (c) assert the Claim against the Debtor(s) as set out in the D&O Proof of Claim and certify all supporting documentation is attached; and
 - (d) have a witness to its certification.
- 2 By signing and submitting the D&O Proof of Claim, the Claimant is asserting the Claim against the Debtor(s) named in the D&O Proof of Claim.

SECTION 6 – FILING OF CLAIM AND APPLICABLE DEADLINES

- 1 All D&O Proofs of Claim in respect of D&O Claims arising prior to June 22, 2017 (except D&O Claims that may be asserted by a Landlord) MUST be received by the Monitor on or before 5:00 p.m. (Toronto time) on March 2, 2018 (the "General Creditor Claims Bar Date").
- 2 All D&O Proofs of Claim in respect of D&O Claims arising on or after June 22, 2017 (except D&O Claims that may be asserted by a Landlord) MUST be received by the Monitor by 5:00 p.m. (Toronto time) on the date (the "General Creditor Restructuring Period Claims Bar Date") that is the later of (i) the date that is 45 days after the date on which the Monitor sends a General Creditor Claims Package with respect to a Restructuring Period Claim and (ii) the General Creditor Claims Bar Date.
- 3 All D&O Proofs of Claim that may be asserted by a Landlord, whether arising before or after June 22, 2017, MUST be received by the Monitor by 5:00 p.m. (Toronto time) on the date (the "Landlord Claims Bar Date") that is the later of (i) the date that is 45 days after the date on which the Monitor sends a General Creditor Claims Package with respect to a Landlord Claim and (ii) April 2, 2018.
- 4 Claimants are strongly encouraged to complete and submit their D&O Proof of Claim on the Monitor's online claims submission portal which can be found at cfcanada.fticonsulting.com/searscanada. If not submitted at the online portal, Proofs of Claim must be delivered to the Monitor by prepaid ordinary mail, registered mail, courier, personal delivery, facsimile transmission or email at the following address:

FTI Consulting Canada Inc., Sears Canada Monitor
TD Waterhouse Tower

79 Wellington Street West
Suite 2010, P.O. Box 104
Toronto, Ontario M5K 1G8

Attention: Sears Canada Claims Process
Fax No.: 416-649-8101
Email: searscanada@fticonsulting.com

Failure to file your D&O Proof of Claim so that it is actually received by the Monitor on or before 5:00 p.m. (Toronto time) on the General Creditor Claims Bar Date, the General Creditor Restructuring Period Claims Bar Date or the Landlord Claims Bar Date, as applicable, WILL result in your Claim being barred and you will be prevented from making or enforcing your Claim against the Directors and Officers of the Sears Canada Entities. In addition, you shall not be entitled to further notice of and shall not be entitled to participate as a creditor in the Sears Canada Entities' CCAA proceedings.

**SCHEDULE E
D&O PROOF OF CLAIM FORM
FOR CLAIMS AGAINST DIRECTORS OR OFFICERS OF THE SEARS CANADA
ENTITIES¹**

This form is to be used only by Claimants asserting a Claim against any Directors and/or Officers of the Sears Canada Entities and NOT for Claims against the Sears Canada Entities themselves. For Claims against the Sears Canada Entities, please use the form titled "Proof of Claim Form for Claims against the Sears Canada Entities"; which is available on the Monitor's website at cfcanada.fticonsulting.com/searscanada.

1 NAME(S) OF OFFICER(S) AND/OR DIRECTOR(S) (THE "DEBTOR(S)") THE CLAIM IS BEING MADE AGAINST:

Debtor(s): _____

2 (A) PARTICULARS OF CLAIMANT

Full Legal Name of Claimant:

Full Mailing Address of Claimant:

Telephone Number of Claimant:

Facsimile Number of Claimant:

E-mail Address of Claimant:

Attention (Contact Person):

¹ The Sears Canada Entities" are 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 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., 4201731 Canada Inc., 168886 Canada Inc., 3339511 Canada Inc., and SearsConnect.

(B) PARTICULARS OF ORIGINAL CLAIMANT FROM WHOM YOU ACQUIRED CLAIM, IF APPLICABLE

- (i) Has the Claimant acquired this Claim by Assignment? Yes No
- (ii) If yes, attach documents evidencing assignment and provide full particulars of the original Claimant from whom you acquired the Claim from:

Full Legal Name of original Claimant: _____

Full Mailing Address of original Claimant: _____

Telephone Number of original Claimant: _____

Facsimile Number of original Claimant: _____

E-mail Address of original Claimant: _____

Attention (Contact Person): _____

3 AMOUNT OF CLAIM

The Debtor(s) was/were and still is/are indebted to the Claimant as follows:

Name(s) of Director(s) and/or Officers	Currency	Amount of D&O Claim in respect of the <u>Pre-Filing Period</u> (including interest up to and including June 22, 2017)	Amount of D&O Claim in respect of the <u>Restructuring Period</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

4 DOCUMENTATION

Provide all particulars of the D&O Claim and supporting documentation, including any Claim assignment/transfer agreement or similar documentation, if applicable, and including amount and description of transaction(s) or agreement(s), and the legal basis for the D&O Claim against the specific Directors or Officers at issue.

5 CERTIFICATION

I hereby certify that:

- (a) I am the Claimant or authorized representative of the Claimant.
- (b) I have knowledge of all the circumstances connected with this Claim.
- (c) The Claimant asserts this Claim against the Debtor(s) as set out above.
- (d) Complete documentation in support of this Claim is attached.

Signature: _____ Witness: _____
(signature)

Name: _____
(print)

Title: _____

Dated at _____ this ____ day of _____, 20__.

6 FILING OF CLAIMS AND APPLICABLE DEADLINES

All D&O Proofs of Claim in respect of D&O Claims arising prior to June 22, 2017 (except D&O Claims that may be asserted by a Landlord) MUST be received by the Monitor on or before 5:00 p.m. (Toronto time) on March 2, 2018 (the "General Creditor Claims Bar Date").

All D&O Proofs of Claim in respect of D&O Claims arising on or after June 22, 2017 (except D&O Claims that may be asserted by a Landlord) MUST be returned to and received by the Monitor by 5:00 p.m. (Toronto time) on the later of (i) the date that is 45 days after the date on which the Monitor sends a General Creditor Claims Package with respect to a Restructuring Period Claim and (ii) the General Creditor Claims Bar Date (the "General Creditor Restructuring Period Claims Bar Date").

All D&O Proofs of Claim that may be asserted by a Landlord, whether arising before or after June 22, 2017, MUST be received by the Monitor by 5:00 p.m. (Toronto time) on the date (the "Landlord Claims Bar Date") that is the later of (i) the date that is 45 days after the date on which the Monitor sends a General Creditor Claims Package with respect to a Landlord Claim and (ii) April 2, 2018.

In each case, completed forms must be delivered to the Monitor by prepaid ordinary mail, registered mail, courier, personal delivery, facsimile transmission or email at the following address:

FTI Consulting Canada Inc., Sears Canada Monitor
TD Waterhouse Tower
79 Wellington Street West

Suite 2010, P.O. Box 104
Toronto, Ontario M5K 1G8

Attention: Sears Canada Claims Process

Fax No.: 416-649-8101

Email: searscanada@fticonsulting.com

Alternatively, Claimants can, and in fact are strongly encouraged to, complete and submit their D&O Proof of Claim on the Monitor's online claims submission portal which can be found at cfcanada.fticonsulting.com/searscanada.

Failure to file your D&O Proof of Claim so that it is actually received by the Monitor on or before 5:00 p.m. (Toronto time) on the General Creditor Claims Bar Date, the General Creditor Restructuring Period Claims Bar Date or the Landlord Claims Bar Date, as applicable, WILL result in your Claim being barred and you will be prevented from making or enforcing your Claim against the Directors and Officers of the Sears Canada Entities. In addition, you shall not be entitled to further notice of and shall not be entitled to participate as a creditor in the Sears Canada Entities' CCAA proceedings.

SCHEDULE F
NOTICE OF DISPUTE OF REVISION OR DISALLOWANCE REGARDING A CLAIM AGAINST THE SEARS CANADA ENTITIES OR THEIR DIRECTOR OR OFFICERS¹

Capitalized terms used but not defined in this Notice of Dispute of Revision or Disallowance shall have the meanings ascribed to them in the Order of the Ontario Superior Court of Justice (Commercial List) in the CCAA proceedings of the Sears Canada Entities dated [December 8], 2017 (the "Claims Procedure Order"). You can obtain a copy of the Claims Procedure Order on the Monitor's website at cfcanada.fticonsulting.com/searscanada.

1 PARTICULARS OF CLAIMANT

Claim Reference Number:
(as indicated in Notice of Revision or Disallowance)

Full Legal Name of Claimant:

Full Mailing Address of Claimant:

Telephone Number of Claimant:

Facsimile Number of Claimant:

E-mail Address of Claimant:

Attention (Contact Person):

2 PARTICULARS OF ORIGINAL CLAIMANT FROM WHOM YOU ACQUIRED THE CLAIM, IF APPLICABLE

(i) Have you acquired this Claim by Assignment? Yes No
(If yes, attach documents evidencing assignment)

(ii) Full legal name of original Claimant: _____

¹ The "Sears Canada Entities" are 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 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., 4201731 Canada Inc., 168886 Canada Inc., 3339611 Canada Inc., and SearsConnect.

3 DISPUTE OF REVISION OR DISALLOWANCE OF CLAIM:

The Claimant hereby disagrees with the value of its Claim, as set out in the Notice of Revision or Disallowance dated _____, and asserts a Claim as follows:

Type of Claim	Amount allowed by Monitor as unsecured (Notice of Revision or Disallowance)	Amount allowed by Monitor as secured (Notice of Revision or Disallowance)	Amount claimed by Claimant as unsecured	Amount claimed by Claimant as secured
A. Pre-Filing Claim	\$	\$	\$	\$
B. Restructuring Period Claim	\$	\$	\$	\$
C. Post-Filing Claim	\$	\$	\$	\$
D. D&O Claim in respect of Pre-Filing Period	\$	\$	\$	\$
E. D&O Claim in respect of Restructuring Period	\$	\$	\$	\$
F. Total Claim	\$	\$	\$	\$

(Insert particulars of your Claim per the Notice of Revision or Disallowance, and the value of your Claim as asserted by you).

4 REASONS FOR DISPUTE

(Provide full particulars of why you dispute the Monitor's revision or disallowance of your Claim as set out in the Notice of Revision or Disallowance, and provide all supporting documentation, including amount, description of transaction(s) or agreement(s) giving rise to the Claim, name of any guarantor(s) which has guaranteed the Claim, and amount of Claim allocated thereto, date and number of all invoices, particulars of all credits, discounts, etc. claimed. The particulars provided must support the value of the Claim as stated by you in item 3, above.)

encouraged to, submit their Notices of Dispute of Revision or Disallowance online by such deadline at the Monitor's website at cfcanada.fticonsulting.com/searscanada.

FTI Consulting Canada Inc., Sears Canada Monitor
TD Waterhouse Tower
79 Wellington Street West
Suite 2010, P.O. Box 104
Toronto, Ontario M5K 1G8

Attention: Sears Canada Claims Process

Fax No.: 416-649-8101

Email: searscanada@fticonsulting.com

In accordance with the Claims Procedure Order, except in the case of forms submitted at the Monitor's online claims portal which are deemed received at the time they are submitted, notices shall be deemed to be received by the Monitor upon actual receipt thereof by the Monitor during normal business hours on a Business Day, or if delivered outside of normal business hours, on the next Business Day.

IF YOU FAIL TO FILE A NOTICE OF DISPUTE OF REVISION OR DISALLOWANCE WITHIN THE PRESCRIBED TIME PERIOD, YOUR CLAIM AS SET OUT IN THE NOTICE OF REVISION OR DISALLOWANCE WILL BE BINDING UPON YOU.

**SCHEDULE G
NOTICE OF REVISION OR DISALLOWANCE**

Regarding Claims against the Sears Canada Entities¹ or
D&O Claims against the Directors and/or Officers of the Sears Canada Entities

TO: [INSERT NAME AND ADDRESS OF CLAIMANT] (the "Claimant")

FROM: FTI Consulting Canada Inc., in its capacity as Court-appointed Monitor of the Sears Canada Entities (the "Monitor")

RE: Claim Reference Number: _____

Capitalized terms used but not defined in this Notice of Revision or Disallowance shall have the meanings ascribed to them in the Order of the Ontario Superior Court of Justice (Commercial List) in the CCAA proceedings of the Sears Canada Entities dated [December 8], 2017 (the "Claims Procedure Order"). You can obtain a copy of the Claims Procedure Order on the Monitor's website at cfcanada.fticonsulting.com/searscanada.

Pursuant to the Claims Procedure Order, the Monitor hereby gives you notice that it has reviewed your Proof of Claim or D&O Proof of Claim and has revised or disallowed all or part of your purported Claim. Subject to further dispute by you in accordance with the Claims Procedure Order, your Claim will be as follows:

Type of Claim	Amount as submitted		Amount allowed by Monitor	Amount allowed as secured	Amount allowed as unsecured
	Original Currency				
A. Pre-Filing Claim		\$	\$	\$	\$
B. Restructuring Period Claim		\$	\$	\$	\$
C. Post-Filing Claim		\$	\$	\$	\$
D. D&O Claim in respect of Pre-Filing Period		\$	\$	\$	\$
E. D&O Claim in respect of Restructuring Period		\$	\$	\$	\$

¹ The "Sears Canada Entities" are Sears Canada Inc., Corbeil Électrique Inc., S.L.H. Transport Inc., The Cut Inc., Sears Contact Services Inc., Inilium Logistics Services Inc., Inilium Commerce Labs Inc., Inilium Logistics Services Inc., Inilium Commerce Labs Inc., Inilium 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., 4201731 Canada Inc., 168886 Canada Inc. 3339611 Canada Inc. and SearsConnect.

F. Total Claim		\$	\$	\$	\$
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Reasons for Revision or Disallowance:

If you intend to dispute this Notice of Revision or Disallowance, you must, by no later than 5:00 p.m. (Toronto time) on the day that is thirty (30) days after this Notice of Revision or Disallowance is deemed to have been received by you (in accordance with paragraph [72] of the Claims Procedure Order), deliver a Notice of Dispute of Revision or Disallowance to the Monitor (by ordinary prepaid mail, registered mail, courier, personal delivery, facsimile transmission or email) at the address listed below. Claimants can also, and are in fact strongly encouraged to, submit their Notices of Dispute of Revision or Disallowance forms online by such deadline at the Monitor's website at cfcanada.fticonsulting.com/searscanada.

If you do not dispute this Notice of Revision or Disallowance in the prescribed manner and within the aforesaid time period, your Claim shall be deemed to be as set out herein.

If you agree with this Notice of Revision or Disallowance, there is no need to file anything further with the Monitor.

The address of the Monitor is set out below:

FTI Consulting Canada Inc., Sears Canada Monitor
 TD Waterhouse Tower
 79 Wellington Street West
 Suite 2010, P.O. Box 104
 Toronto, Ontario M5K 1G8

Attention: Sears Canada Claims Process

Fax No.: 416-649-8101

Email: searscanada@fticonsulting.com

In accordance with the Claims Procedure Order, except in the case of forms submitted at the Monitor's online claims portal which are deemed received at the time they are submitted, notices shall be deemed to be received by the Monitor upon actual receipt thereof by the Monitor during normal business hours on a Business Day, or if delivered outside of normal business hours, on the next Business Day.

The form of Notice of Dispute of Revision or Disallowance is enclosed and can also be accessed on the Monitor's website at cfcanada.fticonsulting.com/searscanada.

IF YOU FAIL TO FILE A NOTICE OF DISPUTE OF REVISION OR DISALLOWANCE WITHIN THE PRESCRIBED TIME PERIOD, THIS NOTICE OF REVISION OR DISALLOWANCE WILL BE BINDING UPON YOU.

DATED this _____ day of _____, 20__.

FTI Consulting Canada Inc.

**SCHEDULE H
OTHER EMPLOYEE LETTER**
(LETTERHEAD OF THE MONITOR)

●, 2017

TO: Active and former employees of the Sears Canada Entities represented by International Brotherhood of Electrical-Workers; Local 213
c/o McMahon, Morrison, Watts
Box 314, 4346 Colonel Talbot Road
London, Ontario N6P 1P9

Attention: J. Craig Morrison

AND TO: Active and former employees of the Sears Canada Entities represented by UNIFOR
c/o UNIFOR
Unifor Legal Department, Local 1000
2015 Placer Court
Toronto Ontario M2H 3H9

Attention: Anthony Dale

AND TO: Active and former employees of the Sears Canada Entities represented by Le Syndicat des Métallos
c/o Le Syndicat des Métallos, Local 9153
565, boulevard Crémazie Est, Bureau 5100
Montréal, Québec H2M 2V8

Attention: ●

AND TO: Present and former members of senior management of the Sears Canada Entities who the Monitor and the Sears Canada Entities believe may wish to assert a Claim against any of the Sears Canada Entities or their respective Directors or Officers

AND TO: Employees who have opted out of representation by Ursel Phillips Fellows
Hopkinson LLP ("Employee Representative Counsel")

AND TO: Former employees who were terminated for cause and who the Monitor and the Sears Canada Entities believe may wish to assert a Claim against any of the Sears Canada Entities or their respective Directors or Officers

To whom it may concern:

Re: Current Claims Process in the CCAA Proceedings of the Sears Canada Entities (Court File No. CV-17-11846-00CL)

Recently, on [December 8], 2017, the Ontario Superior Court of Justice (Commercial List) issued an order (the "Claims Procedure Order") in the *Companies' Creditors Arrangement Act*

proceedings of Sears Canada Inc. and certain of its subsidiaries and affiliates¹ (collectively, the "Sears Canada Entities"), commencing a claims procedure (the "Claims Process") for the purpose of identifying and determining all Claims against the Sears Canada Entities and their respective current and former directors and officers.

Notwithstanding the commencement of the Claims Process, certain classes of persons are currently exempted from the requirement to file any proofs of claim. You are receiving this letter because you fall into one of the categories of such exempted persons, which includes any:

- (i) active or inactive union or non-union employee of any one of the Sears Canada Entities on or after June 22, 2017, including an employee of any one of the Sears Canada Entities who received notice of termination of employment dated on or after June 22, 2017; and
- (ii) former employee of any one of the Sears Canada Entities who was terminated for cause at any time or who received notice of cessation of termination or severance payments dated on or after June 22, 2017.

(collectively, the "Employee Claimants").

Please be advised that the current Claims Process does not include claims of Employee Claimants. Employee claims will be dealt with through a separate Employee Claims Process. That includes any claims you may have against the directors and officers and any claims not related to your compensation.

To be clear, there is NO need at this time for you to take action in connection with this Claims Process, or file any proof of claim in respect of any claim you may have against any of the Sears Canada Entities or their respective current and former directors and officers.

FTI Consulting Canada Inc., as Court-appointed Monitor (the "Monitor") and the Sears Canada Entities are at present working to develop a future claims process (the "Employee Claims Process") to address all claims (of any type) of Employee Claimants. A similar process is also being developed in respect of claims relating to pension entitlements and other post-employment benefits.

In developing this separate Employee Claims Process, the Monitor and the Sears Canada Entities are working with various stakeholders, including: (a) Employee Representative Counsel, who serves as representative counsel to non-unionized current and former employees of the Sears Canada Entities, other than members of senior management, with respect to such employees' interests other than pension entitlements and other post-employment benefits matters (and who, for greater clarity, does not represent the interests of persons listed as recipients to this letter); (b) Koskie Minsky LLP, who serve as representative counsel to, among others, non-unionized retirees and active and former employees of the Sears Canada Entities with respect to pension entitlements and other post-employment benefits matters; (c) the Ontario Superintendent of Financial Services as administrator of the Pension Benefits

¹ The "Sears Canada Entities" are 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 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., 4201731 Canada Inc., 168886 Canada Inc., 3339611 Canada Inc., and SearsConnect.

Guarantee Fund; and (d) Morneau Shepell Inc., as administrator of the Sears Canada Inc. Registered Retirement Plan.

Additional information will be made available to you as this process continues. For now, the only action you may need to take is to advise the Monitor of a change of address.

Once the Employee Claims Process has been established, the Monitor will provide information regarding the process and any claims forms to be filed thereunder to you. This information will also be available on the Monitor's website at cfcanada.fticonsulting.com/searscanada/. We would recommend checking the Monitor's website periodically/monthly.

If you have questions with respect to the foregoing, you may contact the Monitor at:

FTI Consulting Canada Inc., Sears Canada Monitor
TD Waterhouse Tower
79 Wellington Street West
Suite 2010, P.O. Box 104
Toronto, Ontario M5K 1G8

Attention: Sears Canada Claims Process

Tel.: 416-649-8113

Toll Free: 1-855-649-8113

Fax No.: 416-649-8101

Email: searscanada@fticonsulting.com

Yours truly,

FTI Consulting Canada Inc., in its capacity as
Court-appointed Monitor of the
Sears Canada Entities

SCHEDULE I
EMPLOYEE LETTER

(LETTERHEAD OF EMPLOYEE REPRESENTATIVE COUNSEL)

December ●, 2017

To the Non-Unionized Active and Former Employees of Sears Canada Entities:

**Re: Current Claims Process in the CCAA proceedings of the Sears Canada Entities
(Court File No. CV-17-11846-00CL)**

As you know, Sears Canada Inc. and certain of its subsidiaries and affiliates (collectively, the "Sears Canada Entities") filed for and were granted creditor protection under the *Companies' Creditors Arrangement Act* ("CCAA"), pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the "Court").

In connection with the Sears Canada Entities' CCAA proceedings, Ursel Phillips Fellows Hopkinson LLP ("**Employee Representative Counsel**") was appointed to represent the interests of the non-unionized Active Employees and Former Employees of the Sears Canada Entities, other than with respect to the Sears Canada Entities' pension plans and other post-employment benefit entitlements. Information about the proceedings and matters of specific interest to employees may be found at Employee Representative Counsel's website at <http://www.upfhlaw.ca/areas-of-practice/sears-canada-employees-and-former-employees>.

The purpose of this letter is to inform you that on [December 8], 2017, the Court issued an order (the "**Claims Procedure Order**") commencing a claims procedure (the "**Claims Process**") for the purpose of identifying and determining claims against the Sears Canada Entities and their respective current and former directors and officers.

Notwithstanding the commencement of the Claims Process, certain classes of persons are currently **exempted** from the requirement to file any proofs of claim. As a non-unionized Active Employee or Former Employee of one of the Sears Canada Entities (an "Employee"), you fall into one of the categories of such exempted persons.

Please be advised that the current Claims Process **does not include** claims of Employees. Employee claims will be dealt with through a **separate Employee Claims Process** (as described below). That includes any claims you may have against the directors and officers and claims not related to your compensation.

To be clear, there is NO need at this time for you to take action in connection with this Claims Process or file any proof of claim in respect of any claim you may have against the Sears Canada Entities or their respective current and former directors and officers.

Employee Claims Process

Employee Representative Counsel is currently working with the Sears Canada Entities and the Monitor, among others, to develop a separate claims process (the "Employee Claims Process"), to address all claims (of any type) of current or former employees of the Sears Canada Entities. A similar process is also being developed in respect of claims relating to pension entitlements and other post-employment benefits. Any claims against the directors and/or officers of the Sears Canada Entities that you may have as an Employee will also be part of the Employee Claims Process. In addition, if you have a claim against the Sears Canada Entities for a matter not related to your compensation, that claim will also be dealt with through the Employee Claims Process.

Additional information will be made available to you as this process continues. For now, the only action you may need to take is to advise the Monitor and/or Employee Representative Counsel of a change of address.

Once the Employee Claims Process has been established, the Monitor will provide information regarding the process and any claims forms to be filed thereunder to you. This information will also be available on the Monitor's website at cfcanada.fticonsulting.com/searscanada/. At present, it is difficult to estimate when the Employee Claims Process will be established but it should be over the course of the next two to three months. We would also recommend checking the Monitor's website (cfcanada.fticonsulting.com/searscanada/) periodically/monthly.

If you have any questions with respect to any of the above information, please contact us at our toll-free number at 1-844-855-8352 or our email at SearsCanadaEmployees@upfhlaw.ca.

Yours truly,

Ursel Phillips Fellows Hopkinson LLP

Susan Ursel

SCHEDULE J
PENSIONER LETTER

December ●, 2017

Andrew J. Hatnay
ahatnay@kmlaw.ca

Via Regular Mail

Dear Sir/Madam:

**Re: Sears Canada Inc. and certain of its subsidiaries and affiliates (collectively, "Sears Canada")
Representation of Non-Union Employees and Retirees with Pension and OPEB Entitlements in
Sears Canada's proceedings (the "CCAA Proceedings") under the *Companies' Creditors
Arrangement Act*, R.S.C., 1985, c. C-36 (the "CCAA")
Our File No. 17/1312**

We are the Representative Counsel to Ken Eady, Larry Moore, and William Turner, who were appointed by the Ontario Superior Court of Justice (Commercial List) as Representatives of all non-union employees and retirees of Sears Canada¹ who have entitlements to pension benefits and other post-employment benefits such as health benefits, life insurance, and supplemental pension (collectively, "OPEBs") in the CCAA Proceedings. For the purposes of this letter, the non-union employees and retirees shall be collectively referred to as the "Pensioners".

We are writing further to our letter dated July 26, 2017 to provide information on the claims process (the "Claims Process") that Sears Canada established and the Court recently approved. The purpose of this Claims Process is to identify and determine claims from creditors for amounts owing to them by Sears Canada and/or Sears Canada's current and former officers and directors.

Status of the Sears Canada CCAA proceedings

On June 22, 2017, Sears Canada obtained Court protection from its creditors under the CCAA. At the same time, the Court appointed FTI Consulting Canada Inc. as the Monitor. Generally, the Monitor's role is to monitor and regularly report to the Court and stakeholders on Sears Canada's activities while it is under CCAA protection and to interact with creditors in a fair and impartial manner.

There have been a number of developments over the past few months. Sears Canada is not restructuring to continue as a viable company. Instead, on October 13, 2017, Sears Canada brought a motion before the Court for approval that it liquidate its remaining inventory. The Court approved the liquidation. Sears Canada has begun the process of liquidating the inventory in all of the remaining stores and selling all of its other assets. Sears Canada is continuing with the store liquidation process through January, 2018.

¹ (other than senior management of Sears Canada and any person who opted out of representation by Koskie Minsky LLP)

The General Claims Process

During the Claims Process, the Monitor will accept claims from creditors (subject to certain exemptions) for amounts they claim to be owing by Sears Canada and/or their current and former directors and officers.

Generally, the Claims Process will involve an initial assessment of each creditor's claim by the Monitor, in consultation with Sears Canada, after which creditors will be notified whether their claim has either been accepted or revised or disallowed in whole or in part. The claims of creditors that have been revised or disallowed will have the opportunity to respond further, after which the Monitor and Sears Canada may reconsider the claim or attempt to settle the claim(s) with the creditor. If a resolution cannot be reached, the dispute may be referred for adjudication by a Claims Officer who will decide the issues in dispute and render a decision. A creditor may appeal a decision of a Claims Officer. The process is intended to determine the total amount of debts owed by Sears Canada to its creditors.

The future Pensioner Claims Process

The Claims Process that is currently underway is for general creditors of Sears Canada and does not include claims for amounts owing to pension plans or to Pensioners in relation to pension benefits or terminated OPEBs. A separate claims process will be commenced in the future for all such claims in respect of losses of pension benefits and OPEBs. Koskie Minsky LLP as Representative Counsel will work with its actuarial advisors and other parties to ensure that these claims are appropriately valued and submitted in the Pensioner Claims Process. We will provide further information about the Pensioner Claims Process once that process has been finalized and commenced. A similar process is also being developed in respect of employee-related claims.

As a Pensioner, you do not need to make individual claims related to your pension benefits or OPEBs at this time. In addition, any claims you may have against the directors and officers, or claims you may have that are not related to your pension or OPEB entitlements, will be dealt with in the separate Pensioner Claims Process.

At this time, there is no need for you to take any action in connection with the current Claims Process.

We will continue to provide updates to you as the CCAA proceedings move forward, and post updates on our firm website for Sears Canada's Pensioners. You can access our firm website at www.kmlaw.ca/searsrepcounsel for information.

If you have any questions or concerns, call our toll-free hotline at 1-800-244-7120, or e-mail us at searsrepcounsel@kmlaw.ca.

We trust the above is helpful. We wish you the best for the holiday season.

Yours truly,

KOSKIE MINSKY LLP

Andrew J. Hatnay
AJH:vdI

cc. Client Committee
Amy Tang, Barbara Walancik, Natercia McLellan (Communications Manager), *Koskie Minsky LLP*

**SCHEDULE K
NOTICE OF CONSTRUCTION CLAIM
FOR CLAIMS AGAINST THE SEARS CANADA ENTITIES AND/OR THEIR
DIRECTORS AND OFFICERS**

TO: [INSERT NAME AND ADDRESS OF CONSTRUCTION CONTRACTOR AND/OR ITS COUNSEL]

RE:

Claim Reference Number:	
General Description of improvement including Project / Store Location:	
If applicable, Preservation and Perfection Dates (with registration nos.):	
If applicable, Amount of Lien(s) registered on title:	

This notice is issued pursuant to the Claims Process for, among other things, identifying and determining all Construction Claims against the Sears Canada Entities¹ and/or their respective Directors and Officers, which was approved by the Order of the Ontario Superior Court of Justice (Commercial List) in the *Companies' Creditors Arrangement Act* proceedings of the Sears Canada Entities on [December 8], 2017 (the "Claims Procedure Order"). Capitalized terms not defined herein have the meanings ascribed to them in the Claims Procedure Order. A copy of the Claims Procedure Order can be obtained from the website of FTI Consulting Canada Inc., the Court-appointed Monitor of the Sears Canada Entities (the "Monitor"), at cfcanada.fticonsulting.com/searscanada/.

According to the books, records and other relevant information in the possession of the Sears Canada Entities, the Construction Claim of the Construction Contractor, inclusive of Construction Claims of any and all other Construction Claimants at any level in connection with the relevant improvement, is set out in the table below. Note that the term "Construction Claim" also includes any D&O Claim(s) relating thereto.

¹ The "Sears Canada Entities" are 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 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., 4201731 Canada Inc., 168886 Canada Inc., 3339611 Canada Inc., and SearsConnect.

Specific Debtor	Amount	Type of Construction Claim			
		Against a Canada Entity under provisions of applicable Provincial Legislation	Sears Canada Entity trust of Provincial Lien	Against a Director or Officer under provisions of applicable Provincial Legislation	Secured by registration of a builders' or construction lien, or by any security held in connection with a Vacated or Discharged Lien
	\$				
	\$				
	\$				
Total:	\$				

* Amount is in Canadian Dollars. All Construction Claims in an original currency other than Canadian Dollars are converted to Canadian Dollars using the Bank of Canada exchange rate on June 22, 2017.

If you, as the Construction Contractor on behalf of yourself and all Connected Sub-Contractors, agree that the foregoing determination accurately reflects the Construction Claim (including any D&O Claim(s) relating thereto), you are not required to respond to this Notice of Construction Claim. If there is *disagreement* with the determination of the Construction Claim as set out herein, you must complete the enclosed Notice of Dispute of Construction Claim and deliver such executed Notice of Dispute of Construction Claim to the Monitor such that it is received by the Monitor by 5:00 p.m. (Toronto time) on February 15, 2018 (the "Construction Claims Bar Date").

Please note that the Construction Claim as set out herein is deemed to include the Construction Claims of you as the Construction Contractor and the Construction Claims of any and all Construction Sub-Contractors under an agreement (written or oral) or otherwise engaged by you as the Construction Contractor or any other Construction Sub-Contractor at any level, in each case in connection with the relevant improvement (each, a "Connected Sub-Contractor" and together the "Connected Sub-Contractors").

However, pursuant to the terms of the Claims Procedure Order, you are to dispute the above Construction Claim on behalf of yourself and any Connected Sub-Contractor with respect to any disputed amount by submitting a Notice of Dispute of Construction Claim. For greater certainty, no Connected Sub-Contractor shall be required to submit a separate Notice of Dispute of Construction Claim in respect of their portion of the above Construction Claim – rather, any such disagreement by a Connected Sub-Contractor is to be included in the Notice of Dispute of Construction Claim submitted by the Construction Contractor.

As a result of the co-ordination that will be required between the Construction Contractor and the Connected Sub-Contractors, the Claims Procedure Order requires you, as the Construction Contractor, to send as soon as possible a copy of both your Notice of Construction Claim and the enclosed Construction Sub-Contractor Instruction Letter to all Construction Sub-Contractors in a direct contractual agreement or engagement with you in connection with the relevant improvement and ensure that every Construction Sub-Contractor sends as soon as possible a copy of both your Notice of Construction Claim and a Construction Sub-Contractor Instruction Letter to all Construction Sub-Contractors with whom they are in a direct contractual agreement or engagement in connection with the relevant improvement.

If a completed Notice of Dispute of Construction Claim in respect of the Construction Claim set out in the Notice of Construction Claim is not received by the Monitor by the Construction Claims Bar Date, then both you and all Connected Sub-Contractors in connection with the relevant improvement shall be deemed to have accepted the Construction Claim set out therein, and no such Construction Claimant shall have any further right to dispute the same as against the Sears Canada Entities and/or their Directors and Officers.

Since you, as the Construction Contractor, are to file the Notice of Dispute of Construction Claim on behalf of yourself and all Connected Sub-Contractors, it is your responsibility, as the Construction Contractor, to give each Connected Sub-Contractor the opportunity to determine and negotiate with you, any rights they may have with respect to the Construction Claim and incorporate it into the Notice of Dispute of Construction Claim.

IF A NOTICE OF DISPUTE OF CONSTRUCTION CLAIM IS NOT RECEIVED BY THE MONITOR WITHIN THE PRESCRIBED TIME PERIOD, THE CONSTRUCTION CLAIM AS SET OUT IN THE NOTICE OF CONSTRUCTION CLAIM WILL BE BINDING ON YOU AND ALL CONNECTED SUB-CONTRACTORS.

This Notice of Construction Claim does not affect any Claim other than the Construction Claim referred to herein. This Notice of Construction Claim should include all Construction Claims (as defined in the Claims Procedure Order) that you may have. If you believe it does not contain the entirety of your Construction Claim, you must include your whole Construction Claim in the Notice of Dispute of Construction Claim. If you (or any other Person, including any Connected Sub-Constructor) have any Claim that is not a Construction Claim, then you (or such other Person) must file that Claim separately in accordance with the Claims Procedure Order.

Construction Contractors requiring further information or claim documentation, or who wish to submit a Notice of Dispute of Construction Claim to the Monitor, may contact the Monitor at the following address:

FTI Consulting Canada Inc., Sears Canada Monitor
TD Waterhouse Tower
79 Wellington Street West
Suite 2010, P.O. Box 104
Toronto, Ontario M5K 1G8

Attention: Sears Canada Claims Process

Tel.: 416-649-8113
Toll Free: 1-855-649-8113
Fax No.: 416-649-8101
Email: searscanada@fticonsulting.com

DATED at Toronto, this ____ day of December, 2017.

**SCHEDULE L
NOTICE OF DISPUTE OF CONSTRUCTION CLAIM
FOR CONSTRUCTION CLAIMS AGAINST THE SEARS CANADA ENTITIES¹
AND/OR THEIR DIRECTORS AND OFFICERS**

Capitalized terms not defined herein have the meanings ascribed to them in the Order of the Ontario Superior Court of Justice (Commercial List) in the CCAA Proceedings of the Sears Canada Entities on [December 8], 2017 (the "Claims Procedure Order") or the Notice of Construction Claim. A copy of the Claims Procedure Order can be found on the Monitor's website at cfcanada.fticonsulting.com/searscanada/.

1 (A) PARTICULARS OF CONSTRUCTION CONTRACTOR

Full Legal Name of Construction Contractor:

Full Mailing Address of Construction Contractor:

Telephone Number of Construction Contractor:

Facsimile Number of Construction Contractor:

E-mail Address of Construction Contractor:

Attention (Contact Person):

(B) PARTICULARS OF CONSTRUCTION SUB-CONTRACTOR, IF APPLICABLE

(i) Does a Construction Sub-Contractor at any level in connection with the relevant improvement dispute the Construction Claim as set out in the Notice of Construction Claim? Yes No

(ii) If yes, attach documents evidencing (a) such Construction Sub-Contractor's relationship to the Construction Contractor and/or Construction Sub-Contractor who agreed with or engaged them to provide goods/services/work in

¹ The "Sears Canada Entities" are Sears Canada Inc., Corbeil Électrique Inc., S.L.H. Transport Inc., The Cut Inc., Sears Contact Services Inc., Inlitem Logistics Services Inc., Inlitem Commerce Labs Inc., Inlitem Logistics Services Inc., Inlitem Commerce Labs Inc., Inlitem 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., 4201731 Canada Inc., 168886 Canada Inc., 3339611 Canada Inc., and SearsConnect.

connection with the relevant improvement; and (b) provide full contact particulars in the table below of such Construction Sub-Contractor and each *other* Construction Sub-Contractor in the contractual "chain" between such Construction Sub-Contractor and the Construction Contractor. If there is insufficient space below for such particulars, include them in a separate attached schedule.

Full Legal Name of Construction Sub-Contractor:

Full Mailing Address of Construction Sub-Contractor:

Telephone Number of Construction Sub-Contractor:

Facsimile Number of Construction Sub-Contractor:

E-mail Address of Construction Sub-Contractor:

Attention (Contact Person):

2 DISPUTE OF CLAIM AS SET OUT IN NOTICE OF CONSTRUCTION CLAIM

The Construction Contractor on behalf of itself and all Connected Sub-Contractors hereby disagrees with the value of the Construction Claim as set out in the Notice of Construction Claim dated _____ and asserts the following Construction Claim as set out in the following table:

(Insert particulars of your Claim as per the Notice of Construction Claim, and the value of your Construction Claim(s) as asserted by you)

Type of Construction Claim	Name of Specific Debtor Claimed Against	Amount set out in Notice of Construction Claim	Amount claimed by Construction Contractor on behalf of itself and all Connected Sub-Contractors
A. Against a Sears Canada Entity under trust provisions of applicable Provincial Lien Legislation		\$	\$
B. Against a Director or Officer under trust provisions of applicable Provincial Lien Legislation		\$	\$

DATED this _____ day of _____, 20__

(Print name of Construction Contractor, or, if the Construction Contractor is a corporation, the name of the Construction Contractor and the name of the authorized signing officer of the corporation that is executing this Notice of Dispute of Construction Claim.)

(Signature of Construction Contractor, or, if the Construction Contractor is a corporation, the signature of the authorized signing officer of the corporation that is executing this Notice of Dispute of Construction Claim.)

This Notice of Dispute of Construction Claim MUST be submitted to the Monitor at the below address by no later than 5:00 p.m. (Toronto time) on February 15, 2018. Delivery to the Monitor may be made by ordinary prepaid mail, registered mail, courier, personal delivery, facsimile transmission or email to the address below.

FTI Consulting Canada Inc., Sears Canada Monitor
TD Waterhouse Tower
79 Wellington Street West
Suite 2010, P.O. Box 104
Toronto, Ontario M5K 1G8

Attention: Sears Canada Claims Process

Fax No.: 416-649-8101

Email: searscanada@fticonsulting.com

In accordance with the Claims Procedure Order, notices shall be deemed to be received by the Monitor upon actual receipt thereof by the Monitor during normal business hours on a Business Day, or if delivered outside of normal business hours, on the next Business Day.

IF A NOTICE OF DISPUTE OF CONSTRUCTION CLAIM IS NOT RECEIVED BY THE MONITOR WITHIN THE PRESCRIBED TIME PERIOD, THE CONSTRUCTION CLAIM AS SET OUT IN THE NOTICE OF CONSTRUCTION CLAIM WILL BE BINDING ON YOU AND ALL CONNECTED SUB-CONTRACTORS.

**SCHEDULE M
INSTRUCTION LETTER FOR CONSTRUCTION CONTRACTORS
WITH CONSTRUCTION CLAIMS AGAINST THE SEARS CANADA ENTITIES¹
AND/OR THEIR DIRECTORS AND OFFICERS**

CLAIMS PROCEDURE ORDER

On [December 8], 2017, the Ontario Superior Court of Justice (Commercial List) (the "Court") issued an order (the "Claims Procedure Order") in the *Companies' Creditors Arrangement Act* proceedings of the Sears Canada Entities, commencing a claims procedure (the "Claims Process") for the purpose of identifying and determining, among other things, all Construction Claims against the Sears Canada Entities and/or their respective Directors and Officers. Reference should be made to the Claims Procedure Order for the complete definition of "Construction Claim", but in general it includes all:

- (a) Claims under the trust provisions of applicable provincial builders' lien or construction lien legislation and Claims asserted against the holdback under such legislation;
- (b) Claims secured in whole or in part by the registration of a builders' lien or construction lien under such legislation against any real property that has been or is owned or leased by any of the Sears Canada Entities; and
- (c) Claims secured by any security held in connection with a Vacated or Discharged Lien.

Capitalized terms not defined herein have the meanings ascribed to them in the Claims Procedure Order, a copy of which can be obtained from the website of FTI Consulting Canada Inc., the Court-appointed Monitor (the "Monitor") of the Sears Canada Entities, at cfcanada.fticonsulting.com/searscanada/.

You have received this letter because, as indicated by the enclosed Notice of Construction Claim, you have been identified as a Construction Contractor with a Construction Claim. This letter provides general information about the Claims Process as related to Construction Claims, the obligations of Construction Contractors thereunder, and instructions for completing a Notice of Dispute of Construction Claim form.

CLAIMS PROCESS, OBLIGATIONS, AND INSTRUCTIONS TO CONSTRUCTION CONTRACTORS

If you, as the Construction Contractor on behalf of yourself and all Connected Sub-Contractors, disagree with the assessment of the Construction Claim as stated in a Notice of Construction Claim, you must complete the Notice of Dispute of Construction Claim in accordance with the guidelines herein and deliver the executed Notice of Dispute of

¹ The "Sears Canada Entities" are Sears Canada Inc., Corbell Electric Inc., S.L.H. Transport Inc., The Cut Inc., Sears Contact Services Inc., Inilium Logistics Services Inc., Inilium Commerce Labs Inc., Inilium Logistics Services Inc., Inilium Commerce Labs Inc., Inilium 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., 4201731 Canada Inc., 168886 Canada Inc., 3339611 Canada Inc., and SearsConnect.

Construction Claim to the Monitor such that it is received by no later than 5:00 p.m. (Toronto time) on February 15, 2018 (the "Construction Claims Bar Date").

Please note that a Construction Contractor's Construction Claim in relation to a given improvement is deemed to include the Construction Claims of the Construction Contractor and all Construction Claims of any and all Construction Sub-Contractors under an agreement (written or oral) or otherwise engaged by the Construction Contractor or any other Construction Sub-Contractor at any level in connection with the relevant improvement (each, a "Connected Sub-Contractor" and together the "Connected Sub-Contractors").

For greater certainty, no Connected Sub-Contractor shall be required to submit a separate Notice of Dispute of Construction Claim in respect of their portion of the above Construction Claim – rather, any such disagreement by a Connected Sub-Contractor is to be included in the Notice of Dispute of Construction Claim submitted by the Construction Contractor.

As a result of the co-ordination that will be required between the Construction Contractor and the Connected Sub-Contractors, the Claims Procedure Order requires you, as the Construction Contractor, to send as soon as possible a copy of both your Notice of Construction Claim and the enclosed Construction Sub-Contractor Instruction Letter to all Construction Sub-Contractors in a direct contractual agreement or engagement with you in connection with the relevant improvement and take steps to ensure that every Construction Sub-Contractor sends as soon as possible a copy of both your Notice of Construction Claim and a Construction Sub-Contractor Instruction Letter to all Construction Sub-Contractors with whom they are in a direct contractual agreement or engagement with in connection with the relevant improvement.

If a completed Notice of Dispute of Construction Claim in respect of the Construction Claim set out in the Notice of Construction Claim is not received by the Monitor by the Construction Claims Bar Date, then both you and all Connected Sub-Contractors in connection with the relevant improvement shall be deemed to have accepted the Construction Claim set out therein, and no such Construction Claimant shall have any further right to dispute the same as against the Sears Canada Entities and/or their Directors and Officers.

Since you, as the Construction Contractor, are to file the Notice of Dispute of Construction Claim on behalf of yourself and all Connected Sub-Contractors, it is your responsibility, as the Construction Contractor, to give each Connected Sub-Contractor the opportunity to determine and negotiate with you, any rights they may have with respect to the Construction Claim and incorporate it into the Notice of Dispute of Construction Claim.

IF A NOTICE OF DISPUTE OF CONSTRUCTION CLAIM IS NOT RECEIVED BY THE MONITOR WITHIN THE PRESCRIBED TIME PERIOD, THE CONSTRUCTION CLAIM AS SET OUT IN THE NOTICE OF CONSTRUCTION CLAIM WILL BE BINDING ON YOU AND ALL CONNECTED SUB-CONTRACTORS.

Construction Claimants requiring further information or claim documentation may contact the Monitor at the following address:

FTI Consulting Canada Inc., Sears Canada Monitor
TD Waterhouse Tower
79 Wellington Street West
Suite 2010, P.O. Box 104
Toronto, Ontario M5K 1G8

Attention: Sears Canada Claims Process

Tel.: 416-649-8113
Toll Free: 1-855-649-8113
Fax No.: 416-649-8101
Email: searscanada@fticonsulting.com

GUIDE TO COMPLETING THE NOTICE OF DISPUTE OF CONSTRUCTION CLAIM FORM

Please note that this is a guide only, and that in the event of any inconsistency between the terms of this guide and the terms of the Claims Procedure Order made on [December 8], 2017, the terms of the Claims Procedure Order will govern. The guide provides instructions by sections corresponding to the headings of the Notice of Dispute of Construction Claim.

SECTION 1(A) – PARTICULARS OF CONSTRUCTION CONTRACTOR

- 1 Enter the reference number of the Construction Claim as indicated at the top of the Notice of Construction Claim.
- 2 The full legal name of the Construction Contractor and its current particulars must be provided.
- 3 If the Construction Contractor operates under a different name or names, please indicate this in a separate schedule in the supporting documentation.

SECTION 1(B) – PARTICULARS OF CONSTRUCTION SUB-CONTRACTOR, IF APPLICABLE

- 1 If a Construction Sub-Contractor at any level in connection with the relevant improvement disputes the Construction Claim as set out in the Notice of Construction Claim, attach documents evidencing (a) such Construction Sub-Contractor's relationship to the Construction Contractor and/or Construction Sub-Contractor who agreed with or engaged them to provide goods/services/work in connection with the relevant improvement; and (b) provide full contact particulars in the table below of such Construction Sub-Contractor and each *other* Construction Sub-Contractor in the contractual "chain" between such Construction Sub-Contractor and the Construction Contractor. If there is insufficient space on the form for such particulars, include them in a separate attached schedule.
- 2 The full legal name of each relevant Construction Sub-Contractor and its current particulars must be provided.
- 3 If any such Construction Sub-Contractor operates under a different name or names, please indicate this in a separate schedule to be prepared and attached by you.

SECTION 2 – DISPUTE OF CLAIM AS DETERMINED IN NOTICE OF CONSTRUCTION CLAIM

- 1 Indicate both the amount set out in the Notice of Construction Claim and the amount asserted by you, as the Construction Contractor and on behalf of all Connected Sub-Contractors, for each Construction Claim: (i) against a Sears Canada Entity under trust provisions of applicable Provincial Lien Legislation, (ii) against a Director or Officer under trust provisions of applicable Provincial Lien Legislation, (iii) secured by registration of a builders' lien or construction lien, or secured by any security held in connection with a Vacated or Discharged Lien, and (iv) to the extent applicable, any unsecured portion of such Construction Claim.
- 2 Each specific Sears Canada Entity, Director or Officer claimed against must be named in the appropriate column.

- 3 If the amount claimed is in a currency other than Canadian dollars, please indicate this in the table.
- 4 If necessary, currency will be converted in accordance with the Claims Procedure Order.

SECTION 3 – REASONS FOR DISPUTE

- 1 Provide full particulars of why the Construction Contractor on behalf of itself and all Connected Sub-Contractors disputes the determination of the Construction Claim as set out in the Notice of Construction Claim. If there is insufficient space on the form for such particulars, provide it on a separate schedule.
- 2 Attach all supporting documentation, including without limitation amount, description of transaction(s) or agreement(s) giving rise to the Construction Claim(s), name of any guarantor(s) which has guaranteed payment of the Construction Claim(s), and any amount allocated thereto, the date and number of all invoices and supporting documentation, particulars of all credits, discounts, etc. claimed, the full particulars of each person for whom the services or materials were provided to by a given Construction Claimant related to the Construction Claim, a brief description of the services or materials supplied by each Construction Claimant, each contract price or subcontract price, the date of each Construction Claimant's date of last supply, date of substantial performance if applicable, copies of each contract/subcontract at issue including any change orders, amendments, and purchase orders or other related documents.
- 3 The particulars provided must support the value of the Construction Claim as stated by you in Section 2 above.
- 4 The Notice of Dispute of Construction Claim is to be signed only by the Person submitting the Notice of Dispute of Construction Claim.

FILING OF NOTICE OF DISPUTE OF CONSTRUCTION CLAIM

The Notice of Dispute of Construction Claim MUST be received by the Monitor on or before 5:00 p.m. (Toronto time) on the Construction Claims Bar Date of February 15, 2018 by prepaid ordinary mail, registered mail, courier, personal delivery, facsimile transmission or email at the following address:

FTI Consulting Canada Inc., Sears Canada Monitor
TD Waterhouse Tower
79 Wellington Street West
Suite 2010, P.O. Box 104
Toronto, Ontario M5K 1G8

Attention: Sears Canada Claims Process
Fax No.: 416-649-8101
Email: searscanada@fticonsulting.com

IF A NOTICE OF DISPUTE OF CONSTRUCTION CLAIM IS NOT RECEIVED BY THE MONITOR WITHIN THE PRESCRIBED TIME PERIOD, THE CONSTRUCTION CLAIM AS SET OUT IN THE NOTICE OF CONSTRUCTION CLAIM WILL BE BINDING ON YOU AND ALL CONNECTED SUB-CONTRACTORS.

SCHEDULE N

INSTRUCTION LETTER FOR CONSTRUCTION SUB-CONTRACTORS REGARDING CONSTRUCTION CLAIMS AGAINST THE SEARS CANADA ENTITIES AND/OR THEIR DIRECTORS AND OFFICERS¹

CLAIMS PROCEDURE ORDER

On [December 8], 2017, the Ontario Superior Court of Justice (Commercial List) (the "Court") issued an order (the "Claims Procedure Order") in the *Companies' Creditors Arrangement Act* proceedings of the Sears Canada Entities, commencing a claims procedure (the "Claims Process") for the purpose of identifying and determining, among other things, all Construction Claims against the Sears Canada Entities and their respective Directors and Officers. Reference should be made to the Claims Procedure Order for the complete definition of "Construction Claim", but in general it includes all:

- (a) Claims under the trust provisions of applicable provincial builders' lien or construction lien legislation and Claims asserted against the holdback under such legislation;
- (b) Claims secured in whole or in part by the registration of a builders' lien or construction lien under such legislation against any real property that has been or is owned or leased by any of the Sears Canada Entities; and
- (c) Claims secured by any security held in connection with a Vacated or Discharged Lien.

Capitalized terms not defined herein have the meanings ascribed to them in the Claims Procedure Order, a copy of which can be obtained from the website of FTI Consulting Canada Inc., the Court-appointed Monitor (the "Monitor") of the Sears Canada Entities, at cfcanada.fticonsulting.com/searscanada/.

You have received this letter because you have been identified as a Construction Sub-Contractor who has supplied services or materials or work to an improvement to real property that has been or is owned or leased by a Sears Canada Entity (the "Improvement"), AND have done so under an agreement or engagement with either the Construction Contractor (i.e., who has the direct contractual relationship with one of the Sears Canada Entities) OR under an agreement or engagement with another subcontractor of any level.

You therefore may have a Construction Claim against the Sears Canada Entities and/or their Directors and Officers, and this letter has been sent to you to provide general information about the Claims Process as it relates to Construction Claims, your obligations in the Claims Process as a Construction Sub-Contractor, and your responsibility to ensure that any Construction Claims you may have with respect to a given Improvement are accounted for in the

¹ The "Sears Canada Entities" are 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 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., 4201731 Canada Inc., 168886 Canada Inc., 3339611 Canada Inc., and SearsConnect.

Construction Claim of the Construction Contractor (i.e., the party who has the direct contractual relationship with one of the Sears Canada Entities) in relation to that Improvement.

RESPONSIBILITIES OF CONSTRUCTION SUB-CONTRACTORS IN CLAIMS PROCESS

As a part of the Claims Process, the Construction Contractor relevant to the Improvement has received a Notice of Construction Claim indicating the Construction Claim (including any D&O Claim relating thereto) as valued by the Sears Canada Entities, in consultation with the Monitor.

Please note that, under the Claims Procedure Order, any Construction Claims you may have as a Construction Sub-Contractor as well as the Construction Claims of any other Construction Sub-Contractor at any level in relation to the Improvement (each, a "Connected Sub-Contractor") are deemed to be included in that Construction Claim.

If you believe that the Construction Claim as set out in the Notice of Construction Claim that has been sent to the Construction Contractor is incorrect, then the Construction Contractor, on behalf of itself and all Connected Sub-Contractors, including you, is able to dispute such Construction Claim by completing and submitting a Notice of Dispute of Construction Claim to the Monitor such that it must be received by no later than 5:00 p.m. (Toronto time) on February 15, 2018 (the "**Construction Claims Bar Date**"). However, it is the Construction Contractor's responsibility (and not you or any other Connected Sub-Contractor) to submit a Notice of Dispute of Construction Claim to dispute the Construction Claim. For greater certainty, neither you nor any other Construction Sub-Contractor is required to submit a separate Notice of Dispute of Construction Claim in respect of its Construction Claim to the extent that such Construction Sub-Contractor's Construction Claim is captured by the Construction Contractor's Notice of Construction Claim or Notice of Dispute of Construction Claim. **Please contact the Monitor should you believe that your Construction Claim is not fully captured by the Construction Contractor's Notice of Dispute of Construction Claim (or Notice of Construction Claim if a Notice of Dispute of Construction Claim is not submitted by the Construction Contractor).**

If a Notice of Dispute of Construction Claim is not received by the Monitor by the Construction Claims Bar Date, then all Construction Claimants relevant to the Construction Claim (including you and all other Connected Sub-Contractors) shall be deemed to have accepted the Construction Claim set out in the Notice of Construction Claim, and no such Construction Claimant shall have any further right to dispute the same as against the Sears Canada Entities and/or their Directors and Officers.

It is your responsibility as a Construction Sub-Contractor to contact the Construction Contractor directly to:

- (a) **determine and negotiate** with the Construction Contractor any rights you, as the Construction Sub-Contractor, may have with regard to the Construction Contractor's aggregate Construction Claim; and
- (b) **ensure that any Construction Claim you may have is accounted for** – either in the Construction Claim as assessed in the Notice of Construction Claim sent to the Construction Contractor, or in a Notice of Dispute of Construction Claim to be submitted by the Construction Contractor within the prescribed time period.

Note that the Claims Procedure Order further requires you, as a Construction Sub-Contractor, to send as soon as possible a copy of the Notice of Construction Claim and this Construction Sub-Contractor Instruction Letter to all Construction Sub-Contractors in a direct contractual agreement or engagement with you in connection with the Improvement. This is intended to give all Connected Sub-Contractors at every level the opportunity to determine and negotiate with the Construction Contractor any rights they may have with respect to the Construction Claim.

Construction Sub-Contractors requiring further information should contact their Construction Contractor, but may also contact the Monitor at the following address:

FTI Consulting Canada Inc., Sears Canada Monitor
TD Waterhouse Tower
79 Wellington Street West
Suite 2010, P.O. Box 104
Toronto, Ontario M5K 1G8

Attention: Sears Canada Claims Process

Tel.: 416-649-8113
Toll Free: 1-855-649-8113
Fax No.: 416-649-8101
Email: searscanada@fticonsulting.com

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., CORBEL ELECTRIQUE 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

CLAIMS PROCEDURE ORDER

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IN THE MATTER OF the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended

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Applicants

Ontario
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CLAIMS PROCEDURE ORDER

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1291079 ONTARIO INC.
Plaintiff

and SEARS CANADA INC. ET AL.
Defendant

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
TORONTO

**SUPPLEMENTARY RECORD OF THE DEFENDANTS WILLIAM C.
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EPHRAIM J. BIRD, JAMES MCBURNEY and DOUGLAS
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(MOTION FOR CERTIFICATION)**

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