

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

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

and

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

SEARS CANADA INC., by its Court-appointed Litigation Trustee, J. Douglas
Cunningham, Q.C.
Plaintiff

and

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

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

September 17, 2019

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

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

Plaintiff

and

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

Defendants

**NORTON ROSE FULBRIGHT CANADA
LLP**

222 Bay Street, Suite 3000,
P.O. Box 53
Toronto ON M5K 1E7

Orestes Pasparakis LSO#: 36851T

orestes.pasparakis@nortonrosefulbright.com
Tel: 416 216 4815

Robert Frank LSO#: 35456F

robert.frank@nortonrosefulbright.com
Tel: 416 202 6741

Evan Cobb LSO#: 55787N

evan.cobb@nortonrosefulbright.com
Tel: 416 216 1929
Fax: 416 216 3930

Lawyers for FTI Consulting Canada Inc., in
its capacity as Court-appointed monitor

**LAX O'SULLIVAN LISUS GOTTLIEB
LLP**

Counsel
Suite 2750, 145 King Street West
Toronto ON M5H 1J8

Matthew P. Gottlieb LSO#: 32268B

mgottlieb@lolg.ca
Tel: 416 644 5353

Andrew Winton LSO#: 54473I

awinton@lolg.ca
Tel: 416 644 5342

Philip Underwood LSO#: 73637W

punderwood@lolg.ca
Tel: 416 645 5078
Fax: 416 598 3730

Lawyers for Sears Canada Inc., by its Court-
appointed Litigation Trustee, J. Douglas
Cunningham, Q.C.

BLAKE, CASSELS & GRAYDON LLP
199 Bay Street, Suite 4000
Commerce Court West
Toronto, ON M5L 1A9

Michael Barrack LSO #21941W

michael.barrack@blakes.com

Tel: 416 863 5280

Kathryn Bush LSO #236360

kathryn.bush@blakes.com

Tel: 416 863 2633

Kiran Patel LSO #58398H

kiran.patel@blakes.com

Tel: 416 863 2205

Fax: 416 863 2653

Lawyers for Morneau Shepell Ltd., in its
capacity as administrator of the Sears Canada
Inc. Registered Retirement Plan

TO: LITIGATION SERVICE LIST

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TAB 1

In the Matter Of:
Sears Canada Inc. et al. v.
ESL Investments Inc. et al.

WILLIAM CROWLEY
September 10, 2019



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

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Court File No. CV-18-00611219-00CL
ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

BETWEEN:

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

Plaintiff

- and -

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

Defendants

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

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

SEARS CANADA INC., BY ITS COURT-APPOINTED
LITIGATION TRUSTEE, J. DOUGLAS CUNNINGHAM, Q.C.

Plaintiff

- and -

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

Defendants

This is the Cross-Examination on pending motions
of William Crowley, taken via videoconference at
the offices of 40 King St W #2100, Toronto on
the 10th day of September, 2019

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

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

MORNEAU SHEPELL LTD. IN ITS CAPACITY AS
ADMINISTRATOR OF THE SEARS CANADA INC.
REGISTERED PENSION PLAN

Plaintiff

- and -

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

Defendants

This is the Cross-Examination on pending motions
of William Crowley, taken via videoconference at
the offices of 40 King St W #2100, Toronto on
the 10th day of September, 2019.

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

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

1291079 ONTARIO LIMITED

Plaintiff

- and -

SEARS CANADA INC., SEARS HOLDINGS

CORPORATION, ESL INVESTMENTS INC., WILLIAM

CROWLEY, WILLIAM R. HARKER, DONALD CAMPBELL

ROSS, EPHRAIM J. BIRD, DEBORAH E. ROSATI, R.

RAJA KHANNA, JAMES MCBURNEY AND DOUGLAS CAMPBELL

Defendants

This is the Cross-Examination on pending motions
of William Crowley, taken via videoconference at
the offices of 40 King St W #2100, Toronto on
the 10th day of September, 2019.

REPORTED BY:

Amy Armstrong

Realtime Verbatim Reporter

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

Orestes Pasparakis, Esq., for the Monitor
Geoff Mens, Esq.

John Birch, Esq., (via videoconference)
Christopher Horkins, Esq., for Crowley, Harker
& Ross

Matthew Gottlieb, Esq., for the Trustee
Philip Underwood, Esq.,

Kiran Patel, Esq., for Morneau Shepell

Richard Swan, Esq., for The Board of
Directors

Avram Spatz, Esq., for ESL

Chris Trivisonno, Esq., for Sears Holdings

Also Present via videoconference: William
Harker, Kajon Pompey.

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I N D E X

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WITNESS: William Crowley

Cross-Examination by Mr. Pasparakis9

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NO. / DESCRIPTION

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B	RealtyHop Printout.	33
C	BlockShopper Printout.	34

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

4

5

INDEX OF UNDERTAKINGS

6

The questions/requests undertaken are noted by
7 U/T and appear on the following page/line: None
8 noted.

9

10

11

INDEX OF ADVISEMENTS

12

The questions/requests taken under advisement
13 are noted by a U/A and appear on the following
14 page/line: 38/3, 49/22, 50/24.

15

16

17

INDEX OF REFUSALS

18

The questions/requests refused are noted by R/F
19 and appear on the following page/line: 19/11,
20 19/17, 19/23, 20/21, 21/3, 21/7, 21/15, 31/19,
21 31/24, 32/4, 32/9, 32/14, 32/18, 32/23, 33/4,
22 33/9, 33/13, 34/3, 34/12, 34/16, 34/24, 35/3,
23 35/7, 35/11, 35/16, 35/19, 35/24, 36/3, 36/7,
24 36/12, 37/18, 41/24, 42/24, 43/4, 43/8, 43/13,
25 43/17, 51/10, 54/11, 56/12, 56/15.

1 ---Upon commencing at 11:36 a.m.

2 WILLIAM CROWLEY: Affirmed.

3 CROSS-EXAMINATION BY MR. PASPARAKIS:

4 1 Q. Mr. Crowley, you understand that
5 you're being examined today in connection with
6 litigation proceedings in Canada relating to
7 Sears Canada?

8 A. Yes.

9 2 Q. More specifically you understand
10 that you are --

11 A. Excuse me, sir. I don't know if
12 you are as close to the mic as you could be. So
13 it's a little hard to hear.

14 3 Q. I apologize. I'm happy to move
15 wherever is best for you.

16 MR. PATEL: Orestes, I think you have
17 to be a couple of feet taller. Because it's up
18 there, I think that's they way the boardroom
19 works.

20 --- OFF-THE-RECORD DISCUSSION---

21 BY MR. PASPARAKIS:

22 4 Q. So just stop me or ask me to
23 repeat if you can't hear me or if there's any
24 difficulty in hearing my questions, but my next
25 question is more specifically you understand

1 that you are a defendant in a series of actions
2 brought against you personally in connection
3 with a dividend declared by Sears Canada in
4 November 2013; correct?

5 A. Yes.

6 5 Q. And you understand that these
7 claims have been scheduled to go to trial
8 starting in May 2020; correct?

9 A. I'm aware that the -- this is
10 expected to go to trial next year. I actually
11 didn't -- I don't remember whether it was May or
12 when.

13 6 Q. You recall that they were
14 scheduled for the spring of 2020; is that fair?

15 A. Yes.

16 7 Q. And you know that the parties
17 have been preparing for trial on that expedited
18 schedule?

19 A. Yes.

20 8 Q. And you've been aware of the
21 scheduled trial date for several months; fair?

22 A. I don't remember when I first
23 learned about it.

24 9 Q. But it's fair to say you've been
25 aware of it for several months; correct?

1 A. I don't know if it was several
2 months or a month. I just don't recall.

3 10 Q. Okay. Well, in the joint
4 responding motion record -- do you have a copy
5 of that before you?

6 A. Yes.

7 11 Q. If you turn to tab F, you'll
8 see --

9 MR. BIRCH: Tab F?

10 BY MR. PASPARAKIS:

11 12 Q. Tab F as in Frank. You'll see a
12 Notice of Application that bears your name as a
13 party; correct?

14 A. I'm not -- I don't see where.
15 Oh, up in the top, yes.

16 13 Q. So this is an application that
17 was brought in your name; correct?

18 A. I don't remember seeing this, so
19 I see that my name is at the top.

20 14 Q. You've not seen this document
21 before, to the best of your recollection?

22 A. I don't know if I've seen it. I
23 don't recall seeing it.

24 15 Q. Okay.

25 A. I may have seen it, but I don't

1 recall.

2 16 Q. You understand that a motion has
3 been brought on your behalf in the Canadian
4 proceedings?

5 A. A motion has been brought?

6 17 Q. Yes.

7 A. I'm aware that motions have been
8 brought.

9 18 Q. Are you aware that there's a
10 motion that has been brought by you with respect
11 to the schedule of the trial?

12 A. Yes.

13 19 Q. And one of the things you're
14 asking for is that the trial is delayed until
15 the court determines the question of whether
16 certain insurers are required to reimburse you
17 and other defendants for your defence costs?

18 A. Yes.

19 20 Q. And so you say that the question
20 of whether the insurers will reimburse you for
21 your costs should be determined before any
22 further costs are incurred in the Canadian
23 litigation; correct?

24 A. Yes.

25 21 Q. The alternative would be that you

1 fund the defence costs now and the insurer would
2 then either have to reimburse you for the fees
3 you incurred or not, depending on the ultimate
4 court decision; correct?

5 MR. BIRCH: That's not an accurate
6 reflection of what the Notice of Motion says, so
7 I think if you want to properly state what the
8 relief sought is, both primary and alternative.

9 MR. PASPARAKIS: I actually don't. I
10 just want to ask the questions I've got,
11 Mr. Birch.

12 BY MR. PASPARAKIS:

13 22 Q. So let me go back, Mr. Crowley.
14 You understand that one option would be for you
15 to fund the defence costs now, personally;
16 correct?

17 A. That would be one option.

18 23 Q. And I want to explore whether
19 there's any hardship to you in funding your own
20 litigation costs and I want to understand to
21 that end in your financial wherewithal, so I'm
22 going to ask some questions about that. You
23 stipulated to certain facts. You're aware of
24 that; correct?

25 A. Yes.

1 24 Q. And you've stipulated that you
2 can cover your own share of the litigation
3 costs; correct?

4 MR. BIRCH: Well, that's not what the
5 stipulation says. The stipulation says what it
6 says. If you want to read to it to him and as
7 to whether it's accurate, that's fine, but you
8 haven't summarized that the stipulation is
9 accurately --

10 MR. PASPARAKIS: Well, I'm not trying
11 to be inaccurate, I'm just trying to understand
12 what this witness understands.

13 BY MR. PASPARAKIS:

14 25 Q. Why do you understand, sir, that
15 you stipulated to? Mr. Birch, I'm not
16 interested in reading the stipulation. I just
17 want to understand what this witness thought he
18 said. Do you have any understanding --

19 A. Where's the stipulation?

20 26 Q. For the record, counsel is
21 showing the stipulation to the witness.

22 A. Each of Mr. Harker and Mr.
23 Crowley stipulated that they have sufficient
24 assets to interim fund their respective pro rata
25 share of the currently anticipated legal fees

1 that will be incurred until the dispute with the
2 insurance company is resolved; companies is
3 resolved.

4 BY MR. PASPARAKIS:

5 27 Q. So go back to my question. Your
6 stipulation is that you can cover your share of
7 the litigation costs. That's basically what
8 you're saying; correct?

9 A. No.

10 28 Q. And why is that not correct?

11 A. Because what I said was -- it's
12 what I said. The stipulation is what I just
13 read.

14 29 Q. Okay. We'll come back to that.

15 A. Interim fund in respective pro
16 rata share of the currently anticipated legal
17 fees that will be incurred until the dispute
18 with the insurance companies is resolved.

19 30 Q. Okay, so when do you anticipate
20 the dispute with the insurance companies to be
21 resolved? Do you have any information on that?

22 A. Information is from advice of
23 counsel.

24 31 Q. Do you have any understanding,
25 knowledge, or belief as to when this litigation

1 might be resolved?

2 A. Based on what counsel has told
3 me.

4 32 Q. Do you have any understanding?
5 Yes or no?

6 A. Yes.

7 MR. BIRCH: Well, I'm concerned we're
8 getting into what counsel communicated.

9 BY MR. PASPARAKIS:

10 33 Q. When you stipulated that you had
11 sufficient funds to fund the litigation until
12 the insurance dispute was resolved, when was
13 that? In your mind's eye, when you made that
14 stipulation, what was that date?

15 A. A matter of months.

16 34 Q. And you'll agree with me that
17 you're a sophisticated business person?

18 MR. BIRCH: That's not relevant. How
19 is that relevant, counsel?

20 MR. PASPARAKIS: It goes to whether
21 relief should be granted to Mr. Crowley in
22 respect of the motion that has been brought.

23 BY MR. PASPARAKIS:

24 35 Q. You're a sophisticated business
25 person, correct, Mr. Crowley?

1 MR. BIRCH: I'll give you some
2 latitude on that. Go ahead.

3 THE WITNESS: Yes.

4 BY MR. PASPARAKIS:

5 36 Q. You were a managing director at
6 Goldman Sachs for 13 years; correct?

7 A. No.

8 37 Q. You were at Goldman Sachs for 13
9 years; correct?

10 A. Yes.

11 38 Q. And when you left Goldman Sachs
12 you occupied the position of managing director;
13 correct?

14 A. Yes.

15 39 Q. And you have a degree from Yale
16 Law School; correct?

17 A. Yes.

18 40 Q. And you were the CFO of Sears
19 Holdings Corporation; correct?

20 A. I'm sorry. Could you just repeat
21 the question?

22 41 Q. You were the CFO of Sears Holding
23 Corporation; correct?

24 A. For a period of time, yes.

25 42 Q. And at the time you were the CFO

1 of Sear Holding Corporation, it was a
2 multibillion-dollar business; correct?

3 A. Yes.

4 43 Q. And you were the cofounder and
5 CEO of Ashe Capital; correct?

6 A. Yes.

7 44 Q. And Ashe Capital is a wealth
8 management fund; correct?

9 A. No.

10 45 Q. It manages funds on behalf of
11 investors; correct?

12 A. That's not how I would describe
13 it.

14 46 Q. Investors provide Ashe Capital
15 with money through limited partnership units and
16 that money is used in investments for a return
17 for those investors; correct?

18 A. Yes.

19 47 Q. And I want to turn you to the
20 joint responding motion record at page 255.
21 That may help you but you can probably tell me
22 that Ashe Capital has assets under management in
23 excess of \$1.2 million; correct?

24 MR. BIRCH: I'm going to stop you.
25 What possible relevance does this have as to

1 what the assets of this company -- there's no
2 Relevance. I mean, certainly Mr. Harker's and
3 mr. Crowley's assets are irrelevant for the
4 purposes of this motion. So certainly the
5 assets of the business with which they are
6 involved would also be irrelevant.

7 BY MR. PASPARAKIS:

8 48 Q. Well, you have a beneficial
9 interest in a portion of the \$1.2 billion under
10 management; correct?

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

12 BY MR. PASPARAKIS:

13 49 Q. And it's fair to say that some
14 portion of the \$1.2 billion in assets under
15 management you personally have a beneficial
16 interest in; correct?

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

18 BY MR. PASPARAKIS:

19 50 Q. And it's fair to say that to your
20 knowledge, Mr. Harker also has a beneficial
21 interest in the funds being managed by Ashe
22 Capital, i.e., the \$1.2 billion?

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

24 BY MR. PASPARAKIS:

25 51 Q. And I want to show you a document

1 entitled Form ADV Part 2A, firm brochure. It's
2 being handed to you now. And I take it you're
3 aware that Ashe Capital is an SEC registrant;
4 correct?

5 A. Yes. By the way, it's two
6 pronunciation issues. Not a big deal, but it's
7 "Crow-ly," not "Crou-ly."

8 52 Q. I apologize, sir.

9 A. And no problem. And it's
10 "Ash-ay," not "Ash."

11 53 Q. I apologize as well. So Ashe
12 Capital is an SEC registrant; correct?

13 A. Yes.

14 54 Q. And as part of that, there are
15 filings that Ashe Capital makes; correct?

16 A. Yes.

17 55 Q. And the document that I've handed
18 to you is a text of the firm brochure
19 information that you provide to your clients;
20 correct?

21 R/F MR. BIRCH: Don't answer that. It's
22 irrelevant.

23 BY MR. PASPARAKIS:

24 56 Q. And I'd ask you to turn,
25 please -- well, first of all, I'd like you to

1 identify the date on this document. It is March
2 2017; correct?

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

4 BY MR. PASPARAKIS:

5 57 Q. And I take it you're familiar
6 with this document?

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

8 BY MR. PASPARAKIS:

9 58 Q. And I'd like you to turn to
10 page 11 of the document, please. And if I read
11 this properly, I am to understand that this
12 suggests that you and Mr. Harker will have a
13 financial interest in the assets under
14 management by Ashe Capital; am I correct?

15 R/F MR. BIRCH: Don't answer that.
16 Counsel, I've given you some latitude, but given
17 the stipulation, why would the assets of
18 Mr. Crowley or Mr. Harker be relevant?

19 MR. PASPARAKIS: Because we've just
20 heard that the stipulation is that this witness
21 has enough funds to cover a couple of months of
22 his own litigation costs or his pro rata share
23 of the anticipated litigation costs. I think
24 it's pretty apparent that he has enough money to
25 fund the entire litigation and probably a

1 substantial portion of the claim. So we're
2 going to continue to ask questions. You can
3 continue to refuse them at your peril and we
4 will move for answers.

5 MR. BIRCH: Well, but the point --

6 MR. PASPARAKIS: I'm not here to argue
7 with you, Mr. Birch. You can refuse the
8 questions. We can either resolve the refusals
9 or we can have them adjudicated.

10 MR. BIRCH: Well, the clear position I
11 will put on the record is the questions are
12 irrelevant.

13 MR. PASPARAKIS: Yeah, I figured that
14 out when you refused 87 of them in a row.

15 MR. BIRCH: And similarly, there's no
16 evidence that any of these or any of our clients
17 would pay for any of our other clients in terms
18 of defence costs. So it's stipulated to the pro
19 rata defence costs of two of our witnesses.

20 MR. PASPARAKIS: I'm really not here
21 to argue with you.

22 MR. BIRCH: And anything else about
23 their assets is completely irrelevant. Unless
24 you're trying to tell me there's some kind of
25 legal obligation for one defendant to fund the

1 other, and since you haven't said there's such a
2 legal obligation, it's irrelevant.

3 MR. PASPARAKIS: Well, one of the
4 questions is Mr. Crowley, ought he to get any
5 relief. Is there any reason for him to be
6 relieved of his obligation to defend. But I'm
7 not here to argue with you. I'm going to put my
8 questions on the table. You can continue to
9 refuse them as you've done. I want to show
10 you -- I'd like to mark that --

11 THE WITNESS: Can we just take a break
12 for a second?

13 MR. PASPARAKIS: Yeah, but you're not
14 allowed to talk to anybody about your evidence
15 during the break, but I'm happy to take a break
16 if you want. But you can't talk to anybody.

17 THE WITNESS: Okay.

18 --RECESS TAKEN AT 11:52 A.M.--

19 MR. BIRCH: Can we go back on the
20 record? Just one point of clarification that
21 Mr. Harker drew to my attention while during the
22 break.

23 MR. PASPARAKIS: But remember
24 Mr. Harker wasn't supposed to talk to you about
25 his evidence during cross-examination.

1 MR. BIRCH: This is Mr. Crowley.

2 MR. PASPARAKIS: Sorry. Mr. Crowley
3 wasn't supposed to talk to you about his
4 evidence during cross-examination.

5 MR. BIRCH: He didn't. He didn't.

6 MR. PASPARAKIS: Okay, okay.

7 MR. BIRCH: Mr. Crowley -- or
8 Mr. Harker and I spoke. Mr. Harker and I spoke.
9 Mr. Harker has not been examined.

10 MR. PASPARAKIS: So can I tell you
11 just one thing, Mr. Birch, that's sort of a
12 little bit annoying? We understood that you
13 would not be going to New York. We did not go
14 to New York because you weren't going. And now
15 you're having discussions with people during
16 breaks and clarifying evidence when we're not in
17 the room. It's a little bit difficult to get
18 our minds -- at least for me, but maybe that's
19 just me. Go ahead, Mr. Birch.

20 MR. BIRCH: Okay. Can we go back on
21 the record?

22 MR. PASPARAKIS: That was on the
23 record.

24 MR. BIRCH: Oh, sorry. Okay. So, to
25 be clear Norton Rose sent a law clerk over to

1 the office here with very little warning this
2 morning. Of course it's important that I'm
3 here. And I didn't tell you I wasn't going to
4 New York. I told you I hadn't decided and I
5 decided at the last minute to come. It's a good
6 thing I did because a member of Norton Rose is
7 here and it would be completely inappropriate
8 for my clients to be examined here with
9 opposing counsel -- a member of the opposing law
10 firm sitting in the room.

11 But, and just to clarify for the
12 record, I've told you Mr. Harker is in the room
13 as well as with Mr. Crowley. Mr. Harker and I
14 spoke on the break because on a point of
15 clarification.

16 MR. PASPARAKIS: Well, then why don't
17 you do some re-examination at the end?

18 MR. BIRCH: No, no, let me just --
19 you're referring to Ashe Capital. I just want
20 to be clear that you're confusing two entities.

21 MR. PASPARAKIS: That's fine. Let me
22 confuse them for a bit. You can either
23 re-examine or otherwise.

24 MR. BIRCH: Well, no, but you put a
25 document to Mr. Crowley that talks about Ashe

1 Capital Management LP and you asked him
2 questions about it in relation to Ashe Capital
3 and it's the company that he works for. So two
4 different entities. So for clarity of the
5 transcript, please, if you're asking any
6 questions, please make sure you focus on what
7 you're asking about.

8 MR. PASPARAKIS: We're about to get
9 into the details of the various funds that are
10 being managed, where those monies are, and where
11 this individual actually has assets under
12 management. So we'll get there.

13 MR. GOTTLIEB: Sorry. Before you go
14 on, did you say that Mr. Harker is in the room?

15 MR. BIRCH: Yes, he is.

16 MR. GOTTLIEB: Okay. You said you
17 told us that beforehand. I don't recall being
18 told that. Okay. And, counsel, you're okay
19 with that?

20 MR. PASPARAKIS: I'm fine with that.
21 Can we continue? I just do want to make a
22 comment that the law clerk that is here is
23 simply to make available documents that we need
24 for cross-examination. We have the documents
25 here as well. We provided them to counsel that

1 is sitting here from your office. So I'm not
2 going to get into an argument with you. I do
3 think you know what you did in respect of coming
4 to New York.

5 Anyways, let's keep going. I want to
6 show you a printout of another SEC filing from
7 Ashe Capital. And this is a form ADV.

8 MR. BIRCH: Sorry, this is from Ashe
9 Capital Management, LP?

10 BY MR. PASPARAKIS:

11 59 Q. This is from Ashe Capital
12 Management LP. And you are the CEO and
13 cofounder of Ashe Capital Management LP;
14 correct?

15 A. Yes.

16 60 Q. And are you familiar with this
17 form?

18 A. I saw it a while ago, I believe.

19 MR. PASPARAKIS: Okay. Let's mark it
20 as -- I believe we marked the first one, the
21 first document, Exhibit A, for identification
22 purposes. We'll mark this one as Exhibit 1 on
23 the examination.

24 EXHIBIT NO. A: Form ADV, dated March
25 31, 2019.

1 EXHIBIT NO. 1: Form ADV.

2 BY MR. PASPARAKIS:

3 61 Q. So looking at Exhibit 1, which is
4 the form ADV, if you flip forward you will see
5 there's information about the various funds that
6 are managed by Ashe Capital Management LP;
7 correct?

8 MR. BIRCH: So are you talking about
9 the management company or are you talking about
10 the fund?

11 MR. PASPARAKIS: I'm talking about the
12 underlying funds. There's information in this
13 document about the underlying funds. It's not
14 numbered, but if you turn to about page 32,
15 you're going to see a document or a header.
16 You'll see a header towards the end of the
17 document, and the name is Ashe Capital Partners
18 GP LP. It's about 10 pages from the end. It's
19 the middle of the page. It's one of the private
20 funds that is discussed.

21 MR. GOTTLIEB: What item number,
22 Orestes?

23 MR. PASPARAKIS: It doesn't really
24 say.

25 MR. BIRCH: I can't find the document.

1 Can you tell me what heading it's under or what
2 section?

3 BY MR. PASPARAKIS:

4 62 Q. There's a heading called "A
5 Private Fund" in the middle of the page. It's
6 on the right-hand side of the page. The
7 right-hand page. If you go towards the end,
8 you'll see 7B 2, Private Fund Reporting.
9 There's a header in the middle of the page. Do
10 you see that?

11 MR. BIRCH: 7E as in Edward?

12 MR. PASPARAKIS: B as in Bob.

13 MR. BIRCH: B as in Bob.

14 BY MR. PASPARAKIS:

15 63 Q. If you leaf backwards it's about
16 five pages back.

17 A. 7B 2, is that what you said?

18 64 Q. Yeah. In bold, section B2,
19 "Private Fund Reporting." If you just stop
20 where you are and just tell me what you see on
21 your page and maybe I'll be able to help you.

22 A. Custodian 25 period A.

23 MR. GOTTLIEB: It's down a couple of
24 pages.

25 MR. BIRCH: Okay, so I've got the page

1 that says 7B 2 Private Fund Reporting, and then
2 below that item?

3 MR. PASPARAKIS: Right. Now, if you
4 go back from there, so towards the front of the
5 document, about five pages or two double-sided
6 pages you'll see a heading, "A Private Fund,
7 Information About Private Fund." And the name
8 of the private fund is Ashe Capital Partners LP.

9 MR. BIRCH: I think we got that back.

10 THE WITNESS: I see that.

11 MR. BIRCH: It says Delaware and
12 United States right below that?

13 MR. PASPARAKIS: Yes.

14 MR. BIRCH: Okay.

15 BY MR. PASPARAKIS:

16 65 Q. If you turn the page, this is one
17 of the funds that is managed by Ashe Capital
18 Management; correct?

19 A. It's a partnership managed by
20 Ashe Capital Management.

21 66 Q. And that partnership has assets
22 that are valued at over a billion dollars;
23 correct?

24 A. Are you pointing to something in
25 the document that says that?

1 67 Q. Item 11.

2 A. Okay. I see that. So item 11
3 says, yeah, over a billion dollars current gross
4 asset value of the private fund.

5 68 Q. And you'll see at item 14 there's
6 a description of how much of that \$1 billion is
7 beneficially held by related persons to the
8 managers. Do you see that?

9 A. Yes.

10 69 Q. And it says that 7 percent of the
11 \$1 billion is beneficially held by parties
12 related to the asset manager; correct?

13 MR. BIRCH: Well, it says what it
14 says.

15 BY MR. PASPARAKIS:

16 70 Q. And I take it you have a
17 beneficial interest and some part of that
18 7 percent belongs to you; correct?

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

20 BY MR. PASPARAKIS:

21 71 Q. And I take it as the cofounder
22 and CEO, you have the largest beneficial
23 interest; correct?

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

25 BY MR. PASPARAKIS:

1 72 Q. And if we do some simple math, 7
2 percent of a billion dollars is somewhere in the
3 neighbourhood of \$70 million; correct?

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

5 BY MR. PASPARAKIS:

6 73 Q. And what portion of that
7 \$70 million do you personally have a beneficial
8 interest in?

9 R/F MR. BIRCH: Don't answer that

10 BY MR. PASPARAKIS:

11 74 Q. And Mr. Harker has, to your
12 knowledge, a beneficial interest in the fund;
13 correct?

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

15 BY MR. PASPARAKIS:

16 75 Q. And what portion of the fund, to
17 your knowledge, does Mr. Harker have?

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

19 BY MR. PASPARAKIS:

20 76 Q. So we've marked that as
21 Exhibit 1. You also personally own real estate
22 in Manhattan, sir; correct?

23 R/F MR. BIRCH: Don't answer that. It's
24 irrelevant.

25 BY MR. PASPARAKIS:

1 77 Q. I understand your residential
2 address is 146 Central Park West, apartment 10E;
3 correct?

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

5 BY MR. PASPARAKIS:

6 78 Q. I understand this apartment was
7 bought in 2005 by you for approximately US
8 \$12.5 million; correct?

9 R/F MR. BIRCH: Don't answer that.

10 BY MR. PASPARAKIS:

11 79 Q. I understand that you have no
12 mortgage on this property; am I correct?

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

14 MR. PASPARAKIS: And I want to show
15 you a printout from a website called RealtyHop,
16 which we'll mark for identification purposes as
17 Exhibit B.

18 EXHIBIT NO. B: RealtyHop Printout.

19 BY MR. PASPARAKIS:

20 80 Q. But at the second item there's a
21 record of William C. Crowley purchasing your
22 personal residence for \$12.5 US million. And,
23 sir, using Exhibit B for identification purposes
24 only, can you confirm to me that this
25 information is correct and that the house that

1 you live in was bought by you for \$12.5 million
2 US in 2005?

3 R/F MR. BIRCH: Refused.

4 BY MR. PASPARAKIS:

5 81 Q. And I understand, sir, you also
6 have a house in the Hamptons. You're familiar
7 where the Hamptons is; correct, sir?

8 MR. BIRCH: That's irrelevant.

9 BY MR. PASPARAKIS:

10 82 Q. And your house is in the
11 Hamptons; correct, sir?

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

13 BY MR. PASPARAKIS:

14 83 Q. And, in fact, your house is at
15 581 Parsonage Lane; correct?

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

17 BY MR. PASPARAKIS:

18 84 Q. And according to the public
19 record, which I'm going to mark as Exhibit C for
20 identification purposes only, it appears that
21 you bought that property in 2006 for
22 \$6.7 million US; correct?

23 EXHIBIT NO. C: BlockShopper Printout.

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

25 BY MR. PASPARAKIS:

1 85 Q. And there's no mortgage on that
2 property as well; correct?

3 R/F MR. BIRCH: Refused.

4 BY MR. PASPARAKIS:

5 86 Q. And you also have other property
6 assets, real property assets; correct?

7 R/F MR. BIRCH: Refused.

8 MR. PASPARAKIS: Can I have details
9 about the other real property assets that you
10 have?

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

12 BY MR. PASPARAKIS:

13 87 Q. And you have other investments as
14 well as the money that you have in Ashe Capital;
15 correct?

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

17 MR. PASPARAKIS: And I would like
18 details of those other investments, please.

19 R/F MR. BIRCH: We're not going to
20 undertake to provide that.

21 BY MR. PASPARAKIS:

22 88 Q. And I would like your best
23 estimate of your personal net worth, please.

24 R/F MR. BIRCH: We're not providing that.

25 BY MR. PASPARAKIS:

1 89 Q. Is your net worth more than 25 US
2 million dollars?

3 R/F MR. BIRCH: We're not answering that.

4 BY MR. PASPARAKIS:

5 90 Q. Is your net worth more than 50 US
6 million dollars?

7 R/F MR. BIRCH: We're not answering any
8 questions about net worth.

9 BY MR. PASPARAKIS:

10 91 Q. Sir, is your net worth more than
11 US \$75 million?

12 R/F MR. BIRCH: You have our position.

13 BY MR. PASPARAKIS:

14 92 Q. You've retained the law firm of
15 Cassels Brock and Blackwell to act for you in
16 this litigation; correct?

17 A. Yes.

18 93 Q. You've not personally spent any
19 legal fees in connection with this action so
20 far; correct?

21 A. No.

22 94 Q. I'm not correct or I am correct?
23 Sorry.

24 A. You're not correct.

25 95 Q. So are you currently paying for

1 Cassels Black and Blackwell?

2 MR. HORKINS: Brock and Blackwell.

3 BY MR. PASPARAKIS:

4 96 Q. Are you currently paying for the
5 Cassels firm to represent you today?

6 A. No.

7 97 Q. It's fair to say, to date, that
8 the bulk of the legal fees incurred by you have
9 been paid by insurance; correct?

10 A. Yes.

11 98 Q. So you've paid Cassels Brock in
12 connection with this litigation?

13 MR. BIRCH: He said no, not yet.

14 BY MR. PASPARAKIS:

15 99 Q. Have you agreed to make any
16 payments to Cassels Brock in connection with
17 this litigation?

18 R/F MR. BIRCH: That's refused. That's
19 irrelevant.

20 MR. PASPARAKIS: Whether he has an
21 agreement to pay you for your fees?

22 MR. BIRCH: Are you talking about the
23 fees of others?

24 BY MR. PASPARAKIS:

25 100 Q. No. About his agreement to pay

1 you for the litigation services that you
2 provide. Have you agreed to do that, sir?

3 U/A MR. BIRCH: We'll take that under
4 advisement.

5 MR. PASPARAKIS: Well, I'm going to
6 have a bunch of questions about that, Mr. Birch.
7 So let's figure that out now.

8 MR. BIRCH: Well, put your questions
9 on the record and I'll give you a position.

10 MR. PASPARAKIS: Well, that's not how
11 it works. It's cross-examination. So, like,
12 let's get an answer. If you're refusing it, you
13 do so at your peril, but I don't think you
14 should. So what are you going to do?

15 MR. BIRCH: Well, I've given you our
16 position. We'll take that question under
17 advisement.

18 MR. GOTTLIEB: There's no advisement
19 on cross-examination.

20 MR. PASPARAKIS: Yeah. As
21 Mr. Gottlieb rightly points out there's no under
22 advisements on a cross-examination. You can
23 either refuse it or you answer it.

24 MR. BIRCH: Well, let's not get into a
25 deep and dark debate about rule 34, but we can

1 have that another day if we need to.

2 MR. GOTTLIEB: I apologize. I'm not
3 trying to get into a debate. The point is if
4 you're going to refuse it, you've refused it and
5 you can't then, after we haven't had the
6 opportunity to ask the follow-up questions with
7 the witness here, somehow purport to give an
8 answer to the question.

9 MR. PASPARAKIS: I think that's fair.

10 MR. BIRCH: Put your questions on the
11 record, counsel, and we'll deal with them one by
12 one.

13 MR. SWAN: But that's not how it
14 works.

15 MR. GOTTLIEB: So what I think we're
16 trying to say, Mr. Birch, and we can have this
17 discussion with the Court at the appropriate
18 time is if you refuse the question, you refuse
19 it now at your peril. We're not going to go
20 down a laundry list of questions that are
21 follow-ups to an answer we're not getting. So
22 we're simply saying if you're refusing that
23 question about whether this gentleman has agreed
24 to pay Cassels Brock legal fees for his
25 representation, that's fine, you can refuse it,

1 but you've refused it. And you don't have to
2 agree with that, but we're simply saying that's
3 the position we're taking. And so I think that
4 Mr. Pasparakis has given you a couple of chances
5 to change your position on that, but if you
6 don't want to, that's fine, and we'll just move
7 on.

8 MR. BIRCH: To avoid a debate about
9 this, I'll let him answer that question as to
10 whether there's any agreement to pay our fees.
11 Is there any agreement to pay our fees?

12 THE WITNESS: Yes, I think so.

13 BY MR. PASPARAKIS:

14 101 Q. I understand that there is tower
15 coverage with several different insurers that
16 make up the tower; correct?

17 A. I'm not sure what the --

18 102 Q. That was a terrible question,
19 Mr. Crowley. So let me try it again. The
20 insurance that has been covering your fees to
21 date, your legal fees to date, is part of a
22 tower; is that fair?

23 A. Yes.

24 103 Q. And there are different insurers
25 that make up different parts of the tower;

1 correct?

2 A. That's my understanding.

3 104 Q. And I understand that the total
4 amount of the insurance under the tower is US
5 \$150 million. Is that consistent with your
6 understanding?

7 A. Yes.

8 105 Q. And I understand that the first
9 insurer in the tower was XL Specialty Insurance
10 Company. Are you aware of that?

11 A. I understand XL was the insurer.
12 I didn't actually know the specific name of the
13 insurance company. It's always been referred to
14 as XL.

15 106 Q. And you're aware of a limit under
16 the first tier of the tower of \$15 million;
17 correct?

18 A. Yes.

19 107 Q. And as I understand it, that has
20 been exhausted; correct?

21 A. From my understanding, yes.

22 108 Q. And how much has been spent on
23 the Canadian litigation to date?

24 R/F MR. BIRCH: We're not answering that.
25 We've provided the information that's relevant,

1 but we're not providing the rest.

2 MR. PASPARAKIS: Just one second,
3 please.

4 --OFF-THE-RECORD DISCUSSION--

5 BY MR. PASPARAKIS:

6 109 Q. I'm sorry, Mr. Crowley. We're
7 back at it. You became a director of Sears
8 Canada in or about March of 2005; correct?

9 MR. BIRCH: What's the relevance of
10 that, counsel?

11 MR. PASPARAKIS: Just give me a little
12 bit of latitude.

13 MR. SWAN: There's no debate on that.

14 BY MR. PASPARAKIS:

15 110 Q. I can ask him when he was a
16 director. He's being sued in his capacity as a
17 director. We're going to get to relevance real
18 fast. You can refuse and we'll just keep going?

19 MR. BIRCH: Okay. Well, that's not
20 relevant.

21 BY MR. PASPARAKIS:

22 111 Q. And at the time you were an
23 officer of ESL Investments Inc.; correct?

24 R/F MR. BIRCH: It's irrelevant.

25 BY MR. PASPARAKIS:

1 112 Q. And to be clear, you were the
2 president and chief operating officer of ESL
3 Investments Inc.; correct?

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

5 BY MR. PASPARAKIS:

6 113 Q. And at various times ESL was a
7 shareholder of Sears Canada; correct?

8 R/F MR. BIRCH: This is irrelevant.

9 BY MR. PASPARAKIS:

10 114 Q. And you were appointed to the
11 Sears Canada board as a representative of ESL;
12 correct?

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

14 BY MR. PASPARAKIS:

15 115 Q. And as an officer of ESL, did you
16 have an indemnity right from ESL, sir?

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

18 BY MR. PASPARAKIS:

19 116 Q. And in particular, did you have
20 indemnity from ESL for your sitting on Sears
21 Canada's board as ESL's Canada nominee?

22 MR. BIRCH: Do you know?

23 THE WITNESS: Repeat the question?

24 BY MR. PASPARAKIS:

25 117 Q. Well, maybe we should go through

1 all the questions that you refused and actually
2 get answer to them and then we'll be at that
3 question. So let's try it again. You were a
4 director of Sears Canada in or about March 2005;
5 correct?

6 MR. BIRCH: No, no, Mr. Crowley did
7 not hear your last question.

8 MR. PASPARAKIS: I understand that.
9 My last question is premised on the fact that he
10 was a director of Sears Canada and at the same
11 time an officer at ESL and that he was a nominee
12 to the Sears Canada board from ESL and all of
13 those questions were refused by you. So I want
14 to go back and establish them.

15 MR. BIRCH: No, just ask the question
16 that he didn't hear and he can answer it if he
17 knows.

18 BY MR. PASPARAKIS:

19 118 Q. Were you a member of the board of
20 Sears Canada, sir?

21 MR. BIRCH: We're not going back over
22 the old questions. There was one question that
23 Mr. Crowley did not correctly -- did not hear.
24 And I just asked you, counsel, if you could
25 repeat it, I would be grateful. If you could

1 repeat it.

2 BY MR. PASPARAKIS:

3 119 Q. You wanted him to answer that
4 question, okay? And that question depends upon
5 him being a member of the board of Sears Canada.
6 So I'm going to ask the question. Were you a
7 member of the board of Sears Canada? Yes or no?

8 MR. BIRCH: Position already given.

9 MR. PASPARAKIS: And what is that?
10 Are you refusing that?

11 MR. BIRCH: Well, just go back and
12 read the transcript the last time you asked it
13 and you'll have our position on that.

14 MR. PASPARAKIS: Well, actually I
15 asked if he became a member of the Board in
16 March 2005. Now I'm asking were you a director
17 of Sears Canada?

18 MR. BIRCH: We've given you our
19 position.

20 MR. GOTTLIEB: Mr. Birch, I'm going to
21 try to be helpful to you here, which is we want
22 to be able to read segments of this transcript
23 to the judge hearing the motion. And we'd like
24 it in a consistent fashion where we get answers
25 to questions and questions such as whether this

1 gentleman who is claiming an indemnity as a
2 director of Sears that you're refusing to
3 answer, will not look great on a transcript. So
4 we'd like to not have to cut and paste through
5 19 pages to get an answer to the question that
6 Mr. Pasparakis is trying to answer. So if you
7 really want to refuse the question whether this
8 gentleman was a director of Sears, you can do
9 so, obviously.

10 I'm telling you it's not going to look
11 great on the transcript. But if that's what you
12 want to do, then that's what you should do.

13 MR. PASPARAKIS: Well, I'm going to
14 give you another perspective. What you've done
15 so far isn't going to look great on the
16 transcript, so I don't think you can save it,
17 but go ahead, do whatever you're going to do.

18 MR. BIRCH: Just ask the question that
19 Mr. Crowley didn't hear. I mean, it's pretty
20 simple.

21 BY MR. PASPARAKIS:

22 120 Q. In your capacity as a director of
23 Sears Canada appointed by ESL did you have any
24 indemnity rights from ESL? That's a question
25 for Mr. Crowley. Who's in charge of the camera?

1 THE WITNESS: Yeah, again, could you
2 just repeat the question?

3 MR. PASPARAKIS: Who's in charge of
4 the camera over there? Can we just leave it at
5 that view so we can see Mr. Crowley, please?
6 Thank you.

7 MR. BIRCH: I'm not in control of the
8 camera. Nobody is.

9 MR. GOTTLIEB: I believe it's an
10 automatic control.

11 BY MR. PASPARAKIS:

12 121 Q. Oh, okay. Okay. So the
13 question, Mr. Crowley, is did you have an
14 indemnity from ESL for sitting on Sears Canada's
15 board as an ESL nominee?

16 A. I wasn't an ESL nominee as I
17 recall.

18 122 Q. That was one of the questions
19 that I tried to ask you but your counsel
20 refused.

21 So who nominated you to the board of
22 Sears Canada?

23 A. As I recall, it was the
24 nominating committee of Sears Canada.

25 123 Q. And at the time you were, I

1 think, the president of ESL; correct?

2 A. Yes.

3 124 Q. And one of the significant
4 investments that ESL had an interest in was
5 Sears Canada; correct?

6 A. No, I don't think so at that
7 time.

8 125 Q. It had an interest in Sears
9 Holdings Corporation. And Sears Holdings
10 Corporation was the majority shareholder of
11 Sears Canada; correct?

12 A. Yes.

13 126 Q. And so under the umbrella of the
14 assets that ESL had, Sears Canada was one of
15 those assets; correct?

16 A. ESL had an ownership interest in
17 Sears Holdings which had a subsidiary --

18 COURT REPORTER: I'm sorry, I didn't
19 hear the end of that answer, sir.

20 MR. PASPARAKIS: Which had a
21 subsidiary which was Sears Canada.

22 BY MR. PASPARAKIS:

23 127 Q. And did you have indemnification
24 rights from ESL as the president of ESL?

25 A. I believe so, yes.

1 128 Q. And did those indemnification
2 rights include indemnification should you be
3 found personally liable for sitting on boards at
4 the behest of ESL?

5 A. I don't think the indemnification
6 was stated in that way.

7 129 Q. Is it fair to say it was a broad
8 commercial indemnification that was consistent
9 with general director indemnifications and
10 officer indemnifications?

11 A. I don't recall. I recall there
12 was an indemnification, but I don't recall if it
13 was similar to general indemnifications or
14 otherwise.

15 130 Q. Have you looked at that
16 indemnification to determine whether you're
17 entitled to claim indemnification from ESL on
18 account of this litigation?

19 A. No.

20 131 Q. Can you please provide me with a
21 copy of that indemnification, sir?

22 U/A MR. BIRCH: We'll take that under
23 advisement.

24 MR. PASPARAKIS: Do you remember how
25 there's no under advisement in this? Do you

1 want to just say yes or no?

2 MR. BIRCH: No, I don't want to take
3 say yes or no. I'll take it under advisement.

4 BY MR. PASPARAKIS:

5 132 Q. Fine. And are you aware whether
6 ESL had insurance for employees that sat on
7 boards of companies in which it had a financial
8 interest?

9 A. Can you restate that? I didn't
10 understand.

11 133 Q. Are you aware of whether ESL had
12 insurance that covered employees and officers
13 who sat on boards and companies in which ESL had
14 a financial interest?

15 A. I don't think so at the time.

16 134 Q. Have you made any inquiries to
17 determine whether there may be insurance that
18 would be available to you as a result of the
19 fact that you were the president of ESL and
20 sitting on the board of Sears Canada?

21 A. I have not made inquiries.

22 135 Q. Would you please make those
23 inquiries?

24 U/A MR. BIRCH: We'll take that under
25 advisement.

1 BY MR. PASPARAKIS:

2 136 Q. Have you had any discussions with
3 anyone regarding the availability of an
4 indemnity or insurance from ESL, any ESL-related
5 entity or Eddie Lampert?

6 MR. BIRCH: You're talking about from
7 apart from discussions with counsel?

8 MR. PASPARAKIS: You know what? My
9 question is what it is.

10 R/F MR. BIRCH: Well, to the extent that
11 anything touches on communications with counsel,
12 it's not going to be answered.

13 BY MR. PASPARAKIS:

14 137 Q. So do you want to answer the
15 remainder of the question?

16 A. I recall some discussions early
17 in this process with respect to indemnification
18 from ESL.

19 138 Q. And with whom did you have those
20 discussions?

21 A. I think it was with Bill Harker.
22 And I don't know if it was with anyone else.

23 139 Q. And was the point of those
24 discussions a consideration of whether you and
25 Mr. Harker could make an indemnity claim against

1 ESL?

2 A. Trying to understand that issue.

3 140 Q. And did you look at any documents
4 to help you understand that issue?

5 A. I may have. I don't recall. I
6 may have looked at some documents at the time.

7 141 Q. And amongst those documents that
8 you may have looked at, might that have been the
9 indemnity from ESL?

10 A. I think it may have been.

11 142 Q. And did you come to a conclusion
12 about whether you were potentially able to call
13 upon that indemnity?

14 A. Yes.

15 143 Q. And what conclusion did you come
16 to?

17 A. That as with respect to this
18 litigation, I was not an employee at the time of
19 the facts of this litigation taking place and
20 that the indemnification would not apply.

21 144 Q. And did you make a claim under
22 that indemnification to see if your conclusion
23 was correct or you did not make a claim?

24 A. I did not make a claim.

25 145 Q. Did you talk to anybody at ESL

1 about whether you were entitled to
2 indemnification?

3 A. I don't recall who I spoke to.

4 146 Q. Did you speak to Mr. Lampert
5 about the possibility of indemnification?

6 A. No.

7 147 Q. So I'll renew my request for that
8 corporate indemnification policy, or agreement,
9 or terms, please. I would also like to know
10 when you were appointed to the board of ESL,
11 whether you were appointed as a representative
12 of ESL or whether you sought the consent of ESL
13 to sit on the board of Sears Canada.

14 MR. BIRCH: I'm sorry, I think he
15 answered the question. He said he wasn't a
16 representative.

17 BY MR. PASPARAKIS:

18 148 Q. Did you seek the consent of ESL
19 to sit on the board of Sears Canada?

20 A. No.

21 149 Q. And is that because you were the
22 president of ESL and could make that
23 determination yourself?

24 A. No.

25 150 Q. Was ESL aware that you were

1 sitting on its board? On the board of Sears
2 Canada?

3 A. Yes.

4 151 Q. And I take it ESL was content for
5 you to sit on the board of a company in which it
6 had a financial interest; correct?

7 A. Yes.

8 152 Q. And did you have any financial
9 interest in ESL, beneficial financial interest
10 in ESL?

11 R/F MR. BIRCH: Don't answer that. And
12 just, counsel, before you ask your next
13 question, I've given you a lot of latitude here,
14 but this entire line of questioning about the
15 indemnity is irrelevant because we've already
16 provided the stipulation as to defence costs.
17 So none of this has any relevance to the motion
18 before the Court because we're not taking the
19 position that Mr. Harker or Mr. Crowley are
20 unable to fulfill, to pay their proportionate
21 share of the interim defence costs.

22 MR. PASPARAKIS: Okay, so let's talk
23 about the stipulation.

24 MR. GOTTLIEB: Orestes.

25 MR. PASPARAKIS: Yeah?

1 MR. GOTTLIEB: Can you hang on?

2 --OFF-THE-RECORD DISCUSSION--

3 BY MR. PASPARAKIS:

4 153 Q. And, again, Mr. Birch, I'm not
5 going argue with you on the record. Sir, have
6 you got the stipulation in front of you?

7 MR. BIRCH: He does.

8 BY MR. PASPARAKIS:

9 154 Q. You have not told us what your
10 personal wealth is; correct?

11 A. Correct.

12 155 Q. Instead you've stipulated that
13 you could fund a pro rata share of an undefined
14 amount; correct?

15 A. Or the currently anticipated
16 legal fees that will be incurred until the
17 dispute with the insurance company -- companies
18 is resolved.

19 156 Q. And did you have an amount of
20 money that you understood those anticipated
21 legal fees would be?

22 A. I had a sense of a range which
23 those legal fees might be.

24 157 Q. Was there an itemized budget that
25 you received?

1 A. Sorry?

2 158 Q. Was there an itemized budget that
3 you received?

4 A. No.

5 159 Q. And isn't it fair to say, sir,
6 that not only could you fund legal fees for a
7 few months, but you could fund the entire legal
8 fees for the entire litigation; correct?

9 MR. BIRCH: Are you talking about of
10 all defendants?

11 MR. PASPARAKIS: Of all defendants.

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

13 BY MR. PASPARAKIS:

14 160 Q. And for yourself; correct?

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

16 BY MR. PASPARAKIS:

17 161 Q. We've talked about the fact that
18 you're being sued in various claims and you're
19 aware that the total amount of the claims is
20 approximately \$500 million Canadian; correct?

21 A. Yes.

22 162 Q. And I think we've established
23 that your insurance coverage is only US
24 150 million; correct?

25 A. Yes.

1 163 Q. And, sir, you were aware that
2 your personal assets are at risk if the Court
3 were to find against you for the full amount of
4 500 million; correct?

5 MR. BIRCH: You asked that question
6 before and he gave you an answer right at the
7 beginning of the examination.

8 MR. PASPARAKIS: I wrote all my
9 questions down and I never asked that question.

10 MR. BIRCH: That's fine. Read the
11 transcript and you'll see it.

12 MR. SWAN: You asked him if he would
13 be personally liable was your question at the
14 beginning.

15 MR. PASPARAKIS: Yeah, but now I'm
16 asking whether his assets would be at risk,
17 which is a different question.

18 MR. SWAN: I'm not sure they heard
19 that exchange.

20 MR. PASPARAKIS: Did you hear that
21 exchange, Mr. Birch?

22 MR. BIRCH: I did. Let me just
23 understand the question. Is it just a
24 mathematical question saying that the claims are
25 509 million in terms of 150 million, therefore

1 the Delta means that his assets are at risk?

2 MR. PASPARAKIS: That is the magic of
3 the question.

4 MR. BIRCH: Okay. You can answer
5 that.

6 THE WITNESS: That is the math.

7 BY MR. PASPARAKIS:

8 164 Q. I take it you that intend to
9 defend this action regardless of whether there
10 is insurance coverage that covers your defence
11 costs; correct?

12 A. Yes.

13 MR. PASPARAKIS: Those are my
14 questions.

15 ---Whereupon the examination concluded at 12:32
16 p.m.

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REPORTER'S CERTIFICATE

I, Amy Armstrong, RVR-CVR, Realtime
Verbatim 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
accurate transcript of my shorthand notes so
taken. Dated this 12th day of September, 2019.



PER: AMY ARMSTRONG

REALTIME VERBATIM REPORTER

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TAB A

Form ADV Part 2A: Firm Brochure

Àshe Capital Management, LP

March 31, 2017

530 Sylvan Ave.
Suite 101
Englewood Cliffs, NJ 07632
201-464-0962



This brochure provides information about the qualifications and business practices of Àshe Capital Management, LP (“Àshe”). If you have any questions about the contents of this brochure, please contact William Harker at 201-464-0962 or email wrh@ashecap.com. The information in this brochure has not been approved or verified by the United States Securities and Exchange Commission or by any state securities authority.

Additional information about Àshe is also available on the SEC’s website at: www.adviserinfo.sec.gov.

Item 2: Material Changes

Ashe does not believe that there have been any material changes to this brochure since either of its “other than annual” updating amendments in September 2014 and February 2015, which respectively updated Ashe’s principal office location and form of organization.

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Item 4: Advisory Business

Ashe is a limited partnership organized under the laws of the State of Delaware to provide investment management services to a related pooled investment vehicle. Ashe is primarily owned and controlled by William C. Crowley, Stephen M. Blass and William R. Harker (together, the “Founders”), and is the successor entity to Ashe Capital Management, LLC, which the Founders caused to be formed in 2013.

Ashe provides discretionary investment advice to Ashe Capital Partners, LP, a Delaware limited partnership (the “Partnership”). An affiliate, Ashe Capital Partners (GP) LLC, (the “General Partner”) a Delaware limited liability company serves as the general partner to the Partnership. The General Partner is owned and controlled by the Founders.

The Partnership will seek to generate high, risk-adjusted returns by making investments broadly in securities and other instruments including without limitation, publicly-traded equities and other instruments, equity equivalent positions, debt and other financial instruments, rights, options and interests across a range of industries and markets. In providing services to the Partnership, among other things, Ashe (i) manages the Partnership’s assets in accordance with the terms of the

applicable governing documents; (ii) formulates investment objectives; (iii) directs and manages the investment and reinvestment of the Partnership's assets; and (iv) provides periodic reports to investors. Ashe provides investment advice directly to the Partnership and not individually to the Partnership's limited partners or investors. Investment restrictions for the Partnership, if any, are generally established in the applicable Partnership's governing document.

Ashe also provides discretionary investment advice to Ashe Capital Partners Co-Invest I, LP, a Delaware limited partnership ("Co-Invest Fund I"). An affiliate, Ashe Capital Partners Co-Invest (GP), LLC ("Co-Invest GP I") a Delaware limited liability company, serves as the general partner to Co-Invest Fund I. Co-Invest GP I is owned and controlled by the Founders.

Ashe also provides discretionary investment advice to Ashe Capital Partners Co-Invest II, LP, a Delaware limited partnership ("Co-Invest Fund II"). An affiliate, Ashe Capital Partners Co-Invest II (GP), LLC ("Co-Invest GP II") a Delaware limited liability company, serves as the general partner to Co-Invest Fund II. Co-Invest GP II is owned and controlled by the Founders.

Ashe also provides discretionary investment advice to Ashe Capital Partners Co-Invest III, LP, a Delaware limited partnership ("Co-Invest Fund III," and together with Co-Invest Fund I and Co-Invest Fund II, the "Co-Invest Funds"). An affiliate, Ashe Capital Partners Co-Invest III (GP), LLC ("Co-Invest GP III" and together with Co-Invest GP I and Co-Invest GP II, the "Co-Invest GPs"), a Delaware limited liability company, serves as the general partner to Co-Invest Fund III. Co-Invest GP III is owned and controlled by the Founders.

The Co-Invest Funds and similar funds that Ashe may offer generally provide investors the ability to increase exposure to certain positions held by the Partnership and provides Ashe with the opportunity to outsize investments that it deems to be more opportunistic without distorting the overall risk/return profile of the Partnership via excess concentration in one or more positions held in the Partnership.

Ashe may, in the future, organize additional investment vehicles that follow an investment strategy similar to or different from the investment program of the Partnership and the Co-Invest Funds.

From time to time, the Partnership and Co-Invest Funds may, to the extent permitted by the Rules of the U.S. Financial Industry Regulatory Authority ("FINRA") as may be amended from time to time (the "Rules"), purchase equity securities that are part of an initial public offering (sometimes referred to as "IPOs" or "new issues"). Under the Rules, brokers may not sell such securities to a private investment partnership, if the partnership has investors who are "Restricted Persons," which category includes persons employed by or affiliated with a broker and portfolio managers of hedge funds and other registered and unregistered investment advisory firms, unless the partnership has a mechanism in place that excludes such Restricted Persons from receiving allocations of profits from new issues. The profits and losses with respect to new issues will generally be allocated to investors in the Partnership and Co-Invest Funds that are Unrestricted Persons.

As of December 31, 2016, Ashe had approximately \$1.04 billion of assets under management.

Item 5: Fees and Compensation

Ashe's compensation for the investment advisory services it provides to the Partnership is comprised of an asset-based management fee and an incentive allocation that is based on the performance achieved for the account of each investor. The fees and expenses applicable to the Partnership are set forth in detail in the Partnership's confidential private placement memorandum. A brief summary of fees and expenses is provided below.

Management Fee

Each Investor will effectively be charged an annual asset based charge and payment (the "Management Fee") equal to no more than 1.5% per annum of the net asset value of an investor's investment in the Partnership. The Management Fee will be paid quarterly in advance and will be deducted from the relevant accounts. Capital contributions made as of times other than the first day of a calendar quarter will be assessed a pro rata Management Fee at the time such contribution is made. Once paid, the Management Fee will be non-refundable.

Incentive Allocation

Investors will also bear an annual performance-based amount (the "Incentive Allocation") which is calculated and charged separately with respect to each investor's capital account, equal to no more than 18% of the performance (for that year) attributable to each investor's capital account, subject to a standard high-water mark. The Incentive Allocation will also be charged on the day on which an investor makes a partial or total withdrawal from the Partnership, or an investor receives a distribution, and on the day on which the Partnership finally liquidates.

The Management Fee and Incentive Allocation may be reduced, waived or calculated differently with respect to any person, including through separate written agreements with investors.

Other Expenses

The Partnership will bear all of its administrative and operating expenses (including, without limitation, the Management Fee, legal, bookkeeping, accounting, auditing, compliance, operations systems, investment banking, research (including Bloomberg fees and expenses), technology and professional expenses, professional liability insurance, bank service fees, expenses incurred in preparing, printing and delivering all reports, Partnership documents and tax information for investors and regulatory authorities, and all filing costs and fees) and all of its investment fees and expenses, including, without limitation, fees and expenses of any external consultants and administrators, SEC, Hart-Scott-Rodino Act and other reporting and filing expenses and costs incurred by the General Partner generally or in connection with specific shareholder initiatives (such as the costs of calling shareholder meetings, proxy solicitation fees and costs, and professional consulting fees), Form PF expenses, custodial costs, prime brokerage costs, valuation costs (including expenses incurred in connection with services performed by the valuation agent), due diligence (including related travel expenses), purchase or sale of investments whether or not the investment is consummated, any taxes, fees or other governmental charges levied against the Partnership, any information technology expenses incurred in connection with the Partnership's activities, brokerage costs and interest on any indebtedness, expenses related to the advisory

committee, costs of certain communications with prospective investors and limited partners, costs of holding meetings of investors as will be determined by Àshe or the General Partner and costs of any other service providers. The Partnership will also bear any extraordinary expenses it may incur, including any litigation expenses. The Partnership will bear a pro rata share of the (i) organizational and other expenses relating to the formation of the Partnership and any investment vehicle formed on behalf of the Partnership and (ii) expenses related to the offering of interests. The General Partner and Àshe are authorized to incur and pay in the name and on the behalf of the Partnership all expenses that they deem necessary or advisable. Organizational expenses may, for net asset value purposes, be amortized over a period of up to sixty (60) months from the date the Partnership commences operations.

For more information regarding Àshe's brokerage practices and brokerage expenses discussed herein, please see Item 12.

The Partnership may enter into separate agreements, commonly referred to as "side letters", or other similar agreements with a particular investor in connection with its admission to the Partnership without the approval of any other investors, which would have the effect of establishing rights under or supplementing the terms of the Partnership's subscription agreement with respect to such investor in a manner more favorable to such investor than those applicable to other investors. Such rights or terms in any such side letter or other similar agreement may include, without limitation: (i) the General Partner's agreement to exercise its discretionary authority under the partnership agreement and herein in certain respects for the benefit of such investor, including, to alter the Incentive Allocation, Management Fee or applicable lock-up period, (ii) the General Partner's agreement to extend certain information rights or additional reporting to such investor, (iii) restrictions on, or special rights of such investor with respect to activities of the General Partner or (iv) withdrawal rights due to regulatory, legal or policy matters.

Àshe's compensation for the investment advisory services it provides to the Co-Invest Funds is an incentive allocation that is earned after the achievement of a preferred rate-of-return. Any expenses shared between the Partnership and Co-Invest Funds will generally be allocated pro-rata based on overall entity assets, or in case of investment-related expenses, will be in proportion to the amount of the investment held by the Partnership and Co-Invest Funds.

Item 6: Performance Based Fees and Side-by-Side Management

Àshe or its affiliates receive annual performance-based allocations from the Partnership, which are based on a percentage of the net capital appreciation of their assets. As noted above, the Co-Invest would pay an incentive allocation following the achievement of a preferred rate-of-return. These allocations may create an incentive for Àshe to make more speculative investments than would otherwise be made, or make decisions regarding the timing and manner of realization of investments differently than if such allocations were not received.

Item 7: Types of Clients

Àshe provides investment advisory services to the Partnership and Co-Invest Funds subject to the direction and control of the General Partner and Co-Invest GPs and not individually to the investors. Investors in the Partnership may include, but are not limited to, high net worth individuals, family offices, endowments, foundations, trusts, charitable organizations, pension plans, and corporate or business entities.

Details concerning applicable investor suitability criteria are set forth in the Partnership's offering documents and subscription materials. The same investor suitability criteria exist for the Co-Invest Funds. The minimum commitment for an investor is outlined in the Partnership's governing documents, but is generally \$5 million. However, Àshe and the General Partner maintain discretion to accept less than the minimum investment threshold. Each investor is required to meet certain suitability qualifications, such as being an "accredited investor" within the meaning set forth in Regulation D under the Securities Act, as amended, and a "qualified purchaser" as defined in Section 2(a)(51) of the Investment Company Act, as amended.

Item 8: Methods of Analysis, Investment Strategies and Risk of Loss

While the disclosures below apply directly to the Partnership, the information generally applies to the Co-Invest Funds as well. Notwithstanding, an investment in the Co-Invest Funds may present different risks than outlined below; accordingly, investors in the Co-Invest Funds are encouraged to contact William Harker at 201-464-0962 or email wrh@ashecap.com with any additional questions.

Methods of Analysis and Investment Strategies

Àshe will seek to earn high risk-adjusted returns by investing in a select number of extraordinary companies based on exhaustive proprietary research and an extensive understanding of the underlying businesses, industries and management teams. Àshe generally looks for either (a) operating companies that already have high or improving returns on invested capital or (b) businesses that are rich in undervalued assets and have an owner and/or management team committed to realizing that value.

The foundation for extraordinary long-term investment returns is the preservation of capital. As such, Àshe will focus on paying conservative prices for businesses that have owner-oriented management teams committed to growing shareholder value through a thoughtful reinvestment strategy. In addition to finding safety in conservative pricing and management alignment, Àshe will also place significant emphasis on favorable long-term business characteristics, such as dominant market shares, demonstrable barriers to entry, growing end markets, strong cash flow generation, and the ability to reinvest at high returns on invested capital. Àshe believes that characteristics such as these will help protect and grow the real value of the capital invested in the underlying businesses.

Àshe will primarily invest in U.S. and Canadian publicly-traded equity securities. Àshe may also invest in equity securities in other markets, debt, preferred equity, warrants, convertibles and other securities that Àshe believe offer high, risk-adjusted returns. Àshe does not rely on leverage to augment returns and does not expect short selling, swaps, derivatives or hedging to be a

significant component of its portfolio. In certain instances, Ashe may acquire securities of companies that are experiencing significant financial or operational difficulties and of companies that are, or appear likely to become, bankrupt or involved in a debt restructuring or other major capital transaction.

Ashe conducts extensive fieldwork for its investments, including interviews with current and former employees, customers, suppliers and competitors. Where appropriate for the industry, this work will include site visits in addition to extensive phone calls and document retrieval. The investment team believes in the value of reviewing key contracts and source documents available only by poring through often obscure public filings including leases, permit applications and mortgage and insurance filings to understand the unit economics and drivers of a particular business.

Because all companies compete within an industrial ecosystem, Ashe works to understand how and why long-term industry fundamentals may be evolving. Given the paramount importance of management in the process of reinvestment, Ashe conducts thorough diligence on key members of a company's management team and its board of directors prior to making a significant commitment of capital.

Ashe invests either where a company's management and board of directors has demonstrated alignment with its owners, or where Ashe believe they can help create the appropriate alignment, including by joining the board of directors. When evaluating alignment, Ashe's primary focus is capital allocation, which Ashe believe is the most important lever for creating value over time.

Risk of Loss

Investing involves substantial risks, including the risk of total loss of capital, and may not be suitable for all investors. No guarantee or representation is made that the Partnership's investment program, including, without limitation, the Partnership's investment objective, diversification strategies or risk monitoring goals, will be successful. Investment results may vary substantially over time. No assurance can be made that profits will be achieved or that substantial or complete losses will not be incurred. Past investment results of investments otherwise made by the investment professionals of Ashe are not necessarily indicative of the Partnership's or Ashe's future performance.

The following are certain of the principal risks associated with the investment activities of the Partnership:

Investments in Undervalued Securities. One of the primary objectives of Ashe's investment strategy is to invest in undervalued securities. The identification of investment opportunities in undervalued securities is a difficult task, and there can be no assurance that such investment opportunities will be successfully recognized or acquired. While investments in undervalued securities offer the opportunity for above-average capital appreciation, these investments involve a high degree of financial risk and can result in substantial losses. Returns generated from the investment strategy may not adequately compensate investors for the business and financial risks assumed. A prospective investor should be aware that it may lose all or part of its investment in

the Partnership because the Partnership may be forced to sell, at a substantial loss, undervalued securities that have not achieved projected value. In addition, the Partnership may be required to hold such securities for a substantial period of time before realizing their anticipated value. During this period, a portion of the Partnership's funds would be committed to the securities purchased, thus possibly preventing the Partnership from investing in other opportunities.

Investments in Publicly-Traded Securities. Ashe will primarily invest in securities that are publicly traded and are therefore subject to the risks inherent in investing in public securities. When investing in public securities, Ashe may be unable to obtain financial covenants or other contractual rights, including management rights that it might otherwise be able to obtain in making privately negotiated investments. Moreover, Ashe may not have the same access to information in connection with investments in public securities, either when investigating a potential investment or after making an investment, as compared to privately negotiated investments.

Debt Investments. Ashe may make investments in debt instruments or convertible debt securities. Such debt may be unsecured and structurally or contractually subordinated to substantial amounts of senior indebtedness, all or a significant portion of which may be secured. Moreover, such debt investments may not be protected by financial covenants or limitations upon additional indebtedness and there is no minimum credit rating for such debt investments. Other factors may materially and adversely affect the market price and yield of such debt investments, including, investor demand, changes in the financial condition of the applicable issuer, government fiscal policy and domestic or worldwide economic conditions.

Use of Leverage. Certain of the companies in which Ashe may invest may have significant leverage. The leveraged capital structures of such companies increases exposure to adverse economic factors such as rising interest rates, downturns in the economy and/or deterioration in the condition of the company or its industry. Such increased exposure to adverse economic factors may decrease the overall return realized by the Partnership compared to the overall return that may have been realized if leveraged capital structures had not been used.

While Ashe does not intend to use leverage to augment returns, it is authorized to borrow money from third parties or guarantee the obligations of others for any purpose consistent with the Partnership's objectives in the discretion of the General Partner, subject to a cap of 20% of the aggregate Net Asset Value of the Partnership as of the time such borrowings are made. The interest expense and other costs incurred in connection with such borrowing may not be recovered by appreciation in the investments purchased or carried. If investment results fail to cover the cost of borrowings, the Partnership's Net Asset Value could decrease faster than if there had been no borrowings.

Distressed Securities. Certain of the Partnership's assets may be invested in distressed securities. Investments in distressed securities involve acquiring securities of companies that are experiencing significant financial or operating difficulties and of companies that are, or appear likely to become, bankrupt or involved in a debt restructuring or other major capital transaction. Investment in distressed securities involves a high degree of credit and market risk. There can be no assurance that such financially or operationally troubled issuers can be successfully

restructured or transformed into profitable operating companies. Distressed securities are less liquid and more volatile than securities of companies not experiencing financial or operating difficulties. As a result, the Partnership may experience delays and incur losses and other costs in connection with the sale of such securities.

Ashe may invest Partnership assets in the securities of companies involved in bankruptcy proceedings, reorganizations and financial restructurings and may have a more active participation in the affairs of the issuer than is typically assumed by an investor. This may subject the Partnership to litigation risks or prevent the Partnership from disposing of securities. In addition, under certain circumstances, payments to the Partnership and distributions by the Partnership to the investors may be reclaimed if any such payment or distribution is later determined to have been a fraudulent conveyance or a preferential payment under applicable law.

Hedging and Derivatives. Ashe may employ, from time to time, a wide variety of hedging techniques to reduce the risk of speculative investments in securities and hedge against the effects of market conditions. Such techniques include taking long and short positions in related securities and the use of futures, swaps, forwards, options and other derivative instruments. There remains a substantial risk that such hedging techniques may not always be possible or effective in limiting potential risks or losses. Furthermore, in certain transactions, Ashe may not be “hedging” against market fluctuations. If Ashe’s judgment about the general direction of the securities markets or other economic conditions is incorrect, the Partnership could incur losses on such transactions. It is not possible to hedge fully or perfectly against any risk, and a hedge transaction might nevertheless produce a net loss. Ashe may determine in its sole discretion not to hedge against certain risks, and certain risks may exist that Ashe may not be able to effectively hedge against or accurately anticipate.

Short Sales. Ashe may effect short sales, although it is not expected to be a significant activity. Short selling is the practice of selling securities that are not owned by the seller, generally when the seller anticipates a decline in the price of the securities or for hedging purposes. This practice runs the risk of losing an amount greater than the amount invested. Short selling may be subject to unlimited risk of loss because there may be no limit on how much the price of a security may appreciate before the short position is closed out. An increase in the value of any security that is the subject of short selling by Ashe may have a material adverse effect on the assets of the Partnership, and therefore the return on investment of the Partnership. In addition, the supply of securities which can be borrowed fluctuates from time to time. The Partnership may be subject to losses if a security lender demands return of the lent securities and an alternative lending source cannot be found or if the Partnership is otherwise unable to borrow securities which are necessary to maintain its short positions.

Put and Call Options. Ashe may purchase exchange-listed and over-the counter put and call options on specific securities, or may write and sell covered or uncovered call and put option contracts. Options on specific securities may be used by Ashe to seek enhanced profits with respect to a particular security or may be used for various defensive or hedging purposes. Use of put and call options may result in losses to the Partnership, force the sale or purchase of portfolio securities at inopportune times or for prices higher than (in the case of put options) or lower than (in the case of call options) current market values, limit the amount of appreciation the Partnership

can realize on its investments or cause the Partnership to hold a security it might otherwise sell. An adverse price movement may result in unanticipated losses with respect to covered options sold by the Partnership. The use of uncovered option writing techniques may entail greater risks of potential loss to the Partnership than other forms of options transactions.

The descriptions of risk factors contained above are a brief overview of different market risks related to Ashe's investment strategy; however, it is not intended to serve as an exhaustive list or a comprehensive description of all risks and conflicts that may arise in connection with the management and operations of the Partnership. In addition, key risk areas inherent to investing also include risks related to the operations and investment activities of the Partnership, risks related to specific investments, and risks related to non-U.S. securities and non-U.S. jurisdictions.

Investors are recommended to review the Partnership's confidential private placement memorandum and other governing documents for a more complete discussion of the risk factors associated with the Partnership.

Item 9: Disciplinary Information

Neither Ashe nor any of its officers, directors, or employees or other management persons, has been involved in any legal or disciplinary events that would require disclosure in response to this Item.

Item 10: Other Financial Industry Activities and Affiliations

As noted, Ashe Capital Partners (GP) LLC, an affiliate, is the General Partner of the Partnership, Co-Invest GP I is the General Partner of Co-Invest Fund I, Co-Invest GP II is the General Partner of Co-Invest Fund II and Co-Invest GP III is the General Partner of Co-Invest Fund III. While none of the general partners are separately registered as investment advisers with the SEC, all of their investment advisory activities are subject to the Investment Advisers Act of 1940, as amended (the "Advisers Act") and the rules thereunder. In addition, employees and persons acting on behalf of the general partners, if any, are subject to the supervision and control of Ashe.

Other than the relationship described above, neither Ashe nor its employees have any relationships or arrangements with other financial services companies that pose material conflicts of interest.

Item 11: Code of Ethics, Participation or Interest in Client Transactions and Personal Trading

Code of Ethics

Ashe has adopted a written Code of Ethics (the "Code") that is applicable to all employees. Among other things, the Code requires Ashe and its employees to act in clients' best interests, abide by all applicable regulations, avoid even the appearance of insider trading, and pre-clear and report on many types of personal securities transactions. Ashe's restrictions on personal securities

trading apply to employees, as well as employees' family members living in the same household. A copy of Ashe's Code is available upon request by contacting William Harker at 201-464-0962 or email wrh@ashecap.com.

Participation or Interest in Client Transactions

Ashe, its employees or a related entity (collectively "Related Persons"), will have an investment in the Partnership and Co-Invest Funds. Consequently, Related Persons have an interest in an investment that may also be recommended to the Partnership and/or Co-Invest Funds.

Personal Trading

Employees must pre-clear certain personal securities transactions, including IPO's and securities obtained through a private placement, before completing the transactions. Ashe may deny any proposed transaction, particularly if the transaction poses a conflict of interest or if Ashe is evaluating transacting the same security at or about the same time in the Partnership and/or Co-Invest Funds. Employees are also required to provide quarterly reports regarding transactions and holdings in "Reportable Securities" as defined in the Advisers Act. Employees must disclose all personal trading accounts initially upon commencement of employment and annually thereafter.

Item 12: Brokerage Practices

Selection of Brokers and Dealers

Ashe will be responsible for the placement of the portfolio transactions of the Partnership and Co-Invest Funds and the negotiation of any commissions or spreads paid on such transactions. Portfolio transactions normally will be effected through brokers on securities exchanges or directly with the issuer, or through an underwriter, or market maker or other dealer for the investments. Portfolio transactions will be executed by brokers selected solely by Ashe in its absolute discretion.

In selecting brokers to effect portfolio transactions for the Partnership and Co-Invest Funds, Ashe considers such factors as the ability to effect prompt and reliable executions at favorable prices (including the applicable dealer spread or commission, if any); the operational efficiency with which transactions are effected, taking into account the size of order and difficulty of execution; the financial strength, integrity and stability of the broker; the firm's risk in positioning a block of securities; the quality, comprehensiveness and frequency of related services considered to be of value; and the competitiveness of commission rates in comparison with other brokers satisfying our selection criteria. Accordingly, if Ashe determines in good faith that the amount of commissions charged by a broker is reasonable in relation to the value of the brokerage and products or services provided by such broker, the Partnership and Co-Invest Funds may pay commissions to such broker in an amount greater than the amount another broker might charge for effecting the same transaction.

Receipt of Research and Other Benefits

Àshe may effect securities transactions through a number of broker-dealers. By virtue of it conducting business with broker-dealers, Àshe may receive certain economic benefits from such broker-dealers which would not be received if the Company did not transact through the broker-dealers. These benefits may include, but are not limited to: access to an electronic communication network for order entry and account information; receipt of proprietary research; and participation in broker-dealer sponsored research and capital introduction conferences. Àshe understands that the benefits received through its relationship with the broker-dealers (including prime brokers) generally do not depend upon the amount of transactions directed to, or amount of assets custodied by, the broker-dealers.

Trade Errors

Àshe seeks to detect trade errors prior to settlement and to correct and/or mitigate them in an expeditious manner.

To the extent an error is caused by a third party, such as a broker, Àshe will seek to recover any losses associated with the error from that third party. However, there is no guarantee that Àshe will be able to do so. In the event that the Partnership or the Co-Invest Funds incur a trade error solely as a result of Àshe's bad faith, gross negligence, or willful misconduct, such error will be corrected by Àshe as soon as practicable and in a manner such that the Partnership and Co-Invest Funds incur no loss. Trade errors that result from other than by breach of the standard of care stated in the previous sentence will be borne by the Partnership and Co-Invest Funds. To the extent that any gains arise from trading errors then such gains will be retained by the Partnership and Co-Invest Funds that benefited from such errors.

Investor Introductions

Prime brokers or their affiliates may provide capital introduction or other placement services to the Partnership, the Co-Invest Funds, and Àshe (with or without separate charges for such other services). To the extent the General Partner and/or the Co-Invest GPs use a placement agent or similar agent with respect to the placement of interests of any investor, which prospective investors solicited by such placement agent or similar agent may be asked to acknowledge, the related placement fees and/or sales charges may be paid by the Partnership and/or Co-Invest Funds, in which case the Management Fee charged to the investor (in the case of the Partnership) in question will be reduced on a dollar-for-dollar basis by the amount of any such placement fees or sales charges advanced by the Partnership (but in no event will the Management Fee be reduced below zero).

Item 13: Review of Accounts

The holdings of the Partnership and the Co-Invest Funds are reviewed on a continuous basis. Àshe's investment personnel hold investment meetings, as necessary, to discuss investment ideas, investment strategies, economic developments, current events, and other issues related to current portfolio holdings and potential investment opportunities.

Investors are provided with the following reports in accordance with the terms of the Partnership's offering memorandum and partnership agreement: (i) quarterly capital account statements, (ii) annual audited financial reports; and (iii) annual tax information necessary to complete any applicable tax returns. Investors in the Co-Invest Funds are provided with similar reports.

Item 14: Client Referrals

To the extent Àshe uses a placement agent or similar agent with respect to the placement of interests of any investor, the related placement fees and/or sales charges may be paid by the Partnership, in which case the Management Fee charged to the investor in question will be reduced on a dollar-for-dollar basis by the amount of any such placement fees or sales charges advanced by the Partnership (but in no event will the Management Fee be reduced below zero).

Item 15: Custody

Àshe is deemed to have custody of the assets of the Partnership and the Co-Invest Funds because of the authority that Àshe and/or its affiliated entities have over those assets. The financial statements of the Partnership and the Co-Invest Funds are subject to an annual audit by an independent public accountant that is registered with, and subject to regular inspection by, the Public Company Accounting Oversight Board, and the audited financial statements are distributed to each investor. The audited financial statements are prepared in accordance with generally accepted accounting principles and distributed within 120 days of the fiscal year end of the Partnership and Co-Invest Funds.

Item 16: Investment Discretion

Àshe generally has discretionary authority to determine, without obtaining specific consent from the Partnership and Co-Invest Funds or their investors, the securities and the amounts to be bought or sold on behalf of the Partnership and Co-Invest Funds. Any limitations on such authority are included in the Partnership's Offering Memorandum and Partnership Agreement, and are generally applicable to the Co-Invest Funds.

Item 17: Voting Client Securities

Àshe will be responsible for voting client proxies. Àshe has developed a written policy and procedures governing its activities in this area. In general, the policy requires Àshe to vote proxies in the interest of maximizing shareholder value. In addition, Àshe maintains a record of all proxy votes cast on behalf of the Partnership and the Co-Invest Funds. Investors wishing to obtain a copy of Àshe's complete proxy voting policy or a copy of Àshe's proxy voting record may contact Àshe at the number listed on the cover page of this brochure.

In addition, if "Class Action" documents are received by Àshe on behalf of the Partnership and Co-Invest Funds, Àshe and/or the General Partner will ensure that the Partnership and Co-Invest Funds either participate in, or opt out of, any class action settlements received. Àshe will determine if it is in the best interest of the Partnership and the Co-Invest Funds to recover monies

from a class action. In the event Ashe opts out of a class action settlement, Ashe will maintain documentation of any cost/benefit analysis to support its decision.

Item 18: Financial Information

Ashe has never filed for bankruptcy and is not aware of any financial condition that is expected to affect its ability to manage client accounts.

TAB B

FORM ADV

UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION AND REPORT BY EXEMPT REPORTING ADVISERS

Primary Business Name: ASHE CAPITAL MANAGEMENT, LP

CRD Number: 169616

Annual Amendment - All Sections

Rev. 10/2017

3/29/2019 6:22:40 PM

WARNING: Complete this form truthfully. False statements or omissions may result in denial of your application, revocation of your registration, or criminal prosecution. You must keep this form updated by filing periodic amendments. See Form ADV General Instruction 4.

Item 1 Identifying Information

Responses to this Item tell us who you are, where you are doing business, and how we can contact you. If you are filing an *umbrella registration*, the information in Item 1 should be provided for the *filing adviser* only. General Instruction 5 provides information to assist you with filing an *umbrella registration*.

A. Your full legal name (if you are a sole proprietor, your last, first, and middle names):

ASHE CAPITAL MANAGEMENT, LP

B. (1) Name under which you primarily conduct your advisory business, if different from Item 1.A.

ASHE CAPITAL MANAGEMENT, LP

List on Section 1.B. of Schedule D any additional names under which you conduct your advisory business.

(2) If you are using this Form ADV to register more than one investment adviser under an *umbrella registration*, check this box

If you check this box, complete a Schedule R for each relying adviser.

C. If this filing is reporting a change in your legal name (Item 1.A.) or primary business name (Item 1.B.(1)), enter the new name and specify whether the name change is of

your legal name or your primary business name:

D. (1) If you are registered with the SEC as an investment adviser, your SEC file number: **801-79065**

(2) If you report to the SEC as an *exempt reporting adviser*, your SEC file number:

(3) If you have one or more Central Index Key numbers assigned by the SEC ("CIK Numbers"), all of your CIK numbers:

No Information Filed

E. (1) If you have a number ("CRD Number") assigned by the FINRA's CRD system or by the IARD system, your CRD number: **169616**

If your firm does not have a CRD number, skip this Item 1.E. Do not provide the CRD number of one of your officers, employees, or affiliates.

(2) If you have additional CRD Numbers, your additional CRD numbers:

No Information Filed

F. *Principal Office and Place of Business*

(1) Address (do not use a P.O. Box):

Number and Street 1:

530 SYLVAN AVE.

City:

ENGLEWOOD CLIFFS

State:

New Jersey

Number and Street 2:

SUITE 101

Country:

United States

ZIP+4/Postal Code:

07632

If this address is a private residence, check this box:

List on Section 1.F. of Schedule D any office, other than your principal office and place of business, at which you conduct investment advisory business. If you are applying for registration, or are registered, with one or more state securities authorities, you must list all of your offices in the state or states to which you are applying for registration or with whom you are registered. If you are applying for SEC registration, if you are registered only with the SEC, or if you are reporting to the SEC as an exempt reporting adviser, list the largest twenty-five offices in terms of numbers of employees as of the end of your most recently completed fiscal year.

(2) Days of week that you normally conduct business at your *principal office and place of business*:

Monday - Friday Other:

Normal business hours at this location:

9 AM - 5 PM

(3) Telephone number at this location:

201-464-0962

(4) Facsimile number at this location, if any:

(5) What is the total number of offices, other than your *principal office and place of business*, at which you conduct investment advisory business as of the end of your most recently completed fiscal year?



G. Mailing address, if different from your principal office and place of business address:

Number and Street 1: _____ Number and Street 2: _____
City: _____ State: _____ Country: _____ ZIP+4/Postal Code: _____

If this address is a private residence, check this box:

H. If you are a sole proprietor, state your full residence address, if different from your principal office and place of business address in Item 1.F.:

Number and Street 1: _____ Number and Street 2: _____
City: _____ State: _____ Country: _____ ZIP+4/Postal Code: _____

I. Do you have one or more websites or accounts on publicly available social media platforms (including, but not limited to, Twitter, Facebook and LinkedIn)? Yes No

If "yes," list all firm website addresses and the address for each of the firm's accounts on publicly available social media platforms on Section 1.I. of Schedule D. If a website address serves as a portal through which to access other information you have published on the web, you may list the portal without listing addresses for all of the other information. You may need to list more than one portal address. Do not provide the addresses of websites or accounts on publicly available social media platforms where you do not control the content. Do not provide the individual electronic mail (e-mail) addresses of employees or the addresses of employee accounts on publicly available social media platforms.

J. Chief Compliance Officer

(1) Provide the name and contact information of your Chief Compliance Officer. If you are an exempt reporting adviser, you must provide the contact information for your Chief Compliance Officer, if you have one. If not, you must complete Item 1.K. below.

Name: _____ Other titles, if any: _____
Telephone number: _____ Facsimile number, if any: _____
Number and Street 1: _____ Number and Street 2: _____
City: _____ State: _____ Country: _____ ZIP+4/Postal Code: _____

Electronic mail (e-mail) address, if Chief Compliance Officer has one: _____

(2) If your Chief Compliance Officer is compensated or employed by any person other than you, a related person or an investment company registered under the Investment Company Act of 1940 that you advise for providing chief compliance officer services to you, provide the person's name and IRS Employer Identification Number (if any):

Name: _____
IRS Employer Identification Number: _____

K. Additional Regulatory Contact Person: If a person other than the Chief Compliance Officer is authorized to receive information and respond to questions about this Form ADV, you may provide that information here.

Name: _____ Titles: _____
Telephone number: _____ Facsimile number, if any: _____
Number and Street 1: _____ Number and Street 2: _____
City: _____ State: _____ Country: _____ ZIP+4/Postal Code: _____

Electronic mail (e-mail) address, if contact person has one: _____

L. Do you maintain some or all of the books and records you are required to keep under Section 204 of the Advisers Act, or similar state law, somewhere other than your principal office and place of business? Yes No

If "yes," complete Section 1.L. of Schedule D.

M. Are you registered with a foreign financial regulatory authority? Yes No

Answer "no" if you are not registered with a foreign financial regulatory authority, even if you have an affiliate that is registered with a foreign financial regulatory authority. If "yes," complete Section 1.M. of Schedule D.

N. Are you a public reporting company under Sections 12 or 15(d) of the Securities Exchange Act of 1934? Yes No

O. Did you have \$1 billion or more in assets on the last day of your most recent fiscal year? Yes No

If yes, what is the approximate amount of your assets:

- \$1 billion to less than \$10 billion
 \$10 billion to less than \$50 billion

For purposes of Item 1.O. only, "assets" refers to your total assets, rather than the assets you manage on behalf of clients. Determine your total assets using the total assets shown on the balance sheet for your most recent fiscal year end.

P. Provide your *Legal Entity Identifier* if you have one:

A *legal entity identifier* is a unique number that companies use to identify each other in the financial marketplace. You may not have a *legal entity identifier*.

SECTION 1.B. Other Business Names

No Information Filed

SECTION 1.F. Other Offices

Complete the following information for each office, other than your *principal office and place of business*, at which you conduct investment advisory business. You must complete a separate Schedule D Section 1.F. for each location. If you are applying for SEC registration, if you are registered only with the SEC, or if you are an *exempt reporting adviser*, list only the largest twenty-five offices (in terms of numbers of *employees*).

Number and Street 1:		Number and Street 2:	
116 SANTA BARBARA ST.		UNIT C	
City:	State:	Country:	ZIP+4/Postal Code:
SANTA BARBARA	California	United States	93101

If this address is a private residence, check this box:

Telephone Number:	Facsimile Number, if any:
424-231-5656	

If this office location is also required to be registered with FINRA or a *state securities authority* as a branch office location for a broker-dealer or investment adviser on the Uniform Branch Office Registration Form (Form BR), please provide the *CRD Branch Number* here:

How many *employees* perform investment advisory functions from this office location?
1

Are other business activities conducted at this office location? (check all that apply)

- (1) Broker-dealer (registered or unregistered)
- (2) Bank (including a separately identifiable department or division of a bank)
- (3) Insurance broker or agent
- (4) Commodity pool operator or commodity trading advisor (whether registered or exempt from registration)
- (5) Registered municipal advisor
- (6) Accountant or accounting firm
- (7) Lawyer or law firm

Describe any other *investment-related* business activities conducted from this office location:

Complete the following information for each office, other than your *principal office and place of business*, at which you conduct investment advisory business. You must complete a separate Schedule D Section 1.F. for each location. If you are applying for SEC registration, if you are registered only with the SEC, or if you are an *exempt reporting adviser*, list only the largest twenty-five offices (in terms of numbers of *employees*).

Number and Street 1:		Number and Street 2:	
5251 W. 116TH PLACE		SUITE 200	
City:	State:	Country:	ZIP+4/Postal Code:
LEAWOOD	Kansas	United States	66211

If this address is a private residence, check this box:

Telephone number:
424-281-9490

If this office location is also required to be registered with FINRA or a *state securities authority* as a branch office location for a broker-dealer or investment adviser on the Uniform Branch Office Registration Form (Form BR), please provide the *CRD Branch Number* here:

How many *employees* perform investment advisory functions from this office location?

1

Are other business activities conducted at this office location? (check all that apply)

- (1) Broker-dealer (registered or unregistered)
 (2) Bank (including a separately identifiable department or division of a bank)
 (3) Insurance broker or agent
 (4) Commodity pool operator or commodity trading advisor (whether registered or exempt from registration)
 (5) Registered municipal advisor
 (6) Accountant or accounting firm
 (7) Lawyer or law firm

Describe any other *investment-related* business activities conducted from this office location:

SECTION 1.I. Website Addresses

No Information Filed

SECTION 1.L. Location of Books and Records

Complete the following information for each location at which you keep your books and records, other than your *principal office and place of business*. You must complete a separate Schedule D, Section 1.L. for each location.

Name of entity where books and records are kept:

NORTHERN TRUST HEDGE FUND SERVICES LLC

Number and Street 1:

50 SOUTH LASALLE STREET

City:

CHICAGO

State:

Illinois

Number and Street 2:

LQ-9

Country:

United States

ZIP+4/Postal Code:

60603

If this address is a private residence, check this box:

Telephone Number:

312-630-6245

Facsimile number, if any:

312-267-3703

This is (check one):

- one of your branch offices or affiliates.
 a third-party unaffiliated recordkeeper.
 other.

Briefly describe the books and records kept at this location.

FUND ADMINISTRATOR

Name of entity where books and records are kept:

UNTRACHT EARLY LLC

Number and Street 1:

325 COLUMBIA TURNPIKE

City:

FLORHAM PARK

State:

New Jersey

Number and Street 2:

SUITE 202

Country:

United States

ZIP+4/Postal Code:

07932

If this address is a private residence, check this box:

Telephone Number:
973-408-6700

facsimile number, if any:

This is (check one):

- one of your branch offices or affiliates.
 a third-party unaffiliated recordkeeper.
 other.

Briefly describe the books and records kept at this location.

BOOKS AND RECORDS RELATED TO SOME OUTSOURCED ACCOUNTING, ADMINISTRATIVE, AND OPERATIONAL ACTIVITIES.

SECTION 1.M. Registration with Foreign Financial Regulatory Authorities

No Information Filed

Item 2 SEC Registration/Reporting

Responses to this Item help us (and you) determine whether you are eligible to register with the SEC. Complete this Item 2.A. only if you are applying for SEC registration or submitting an *annual updating amendment* to your SEC registration. If you are filing an *umbrella registration*, the information in Item 2 should be provided for the *filing adviser* only.

A. To register (or remain registered) with the SEC, you must check **at least one** of the Items 2.A.(1) through 2.A.(12), below. If you are submitting an *annual updating amendment* to your SEC registration and you are no longer eligible to register with the SEC, check Item 2.A.(13). Part 1A Instruction 2 provides information to help you determine whether you may affirmatively respond to each of these items.

You (the adviser):

- (1) are a **large advisory firm** that either:
- (a) has regulatory assets under management of \$100 million (in U.S. dollars) or more; or
 - (b) has regulatory assets under management of \$90 million (in U.S. dollars) or more at the time of filing its most recent *annual updating amendment* and is registered with the SEC;
- (2) are a **mid-sized advisory firm** that has regulatory assets under management of \$25 million (in U.S. dollars) or more but less than \$100 million (in U.S. dollars) and you are either:
- (a) not required to be registered as an adviser with the *state securities authority* of the state where you maintain your *principal office and place of business*; or
 - (b) not subject to examination by the *state securities authority* of the state where you maintain your *principal office and place of business*;
Click [HERE](#) for a list of states in which an investment adviser, if registered, would not be subject to examination by the state securities authority.
- (3) Reserved
- (4) have your *principal office and place of business* **outside the United States**;
- (5) are an **investment adviser (or subadviser) to an investment company** registered under the Investment Company Act of 1940;
- (6) are an **investment adviser to a company which has elected to be a business development company** pursuant to section 54 of the Investment Company Act of 1940 and has not withdrawn the election, and you have at least \$25 million of regulatory assets under management;
- (7) are a **pension consultant** with respect to assets of plans having an aggregate value of at least \$200,000,000 that qualifies for the exemption in rule 203A-2(a);
- (8) are a **related adviser** under rule 203A-2(b) that *controls, is controlled by, or is under common control* with, an investment adviser that is registered with the SEC, and your *principal office and place of business* is the same as the registered adviser;
If you check this box, complete Section 2.A.(8) of Schedule D.
- (9) are an **adviser** relying on rule 203A-2(c) because you **expect to be eligible for SEC registration within 120 days**;
If you check this box, complete Section 2.A.(9) of Schedule D.
- (10) are a **multi-state adviser** that is required to register in 15 or more states and is relying on rule 203A-2(d);
If you check this box, complete Section 2.A.(10) of Schedule D.
- (11) are an **Internet adviser** relying on rule 203A-2(e);
- (12) have **received an SEC order** exempting you from the prohibition against registration with the SEC;
If you check this box, complete Section 2.A.(12) of Schedule D.
- (13) are **no longer eligible** to remain registered with the SEC.

C. Under state laws, SEC-registered advisers may be required to provide to *state securities authorities* a copy of the Form ADV and any amendments they file with the SEC. These are called *notice filings*. In addition, *exempt reporting advisers* may be required to provide *state securities authorities* with a copy of reports and any amendments they file with the SEC. If this is an initial application or report, check the box(es) next to the state(s) that you would like to receive notice of this and all subsequent filings or reports you submit to the SEC. If this is an amendment to direct your *notice filings* or reports to additional state(s), check the box(es) next to the state(s) that you would like to receive notice of this and all subsequent filings or reports you submit to the SEC. If this is an amendment to your registration to stop your *notice filings* or reports from going to state(s) that currently receive them, uncheck the box(es) next to those state(s).

Jurisdictions

<input type="checkbox"/> AL	<input type="checkbox"/> IL	<input type="checkbox"/> NE	<input type="checkbox"/> SC
<input type="checkbox"/> AK	<input type="checkbox"/> IN	<input type="checkbox"/> NV	<input type="checkbox"/> SD
<input type="checkbox"/> AZ	<input type="checkbox"/> IA	<input type="checkbox"/> NH	<input type="checkbox"/> TN
<input type="checkbox"/> AR	<input checked="" type="checkbox"/> KS	<input type="checkbox"/> NJ	<input type="checkbox"/> TX
<input type="checkbox"/> CA	<input type="checkbox"/> KY	<input type="checkbox"/> NM	<input type="checkbox"/> UT
<input type="checkbox"/> CO	<input type="checkbox"/> LA	<input type="checkbox"/> NY	<input type="checkbox"/> VT
<input type="checkbox"/> CT	<input type="checkbox"/> ME	<input type="checkbox"/> NC	<input type="checkbox"/> VI
<input type="checkbox"/> DE	<input type="checkbox"/> MD	<input type="checkbox"/> ND	<input type="checkbox"/> VA
<input type="checkbox"/> DC	<input type="checkbox"/> MA	<input type="checkbox"/> OH	<input type="checkbox"/> WA
<input type="checkbox"/> FL	<input type="checkbox"/> MI	<input type="checkbox"/> OK	<input type="checkbox"/> WV
<input type="checkbox"/> GA	<input type="checkbox"/> MN	<input type="checkbox"/> OR	<input type="checkbox"/> WI
<input type="checkbox"/> GU	<input type="checkbox"/> MS	<input type="checkbox"/> PA	<input type="checkbox"/> WY
<input type="checkbox"/> HI	<input type="checkbox"/> MO	<input type="checkbox"/> PR	
<input type="checkbox"/> ID	<input type="checkbox"/> MT	<input type="checkbox"/> RI	

If you are amending your registration to stop your notice filings or reports from going to a state that currently receives them and you do not want to pay that state's notice filing or report filing fee for the coming year, your amendment must be filed before the end of the year (December 31).

SECTION 2.A.(8) Related Adviser

If you are relying on the exemption in rule 203A-2(b) from the prohibition on registration because you *control*, are *controlled by*, or are under common *control* with an investment adviser that is registered with the SEC and your *principal office and place of business* is the same as that of the registered adviser, provide the following information:

Name of Registered Investment Adviser

CRD Number of Registered Investment Adviser

SEC Number of Registered Investment Adviser

SECTION 2.A.(9) Investment Adviser Expecting to be Eligible for Commission Registration within 120 Days

If you are relying on rule 203A-2(c), the exemption from the prohibition on registration available to an adviser that expects to be eligible for SEC registration within 120 days, you are required to make certain representations about your eligibility for SEC registration. By checking the appropriate boxes, you will be deemed to have made the required representations. You must make both of these representations:

- I am not registered or required to be registered with the SEC or a *state securities authority* and I have a reasonable expectation that I will be eligible to register with the SEC within 120 days after the date my registration with the SEC becomes effective.
- I undertake to withdraw from SEC registration if, on the 120th day after my registration with the SEC becomes effective, I would be prohibited by Section 203A(a) of the Advisers Act from registering with the SEC.

SECTION 2.A.(10) Multi-State Adviser

If you are relying on rule 203A-2(d), the multi-state adviser exemption from the prohibition on registration, you are required to make certain representations about your eligibility for SEC registration. By checking the appropriate boxes, you will be deemed to have made the required representations.

If you are applying for registration as an investment adviser with the SEC, you must make both of these representations:

- I have reviewed the applicable state and federal laws and have concluded that I am required by the laws of 15 or more states to register as an investment adviser with the *state securities authorities* in those states.
- I undertake to withdraw from SEC registration if I file an amendment to this registration indicating that I would be required by the laws of fewer than 15 states to register as an investment adviser with the *state securities authorities* of those states.

If you are submitting your *annual updating amendment*, you must make this representation:

- Within 90 days prior to the date of filing this amendment, I have reviewed the applicable state and federal laws and have concluded that I am required

SECTION 2.A.(12) SEC Exemptive Order

If you are relying upon an SEC order exempting you from the prohibition on registration, provide the following information:

Application Number:

803-

Date of order:

Item 3 Form of Organization

If you are filing an umbrella registration, the information in Item 3 should be provided for the filing adviser only.

- A. How are you organized?
- Corporation
 - Sole Proprietorship
 - Limited Liability Partnership (LLP)
 - Partnership
 - Limited Liability Company (LLC)
 - Limited Partnership (LP)
 - Other (specify):

If you are changing your response to this Item, see Part 1A Instruction 4.

- B. In what month does your fiscal year end each year?
DECEMBER

- C. Under the laws of what state or country are you organized?
- | | |
|----------|---------------|
| State | Country |
| Delaware | United States |

If you are a partnership, provide the name of the state or country under whose laws your partnership was formed. If you are a sole proprietor, provide the name of the state or country where you reside.

If you are changing your response to this Item, see Part 1A Instruction 4.

Item 4 Successions

- | | Yes | No |
|---|-----------------------|----------------------------------|
| A. Are you, at the time of this filing, succeeding to the business of a registered investment adviser, including, for example, a change of your structure or legal status (e.g., form of organization or state of incorporation)? | <input type="radio"/> | <input checked="" type="radio"/> |

If "yes", complete Item 4.B. and Section 4 of Schedule D.

- B. Date of Succession: (MM/DD/YYYY)

If you have already reported this succession on a previous Form ADV filing, do not report the succession again. Instead, check "No." See Part 1A Instruction 4.

SECTION 4 Successions

No Information Filed

Item 5 Information About Your Advisory Business - Employees, Clients, and Compensation

Responses to this Item help us understand your business, assist us in preparing for on-site examinations, and provide us with data we use when making regulatory policy. Part 1A Instruction 5.a. provides additional guidance to newly formed advisers for completing this Item 5.

Employees

If you are organized as a sole proprietorship, include yourself as an employee in your responses to Item 5.A. and Items 5.B.(1), (2), (3), (4), and (5). If an employee

A. Approximately how many *employees* do you have? Include full- and part-time *employees* but do not include any clerical workers.

5

B. (1) Approximately how many of the *employees* reported in 5.A. perform investment advisory functions (including research)?

5

(2) Approximately how many of the *employees* reported in 5.A. are registered representatives of a broker-dealer?

0

(3) Approximately how many of the *employees* reported in 5.A. are registered with one or more *state securities authorities* as *investment adviser representatives*?

0

(4) Approximately how many of the *employees* reported in 5.A. are registered with one or more *state securities authorities* as *investment adviser representatives* for an investment adviser other than you?

0

(5) Approximately how many of the *employees* reported in 5.A. are licensed agents of an insurance company or agency?

0

(6) Approximately how many firms or other *persons* solicit advisory *clients* on your behalf?

0

In your response to Item 5.B.(6), do not count any of your *employees* and count a firm only once - do not count each of the firm's *employees* that solicit on your behalf.

Clients

In your responses to Items 5.C. and 5.D. do not include as "*clients*" the investors in a private fund you advise, unless you have a separate advisory relationship with those investors.

C. (1) To approximately how many *clients* for whom you do not have regulatory assets under management did you provide investment advisory services during your most recently completed fiscal year?

0

(2) Approximately what percentage of your *clients* are non-United States persons?

0%

D. For purposes of this Item 5.D., the category "*individuals*" includes trusts, estates, and 401(k) plans and IRAs of individuals and their family members, but does not include businesses organized as sole proprietorships.

The category "*business development companies*" consists of companies that have made an election pursuant to section 54 of the Investment Company Act of 1940. Unless you provide advisory services pursuant to an investment advisory contract to an investment company registered under the Investment Company Act of 1940, do not answer (d)(1) or (d)(3) below.

Indicate the approximate number of your *clients* and amount of your total regulatory assets under management (reported in Item 5.F. below) attributable to each of the following type of *client*. If you have fewer than 5 *clients* in a particular category (other than (d), (e), and (f)) you may check Item 5.D.(2) rather than respond to Item 5.D.(1).

The aggregate amount of regulatory assets under management reported in Item 5.D.(3) should equal the total amount of regulatory assets under management reported in Item 5.F.(2)(c) below.

If a *client* fits into more than one category, select one category that most accurately represents the *client* to avoid double counting *clients* and assets. If you advise a registered investment company, business development company, or pooled investment vehicle, report those assets in categories (d), (e), and (f) as applicable.

Type of Client	(1) Number of Client(s)	(2) Fewer than 5 Clients	(3) Amount of Regulatory Assets under Management
(a) Individuals (other than high net worth individuals)		<input type="checkbox"/>	\$
(b) High net worth individuals		<input type="checkbox"/>	\$
(c) Banking or thrift institutions		<input type="checkbox"/>	\$
(d) Investment companies			\$
(e) Business development companies			\$
(f) Pooled investment vehicles (other than investment companies and business development companies)	4		\$ 1,248,980,131
(g) Pension and profit sharing plans (but not the plan participants or government pension plans)		<input type="checkbox"/>	\$
(h) Charitable organizations		<input type="checkbox"/>	\$
(i) State or municipal government entities (including government pension plans)		<input type="checkbox"/>	\$

(j) Other investment advisers		<input type="checkbox"/>	\$
(k) Insurance companies		<input type="checkbox"/>	\$
(l) Sovereign wealth funds and foreign official institutions		<input type="checkbox"/>	\$
(m) Corporations or other businesses not listed above		<input type="checkbox"/>	\$
(n) Other:		<input type="checkbox"/>	\$

Compensation Arrangements

E. You are compensated for your investment advisory services by (check all that apply):

- (1) A percentage of assets under your management
- (2) Hourly charges
- (3) Subscription fees (for a newsletter or periodical)
- (4) Fixed fees (other than subscription fees)
- (5) Commissions
- (6) Performance-based fees
- (7) Other (specify):

Item 5 Information About Your Advisory Business - Regulatory Assets Under Management

Regulatory Assets Under Management

Yes No

F. (1) Do you provide continuous and regular supervisory or management services to securities portfolios?

(2) If yes, what is the amount of your regulatory assets under management and total number of accounts?

	U.S. Dollar Amount	Total Number of Accounts
Discretionary:	(a) \$ 1,248,980,131	(d) 4
Non-Discretionary:	(b) \$ 0	(e) 0
Total:	(c) \$ 1,248,980,131	(f) 4

Part 1A Instruction 5.b. explains how to calculate your regulatory assets under management. You must follow these instructions carefully when completing this Item.

(3) What is the approximate amount of your total regulatory assets under management (reported in Item 5.F.(2)(c) above) attributable to clients who are non-United States persons?
\$ 0

Item 5 Information About Your Advisory Business - Advisory Activities

Advisory Activities

G. What type(s) of advisory services do you provide? Check all that apply.

- (1) Financial planning services
- (2) Portfolio management for individuals and/or small businesses
- (3) Portfolio management for investment companies (as well as "business development companies" that have made an election pursuant to section 54 of the Investment Company Act of 1940)
- (4) Portfolio management for pooled investment vehicles (other than investment companies)
- (5) Portfolio management for businesses (other than small businesses) or institutional clients (other than registered investment companies and other pooled investment vehicles)
- (6) Pension consulting services
- (7) Selection of other advisers (including private fund managers)
- (8) Publication of periodicals or newsletters
- (9) Security ratings or pricing services
- (10) Market timing services
- (11) Educational seminars/workshops
- (12) Other(specify):

Do not check Item 5.G.(3) unless you provide advisory services pursuant to an investment advisory contract to an investment company registered under the Investment Company Act of 1940, including as a subadviser. If you check Item 5.G.(3), report the 811 or 814 number of the investment company or investment companies to which you provide advice in Section 5.G.(3) of Schedule D.

H. If you provide financial planning services, to how many clients did you provide these services during your last fiscal year?

- 0
- 1 - 10
- 11 - 25
- 26 - 50
- 51 - 100
- 101 - 250
- 251 - 500
- More than 500

End of year refers to the date used to calculate your regulatory assets under management for purposes of your *annual updating amendment*. Mid-year is the date six months before the end of year date. Each column should add up to 100% and numbers should be rounded to the nearest percent.

Investments in derivatives, registered investment companies, business development companies, and pooled investment vehicles should be reported in those categories. Do not report those investments based on related or underlying portfolio assets. Cash equivalents include bank deposits, certificates of deposit, bankers' acceptances and similar bank instruments.

Some assets could be classified into more than one category or require discretion about which category applies. You may use your own internal methodologies and the conventions of your service providers in determining how to categorize assets, so long as the methodologies or conventions are consistently applied and consistent with information you report internally and to current and prospective clients. However, you should not double count assets, and your responses must be consistent with any instructions or other guidance relating to this Section.

(a) Asset Type	Mid-year	End of year
(i) Exchange-Traded Equity Securities	%	%
(ii) Non Exchange-Traded Equity Securities	%	%
(iii) U.S. Government/Agency Bonds	%	%
(iv) U.S. State and Local Bonds	%	%
(v) <i>Sovereign Bonds</i>	%	%
(vi) Investment Grade Corporate Bonds	%	%
(vii) Non-Investment Grade Corporate Bonds	%	%
(viii) Derivatives	%	%
(ix) Securities Issued by Registered Investment Companies or Business Development Companies	%	%
(x) Securities Issued by Pooled Investment Vehicles (other than Registered Investment Companies or Business Development Companies)	%	%
(xi) Cash and Cash Equivalents	%	%
(xii) Other	%	%

Generally describe any assets included in "Other"

(b) Asset Type	End of year
(i) Exchange-Traded Equity Securities	%
(ii) Non Exchange-Traded Equity Securities	%
(iii) U.S. Government/Agency Bonds	%
(iv) U.S. State and Local Bonds	%
(v) <i>Sovereign Bonds</i>	%
(vi) Investment Grade Corporate Bonds	%
(vii) Non-Investment Grade Corporate Bonds	%
(viii) Derivatives	%
(ix) Securities Issued by Registered Investment Companies or Business Development Companies	%
(x) Securities Issued by Pooled Investment Vehicles (other than Registered Investment Companies or Business Development Companies)	%
(xi) Cash and Cash Equivalents	%
(xii) Other	%

Generally describe any assets included in "Other"

SECTION 5.K.(2) Separately Managed Accounts - Use of Borrowings and Derivatives

No information is required to be reported in this Section 5.K.(2) per the instructions of this Section 5.K.(2)

If your regulatory assets under management attributable to separately managed accounts are at least \$10 billion, you should complete Question (a). If your regulatory assets under management attributable to separately managed accounts are at least \$500 million but less than \$10 billion, you should complete Question (b).

(a) In the table below, provide the following information regarding the separately managed accounts you advise. If you are a subadviser to a separately managed account, you should only provide information with respect to the portion of the account that you subadvise. End of year refers to the date used to calculate your regulatory assets under management for purposes of your *annual updating amendment*. Mid-year is the date six months before the end of year date.

In column 1, indicate the regulatory assets under management attributable to separately managed accounts associated with each level of gross notional exposure. For purposes of this table, the gross notional exposure of an account is the percentage obtained by dividing (i) the sum of (a) the

dollar amount of any borrowings and (b) the gross notional value of all derivatives, by (ii) the regulatory assets under management of the account.

In column 2, provide the dollar amount of *borrowings* for the accounts included in column 1.

In column 3, provide aggregate *gross notional value* of derivatives divided by the aggregate regulatory assets under management of the accounts included in column 1 with respect to each category of derivatives specified in 3(a) through (f).

You may, but are not required to, complete the table with respect to any separately managed account with regulatory assets under management of less than \$10,000,000.

Any regulatory assets under management reported in Item 5.D.(3)(d), (e), and (f) should not be reported below.

(i) Mid-Year

Gross Notional Exposure	(1) Regulatory Assets Under Management	(2) Borrowings	(3) Derivative Exposures					
			(a) Interest Rate Derivative	(b) Foreign Exchange Derivative	(c) Credit Derivative	(d) Equity Derivative	(e) Commodity Derivative	(f) Other Derivative
Less than 10%	\$	\$	%	%	%	%	%	%
10-149%	\$	\$	%	%	%	%	%	%
150% or more	\$	\$	%	%	%	%	%	%

Optional: Use the space below to provide a narrative description of the strategies and/or manner in which *borrowings* and derivatives are used in the management of the separately managed accounts that you advise.

(ii) End of Year

Gross Notional Exposure	(1) Regulatory Assets Under Management	(2) Borrowings	(3) Derivative Exposures					
			(a) Interest Rate Derivative	(b) Foreign Exchange Derivative	(c) Credit Derivative	(d) Equity Derivative	(e) Commodity Derivative	(f) Other Derivative
Less than 10%	\$	\$	%	%	%	%	%	%
10-149%	\$	\$	%	%	%	%	%	%
150% or more	\$	\$	%	%	%	%	%	%

Optional: Use the space below to provide a narrative description of the strategies and/or manner in which *borrowings* and derivatives are used in the management of the separately managed accounts that you advise.

- (b) In the table below, provide the following information regarding the separately managed accounts you advise as of the date used to calculate your regulatory assets under management for purposes of your *annual updating amendment*. If you are a subadviser to a separately managed account, you should only provide information with respect to the portion of the account that you subadvise.

In column 1, indicate the regulatory assets under management attributable to separately managed accounts associated with each level of gross notional exposure. For purposes of this table, the gross notional exposure of an account is the percentage obtained by dividing (i) the sum of (a) the dollar amount of any *borrowings* and (b) the *gross notional value* of all derivatives, by (ii) the regulatory assets under management of the account.

In column 2, provide the dollar amount of *borrowings* for the accounts included in column 1.

You may, but are not required to, complete the table with respect to any separately managed accounts with regulatory assets under management of less than \$10,000,000.

Any regulatory assets under management reported in Item 5.D.(3)(d), (e), and (f) should not be reported below.

Gross Notional Exposure	(1) Regulatory Assets Under Management	(2) Borrowings
Less than 10%	\$	\$
10-149%	\$	\$
150% or more	\$	\$

Optional: Use the space below to provide a narrative description of the strategies and/or manner in which *borrowings* and derivatives are used in the management of the separately managed accounts that you advise.

Item 6 Other Business Activities

In this Item, we request information about your firm's other business activities.

A. You are actively engaged in business as a (check all that apply):

- (1) broker-dealer (registered or unregistered)
- (2) registered representative of a broker-dealer
- (3) commodity pool operator or commodity trading advisor (whether registered or exempt from registration)
- (4) futures commission merchant
- (5) real estate broker, dealer, or agent
- (6) insurance broker or agent
- (7) bank (including a separately identifiable department or division of a bank)
- (8) trust company
- (9) registered municipal advisor
- (10) registered security-based swap dealer
- (11) major security-based swap participant
- (12) accountant or accounting firm
- (13) lawyer or law firm
- (14) other financial product salesperson (specify):

If you engage in other business using a name that is different from the names reported in Items 1.A. or 1.B.(1), complete Section 6.A. of Schedule D.

- B. (1) Are you actively engaged in any other business not listed in Item 6.A. (other than giving investment advice)? Yes No
- (2) If yes, is this other business your primary business? Yes No

If "yes," describe this other business on Section 6.B.(2) of Schedule D, and if you engage in this business under a different name, provide that name.

- (3) Do you sell products or provide services other than investment advice to your advisory clients? Yes No

If "yes," describe this other business on Section 6.B.(3) of Schedule D, and if you engage in this business under a different name, provide that name.

SECTION 6.A. Names of Your Other Businesses

No Information Filed

SECTION 6.B.(2) Description of Primary Business

Describe your primary business (not your investment advisory business):

If you engage in that business under a different name, provide that name:

SECTION 6.B.(3) Description of Other Products and Services

Describe other products or services you sell to your client. You may omit products and services that you listed in Section 6.B.(2) above.

If you engage in that business under a different name, provide that name:

Item 7 Financial Industry Affiliations

In this Item, we request information about your financial industry affiliations and activities. This information identifies areas in which conflicts of interest may occur between you and your clients.

A. This part of Item 7 requires you to provide information about you and your related persons, including foreign affiliates. Your related persons are all of your advisory affiliates and any person that is under common control with you.

You have a related person that is a (check all that apply):

- (1) broker-dealer, municipal securities dealer, or government securities broker or dealer (registered or unregistered)
- (2) other investment adviser (including financial planners)
- (3) registered municipal advisor
- (4) registered security-based swap dealer
- (5) major security-based swap participant
- (6) commodity pool operator or commodity trading advisor (whether registered or exempt from registration)
- (7) futures commission merchant
- (8) banking or thrift institution
- (9) trust company

- (10) accountant or accounting firm
- (11) lawyer or law firm
- (12) insurance company or agency
- (13) pension consultant
- (14) real estate broker or dealer
- (15) sponsor or syndicator of limited partnerships (or equivalent), excluding pooled investment vehicles
- (16) sponsor, general partner, managing member (or equivalent) of pooled investment vehicles

Note that Item 7.A. should not be used to disclose that some of your employees perform investment advisory functions or are registered representatives of a broker-dealer. The number of your firm's employees who perform investment advisory functions should be disclosed under Item 5.B.(1). The number of your firm's employees who are registered representatives of a broker-dealer should be disclosed under Item 5.B.(2).

Note that if you are filing an umbrella registration, you should not check Item 7.A.(2) with respect to your relying advisers, and you do not have to complete Section 7.A. in Schedule D for your relying advisers. You should complete a Schedule R for each relying adviser.

For each related person, including foreign affiliates that may not be registered or required to be registered in the United States, complete Section 7.A. of Schedule D.

You do not need to complete Section 7.A. of Schedule D for any related person if: (1) you have no business dealings with the related person in connection with advisory services you provide to your clients; (2) you do not conduct shared operations with the related person; (3) you do not refer clients or business to the related person, and the related person does not refer prospective clients or business to you; (4) you do not share supervised persons or premises with the related person; and (5) you have no reason to believe that your relationship with the related person otherwise creates a conflict of interest with your clients.

You must complete Section 7.A. of Schedule D for each related person acting as qualified custodian in connection with advisory services you provide to your clients (other than any mutual fund transfer agent pursuant to rule 206(4)-2(b)(1)), regardless of whether you have determined the related person to be operationally independent under rule 206(4)-2 of the Advisers Act.

SECTION 7.A. Financial Industry Affiliations

Complete a separate Schedule D Section 7.A. for each related person listed in Item 7.A.

1. Legal Name of Related Person:
ASHE CAPITAL PARTNERS (GP), LLC
2. Primary Business Name of Related Person:
ASHE CAPITAL PARTNERS (GP), LLC
3. Related Person's SEC File Number (if any) (e.g., 801-, 8-, 866-, 802-)
-
or
Other
4. Related Person's
 - (a) CRD Number (if any):
 - (b) CIK Number(s) (if any):
No Information Filed
5. Related Person is: (check all that apply)
 - (a) broker-dealer, municipal securities dealer, or government securities broker or dealer
 - (b) other investment adviser (including financial planners)
 - (c) registered municipal advisor
 - (d) registered security-based swap dealer
 - (e) major security-based swap participant
 - (f) commodity pool operator or commodity trading advisor (whether registered or exempt from registration)
 - (g) futures commission merchant
 - (h) banking or thrift institution
 - (i) trust company
 - (j) accountant or accounting firm
 - (k) lawyer or law firm
 - (l) insurance company or agency
 - (m) pension consultant
 - (n) real estate broker or dealer
 - (o) sponsor or syndicator of limited partnerships (or equivalent), excluding pooled investment vehicles
 - (p) sponsor, general partner, managing member (or equivalent) of pooled investment vehicles

6. Do you control or are you controlled by the related person?

Yes No

7. Are you and the related person under common control?

8. (a) Does the *related person* act as a qualified custodian for your *clients* in connection with advisory services you provide to *clients*? Yes No
- (b) If you are registering or registered with the SEC and you have answered "yes," to question 8.(a) above, have you overcome the presumption that you are not operationally independent (pursuant to rule 206(4)-2(d)(5)) from the *related person* and thus are not required to obtain a surprise examination for your *clients'* funds or securities that are maintained at the *related person*? Yes No
- (c) If you have answered "yes" to question 8.(a) above, provide the location of the *related person's* office responsible for *custody* of your *clients'* assets:
 Number and Street 1: _____ Number and Street 2: _____
 City: _____ State: _____ Country: _____ ZIP+4/Postal Code: _____
 If this address is a private residence, check this box:
9. (a) If the *related person* is an investment adviser, is it exempt from registration? Yes No
- (b) If the answer is yes, under what exemption? _____
10. (a) Is the *related person* registered with a *foreign financial regulatory authority*? Yes No
- (b) If the answer is yes, list the name and country, in English of each *foreign financial regulatory authority* with which the *related person* is registered.
 No Information Filed
11. Do you and the *related person* share any *supervised persons*? Yes No
12. Do you and the *related person* share the same physical location? Yes No

1. Legal Name of *Related Person*:
 ASHE CAPITAL PARTNERS CO-INVEST (GP), LP
2. Primary Business Name of *Related Person*:
 ASHE CAPITAL PARTNERS CO-INVEST (GP), LP
3. *Related Person's* SEC File Number (if any) (e.g., 801-, 8-, 866-, 802-)
 -
 or
 Other
4. *Related Person's*
 (a) CRD Number (if any):
 (b) CIK Number(s) (if any):
 No Information Filed
5. *Related Person* is: (check all that apply)
- (a) broker-dealer, municipal securities dealer, or government securities broker or dealer
 - (b) other investment adviser (including financial planners)
 - (c) registered municipal advisor
 - (d) registered security-based swap dealer
 - (e) major security-based swap participant
 - (f) commodity pool operator or commodity trading advisor (whether registered or exempt from registration)
 - (g) futures commission merchant
 - (h) banking or thrift institution
 - (i) trust company
 - (j) accountant or accounting firm
 - (k) lawyer or law firm
 - (l) insurance company or agency
 - (m) pension consultant
 - (n) real estate broker or dealer
 - (o) sponsor or syndicator of limited partnerships (or equivalent), excluding pooled investment vehicles
 - (p) sponsor, general partner, managing member (or equivalent) of pooled investment vehicles

6. Do you *control* or are you *controlled* by the *related person*? Yes No
7. Are you and the *related person* under common *control*? Yes No
8. (a) Does the *related person* act as a qualified custodian for your *clients* in connection with advisory services you provide to *clients*? Yes No
- (b) If you are registering or registered with the SEC and you have answered "yes," to question 8.(a) above, have you overcome the presumption that you are not operationally independent (pursuant to rule 206(4)-2(d)(5)) from the *related person* and thus are not required to obtain a surprise examination for your *clients'* funds or securities that are maintained at the *related person*? Yes No
- (c) If you have answered "yes" to question 8.(a) above, provide the location of the *related person's* office responsible for *custody* of your *clients'* assets:

Number and Street 1:

Number and Street 2:

City:

State:

Country:

ZIP+4/Postal Code:

If this address is a private residence, check this box:

Yes No

9. (a) If the *related person* is an investment adviser, is it exempt from registration? Yes No
 (b) If the answer is yes, under what exemption?
10. (a) Is the *related person* registered with a *foreign financial regulatory authority*? Yes No
 (b) If the answer is yes, list the name and country, in English of each *foreign financial regulatory authority* with which the *related person* is registered.
 No Information Filed
11. Do you and the *related person* share any *supervised persons*? Yes No
12. Do you and the *related person* share the same physical location? Yes No

1. Legal Name of *Related Person*:

ASHE CAPITAL PARTNERS CO-INVEST II (GP), LP

2. Primary Business Name of *Related Person*:

ASHE CAPITAL PARTNERS CO-INVEST II (GP), LP

3. *Related Person's* SEC File Number (if any) (e.g., 801-, 8-, 866-, 802-)

-

or

Other

4. *Related Person's*

(a) CRD Number (if any):

(b) CIK Number(s) (if any):

No Information Filed

5. *Related Person* is: (check all that apply)

- (a) broker-dealer, municipal securities dealer, or government securities broker or dealer
 (b) other investment adviser (including financial planners)
 (c) registered municipal advisor
 (d) registered security-based swap dealer
 (e) major security-based swap participant
 (f) commodity pool operator or commodity trading advisor (whether registered or exempt from registration)
 (g) futures commission merchant
 (h) banking or thrift institution
 (i) trust company
 (j) accountant or accounting firm
 (k) lawyer or law firm
 (l) insurance company or agency
 (m) pension consultant
 (n) real estate broker or dealer
 (o) sponsor or syndicator of limited partnerships (or equivalent), excluding pooled investment vehicles
 (p) sponsor, general partner, managing member (or equivalent) of pooled investment vehicles

Yes No

6. Do you *control* or are you *controlled* by the *related person*? Yes No
7. Are you and the *related person* under common *control*? Yes No
8. (a) Does the *related person* act as a qualified custodian for your *clients* in connection with advisory services you provide to *clients*? Yes No
 (b) If you are registering or registered with the SEC and you have answered "yes," to question 8.(a) above, have you overcome the presumption that you are not operationally independent (pursuant to rule 206(4)-2(d)(5)) from the *related person* and thus are not required to obtain a surprise examination for your *clients'* funds or securities that are maintained at the *related person*? Yes No
 (c) If you have answered "yes" to question 8.(a) above, provide the location of the *related person's* office responsible for *custody* of your *clients'* assets:
 Number and Street 1: _____ Number and Street 2: _____
 City: _____ State: _____ Country: _____ ZIP+4/Postal Code: _____
 If this address is a private residence, check this box:

Yes No

9. (a) If the *related person* is an investment adviser, is it exempt from registration? Yes No
 (b) If the answer is yes, under what exemption?

10. (a) Is the *related person* registered with a *foreign financial regulatory authority* ?
- (b) If the answer is yes, list the name and country, in English of each *foreign financial regulatory authority* with which the *related person* is registered.
No Information Filed
11. Do you and the *related person* share any *supervised persons*?
12. Do you and the *related person* share the same physical location?

1. Legal Name of *Related Person*:
ASHE CAPITAL PARTNERS CO-INVEST III (GP), LP
2. Primary Business Name of *Related Person*:
ASHE CAPITAL PARTNERS CO-INVEST III (GP), LP
3. *Related Person's* SEC File Number (if any) (e.g., 801-, 8-, 866-, 802-)
-
or
Other

4. *Related Person's*
- (a) CRD Number (if any):
- (b) CIK Number(s) (if any):
No Information Filed

5. *Related Person* is: (check all that apply)
- (a) broker-dealer, municipal securities dealer, or government securities broker or dealer
- (b) other investment adviser (including financial planners)
- (c) registered municipal advisor
- (d) registered security-based swap dealer
- (e) major security-based swap participant
- (f) commodity pool operator or commodity trading advisor (whether registered or exempt from registration)
- (g) futures commission merchant
- (h) banking or thrift institution
- (i) trust company
- (j) accountant or accounting firm
- (k) lawyer or law firm
- (l) insurance company or agency
- (m) pension consultant
- (n) real estate broker or dealer
- (o) sponsor or syndicator of limited partnerships (or equivalent), excluding pooled investment vehicles
- (p) sponsor, general partner, managing member (or equivalent) of pooled investment vehicles

6. Do you *control* or are you *controlled* by the *related person*? **Yes No**
7. Are you and the *related person* under common *control*?
8. (a) Does the *related person* act as a qualified custodian for your *clients* in connection with advisory services you provide to *clients*?
- (b) If you are registering or registered with the SEC and you have answered "yes," to question 8.(a) above, have you overcome the presumption that you are not operationally independent (pursuant to rule 206(4)-2(d)(5)) from the *related person* and thus are not required to obtain a surprise examination for your *clients'* funds or securities that are maintained at the *related person*?
- (c) If you have answered "yes" to question 8.(a) above, provide the location of the *related person's* office responsible for *custody* of your *clients'* assets:
Number and Street 1: _____ Number and Street 2: _____
City: _____ State: _____ Country: _____ ZIP+4/Postal Code: _____
If this address is a private residence, check this box:

9. (a) If the *related person* is an investment adviser, is it exempt from registration? **Yes No**
- (b) If the answer is yes, under what exemption?
10. (a) Is the *related person* registered with a *foreign financial regulatory authority* ?
- (b) If the answer is yes, list the name and country, in English of each *foreign financial regulatory authority* with which the *related person* is registered.
No Information Filed
11. Do you and the *related person* share any *supervised persons*?

Item 7 Private Fund Reporting

B. Are you an adviser to any private fund?

Yes No

Yes No

If "yes," then for each private fund that you advise, you must complete a Section 7.B.(1) of Schedule D, except in certain circumstances described in the next sentence and in Instruction 6 of the Instructions to Part 1A. If you are registered or applying for registration with the SEC or reporting as an SEC exempt reporting adviser, and another SEC-registered adviser or SEC exempt reporting adviser reports this information with respect to any such private fund in Section 7.B.(1) of Schedule D of its Form ADV (e.g., if you are a subadviser), do not complete Section 7.B.(1) of Schedule D with respect to that private fund. You must, instead, complete Section 7.B.(2) of Schedule D.

In either case, if you seek to preserve the anonymity of a private fund client by maintaining its identity in your books and records in numerical or alphabetical code, or similar designation, pursuant to rule 204-2(d), you may identify the private fund in Section 7.B.(1) or 7.B.(2) of Schedule D using the same code or designation in place of the fund's name.

SECTION 7.B.(1) Private Fund Reporting

A. PRIVATE FUND

Information About the Private Fund

1. (a) Name of the private fund:

ASHE CAPITAL PARTNERS CO-INVEST I, LP

(b) Private fund identification number:

(include the "805-" prefix also)

805-2642266448

2. Under the laws of what state or country is the private fund organized:

State:

Delaware

Country:

United States

3. (a) Name(s) of General Partner, Manager, Trustee, or Directors (or persons serving in a similar capacity):

Name of General Partner, Manager, Trustee, or Director

ASHE CAPITAL PARTNERS CO-INVEST (GP), LP

(b) If filing an umbrella registration, identify the filing adviser and/or relying adviser(s) that sponsor(s) or manage(s) this private fund.

No Information Filed

4. The private fund (check all that apply; you must check at least one):

(1) qualifies for the exclusion from the definition of investment company under section 3(c)(1) of the Investment Company Act of 1940

(2) qualifies for the exclusion from the definition of investment company under section 3(c)(7) of the Investment Company Act of 1940

5. List the name and country, in English, of each foreign financial regulatory authority with which the private fund is registered.

No Information Filed

Yes No

6. (a) Is this a "master fund" in a master-feeder arrangement?

Yes No

(b) If yes, what is the name and private fund identification number (if any) of the feeder funds investing in this private fund?

No Information Filed

Yes No

(c) Is this a "feeder fund" in a master-feeder arrangement?

Yes No

(d) If yes, what is the name and private fund identification number (if any) of the master fund in which this private fund invests?

Name of private fund:

Private fund identification number:

(include the "805-" prefix also)

NOTE: You must complete question 6 for each master-feeder arrangement regardless of whether you are filing a single Schedule D, Section 7.B.(1) for the master-feeder arrangement or reporting on the funds separately.

7. If you are filing a single Schedule D, Section 7.B.(1) for a master-feeder arrangement according to the instructions to this Section 7.B.(1), for each of the feeder funds answer the following questions:

No Information Filed

NOTE: For purposes of questions 6 and 7, in a master-feeder arrangement, one or more funds ("feeder funds") invest all or substantially all of their assets in a single fund ("master fund"). A fund would also be a "feeder fund" investing in a "master fund" for purposes of this question if it issued multiple classes (or series) of shares or interests, and each class (or series) invests substantially all of its assets in a single master fund.

8. (a) Is this *private fund* a "fund of funds"? Yes No
- NOTE: For purposes of this question only, answer "yes" if the fund invests 10 percent or more of its total assets in other pooled investment vehicles, regardless of whether they are also *private funds* or registered investment companies.
- (b) If yes, does the *private fund* invest in funds managed by you or by a *related person*?

9. During your last fiscal year, did the *private fund* invest in securities issued by investment companies registered under the Investment Company Act of 1940 (other than "money market funds," to the extent provided in Instruction 6.e.)? Yes No

10. What type of fund is the *private fund*?
 hedge fund liquidity fund private equity fund real estate fund securitized asset fund venture capital fund Other *private fund*:
CO-INVESTMENT FUND

NOTE: For definitions of these fund types, please see Instruction 6 of the Instructions to Part 1A.

11. Current gross asset value of the *private fund*:
\$ 123,818,156

Ownership

12. Minimum investment commitment required of an investor in the *private fund*:
\$ 5,000,000
- NOTE: Report the amount routinely required of investors who are not your *related persons* (even if different from the amount set forth in the organizational documents of the fund).

13. Approximate number of the *private fund's* beneficial owners:
24

14. What is the approximate percentage of the *private fund* beneficially owned by you and your *related persons*:
0%

15. (a) What is the approximate percentage of the *private fund* beneficially owned (in the aggregate) by funds of funds:
0%

- (b) If the *private fund* qualifies for the exclusion from the definition of investment company under section 3(c)(1) of the Investment Company Act of 1940, are sales of the fund limited to *qualified clients*? Yes No

16. What is the approximate percentage of the *private fund* beneficially owned by non-United States persons:
0%

Your Advisory Services

17. (a) Are you a subadviser to this *private fund*? Yes No
- (b) If the answer to question 17.(a) is "yes," provide the name and SEC file number, if any, of the adviser of the *private fund*. If the answer to question 17.(a) is "no," leave this question blank.

No Information Filed

Yes No

18. (a) Do any investment advisers (other than the investment advisers listed in Section 7.B.(1).A.3.(b)) advise the *private fund*?

(b) If the answer to question 18.(a) is "yes," provide the name and SEC file number, if any, of the other advisers to the *private fund*. If the answer to question 18.(a) is "no," leave this question blank.

No Information Filed

Yes No

19. Are your *clients* solicited to invest in the *private fund*?

NOTE: For purposes of this question, do not consider feeder funds of the *private fund*.

20. Approximately what percentage of your *clients* has invested in the *private fund*?

0%

Private Offering

Yes No

21. Has the *private fund* ever relied on an exemption from registration of its securities under Regulation D of the Securities Act of 1933?

22. If yes, provide the *private fund's* Form D file number (if any):

No Information Filed

B. SERVICE PROVIDERS

Auditors

Yes No

23. (a) (1) Are the *private fund's* financial statements subject to an annual audit?

(2) If the answer to question 23.(a)(1) is "yes," are the financial statements prepared in accordance with U.S. GAAP?

If the answer to question 23.(a)(1) is "yes," respond to questions (b) through (h) below. If the *private fund* uses more than one auditing firm, you must complete questions (b) through (f) separately for each auditing firm.

Additional Auditor Information : 1 Record(s) Filed.

If the answer to question 23.(a)(1) is "yes," respond to questions (b) through (h) below. If the *private fund* uses more than one auditing firm, you must complete questions (b) through (f) separately for each auditing firm.

(b) Name of the auditing firm:
KPMG LLP

(c) The location of the auditing firm's office responsible for the *private fund's* audit (city, state and country):
City: NEW YORK State: New York Country: United States

Yes No

(d) Is the auditing firm an *independent public accountant*?

(e) Is the auditing firm registered with the Public Company Accounting Oversight Board?

If yes, Public Company Accounting Oversight Board-Assigned Number:
185

(f) If "yes" to (e) above, is the auditing firm subject to regular inspection by the Public Company Accounting Oversight Board in accordance with its rules?

Yes No

(g) Are the *private fund's* audited financial statements for the most recently completed fiscal year distributed to the *private fund's* investors?

(h) Do all of the reports prepared by the auditing firm for the *private fund* since your last *annual updating amendment* contain unqualified opinions?

Yes No Report Not Yet Received

If you check "Report Not Yet Received," you must promptly file an amendment to your Form ADV to update your response when the report is available.

Prime Broker

Yes No

24. (a) Does the *private fund* use one or more prime brokers?

If the answer to question 24.(a) is "yes," respond to questions (b) through (e) below for each prime broker the *private fund* uses. If the *private fund* uses more than one prime broker, you must complete questions (b) through (e) separately for each prime broker.

No Information Filed

Custodian

Yes No

25. (a) Does the *private fund* use any custodians (including the prime brokers listed above) to hold some or all of its assets?

If the answer to question 25.(a) is "yes," respond to questions (b) through (g) below for each custodian the *private fund* uses. If the *private fund* uses more than one custodian, you must complete questions (b) through (g) separately for each custodian.

Additional Custodian Information : 1 Record(s) Filed.

If the answer to question 25.(a) is "yes," respond to questions (b) through (g) below for each custodian the *private fund* uses. If the *private fund* uses more than one custodian, you must complete questions (b) through (g) separately for each custodian.

(b) Legal name of custodian:

THE NORTHERN TRUST COMPANY

(c) Primary business name of custodian:

THE NORTHERN TRUST COMPANY

(d) The location of the custodian's office responsible for custody of the *private fund's* assets (city, state and country):

City:

CHICAGO

State:

Illinois

Country:

United States

Yes No

(e) Is the custodian a *related person* of your firm?

(f) If the custodian is a broker-dealer, provide its SEC registration number (if any):

-

CRD Number (if any):

(g) If the custodian is not a broker-dealer, or is a broker-dealer but does not have an SEC registration number, provide its *legal entity identifier* (if any)

Administrator

Yes No

26. (a) Does the *private fund* use an administrator other than your firm?

If the answer to question 26.(a) is "yes," respond to questions (b) through (f) below. If the *private fund* uses more than one administrator, you must complete questions (b) through (f) separately for each administrator.

Additional Administrator Information : 1 Record(s) Filed.

If the answer to question 26.(a) is "yes," respond to questions (b) through (f) below. If the *private fund* uses more than one administrator, you must complete questions (b) through (f) separately for each administrator.

(b) Name of administrator:

NORTHERN TRUST HEDGE FUND SERVICES

(c) Location of administrator (city, state and country):

City:

CHICAGO

State:

Illinois

Country:

United States

Yes No

(d) Is the administrator a *related person* of your firm?

(e) Does the administrator prepare and send investor account statements to the *private fund's* investors?

(f) If the answer to question 26.(e) is "no" or "some," who sends the investor account statements to the (rest of the) *private fund's* investors? If investor account statements are not sent to the (rest of the) *private fund's* investors, respond "not applicable."

27. During your last fiscal year, what percentage of the *private fund's* assets (by value) was valued by a *person*, such as an administrator, that is not your *related person*?

0%

Include only those assets where (i) such *person* carried out the valuation procedure established for that asset, if any, including obtaining any relevant quotes, and (ii) the valuation used for purposes of investor subscriptions, redemptions or distributions, and fee calculations (including allocations) was the valuation determined by such *person*.

Marketers

28. (a) Does the *private fund* use the services of someone other than you or your *employees* for marketing purposes? Yes No

You must answer "yes" whether the *person* acts as a placement agent, consultant, finder, introducer, municipal advisor or other solicitor, or similar *person*. If the answer to question 28.(a) is "yes," respond to questions (b) through (g) below for each such marketer the *private fund* uses. If the *private fund* uses more than one marketer you must complete questions (b) through (g) separately for each marketer.

No Information Filed

A. PRIVATE FUND

Information About the *Private Fund*

1. (a) Name of the *private fund*:

ASHE CAPITAL PARTNERS CO-INVEST II, LP

(b) *Private fund* identification number:

(include the "805-" prefix also)

805-8106903441

2. Under the laws of what state or country is the *private fund* organized:

State:

Delaware

Country:

United States

3. (a) Name(s) of General Partner, Manager, Trustee, or Directors (or *persons* serving in a similar capacity):

Name of General Partner, Manager, Trustee, or Director

ASHE CAPITAL PARTNERS CO-INVEST II (GP), LP

(b) If filing an *umbrella registration*, identify the *filing adviser* and/or *relying adviser(s)* that sponsor(s) or manage(s) this *private fund*.

No Information Filed

4. The *private fund* (check all that apply; you must check at least one):

(1) qualifies for the exclusion from the definition of investment company under section 3(c)(1) of the Investment Company Act of 1940

(2) qualifies for the exclusion from the definition of investment company under section 3(c)(7) of the Investment Company Act of 1940

5. List the name and country, in English, of each *foreign financial regulatory authority* with which the *private fund* is registered.

No Information Filed

6. (a) Is this a "master fund" in a master-feeder arrangement? Yes No

(b) If yes, what is the name and *private fund* identification number (if any) of the feeder funds investing in this *private fund*?

No Information Filed

(c) Is this a "feeder fund" in a master-feeder arrangement? Yes No

(d) If yes, what is the name and *private fund* identification number (if any) of the master fund in which this *private fund* invests?

Name of private fund:

Private fund identification number:
(include the "805-" prefix also)

NOTE: You must complete question 6 for each master-feeder arrangement regardless of whether you are filing a single Schedule D, Section 7.B.(1) for the master-feeder arrangement or reporting on the funds separately.

7. If you are filing a single Schedule D, Section 7.B.(1) for a master-feeder arrangement according to the instructions to this Section 7.B.(1), for each of the feeder funds answer the following questions:

No Information Filed

NOTE: For purposes of questions 6 and 7, in a master-feeder arrangement, one or more funds ("feeder funds") invest all or substantially all of their assets in a single fund ("master fund"). A fund would also be a "feeder fund" investing in a "master fund" for purposes of this question if it issued multiple classes (or series) of shares or interests, and each class (or series) invests substantially all of its assets in a single master fund.

8. (a) Is this private fund a "fund of funds"? Yes No
- NOTE: For purposes of this question only, answer "yes" if the fund invests 10 percent or more of its total assets in other pooled investment vehicles, regardless of whether they are also private funds or registered investment companies.
- (b) If yes, does the private fund invest in funds managed by you or by a related person?

9. During your last fiscal year, did the private fund invest in securities issued by investment companies registered under the Investment Company Act of 1940 (other than "money market funds," to the extent provided in Instruction 6.e.)? Yes No

10. What type of fund is the private fund?
- hedge fund liquidity fund private equity fund real estate fund securitized asset fund venture capital fund Other private fund:
CO-INVESTMENT FUND

NOTE: For definitions of these fund types, please see Instruction 6 of the Instructions to Part 1A.

11. Current gross asset value of the private fund:
\$ 74,685,890

Ownership

12. Minimum investment commitment required of an investor in the private fund:
\$ 5,000,000
- NOTE: Report the amount routinely required of investors who are not your related persons (even if different from the amount set forth in the organizational documents of the fund).

13. Approximate number of the private fund's beneficial owners:
1

14. What is the approximate percentage of the private fund beneficially owned by you and your related persons:
0%

15. (a) What is the approximate percentage of the private fund beneficially owned (in the aggregate) by funds of funds:
0%

- (b) If the private fund qualifies for the exclusion from the definition of investment company under section 3(c)(1) of the Investment Company Act of 1940, are sales of the fund limited to qualified clients? Yes No

16. What is the approximate percentage of the private fund beneficially owned by non-United States persons:
0%

Your Advisory Services

Yes No

17. (b) Are you a subadviser to this private fund?

(b) If the answer to question 17.(a) is "yes," provide the name and SEC file number, if any, of the adviser of the private fund. If the answer to question 17.(a) is "no," leave this question blank.

No Information Filed

Yes No

18. (a) Do any investment advisers (other than the investment advisers listed in Section 7.B.(1).A.3.(b)) advise the private fund?

(b) If the answer to question 18.(a) is "yes," provide the name and SEC file number, if any, of the other advisers to the private fund. If the answer to question 18.(a) is "no," leave this question blank.

No Information Filed

Yes No

19. Are your clients solicited to invest in the private fund?

NOTE: For purposes of this question, do not consider feeder funds of the private fund.

20. Approximately what percentage of your clients has invested in the private fund?

0%

Private Offering

Yes No

21. Has the private fund ever relied on an exemption from registration of its securities under Regulation D of the Securities Act of 1933?

22. If yes, provide the private fund's Form D file number (if any):

No Information Filed

B. SERVICE PROVIDERS

Auditors

Yes No

23. (a) (1) Are the private fund's financial statements subject to an annual audit?

(2) If the answer to question 23.(a)(1) is "yes," are the financial statements prepared in accordance with U.S. GAAP?

If the answer to question 23.(a)(1) is "yes," respond to questions (b) through (h) below. If the private fund uses more than one auditing firm, you must complete questions (b) through (f) separately for each auditing firm.

Additional Auditor Information : 1 Record(s) Filed.

If the answer to question 23.(a)(1) is "yes," respond to questions (b) through (h) below. If the private fund uses more than one auditing firm, you must complete questions (b) through (f) separately for each auditing firm.

(b) Name of the auditing firm:

KPMG LLP

(c) The location of the auditing firm's office responsible for the private fund's audit (city, state and country):

City:

NEW YORK

State:

New York

Country:

United States

Yes No

(d) Is the auditing firm an independent public accountant?

(e) Is the auditing firm registered with the Public Company Accounting Oversight Board?

If yes, Public Company Accounting Oversight Board-Assigned Number:

185

(f) If "yes" to (e) above, is the auditing firm subject to regular inspection by the Public Company Accounting Oversight Board in accordance with its rules?

Yes No

(g) Are the private fund's audited financial statements for the most recently completed fiscal year distributed to the private fund's investors?

(h) Do all of the reports prepared by the auditing firm for the private fund since your last annual updating amendment contain unqualified opinions?

Yes No Report Not Yet Received

Prime Broker

Yes No

24. (a) Does the *private fund* use one or more prime brokers?

If the answer to question 24.(a) is "yes," respond to questions (b) through (e) below for each prime broker the *private fund* uses. If the *private fund* uses more than one prime broker, you must complete questions (b) through (e) separately for each prime broker.

No Information Filed

Custodian

Yes No

25. (a) Does the *private fund* use any custodians (including the prime brokers listed above) to hold some or all of its assets?

If the answer to question 25.(a) is "yes," respond to questions (b) through (g) below for each custodian the *private fund* uses. If the *private fund* uses more than one custodian, you must complete questions (b) through (g) separately for each custodian.

Additional Custodian Information : 1 Record(s) Filed.

If the answer to question 25.(a) is "yes," respond to questions (b) through (g) below for each custodian the *private fund* uses. If the *private fund* uses more than one custodian, you must complete questions (b) through (g) separately for each custodian.

(b) Legal name of custodian:

THE NORTHERN TRUST COMPANY

(c) Primary business name of custodian:

THE NORTHERN TRUST COMPANY

(d) The location of the custodian's office responsible for custody of the *private fund's* assets (city, state and country):

City:

CHICAGO

State:

Illinois

Country:

United States

Yes No

(e) Is the custodian a *related person* of your firm?

(f) If the custodian is a broker-dealer, provide its SEC registration number (if any):

-

CRD Number (if any):

(g) If the custodian is not a broker-dealer, or is a broker-dealer but does not have an SEC registration number, provide its *legal entity identifier* (if any)

Administrator

Yes No

26. (a) Does the *private fund* use an administrator other than your firm?

If the answer to question 26.(a) is "yes," respond to questions (b) through (f) below. If the *private fund* uses more than one administrator, you must complete questions (b) through (f) separately for each administrator.

Additional Administrator Information : 1 Record(s) Filed.

If the answer to question 26.(a) is "yes," respond to questions (b) through (f) below. If the *private fund* uses more than one administrator, you must complete questions (b) through (f) separately for each administrator.

(b) Name of administrator:

NORTHERN TRUST HEDGE FUND SERVICES

(c) Location of administrator (city, state and country):

City:

CHICAGO

State:

Illinois

Country:

United States

Yes No

(d) Is the administrator a *related person* of your firm?

(e) Does the administrator prepare and send investor account statements to the *private fund's* investors?

Yes (provided to all investors) Some (provided to some but not all investors) No (provided to no investors)

(f) If the answer to question 26.(e) is "no" or "some," who sends the investor account statements to the (rest of the) *private fund's* investors? If investor account statements are not sent to the (rest of the) *private fund's* investors, respond "not applicable."

27. During your last fiscal year, what percentage of the *private fund's* assets (by value) was valued by a *person*, such as an administrator, that is not your *related person*?

0%

Include only those assets where (i) such *person* carried out the valuation procedure established for that asset, if any, including obtaining any relevant quotes, and (ii) the valuation used for purposes of investor subscriptions, redemptions or distributions, and fee calculations (including allocations) was the valuation determined by such *person*.

Marketers

Yes No

28. (a) Does the *private fund* use the services of someone other than you or your *employees* for marketing purposes?

You must answer "yes" whether the *person* acts as a placement agent, consultant, finder, introducer, municipal advisor or other solicitor, or similar *person*. If the answer to question 28.(a) is "yes," respond to questions (b) through (g) below for each such marketer the *private fund* uses. If the *private fund* uses more than one marketer you must complete questions (b) through (g) separately for each marketer.

No Information Filed

A. PRIVATE FUND

Information About the *Private Fund*

1. (a) Name of the *private fund*:

ASHE CAPITAL PARTNERS CO-INVEST III, LP

(b) *Private fund* identification number:

(include the "805-" prefix also)

805-3129712236

2. Under the laws of what state or country is the *private fund* organized:

State:

Delaware

Country:

United States

3. (a) Name(s) of General Partner, Manager, Trustee, or Directors (or *persons* serving in a similar capacity):

Name of General Partner, Manager, Trustee, or Director

ASHE CAPITAL PARTNERS CO-INVEST III (GP), LP

(b) If filing an *umbrella registration*, identify the *filing adviser* and/or *relying adviser(s)* that sponsor(s) or manage(s) this *private fund*.

No Information Filed

4. The *private fund* (check all that apply; you must check at least one):

(1) qualifies for the exclusion from the definition of investment company under section 3(c)(1) of the Investment Company Act of 1940

(2) qualifies for the exclusion from the definition of investment company under section 3(c)(7) of the Investment Company Act of 1940

5. List the name and country, in English, of each *foreign financial regulatory authority* with which the *private fund* is registered.

No Information Filed

Yes No

6. (a) Is this a "master fund" in a master-feeder arrangement?

(b) If yes, what is the name and *private fund* identification number (if any) of the feeder funds investing in this *private fund*?

No Information Filed

(c) Is this a "feeder fund" in a master-feeder arrangement?

(d) If yes, what is the name and private fund identification number (if any) of the master fund in which this private fund invests?

Name of private fund:

Private fund identification number:
(include the "805-" prefix also)

NOTE: You must complete question 6 for each master-feeder arrangement regardless of whether you are filing a single Schedule D, Section 7.B.(1) for the master-feeder arrangement or reporting on the funds separately.

7. If you are filing a single Schedule D, Section 7.B.(1) for a master-feeder arrangement according to the instructions to this Section 7.B.(1), for each of the feeder funds answer the following questions:

No Information Filed

NOTE: For purposes of questions 6 and 7, in a master-feeder arrangement, one or more funds ("feeder funds") invest all or substantially all of their assets in a single fund ("master fund"). A fund would also be a "feeder fund" investing in a "master fund" for purposes of this question if it issued multiple classes (or series) of shares or interests, and each class (or series) invests substantially all of its assets in a single master fund.

8. (a) Is this private fund a "fund of funds"?

Yes No

NOTE: For purposes of this question only, answer "yes" if the fund invests 10 percent or more of its total assets in other pooled investment vehicles, regardless of whether they are also private funds or registered investment companies.

(b) If yes, does the private fund invest in funds managed by you or by a related person?

9. During your last fiscal year, did the private fund invest in securities issued by investment companies registered under the Investment Company Act of 1940 (other than "money market funds," to the extent provided in Instruction 6.e.)?

Yes No

10. What type of fund is the private fund?

hedge fund liquidity fund private equity fund real estate fund securitized asset fund venture capital fund Other private fund:
CO-INVESTMENT FUND

NOTE: For definitions of these fund types, please see Instruction 6 of the Instructions to Part 1A.

11. Current gross asset value of the private fund:

\$ 18,603,344

Ownership

12. Minimum investment commitment required of an investor in the private fund:

\$ 5,000,000

NOTE: Report the amount routinely required of investors who are not your related persons (even if different from the amount set forth in the organizational documents of the fund).

13. Approximate number of the private fund's beneficial owners:

1

14. What is the approximate percentage of the private fund beneficially owned by you and your related persons:

0%

15. (a) What is the approximate percentage of the private fund beneficially owned (in the aggregate) by funds of funds:

0%

(b) If the private fund qualifies for the exclusion from the definition of investment company under section 3(c)(1) of the Investment Company Act of 1940, are sales of the fund limited to qualified clients?

Yes No

16. What is the approximate percentage of the private fund beneficially owned by non-United States persons:

0%

Your Advisory Services

Yes No

17. (a) Are you a subadviser to this *private fund*?

(b) If the answer to question 17.(a) is "yes," provide the name and SEC file number, if any, of the adviser of the *private fund*. If the answer to question 17.(a) is "no," leave this question blank.

No Information Filed

Yes No

18. (a) Do any investment advisers (other than the investment advisers listed in Section 7.B.(1).A.3.(b)) advise the *private fund*?

(b) If the answer to question 18.(a) is "yes," provide the name and SEC file number, if any, of the other advisers to the *private fund*. If the answer to question 18.(a) is "no," leave this question blank.

No Information Filed

Yes No

19. Are your *clients* solicited to invest in the *private fund*?

NOTE: For purposes of this question, do not consider feeder funds of the *private fund*.

20. Approximately what percentage of your *clients* has invested in the *private fund*?

0%

Private Offering

Yes No

21. Has the *private fund* ever relied on an exemption from registration of its securities under Regulation D of the Securities Act of 1933?

22. If yes, provide the *private fund's* Form D file number (if any):

No Information Filed

B. SERVICE PROVIDERS

Auditors

Yes No

23. (a) (1) Are the *private fund's* financial statements subject to an annual audit?

(2) If the answer to question 23.(a)(1) is "yes," are the financial statements prepared in accordance with U.S. GAAP?

If the answer to question 23.(a)(1) is "yes," respond to questions (b) through (h) below. If the *private fund* uses more than one auditing firm, you must complete questions (b) through (f) separately for each auditing firm.

Additional Auditor Information : 1 Record(s) Filed.

If the answer to question 23.(a)(1) is "yes," respond to questions (b) through (h) below. If the *private fund* uses more than one auditing firm, you must complete questions (b) through (f) separately for each auditing firm.

(b) Name of the auditing firm:

KPMG LLP

(c) The location of the auditing firm's office responsible for the *private fund's* audit (city, state and country):

City:

NEW YORK

State:

New York

Country:

United States

Yes No

(d) Is the auditing firm an *independent public accountant*?

(e) Is the auditing firm registered with the Public Company Accounting Oversight Board?

If yes, Public Company Accounting Oversight Board-Assigned Number:

185

(f) If "yes" to (e) above, is the auditing firm subject to regular inspection by the Public Company Accounting Oversight Board in accordance with its rules?

Yes No

(g) Are the *private fund's* audited financial statements for the most recently completed fiscal year distributed to the *private fund's* investors?

(h) Do all of the reports prepared by the auditing firm for the *private fund* since your last *annual updating amendment* contain unqualified opinions?

Yes No Report Not Yet Received

If you check "Report Not Yet Received," you must promptly file an amendment to your Form ADV to update your response when the report is available.

Prime Broker

Yes No

24. (a) Does the *private fund* use one or more prime brokers? Yes No

If the answer to question 24.(a) is "yes," respond to questions (b) through (e) below for each prime broker the *private fund* uses. If the *private fund* uses more than one prime broker, you must complete questions (b) through (e) separately for each prime broker.

No Information Filed

Custodian

Yes No

25. (a) Does the *private fund* use any custodians (including the prime brokers listed above) to hold some or all of its assets? Yes No

If the answer to question 25.(a) is "yes," respond to questions (b) through (g) below for each custodian the *private fund* uses. If the *private fund* uses more than one custodian, you must complete questions (b) through (g) separately for each custodian.

Additional Custodian Information : 1 Record(s) Filed.

If the answer to question 25.(a) is "yes," respond to questions (b) through (g) below for each custodian the *private fund* uses. If the *private fund* uses more than one custodian, you must complete questions (b) through (g) separately for each custodian.

(b) Legal name of custodian:

THE NORTHERN TRUST COMPANY

(c) Primary business name of custodian:

THE NORTHERN TRUST COMPANY

(d) The location of the custodian's office responsible for custody of the *private fund's* assets (city, state and country):

City:

CHICAGO

State:

Illinois

Country:

United States

Yes No

(e) Is the custodian a *related person* of your firm? Yes No

(f) If the custodian is a broker-dealer, provide its SEC registration number (if any):

CRD Number (if any):

(g) If the custodian is not a broker-dealer, or is a broker-dealer but does not have an SEC registration number, provide its *legal entity identifier* (if any)

Administrator

Yes No

26. (a) Does the *private fund* use an administrator other than your firm? Yes No

If the answer to question 26.(a) is "yes," respond to questions (b) through (f) below. If the *private fund* uses more than one administrator, you must complete questions (b) through (f) separately for each administrator.

Additional Administrator Information : 1 Record(s) Filed.

If the answer to question 26.(a) is "yes," respond to questions (b) through (f) below. If the *private fund* uses more than one administrator, you must complete questions (b) through (f) separately for each administrator.

(b) Name of administrator:

NORTHERN TRUST HEDGE FUND SERVICES

(c) Location of administrator (city, state and country):

City:
CHICAGO

State:
Illinois

Country:
United States

Yes No

(d) Is the administrator a *related person* of your firm?

(e) Does the administrator prepare and send investor account statements to the *private fund's* investors?

Yes (provided to all investors) Some (provided to some but not all investors) No (provided to no investors)

(f) If the answer to question 26.(e) is "no" or "some," who sends the investor account statements to the (rest of the) *private fund's* investors? If investor account statements are not sent to the (rest of the) *private fund's* investors, respond "not applicable."

27. During your last fiscal year, what percentage of the *private fund's* assets (by value) was valued by a *person*, such as an administrator, that is not your *related person*?

0%

Include only those assets where (i) such *person* carried out the valuation procedure established for that asset, if any, including obtaining any relevant quotes, and (ii) the valuation used for purposes of investor subscriptions, redemptions or distributions, and fee calculations (including allocations) was the valuation determined by such *person*.

Marketers

Yes No

28. (a) Does the *private fund* use the services of someone other than you or your *employees* for marketing purposes?

You must answer "yes" whether the *person* acts as a placement agent, consultant, finder, introducer, municipal advisor or other solicitor, or similar *person*. If the answer to question 28.(a) is "yes," respond to questions (b) through (g) below for each such marketer the *private fund* uses. If the *private fund* uses more than one marketer you must complete questions (b) through (g) separately for each marketer.

No Information Filed

A. PRIVATE FUND

Information About the *Private Fund*

1. (a) Name of the *private fund*:

ASHE CAPITAL PARTNERS, LP

(b) *Private fund* identification number:

(Include the "805-" prefix also)

805-3663567176

2. Under the laws of what state or country is the *private fund* organized:

State:

Delaware

Country:

United States

3. (a) Name(s) of General Partner, Manager, Trustee, or Directors (or *persons* serving in a similar capacity):

Name of General Partner, Manager, Trustee, or Director

ASHE CAPITAL PARTNERS (GP), LP

(b) If filing an *umbrella registration*, identify the *filing adviser* and/or *relying adviser(s)* that sponsor(s) or manage(s) this *private fund*.

No Information Filed

4. The *private fund* (check all that apply; you must check at least one):

(1) qualifies for the exclusion from the definition of investment company under section 3(c)(1) of the Investment Company Act of 1940

(2) qualifies for the exclusion from the definition of investment company under section 3(c)(7) of the Investment Company Act of 1940

5. List the name and country, in English, of each *foreign financial regulatory authority* with which the *private fund* is registered.

No Information Filed

Yes No

6. (a) Is this a "master fund" in a master-feeder arrangement?

(b) If yes, what is the name and *private fund* identification number (if any) of the feeder funds investing in this *private fund*?

Yes No

(c) Is this a "feeder fund" in a master-feeder arrangement? (d) If yes, what is the name and *private fund* identification number (if any) of the master fund in which this *private fund* invests?Name of *private fund*:*Private fund* identification number:
(include the "805-" prefix also)

NOTE: You must complete question 6 for each master-feeder arrangement regardless of whether you are filing a single Schedule D, Section 7.B.(1) for the master-feeder arrangement or reporting on the funds separately.

7. If you are filing a single Schedule D, Section 7.B.(1) for a master-feeder arrangement according to the instructions to this Section 7.B.(1), for each of the feeder funds answer the following questions:

No Information Filed

NOTE: For purposes of questions 6 and 7, in a master-feeder arrangement, one or more funds ("feeder funds") invest all or substantially all of their assets in a single fund ("master fund"). A fund would also be a "feeder fund" investing in a "master fund" for purposes of this question if it issued multiple classes (or series) of shares or interests, and each class (or series) invests substantially all of its assets in a single master fund.

Yes No

8. (a) Is this
- private fund*
- a "fund of funds"?
-
-

NOTE: For purposes of this question only, answer "yes" if the fund invests 10 percent or more of its total assets in other pooled investment vehicles, regardless of whether they are also *private funds* or registered investment companies.(b) If yes, does the *private fund* invest in funds managed by you or by a *related person*?

Yes No

9. During your last fiscal year, did the
- private fund*
- invest in securities issued by investment companies registered under the Investment Company Act of 1940 (other than "money market funds," to the extent provided in Instruction 6.e.)?
-
-

10. What type of fund is the
- private fund*
- ?

 hedge fund liquidity fund private equity fund real estate fund securitized asset fund venture capital fund Other *private fund*:

NOTE: For definitions of these fund types, please see Instruction 6 of the Instructions to Part 1A.

11. Current gross asset value of the
- private fund*
- :

\$ 1,031,872,941

Ownership

12. Minimum investment commitment required of an investor in the
- private fund*
- :

\$ 5,000,000

NOTE: Report the amount routinely required of investors who are not your *related persons* (even if different from the amount set forth in the organizational documents of the fund).

13. Approximate number of the
- private fund's*
- beneficial owners:

91

14. What is the approximate percentage of the
- private fund*
- beneficially owned by you and your
- related persons*
- :

7%

15. (a) What is the approximate percentage of the
- private fund*
- beneficially owned (in the aggregate) by funds of funds:

2%

Yes No

- (b) If the
- private fund*
- qualifies for the exclusion from the definition of investment company under section 3(c)(1) of the Investment Company Act of 1940, are sales of the fund limited to
- qualified clients*
- ?
-
-

16. What is the approximate percentage of the private fund beneficially owned by non-United States persons:

1%

Your Advisory Services

17. (a) Are you a subadviser to this private fund? Yes No

(b) If the answer to question 17.(a) is "yes," provide the name and SEC file number, if any, of the adviser of the private fund. If the answer to question 17.(a) is "no," leave this question blank.

No Information Filed

18. (a) Do any investment advisers (other than the investment advisers listed in Section 7.B.(1).A.3.(b)) advise the private fund? Yes No

(b) If the answer to question 18.(a) is "yes," provide the name and SEC file number, if any, of the other advisers to the private fund. If the answer to question 18.(a) is "no," leave this question blank.

No Information Filed

19. Are your clients solicited to invest in the private fund? Yes No

NOTE: For purposes of this question, do not consider feeder funds of the private fund.

20. Approximately what percentage of your clients has invested in the private fund?

0%

Private Offering

21. Has the private fund ever relied on an exemption from registration of its securities under Regulation D of the Securities Act of 1933? Yes No

22. If yes, provide the private fund's Form D file number (if any):

Form D file number

021-204535

B. SERVICE PROVIDERS

Auditors

23. (a) (1) Are the private fund's financial statements subject to an annual audit? Yes No

(2) If the answer to question 23.(a)(1) is "yes," are the financial statements prepared in accordance with U.S. GAAP? Yes No

If the answer to question 23.(a)(1) is "yes," respond to questions (b) through (h) below. If the private fund uses more than one auditing firm, you must complete questions (b) through (f) separately for each auditing firm.

Additional Auditor Information : 1 Record(s) Filed.

If the answer to question 23.(a)(1) is "yes," respond to questions (b) through (h) below. If the private fund uses more than one auditing firm, you must complete questions (b) through (f) separately for each auditing firm.

(b) Name of the auditing firm:

KPMG LLP

(c) The location of the auditing firm's office responsible for the private fund's audit (city, state and country):

City: NEW YORK State: New York Country: United States

(d) Is the auditing firm an independent public accountant? Yes No

(e) Is the auditing firm registered with the Public Company Accounting Oversight Board? Yes No

If yes, Public Company Accounting Oversight Board-Assigned Number:

185

(f) If "yes" to (e) above, is the auditing firm subject to regular inspection by the Public Company Accounting Oversight Board in accordance with its rules? Yes No

(g) Are the *private fund's* audited financial statements for the most recently completed fiscal year distributed to the *private fund's* investors?

(h) Do all of the reports prepared by the auditing firm for the *private fund* since your last *annual updating amendment* contain unqualified opinions?

Yes No Report Not Yet Received

If you check "Report Not Yet Received," you must promptly file an amendment to your Form ADV to update your response when the report is available.

Prime Broker

24. (a) Does the *private fund* use one or more prime brokers?

If the answer to question 24.(a) is "yes," respond to questions (b) through (e) below for each prime broker the *private fund* uses. If the *private fund* uses more than one prime broker, you must complete questions (b) through (e) separately for each prime broker.

No Information Filed

Custodian

25. (a) Does the *private fund* use any custodians (including the prime brokers listed above) to hold some or all of its assets?

If the answer to question 25.(a) is "yes," respond to questions (b) through (g) below for each custodian the *private fund* uses. If the *private fund* uses more than one custodian, you must complete questions (b) through (g) separately for each custodian.

Additional Custodian Information : 1 Record(s) Filed.

If the answer to question 25.(a) is "yes," respond to questions (b) through (g) below for each custodian the *private fund* uses. If the *private fund* uses more than one custodian, you must complete questions (b) through (g) separately for each custodian.

(b) Legal name of custodian:
THE NORTHERN TRUST COMPANY

(c) Primary business name of custodian:
THE NORTHERN TRUST COMPANY

(d) The location of the custodian's office responsible for custody of the *private fund's* assets (city, state and country):

City: CHICAGO	State: Illinois	Country: United States
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Yes No

(e) Is the custodian a *related person* of your firm?

(f) If the custodian is a broker-dealer, provide its SEC registration number (if any):
-
CRD Number (if any):

(g) If the custodian is not a broker-dealer, or is a broker-dealer but does not have an SEC registration number, provide its *legal entity identifier* (if any)

Administrator

26. (a) Does the *private fund* use an administrator other than your firm?

If the answer to question 26.(a) is "yes," respond to questions (b) through (f) below. If the *private fund* uses more than one administrator, you must complete questions (b) through (f) separately for each administrator.

Additional Administrator Information : 1 Record(s) Filed.

If the answer to question 26.(a) is "yes," respond to questions (b) through (f) below. If the *private fund* uses more than one administrator, you must complete questions (b) through (f) separately for each administrator.

(b) Name of administrator:

(c) Location of administrator (city, state and country):

City: CHICAGO State: Illinois Country: United States

Yes No

(d) Is the administrator a *related person* of your firm?

(e) Does the administrator prepare and send investor account statements to the *private fund's* investors?

Yes (provided to all investors) Some (provided to some but not all investors) No (provided to no investors)

(f) If the answer to question 26.(e) is "no" or "some," who sends the investor account statements to the (rest of the) *private fund's* investors? If investor account statements are not sent to the (rest of the) *private fund's* investors, respond "not applicable."

27. During your last fiscal year, what percentage of the *private fund's* assets (by value) was valued by a *person*, such as an administrator, that is not your *related person*?

0%

Include only those assets where (i) such *person* carried out the valuation procedure established for that asset, if any, including obtaining any relevant quotes, and (ii) the valuation used for purposes of investor subscriptions, redemptions or distributions, and fee calculations (including allocations) was the valuation determined by such *person*.

Marketers

Yes No

28. (a) Does the *private fund* use the services of someone other than you or your *employees* for marketing purposes?

You must answer "yes" whether the *person* acts as a placement agent, consultant, finder, introducer, municipal advisor or other solicitor, or similar *person*. If the answer to question 28.(a) is "yes," respond to questions (b) through (g) below for each such marketer the *private fund* uses. If the *private fund* uses more than one marketer you must complete questions (b) through (g) separately for each marketer.

No Information Filed

SECTION 7.B.(2) Private Fund Reporting

No Information Filed

Item 8 Participation or Interest in Client Transactions

In this Item, we request information about your participation and interest in your *clients'* transactions. This information identifies additional areas in which conflicts of interest may occur between you and your *clients*. Newly-formed advisers should base responses to these questions on the types of participation and interest that you expect to engage in during the next year.

Like Item 7, Item 8 requires you to provide information about you and your *related persons*, including foreign affiliates.

Proprietary Interest in Client Transactions

A. Do you or any *related person*:

Yes No

- (1) buy securities for yourself from advisory *clients*, or sell securities you own to advisory *clients* (principal transactions)?
- (2) buy or sell for yourself securities (other than shares of mutual funds) that you also recommend to advisory *clients*?
- (3) recommend securities (or other investment products) to advisory *clients* in which you or any *related person* has some other proprietary (ownership) interest (other than those mentioned in Items 8.A.(1) or (2))?

Sales Interest in Client Transactions

B. Do you or any *related person*:

Yes No

- (1) as a broker-dealer or registered representative of a broker-dealer, execute securities trades for brokerage customers in which advisory *client* securities are sold to or bought from the brokerage customer (agency cross transactions)?
- (2) recommend to advisory *clients*, or act as a purchaser representative for advisory *clients* with respect to, the purchase of securities for which you or any *related person* serves as underwriter or general or managing partner?
- (3) recommend purchase or sale of securities to advisory *clients* for which you or any *related person* has any other sales interest (other than the receipt of sales commissions as a broker or registered representative of a broker-dealer)?

Investment or Brokerage Discretion

- C. Do you or any *related person* have *discretionary authority* to determine the:
- (1) securities to be bought or sold for a *client's* account? Yes No
- (2) amount of securities to be bought or sold for a *client's* account? Yes No
- (3) broker or dealer to be used for a purchase or sale of securities for a *client's* account? Yes No
- (4) commission rates to be paid to a broker or dealer for a *client's* securities transactions? Yes No
- D. If you answer "yes" to C.(3) above, are any of the brokers or dealers *related persons*? Yes No
- E. Do you or any *related person* recommend brokers or dealers to *clients*? Yes No
- F. If you answer "yes" to E. above, are any of the brokers or dealers *related persons*? Yes No
- G. (1) Do you or any *related person* receive research or other products or services other than execution from a broker-dealer or a third party ("soft dollar benefits") in connection with *client* securities transactions? Yes No
- (2) If "yes" to G.(1) above, are all the "soft dollar benefits" you or any *related persons* receive eligible "research or brokerage services" under section 28(e) of the Securities Exchange Act of 1934? Yes No
- H. (1) Do you or any *related person*, directly or indirectly, compensate any *person* that is not an *employee* for *client* referrals? Yes No
- (2) Do you or any *related person*, directly or indirectly, provide any *employee* compensation that is specifically related to obtaining *clients* for the firm (cash or non-cash compensation in addition to the *employee's* regular salary)? Yes No
- I. Do you or any *related person*, including any *employee*, directly or indirectly, receive compensation from any *person* (other than you or any *related person*) for *client* referrals? Yes No
- In your response to Item 8.I., do not include the regular salary you pay to an employee.*
- In responding to Items 8.H. and 8.I., consider all cash and non-cash compensation that you or a related person gave to (in answering Item 8.H.) or received from (in answering Item 8.I.) any person in exchange for client referrals, including any bonus that is based, at least in part, on the number or amount of client referrals.*

Item 9 Custody

In this Item, we ask you whether you or a *related person* has *custody* of *client* (other than *clients* that are investment companies registered under the Investment Company Act of 1940) assets and about your custodial practices.

- A. (1) Do you have *custody* of any advisory *clients'*:
- (a) cash or bank accounts? Yes No
- (b) securities? Yes No

If you are registering or registered with the SEC, answer "No" to Item 9.A.(1)(a) and (b) if you have custody solely because (i) you deduct your advisory fees directly from your clients' accounts, or (ii) a related person has custody of client assets in connection with advisory services you provide to clients, but you have overcome the presumption that you are not operationally independent (pursuant to Advisers Act rule 206(4)-2(d)(5)) from the related person.

- (2) If you checked "yes" to Item 9.A.(1)(a) or (b), what is the approximate amount of *client* funds and securities and total number of *clients* for which you have *custody*:

U.S. Dollar Amount	Total Number of <i>Clients</i>
(a) \$ 0	(b) 0

If you are registering or registered with the SEC and you have custody solely because you deduct your advisory fees directly from your clients' accounts, do not include the amount of those assets and the number of those clients in your response to Item 9.A.(2). If your related person has custody of client assets in connection with advisory services you provide to clients, do not include the amount of those assets and number of those clients in your response to 9.A.(2). Instead, include that information in your response to Item 9.B.(2).

- B. (1) In connection with advisory services you provide to *clients*, do any of your *related persons* have *custody* of any of your advisory *clients'*:
- (a) cash or bank accounts? Yes No
- (b) securities? Yes No

You are required to answer this item regardless of how you answered Item 9.A.(1)(a) or (b).

- (2) If you checked "yes" to Item 9.B.(1)(a) or (b), what is the approximate amount of *client* funds and securities and total number of *clients* for which your *related persons* have *custody*:

U.S. Dollar Amount	Total Number of <i>Clients</i>
(a) \$ 1,248,980,131	(b) 4

- C. If you or your *related persons* have *custody* of *client* funds or securities in connection with advisory services you provide to *clients*, check all the following

that apply:

- (1) A qualified custodian(s) sends account statements at least quarterly to the investors in the pooled investment vehicle(s) you manage.
- (2) An independent public accountant audits annually the pooled investment vehicle(s) that you manage and the audited financial statements are distributed to the investors in the pools.
- (3) An independent public accountant conducts an annual surprise examination of client funds and securities.
- (4) An independent public accountant prepares an internal control report with respect to custodial services when you or your related persons are qualified custodians for client funds and securities.

If you checked Item 9.C.(2), C.(3) or C.(4), list in Section 9.C. of Schedule D the accountants that are engaged to perform the audit or examination or prepare an internal control report. (If you checked Item 9.C.(2), you do not have to list auditor information in Section 9.C. of Schedule D if you already provided this information with respect to the private funds you advise in Section 7.B.(1) of Schedule D).

- D. Do you or your related person(s) act as qualified custodians for your clients in connection with advisory services you provide to clients? **Yes No**
- (1) you act as a qualified custodian
 - (2) your related person(s) act as qualified custodian(s)

If you checked "yes" to Item 9.D.(2), all related persons that act as qualified custodians (other than any mutual fund transfer agent pursuant to rule 206(4)-2(b)(1)) must be identified in Section 7.A. of Schedule D, regardless of whether you have determined the related person to be operationally independent under rule 206(4)-2 of the Advisers Act.

- E. If you are filing your annual updating amendment and you were subject to a surprise examination by an independent public accountant during your last fiscal year, provide the date (MM/YYYY) the examination commenced:
- F. If you or your related persons have custody of client funds or securities, how many persons, including, but not limited to, you and your related persons, act as qualified custodians for your clients in connection with advisory services you provide to clients?
- 1

SECTION 9.C. Independent Public Accountant

No Information Filed

Item 10 Control Persons

In this Item, we ask you to identify every person that, directly or indirectly, controls you. If you are filing an umbrella registration, the information in Item 10 should be provided for the filing adviser only.

If you are submitting an initial application or report, you must complete Schedule A and Schedule B. Schedule A asks for information about your direct owners and executive officers. Schedule B asks for information about your indirect owners. If this is an amendment and you are updating information you reported on either Schedule A or Schedule B (or both) that you filed with your initial application or report, you must complete Schedule C.

- A. Does any person not named in Item 1.A. or Schedules A, B, or C, directly or indirectly, control your management or policies? **Yes No**
-

If yes, complete Section 10.A. of Schedule D.

- B. If any person named in Schedules A, B, or C or in Section 10.A. of Schedule D is a public reporting company under Sections 12 or 15(d) of the Securities Exchange Act of 1934, please complete Section 10.B. of Schedule D.

SECTION 10.A. Control Persons

No Information Filed

SECTION 10.B. Control Person Public Reporting Companies

No Information Filed

Item 11 Disclosure Information

In this Item, we ask for information about your disciplinary history and the disciplinary history of all your advisory affiliates. We use this information to determine whether to grant your application for registration, to decide whether to revoke your registration or to place limitations on your activities as an investment adviser, and to identify potential problem areas to focus on during our on-site examinations. One event may result in "yes" answers to more than one of the questions below. In accordance with General Instruction 5 to Form ADV, "you" and "your" include the filing adviser and all relying advisers under an

umbrella registration.

Your *advisory affiliates* are: (1) all of your current *employees* (other than *employees* performing only clerical, administrative, support or similar functions); (2) all of your officers, partners, or directors (or any *person* performing similar functions); and (3) all *persons* directly or indirectly *controlling* you or *controlled* by you. If you are a "separately identifiable department or division" (SID) of a bank, see the Glossary of Terms to determine who your *advisory affiliates* are.

If you are registered or registering with the SEC or if you are an exempt reporting adviser, you may limit your disclosure of any event listed in Item 11 to ten years following the date of the event. If you are registered or registering with a state, you must respond to the questions as posed; you may, therefore, limit your disclosure to ten years following the date of an event only in responding to Items 11.A.(1), 11.A.(2), 11.B.(1), 11.B.(2), 11.D.(4), and 11.H.(1)(a). For purposes of calculating this ten-year period, the date of an event is the date the final order, judgment, or decree was entered, or the date any rights of appeal from preliminary orders, judgments, or decrees lapsed.

You must complete the appropriate Disclosure Reporting Page ("DRP") for "yes" answers to the questions in this Item 11.

Do any of the events below involve you or any of your *supervised persons*? Yes No

For "yes" answers to the following questions, complete a Criminal Action DRP:

A. In the past ten years, have you or any *advisory affiliate*: Yes No
(1) been convicted of or pled guilty or nolo contendere ("no contest") in a domestic, foreign, or military court to any *felony*?
(2) been *charged* with any *felony*?

If you are registered or registering with the SEC, or if you are reporting as an exempt reporting adviser, you may limit your response to Item 11.A.(2) to charges that are currently pending.

B. In the past ten years, have you or any *advisory affiliate*: Yes No
(1) been convicted of or pled guilty or nolo contendere ("no contest") in a domestic, foreign, or military court to a *misdemeanor* involving: investments or an *investment-related* business, or any fraud, false statements, or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses?
(2) been *charged* with a *misdemeanor* listed in Item 11.B.(1)?

If you are registered or registering with the SEC, or if you are reporting as an exempt reporting adviser, you may limit your response to Item 11.B.(2) to charges that are currently pending.

For "yes" answers to the following questions, complete a Regulatory Action DRP:

C. Has the SEC or the Commodity Futures Trading Commission (CFTC) ever: Yes No
(1) *found* you or any *advisory affiliate* to have made a false statement or omission?
(2) *found* you or any *advisory affiliate* to have been *involved* in a violation of SEC or CFTC regulations or statutes?
(3) *found* you or any *advisory affiliate* to have been a cause of an *investment-related* business having its authorization to do business denied, suspended, revoked, or restricted?
(4) entered an *order* against you or any *advisory affiliate* in connection with *investment-related* activity?
(5) imposed a civil money penalty on you or any *advisory affiliate*, or *ordered* you or any *advisory affiliate* to cease and desist from any activity?

D. Has any other federal regulatory agency, any state regulatory agency, or any *foreign financial regulatory authority*: Yes No
(1) ever *found* you or any *advisory affiliate* to have made a false statement or omission, or been dishonest, unfair, or unethical?
(2) ever *found* you or any *advisory affiliate* to have been *involved* in a violation of *investment-related* regulations or statutes?
(3) ever *found* you or any *advisory affiliate* to have been a cause of an *investment-related* business having its authorization to do business denied, suspended, revoked, or restricted?
(4) in the past ten years, entered an *order* against you or any *advisory affiliate* in connection with an *investment-related* activity?
(5) ever denied, suspended, or revoked your or any *advisory affiliate's* registration or license, or otherwise prevented you or any *advisory affiliate*, by *order*, from associating with an *investment-related* business or restricted your or any *advisory affiliate's* activity?

E. Has any *self-regulatory organization* or commodities exchange ever: Yes No
(1) *found* you or any *advisory affiliate* to have made a false statement or omission?
(2) *found* you or any *advisory affiliate* to have been *involved* in a violation of its rules (other than a violation designated as a "*minor rule violation*" under a plan approved by the SEC)?
(3) *found* you or any *advisory affiliate* to have been the cause of an *investment-related* business having its authorization to do business denied, suspended, revoked, or restricted?
(4) disciplined you or any *advisory affiliate* by expelling or suspending you or the *advisory affiliate* from membership, barring or suspending you or the *advisory affiliate* from association with other members, or otherwise restricting your or the *advisory affiliate's* activities?

F. Has an authorization to act as an attorney, accountant, or federal contractor granted to you or any *advisory affiliate* ever been revoked or suspended?

G. Are you or any *advisory affiliate* now the subject of any regulatory *proceeding* that could result in a "yes" answer to any part of Item 11.C., 11.D., or 11.E.?

For "yes" answers to the following questions, complete a Civil Judicial Action DRP:

- | | Yes | No |
|--|-----------------------|----------------------------------|
| H. (1) Has any domestic or foreign court: | | |
| (a) in the past ten years, enjoined you or any advisory affiliate in connection with any investment-related activity? | <input type="radio"/> | <input checked="" type="radio"/> |
| (b) ever found that you or any advisory affiliate were involved in a violation of investment-related statutes or regulations? | <input type="radio"/> | <input checked="" type="radio"/> |
| (c) ever dismissed, pursuant to a settlement agreement, an investment-related civil action brought against you or any advisory affiliate by a state or foreign financial regulatory authority? | <input type="radio"/> | <input checked="" type="radio"/> |
| (2) Are you or any advisory affiliate now the subject of any civil proceeding that could result in a "yes" answer to any part of Item 11.H.(1)? | <input type="radio"/> | <input checked="" type="radio"/> |

Item 12 Small Businesses

The SEC is required by the Regulatory Flexibility Act to consider the effect of its regulations on small entities. In order to do this, we need to determine whether you meet the definition of "small business" or "small organization" under rule 0-7.

Answer this Item 12 only if you are registered or registering with the SEC and you indicated in response to Item 5.F.(2)(c) that you have regulatory assets under management of less than \$25 million. You are not required to answer this Item 12 if you are filing for initial registration as a state adviser, amending a current state registration, or switching from SEC to state registration.

For purposes of this Item 12 only:

- Total Assets refers to the total assets of a firm, rather than the assets managed on behalf of clients. In determining your or another person's total assets, you may use the total assets shown on a current balance sheet (but use total assets reported on a consolidated balance sheet with subsidiaries included, if that amount is larger).
- Control means the power to direct or cause the direction of the management or policies of a person, whether through ownership of securities, by contract, or otherwise. Any person that directly or indirectly has the right to vote 25 percent or more of the voting securities, or is entitled to 25 percent or more of the profits, of another person is presumed to control the other person.

- | | Yes | No |
|--|-----------------------|----------------------------------|
| A. Did you have total assets of \$5 million or more on the last day of your most recent fiscal year? | <input type="radio"/> | <input checked="" type="radio"/> |

If "yes," you do not need to answer Items 12.B. and 12.C.

- | | | |
|---|-----------------------|----------------------------------|
| B. Do you: | | |
| (1) control another investment adviser that had regulatory assets under management (calculated in response to Item 5.F.(2)(c) of Form ADV) of \$25 million or more on the last day of its most recent fiscal year? | <input type="radio"/> | <input checked="" type="radio"/> |
| (2) control another person (other than a natural person) that had total assets of \$5 million or more on the last day of its most recent fiscal year? | <input type="radio"/> | <input checked="" type="radio"/> |
| C. Are you: | | |
| (1) controlled by or under common control with another investment adviser that had regulatory assets under management (calculated in response to Item 5.F.(2)(c) of Form ADV) of \$25 million or more on the last day of its most recent fiscal year? | <input type="radio"/> | <input checked="" type="radio"/> |
| (2) controlled by or under common control with another person (other than a natural person) that had total assets of \$5 million or more on the last day of its most recent fiscal year? | <input type="radio"/> | <input checked="" type="radio"/> |

Schedule A

Direct Owners and Executive Officers

1. Complete Schedule A only if you are submitting an initial application or report. Schedule A asks for information about your direct owners and executive officers. Use Schedule C to amend this information.
2. Direct Owners and Executive Officers. List below the names of:
 - (a) each Chief Executive Officer, Chief Financial Officer, Chief Operations Officer, Chief Legal Officer, Chief Compliance Officer (Chief Compliance Officer is required if you are registered or applying for registration and cannot be more than one individual), director, and any other individuals with similar status or functions;
 - (b) if you are organized as a corporation, each shareholder that is a direct owner of 5% or more of a class of your voting securities, unless you are a public reporting company (a company subject to Section 12 or 15(d) of the Exchange Act);
Direct owners include any person that owns, beneficially owns, has the right to vote, or has the power to sell or direct the sale of, 5% or more of a class of your voting securities. For purposes of this Schedule, a person beneficially owns any securities: (i) owned by his/her child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, sharing the same residence; or (ii) that he/she has the right to acquire, within 60 days, through the exercise of any option, warrant, or right to purchase the security.
 - (c) if you are organized as a partnership, all general partners and those limited and special partners that have the right to receive upon dissolution, or have contributed, 5% or more of your capital;
 - (d) in the case of a trust that directly owns 5% or more of a class of your voting securities, or that has the right to receive upon dissolution, or has contributed, 5% or more of your capital, the trust and each trustee; and
 - (e) if you are organized as a limited liability company ("LLC"), (i) those members that have the right to receive upon dissolution, or have contributed, 5% or more of your capital, and (ii) if managed by elected managers, all elected managers.
3. Do you have any indirect owners to be reported on Schedule B? Yes No
4. In the DE/FE/I column below, enter "DE" if the owner is a domestic entity, "FE" if the owner is an entity incorporated or domiciled in a foreign country, or "I" if the owner or executive officer is an individual.
5. Complete the Title or Status column by entering board/management titles; status as partner, trustee, sole proprietor, elected manager, shareholder, or

member; and for shareholders or members, the class of securities owned (if more than one is issued).

6. Ownership codes are: NA - less than 5% B - 10% but less than 25% D - 50% but less than 75%
 A - 5% but less than 10% C - 25% but less than 50% E - 75% or more

7. (a) In the *Control Person* column, enter "Yes" if the *person* has *control* as defined in the Glossary of Terms to Form ADV, and enter "No" if the *person* does not have *control*. Note that under this definition, most executive officers and all 25% owners, general partners, elected managers, and trustees are *control persons*.
 (b) In the PR column, enter "PR" if the owner is a public reporting company under Sections 12 or 15(d) of the Exchange Act.
 (c) Complete each column.

FULL LEGAL NAME (Individuals: Last Name, First Name, Middle Name)	DE/FE/I	Title or Status	Date Title or Status Acquired MM/YYYY	Ownership Code	Control Person	PR	CRD No. If None: S.S. No. and Date of Birth, IRS Tax No. or Employer ID No.
HARKER, WILLIAM, RICHARD	I	LIMITED PARTNER, PRESIDENT, AND CCO	01/2015	C	Y	N	2661000
CROWLEY, WILLIAM, CHARLES	I	LIMITED PARTNER, CHAIRMAN, AND CEO	01/2015	C	Y	N	1659558
BLASS, STEPHEN, MICHAEL	I	LIMITED PARTNER AND CHIEF INVESTMENT OFFICER	01/2015	C	Y	N	5605392
ASHE GP, LLC	DE	GENERAL PARTNER	01/2015	NA	Y	N	473264825

Schedule B

Indirect Owners

- Complete Schedule B only if you are submitting an initial application or report. Schedule B asks for information about your indirect owners; you must first complete Schedule A, which asks for information about your direct owners. Use Schedule C to amend this information.
- Indirect Owners. With respect to each owner listed on Schedule A (except individual owners), list below:
 - in the case of an owner that is a corporation, each of its shareholders that beneficially owns, has the right to vote, or has the power to sell or direct the sale of, 25% or more of a class of a voting security of that corporation;

 For purposes of this Schedule, a *person* beneficially owns any securities: (i) owned by his/her child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, sharing the same residence; or (ii) that he/she has the right to acquire, within 60 days, through the exercise of any option, warrant, or right to purchase the security.
 - in the case of an owner that is a partnership, all general partners and those limited and special partners that have the right to receive upon dissolution, or have contributed, 25% or more of the partnership's capital;
 - in the case of an owner that is a trust, the trust and each trustee; and
 - in the case of an owner that is a limited liability company ("LLC"), (i) those members that have the right to receive upon dissolution, or have contributed, 25% or more of the LLC's capital, and (ii) if managed by elected managers, all elected managers.
- Continue up the chain of ownership listing all 25% owners at each level. Once a public reporting company (a company subject to Sections 12 or 15(d) of the Exchange Act) is reached, no further ownership information need be given.
- In the DE/FE/I column below, enter "DE" if the owner is a domestic entity, "FE" if the owner is an entity incorporated or domiciled in a foreign country, or "I" if the owner is an individual.
- Complete the Status column by entering the owner's status as partner, trustee, elected manager, shareholder, or member; and for shareholders or members, the class of securities owned (if more than one is issued).
- Ownership codes are: C - 25% but less than 50% E - 75% or more
 D - 50% but less than 75% F - Other (general partner, trustee, or elected manager)
- (a) In the *Control Person* column, enter "Yes" if the *person* has *control* as defined in the Glossary of Terms to Form ADV, and enter "No" if the *person* does not have *control*. Note that under this definition, most executive officers and all 25% owners, general partners, elected managers, and trustees are *control persons*.
 (b) In the PR column, enter "PR" if the owner is a public reporting company under Sections 12 or 15(d) of the Exchange Act.
 (c) Complete each column.

FULL LEGAL NAME (Individuals: Last Name, First Name, Middle Name)	DE/FE/I	Entity in Which Interest is Owned	Status	Date Status Acquired MM/YYYY	Ownership Code	Control Person	PR	CRD No. If None: S.S. No. and Date of Birth, IRS Tax No. or Employer ID No.
HARKER, WILLIAM, RICHARD	I	ASHE GP, LLC	MEMBER	01/2015	C	Y	N	2661000
CROWLEY, WILLIAM, CHARLES	I	ASHE GP, LLC	MEMBER	01/2015	C	Y	N	1659558
BLASS, STEPHEN, MICHAEL	I	ASHE GP, LLC	MEMBER	01/2015	C	Y	N	5605392

Schedule D - Miscellaneous

You may use the space below to explain a response to an Item or to provide any other information.

Schedule R

DRP Pages

CRIMINAL DISCLOSURE REPORTING PAGE (ADV)

No Information Filed

REGULATORY ACTION DISCLOSURE REPORTING PAGE (ADV)

No Information Filed

CIVIL JUDICIAL ACTION DISCLOSURE REPORTING PAGE (ADV)

No Information Filed

Part 2

Exemption from brochure delivery requirements for SEC-registered advisers

SEC rules exempt SEC-registered advisers from delivering a firm brochure to some kinds of clients. If these exemptions excuse you from delivering a brochure to all of your advisory clients, you do not have to prepare a brochure.

Yes No

Are you exempt from delivering a brochure to all of your clients under these rules?

If no, complete the ADV Part 2 filing below.

Amend, retire or file new brochures:

Brochure ID	Brochure Name	Brochure Type(s)
107603	ASHE CAPITAL ADV PART 2A 03 2019	Private funds or pools

Execution Pages

DOMESTIC INVESTMENT ADVISER EXECUTION PAGE

You must complete the following Execution Page to Form ADV. This execution page must be signed and attached to your initial submission of Form ADV to the SEC and all amendments.

Appointment of Agent for Service of Process

By signing this Form ADV Execution Page, you, the undersigned adviser, irrevocably appoint the Secretary of State or other legally designated officer, of the state in which you maintain your principal office and place of business and any other state in which you are submitting a notice filing, as your agents to receive service, and agree that such persons may accept service on your behalf, of any notice, subpoena, summons, order instituting proceedings, demand for arbitration, or other process or papers, and you further agree that such service may be made by registered or certified mail, in any federal or state action, administrative proceeding or arbitration brought against you in any place subject to the jurisdiction of the United States, if the action, proceeding, or arbitration (a) arises out of any activity in connection with your investment advisory business that is subject to the jurisdiction of the United States, and (b) is founded, directly or indirectly, upon the provisions of: (i) the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Investment Company Act of 1940, or the Investment Advisers Act of 1940, or any rule or regulation under any of these acts, or (ii) the laws of the state in which you maintain your principal office and place of business or of any state in which you are submitting a notice filing.

Signature

I, the undersigned, sign this Form ADV on behalf of, and with the authority of, the investment adviser. The investment adviser and I both certify, under penalty of perjury under the laws of the United States of America, that the information and statements made in this ADV, including exhibits and any other information submitted, are true and correct, and that I am signing this Form ADV Execution Page as a free and voluntary act.

I certify that the adviser's books and records will be preserved and available for inspection as required by law. Finally, I authorize any person having custody or possession of these books and records to make them available to federal and state regulatory representatives.

Signature: WILLIAM R. HARKER

Date: MM/DD/YYYY 03/29/2019

Printed Name: WILLIAM R. HARKER

Title: CO-FOUNDER, PRESIDENT & CCO

Adviser CRD Number: 169616

NON-RESIDENT INVESTMENT ADVISER EXECUTION PAGE

You must complete the following Execution Page to Form ADV. This execution page must be signed and attached to your initial submission of Form ADV to the SEC and all amendments.

1. Appointment of Agent for Service of Process

By signing this Form ADV Execution Page, you, the undersigned adviser, irrevocably appoint each of the Secretary of the SEC, and the Secretary of State or other legally designated officer, of any other state in which you are submitting a *notice filing*, as your agents to receive service, and agree that such persons may accept service on your behalf, of any notice, subpoena, summons, *order instituting proceedings*, demand for arbitration, or other process or papers, and you further agree that such service may be made by registered or certified mail, in any federal or state action, administrative *proceeding* or arbitration brought against you in any place subject to the jurisdiction of the United States, if the action, *proceeding* or arbitration (a) arises out of any activity in connection with your investment advisory business that is subject to the jurisdiction of the United States, and (b) is *founded*, directly or indirectly, upon the provisions of: (i) the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Investment Company Act of 1940, or the Investment Advisers Act of 1940, or any rule or regulation under any of these acts, or (ii) the laws of any state in which you are submitting a *notice filing*.

2. Appointment and Consent: Effect on Partnerships

If you are organized as a partnership, this irrevocable power of attorney and consent to service of process will continue in effect if any partner withdraws from or is admitted to the partnership, provided that the admission or withdrawal does not create a new partnership. If the partnership dissolves, this irrevocable power of attorney and consent shall be in effect for any action brought against you or any of your former partners.

3. Non-Resident Investment Adviser Undertaking Regarding Books and Records

By signing this Form ADV, you also agree to provide, at your own expense, to the U.S. Securities and Exchange Commission at its principal office in Washington D.C., at any Regional or District Office of the Commission, or at any one of its offices in the United States, as specified by the Commission, correct, current, and complete copies of any or all records that you are required to maintain under Rule 204-2 under the Investment Advisers Act of 1940. This undertaking shall be binding upon you, your heirs, successors and assigns, and any *person* subject to your written irrevocable consents or powers of attorney or any of your general partners and *managing agents*.

Signature

I, the undersigned, sign this Form ADV on behalf of, and with the authority of, the *non-resident* investment adviser. The investment adviser and I both certify, under penalty of perjury under the laws of the United States of America, that the information and statements made in this ADV, including exhibits and any other information submitted, are true and correct, and that I am signing this Form ADV Execution Page as a free and voluntary act.

I certify that the adviser's books and records will be preserved and available for inspection as required by law. Finally, I authorize any *person* having *custody* or possession of these books and records to make them available to federal and state regulatory representatives.

Signature:

Date: MM/DD/YYYY

Printed Name:

Title:

Adviser CRD Number:

169616

TAB C

All Property Records / shawn crowley

Property Records Search: Shawn Crowley

View Buy/Sell Events by Individual, Organization, or Property Address

26 property records found

[Fulton County, GA](#) 3 [Kings County, WA](#) 9 [New York, NY](#) 13 [Philadelphia, PA](#) 1

Date	Party A	Event	Property / Party B	Amount
2007-01-10	William C. Crowley 146 Central Park West Unit 10e, New York, NY Other Parties: Shawn W. Crowley Source: Public Records	Sells	160 Riverside Drive, Manhattan, NY Unit 16A From: Michelle Kassner No Mortgage Data For Co-op Purchase	\$3,900,000
2005-05-26	William C. Crowley 146 Central Park West Apt 10e, New York, NY Other Parties: Shawn Crowley Source: Public Records	Buys	146 Central Park West, Manhattan, NY Unit 10E From: Estate Of Nadia Jaglom No Mortgage Data For Co-op Purchase	\$12,500,000
2001-06-22	William C. III Crowley Atlanta, GA	Sells	610 Tuxedo Pl. Nw, Atlanta, GA From: Beth Sugarman, Edward Sugarman	\$910,000
2015-09-02	William M. Crowley 12 East 97th Street, 10b, New York, NY Other Parties: Ashley R. Crowley Source: Public Records	Buys	225 Park Avenue, Manhattan, NY Unit 2C From: Benjamin F. Iv Stapleton No Mortgage Data For Co-op Purchase	\$2,652,000
2013-05-30	William M. Crowley 1 Astor Place, Apt 2u, New York, NY Other Parties: Ashley R. Crowley, Cynthia I. Sweeting Source: Public Records	Buys	12 East 97th Street, Manhattan, NY Unit 10B From: Susan W. Ettinger, Walter H. Ettinger No Mortgage Data For Co-op Purchase	\$850,000
2014-04-21	William J. Crowley 430 East Walnut Street, Long Beach, NY Source: Public Records	Buys	23 Bedford Avenue, Queens, NY Unit 266 From: Carla Commisso No Mortgage Data For Co-op Purchase	\$165,000
1997-10-02	William J. Crowley Seattle, WA Other Parties: Shannon E. Crowley	Buys	5855 Oberlin Ave. Ne, Seattle, WA From: Allyn H. Seymour	\$260,000
1997-10-01	William J. Crowley Seattle, WA Other Parties: Shannon E. Crowley	Sells	6556 44th Ave. Ne, Seattle, WA From: David A. Follett, Jill B. Follett	\$246,000
1995-05-22	William J. Crowley Seattle, WA Other Parties: Shannon E. Crowley	Sells	8623 30th Ave. Ne, Seattle, WA From: James T. Slavin, Joanne H. Slavin	\$135,000
1995-05-16	William J. Crowley Seattle, WA Other Parties: Shannon E. Crowley	Buys	6556 44th Ave. Ne, Seattle, WA From: Paul V. Rosillo	\$189,000



Date	Party A	Event	Property / Party B	Amount
1993-07-26	William J Crowley Seattle, WA	Buys	8623 30th Ave Ne, Seattle, WA From: Bruce E Backlund, Cynthia A Backlund	\$112,500
2002-08-30	William V Crowley Atlanta, GA Other Parties: Sigrid E Crowley	Sells	2637 Peachtree Rd Ne 305, Atlanta, GA From: Karen C Ross	\$230,000
2001-06-25	William V Crowley Atlanta, GA Other Parties: Sigrid E Crowley	Buys	2637 Peachtree Rd Ne 305, Atlanta, GA From: Mary Katherine Rose	\$220,826
1999-10-13	William P Crowley Auburn, WA	Sells	120 10th St Se, Auburn, WA From: Brian A Verge	\$119,000
1998-12-29	William P Crowley WA	Buys	, WA From: Christina Lee Jarvis	\$112,000

The top 15 most relevant results are shown for the public search. [Sign up](#) or [log in](#) to see more records.

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Atlanta Property Records
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Seattle Property Records
Philadelphia Property Records

Company

About
Press

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TAB D

581 Parsonage Lane

Sagaponack, NY 11962

Neighborhood

Sagaponack Seaside




Delivers the tech
With the Uconnect®
4C NAV multimedia centre

PACIFICA

Property Detail

Current Owners

William C Crowley and Shawn Warren Crowley

[Get more homeowner info: contact, photos, criminal records & more](#)

Purchase Price

(2008)

Property Taxes

\$17,361 (2008)

Lot Size

Tax \$/Acre

Home Size

4,531 Sqft

Beds

4

Baths

Built

Search People & Public Records

BeenVerified

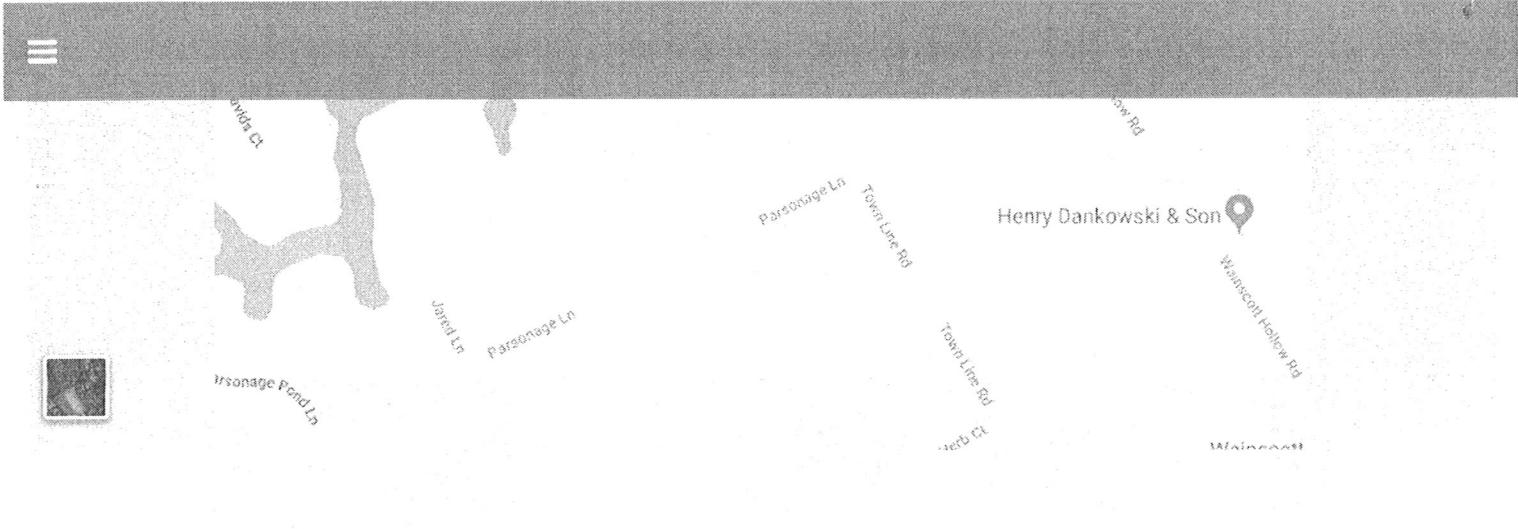
Millions of users. Billions of records. Start your background check today and stay in-the-know.

First Name

Last Name

New York

Search



Sales History

\$

Sep. 5, 2008

Buyer William C Crowley and Shawn Warren Crowley

Seller William C Crowley and Shawn Warren Crowley

\$6,700,000

Nov. 27, 2006

Buyer William C Crowley and Shawn Warren Crowley

Seller John McLaughlin

\$4,400,000

May. 20, 2005

Buyer John McLaughlin

Seller Halex Properties LLC

\$1,500,000

Jun. 4, 2003

Buyer Halex Properties LLC

Seller Gregory T Strong and Lori R Strong

Tax History



Community Demographics

Median Income	\$82,135
White: All*	84.5%
Latin or Hispanic*	13.1%
Black or African American*	1.1%
American Indian and Alaska Native*	
Native Hawaiian and Pacific Islander*	
Asian*	1.3%
*Alone or in combination	

Political Representation

U.S. House of Representatives:	State Sen. Kenneth P. LaValle (R-01)
State Senator:	U.S. Rep. Tim Bishop (D-01)
State Representative:	State Rep. Fred W. Thiele Jr. (R-02)

School Districts

Elementary School:	Sagaponack Elementary School
High School:	Sagaponack Community High School

Notes

There are currently no notes available for 581 Parsonage Lane



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Sign up to receive latest news each week

Sign Up

By signing up you agree to receive email newsletters or alerts from Sagaponack. You can unsubscribe at any time.



[Five-bedroom home sells in Westhampton Beach Bayside](#)

Fay A. MacK and Walter J. MacK sold a five-bedroom, four-bath home at 129 Seafield Point, in Westhampton Beach, to William B. MacK for \$1,440,000 on Jan. 29.

[Two-bedroom home sells in Leisure Glen](#)

Maureen Riordan sold a two-bedroom, two-bath home at 163 Glen Drive, in Ridge, to Lenore Randall for \$275,000 on Jan. 29.

[Three-bedroom home sells in North Bay Shore East](#)

Amparo Garcia sold a three-bedroom, one-bath home at 20 Amfer Court, in North Bay Shore, to Big Apple Remodelers and Builders Inc. for \$154,875 on Jan. 28.

[Three-bedroom home sells in South of Lake Ave](#)

Anthony J. Devito and Mary Jane Devito sold a three-bedroom, three-bath home at 16 Leary Lane, in Nesconset, to Dennis Colonna, Mary Colonna and Robert L. Schutzenbach for \$300,000 on Jan. 28.

[Four-bedroom home sells in Smithtown North](#)

Betty Jane Sloan sold a four-bedroom, 1 1/2-bath home at 47 Lindron Ave., in Smithtown, to Bobby Fan and Lindsey M. Fan for \$386,597 on Jan. 28.

[Two-bedroom home sells in Southampton Commons](#)

Keller Diane Albano and Blaine L. Keller sold a two-bedroom, two-bath home at 50 Hubbard Lane, in Hampton Bays, to Bridget Baccarella and Carl Baccarella for \$440,000 on Jan. 28.

[Four-bedroom home sells in North Lawrence Hill Rd](#)

Jason Nash and Rachel Nash sold a four-bedroom, three-bath home at 15 Glen Way, in Cold Spring Harbor, to Kristin M. Olchon and Thomas R. Olchon for \$1,200,000 on Jan. 28.

BlockShopper
info@blockshopper.com



STATES

Arizona	District Of Columbia	Missouri	Pennsylvania
California	Florida	Nevada	South Carolina
Colorado	Illinois	New York	Texas
Connecticut	Maryland	North Carolina	Virginia
Delaware	Minnesota	Ohio	Washington

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TAB 2

In the Matter Of:
Sears Canada Inc. et al. v.
ESL Investments Inc. et al.

WILLIAM HARKER
September 10, 2019



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

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Court File No. CV-18-00611219-00CL
ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

BETWEEN:

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

Plaintiff

- and -

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

Defendants

This is the Cross-Examination on pending motions
of William Harker, taken via video conference at
the offices of 40 King St W #2100, Toronto, on
the 10th day of September, 2019.

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

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

SEARS CANADA INC., BY ITS COURT-APPOINTED
LITIGATION TRUSTEE, J. DOUGLAS CUNNINGHAM, Q.C.

Plaintiff

- and -

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

Defendants

This is the Cross-Examination on pending motions
of William Harker, taken via video conference at
the offices of 40 King St W #2100, Toronto, on
the 10th day of September, 2019.

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

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

MORNEAU SHEPELL LTD. IN ITS CAPACITY AS
ADMINISTRATOR OF THE SEARS CANADA INC.
REGISTERED PENSION PLAN

Plaintiff

- and -

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

Defendants

This is the Cross-Examination on pending motions
of William Harker, taken via video conference at
the offices of 40 King St W #2100, Toronto, on
the 10th day of September, 2019.

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

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

1291079 ONTARIO LIMITED

Plaintiff

- and -

SEARS CANADA INC., SEARS HOLDINGS

CORPORATION, ESL INVESTMENTS INC., WILLIAM

CROWLEY, WILLIAM R. HARKER, DONALD CAMPBELL

ROSS, EPHRAIM J. BIRD, DEBORAH E. ROSATI, R.

RAJA KHANNA, JAMES MCBURNEY AND DOUGLAS CAMPBELL

Defendants

This is the Cross-Examination on pending motions
of William Harker, taken via video conference at
the offices of 40 King St W #2100, Toronto, on
the 10th day of September, 2019.

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

Orestes Pasparakis, Esq., for the Monitor
Geoff Mens, Esq.

John Birch, Esq., (via videoconference)
Christopher Horkins, Esq., for Crowley, Harker
& Ross

Matthew Gottlieb, Esq., for the Trustee
Philip Underwood, Esq.,

Kiran Patel, Esq., for Morneau Shepell

Richard Swan, Esq., for Rosati & Khanna

Avram Spatz, Esq., for ESL

Chris Trivisonno, Esq., for Sears Holdings

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I N D E X

PAGE

WITNESS: William Haarker

Cross-Examination by Mr. Pasparakis9

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

4

5

INDEX OF UNDERTAKINGS

6

The questions/requests undertaken are noted by
7 U/T and appear on the following page/line: None
8 noted.

9

10

11

INDEX OF ADVISEMENTS

12

The questions/requests taken under advisement
13 are noted by a U/A and appear on the following
14 page/line: 13/7.

15

16

17

INDEX OF REFUSALS

18

The questions/requests refused are noted by R/F
19 and appear on the following page/line: None
20 noted.

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1 ---Upon commencing at 12:38 P.M

2 WILLIAM HARKER: Affirmed.

3 MR. PASPARAKIS: Mr. Birch, to
4 streamline Mr. Harker's examination, can we
5 agree that the questions about his personal
6 wealth, similar to those asked of Mr. Crowley,
7 will be refused by you and there's no need for
8 me to repeat them?

9 MR. BIRCH: Yeah. No, I agree and for
10 the same basis, that we've given you the
11 stipulation. And we also take the position that
12 any line of questioning about the willingness or
13 the ability, or at least the duty to fund other
14 people's legal fees is also improper because
15 there is no duty on the part of any one
16 defendant to fund the legal costs of the others.

17 MR. PASPARAKIS: Okay. Again, I'm not
18 going to argue with you on the record. I just
19 simply want to know that I don't have to repeat
20 my questions about how much of the \$1 billion
21 Mr. Harker has a beneficial interest in or about
22 his other assets, because those are refused;
23 correct?

24 MR. BIRCH: Yeah. No, I agree. Same
25 position with respect to Mr. Harker.

1 CROSS-EXAMINATION BY MR. PASPARAKIS:

2 1 Q. So I do want to ask you a couple
3 of questions. It shouldn't take long. You were
4 in the room during Mr. Crowley's examination;
5 correct?

6 A. Correct. "Cro-lee" is how it's
7 pronounced.

8 2 Q. Crowley. Yeah, no, I know.

9 A. And it's "Ash-ay."

10 3 Q. Yeah, I get there. Do you also
11 have an understanding with Cassels Brock with
12 respect to covering any legal fees that you
13 incur with them?

14 A. I have not signed an engagement
15 letter with Cassels Brock.

16 4 Q. That's not my question. My
17 question was an understanding.

18 A. An understanding. Please, please
19 restate the question.

20 5 Q. An understanding that to the
21 extent that they incur costs on your behalf, you
22 will pay those costs.

23 A. I don't think we have that
24 understanding. We had the understanding that
25 insurance was in place.

1 6 Q. And have you had any discussion
2 with them about you paying for your own costs?

3 MR. BIRCH: Well, I'm not going to get
4 into what discussions Mr. Harker has had with
5 us.

6 MR. PASPARAKIS: Well, it's not
7 exactly about legal advice, counsel. It's about
8 payment of fees. And I need to know whether
9 there is any understanding as between Mr. Harker
10 and Cassels Brock with respect to who's going to
11 cover your fees.

12 MR. BIRCH: Yeah, I thought he
13 answered that.

14 BY MR. PASPARAKIS:

15 7 Q. Have you had any discussions on
16 the topic at all?

17 A. Have I spoken to my counsel? Is
18 that the question?

19 8 Q. About your willingness or
20 agreement to pay their fees.

21 A. To the extent of the stipulation.

22 9 Q. And the stipulation anticipates
23 that you could pay their fees in accordance with
24 its terms; correct?

25 A. In accordance with what terms?

1 Sir, as I said, I don't have an access to an
2 engagement letter. I don't know their hourly
3 rates. No.

4 10 Q. So you haven't bothered to make
5 inquiries as to their hourly rates; correct?

6 A. The insurance company --

7 11 Q. Can you answer my question? Can
8 you answer my question? Have you bothered to
9 make inquiries of Cassels Brock as to their
10 hourly rates? Yes or no?

11 A. I have not asked for hourly
12 rates.

13 12 Q. Have you asked them for an
14 engagement letter or any written estimate of the
15 costs of the litigation? Yes or no?

16 A. No.

17 13 Q. And do you recall from
18 Mr. Crowley's examination that his evidence was
19 that he spoke to you about indemnification from
20 ESL. Do you recall that exchange between
21 Mr. Crowley and I?

22 A. Yes.

23 14 Q. And do you recall inquiring into
24 whether ESL had an obligation to indemnify you
25 in connection with this litigation?

1 A. In serving as effectively the
2 general counsel of Ashe and as a lawyer,
3 Mr. Crowley and I talked about our respective
4 agreements with ESL, what had been in place at
5 various times. And after that and I did not
6 have a conversation with ESL.

7 15 Q. Have you had a conversation with
8 anyone other than Mr. Crowley in connection with
9 those issues?

10 A. Probably other counsel looking at
11 my agreement. And also probably counsel for
12 Sears Holdings.

13 MR. GOTTLIEB: What does probably
14 mean? What is probably?

15 BY MR. PASPARAKIS:

16 16 Q. By "probably" you do not
17 specifically recollect, but you believe you did?
18 Is that what you're saying?

19 A. I don't know that I put the
20 agreement in front of other people. There were
21 conversations with Sears Holdings, for example,
22 and Sears Holdings counsel about whether or not
23 I was indemnified when these claims first arose.

24 17 Q. From Sears Holdings, you sought
25 indemnity from Sears Holdings or from ESL?

1 A. From Sears Holdings. On the
2 basis of my read of the agreement that I had at
3 one point with ESL, I did not believe I was
4 indemnified or even had a basis to claim it.

5 MR. PASPARAKIS: Can I get a copy of
6 that document that you're referencing, please?

7 U/A MR. BIRCH: We'll take it under
8 advisement.

9 BY MR. PASPARAKIS:

10 18 Q. And did you correspond with Sears
11 Holdings in respect of your ability to seek
12 identification from Sears Holdings?

13 A. By correspondence you mean in
14 writing?

15 19 Q. Yeah.

16 A. I believe at some point Cassels
17 may have. I had conversations with folks at
18 Sears Holdings and their outside counsel.

19 20 Q. So you now remember that not only
20 did you probably have those discussions, you
21 actually did have those discussions?

22 A. You asked me about Crowley's
23 agreement previously. Now I'm speaking
24 specifically about my agreement. I don't know
25 all -- I don't know the extent of the

1 conversations about Crowley's agreement. I
2 thought the original question was about Crowley.
3 I'm now speaking about me.

4 21 Q. So you have had discussions about
5 indemnification of you by ESL; correct?

6 A. No, not by ESL.

7 22 Q. Only by Sears Holdings?

8 A. By Sears Holdings.

9 23 Q. But you've also had discussions
10 about your own indemnification with, amongst
11 others, Mr. Crowley; correct?

12 A. Yes.

13 MR. PASPARAKIS: Just one second.

14 --OFF THE RECORD--

15 THE WITNESS: And to be clear, I've
16 had conversations with Cassels.

17 MR. BIRCH: Which we're not going to
18 get into.

19 THE WITNESS: Right. But to answer
20 his question wholly and fairly.

21 BY MR. PASPARAKIS:

22 24 Q. And you may recall that I asked
23 Mr. Crowley about the total value of claims
24 being in the neighbourhood of \$500 million
25 against him. The same goes for you, too.

1 You're aware that the total amount of claims
2 against you is about \$500 million Canadian;
3 correct?

4 A. Correct.

5 25 Q. And you're also aware of the fact
6 that the insurance coverage is limited to US
7 150 million, minus whatever's been spent so far;
8 correct?

9 A. Correct.

10 26 Q. And so you understand that your
11 personal assets are at risk as a result of the
12 Canadian litigation; correct?

13 A. Correct.

14 27 Q. And I take it that you intend to
15 defend this action regardless of whether there's
16 insurance coverage; correct?

17 A. I will consider my options at
18 various points.

19 28 Q. But at this point and for the
20 foreseeable future your intention is to defend;
21 correct?

22 A. To a certain extent. I'm not
23 going to wipe myself out defending a situation
24 to keep from being wiped out.

25 MR. GOTTLIEB: That doesn't make any

1 sense .

2 BY MR. PASPARAKIS:

3 29 Q. So you will re-evaluate the
4 situation as time goes on and as fees are
5 incurred. That's what you're telling me;
6 correct?

7 A. I will have to consider
8 alternatives at various points if I do not have
9 insurance coverage.

10 MR. PASPARAKIS: Thank you. Those are
11 our questions, Mr. Birch, and Mr. Harker. Thank
12 you again for your time this afternoon. And
13 we'll see you again, I'm sure.

14 ---Whereupon the examination concluded at 12:48
15 p.m.

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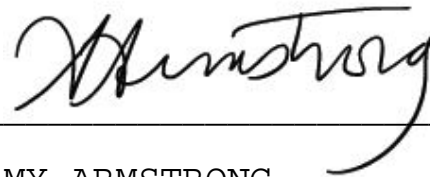
REPORTER'S CERTIFICATE

I, Amy Armstrong, RVR-CVR, Realtime
Verbatim 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
accurate transcript of my shorthand notes so
taken. Dated this 11th day of September, 2019.



PER: AMY ARMSTRONG

REALTIME VERBATIM REPORTER

<p>\$</p> <hr/> <p>\$1 8:20</p> <p>\$500 14:24 15:2</p> <hr/> <p>-</p> <hr/> <p>---upon 8:1</p> <p>---whereupon 16:14</p> <p>--OFF 14:14</p> <hr/> <p>1</p> <hr/> <p>1 9:2</p> <p>10 11:4</p> <p>11 11:7</p> <p>12 11:13</p> <p>12:38 8:1</p> <p>12:48 16:14</p> <p>13 11:17</p> <p>14 11:23</p> <p>15 12:7</p> <p>150 15:7</p> <p>16 12:16</p> <p>17 12:24</p> <p>18 13:10</p> <p>19 13:15</p> <hr/> <p>2</p> <hr/> <p>2 9:8</p> <p>20 13:19</p> <p>21 14:4</p> <p>22 14:7</p> <p>23 14:9</p> <p>24 14:22</p> <p>25 15:5</p>	<p>26 15:10</p> <p>27 15:14</p> <p>28 15:19</p> <p>29 16:3</p> <hr/> <p>3</p> <hr/> <p>3 9:10</p> <hr/> <p>4</p> <hr/> <p>4 9:16</p> <hr/> <p>5</p> <hr/> <p>5 9:20</p> <hr/> <p>6</p> <hr/> <p>6 10:1</p> <hr/> <p>7</p> <hr/> <p>7 10:15</p> <hr/> <p>8</p> <hr/> <p>8 10:19</p> <hr/> <p>9</p> <hr/> <p>9 10:22</p> <hr/> <p>A</p> <hr/> <p>ability 8:13 13:11</p> <p>access 11:1</p> <p>accordance 10:23,25</p> <p>action 15:15</p> <p>advice 10:7</p> <p>advisement 13:8</p>	<p>Affirmed 8:2</p> <p>afternoon 16:12</p> <p>agree 8:5,9,24</p> <p>agreement 10:20 12:11,20 13:2,23,24 14:1</p> <p>agreements 12:4</p> <p>alternatives 16:8</p> <p>amount 15:1</p> <p>anticipates 10:22</p> <p>argue 8:18</p> <p>arose 12:23</p> <p>Ash-ay 9:9</p> <p>Ashe 12:2</p> <p>assets 8:22 15:11</p> <p>aware 15:1,5</p> <hr/> <p>B</p> <hr/> <p>basis 8:10 13:2,4</p> <p>behalf 9:21</p> <p>beneficial 8:21</p> <p>billion 8:20</p> <p>Birch 8:3,9,24 10:3,12 13:7 14:17 16:11</p> <p>bothered 11:4,8</p> <p>Brock 9:11,15 10:10 11:9</p> <hr/> <p>C</p> <hr/> <p>Canadian 15:2,12</p> <p>Cassels 9:11, 15 10:10 11:9</p>	<p>13:16 14:16</p> <p>claim 13:4</p> <p>claims 12:23 14:23 15:1</p> <p>clear 14:15</p> <p>commencing 8:1</p> <p>company 11:6</p> <p>concluded 16:14</p> <p>connection 11:25 12:8</p> <p>conversation 12:6,7</p> <p>conversation 12:21 13:17 14:1,16</p> <p>copy 13:5</p> <p>correct 8:23 9:5,6 10:24 11:5 14:5,11 15:3,4, 8,9,12,13,16,21 16:6</p> <p>correspond 13:10</p> <p>corresponde 13:13</p> <p>costs 8:16 9:21,22 10:2 11:15</p> <p>counsel 10:7, 17 12:2,10,11, 22 13:18</p> <p>couple 9:2</p> <p>cover 10:11</p> <p>coverage 15:6,16 16:9</p> <p>covering 9:12</p> <p>Cro-lee 9:6</p> <p>CROSS-EXAMINATIO</p> <p>N 9:1</p> <p>Crowley 8:6 9:8 11:21 12:3,8</p>	<p>14:2,11,23</p> <p>Crowley's 9:4 11:18 13:22 14:1</p> <hr/> <p>D</p> <hr/> <p>defend 15:15, 20</p> <p>defendant 8:16</p> <p>defending 15:23</p> <p>discussion 10:1</p> <p>discussions 10:4,15 13:20, 21 14:4,9</p> <p>document 13:6</p> <p>duty 8:13,15</p> <hr/> <p>E</p> <hr/> <p>effectively 12:1</p> <p>engagement 9:14 11:2,14</p> <p>ESL 11:20,24 12:4,6,25 13:3 14:5,6</p> <p>estimate 11:14</p> <p>evidence 11:18</p> <p>examination 8:4 9:4 11:18 16:14</p> <p>exchange 11:20</p> <p>extent 9:21 10:21 13:25 15:22</p>
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TAB 3

In the Matter Of:
Sears Canada Inc. et al. v.
ESL Investments Inc. et al.

DONALD ROSS
September 10, 2019



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

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

2 ONTARIO

3 SUPERIOR COURT OF JUSTICE

4 COMMERCIAL LIST

5 BETWEEN:

6
7 FTI CONSULTING CANADA INC., IN ITS CAPACITY AS
8 COURT-APPOINTED MONITOR IN PROCEEDINGS PURSUANT
9 TO THE COMPANIES' CREDITORS ARRANGEMENT ACT, RSC
10 1985, C. C-36

11
12 Plaintiff

13 - and -

14 ESL INVESTMENTS INC., ESL PARTNERS LP,
15 SPE I PARTNERS, LP, SPE MASTER I, LP, ESL
16 INSTITUTIONAL PARTNERS, LP, EDWARD S. LAMPERT,
17 WILLIAM HARKER

18
19 Defendants

20 -----
21 This is the Cross-Examination on of Donald Ross
22 on affidavits sworn August 26, 2019, and
23 September 6, 2019, taken via video conference at
24 the offices of 40 King St W #2100, Toronto, on
25 the 10th day of September, 2019.

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

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

SEARS CANADA INC., BY ITS COURT-APPOINTED
LITIGATION TRUSTEE, J. DOUGLAS CUNNINGHAM, Q.C.

Plaintiff

- and -

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

Defendants

This is the Cross-Examination on of Donald Ross
on affidavits sworn August 26, 2019, and
September 6, 2019, taken via video conference at
the offices of 40 King St W #2100, Toronto, on
the 10th day of September, 2019.

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

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

MORNEAU SHEPELL LTD. IN ITS CAPACITY AS
ADMINISTRATOR OF THE SEARS CANADA INC.
REGISTERED PENSION PLAN

Plaintiff

- and -

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

Defendants

This is the Cross-Examination on of Donald Ross
on affidavits sworn August 26, 2019, and
September 6, 2019, taken via video conference at
the offices of 40 King St W #2100, Toronto, on
the 10th day of September, 2019.

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

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

1291079 ONTARIO LIMITED

Plaintiff

- and -

SEARS CANADA INC., SEARS HOLDINGS

CORPORATION, ESL INVESTMENTS INC., WILLIAM

CROWLEY, WILLIAM R. HARKER, DONALD CAMPBELL

ROSS, EPHRAIM J. BIRD, DEBORAH E. ROSATI, R.

RAJA KHANNA, JAMES MCBURNEY AND DOUGLAS CAMPBELL

Defendants

This is the Cross-Examination on of Donald Ross
on affidavits sworn August 26, 2019, and
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the offices of 40 King St W #2100, Toronto, on
the 10th day of September, 2019.

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

Orestes Pasparakis, Esq., for the Monitor
Geoff Mens, Esq.

John Birch, Esq., (via videoconference)
Christopher Horkins, Esq., for Crowley, Harker
& Ross

Matthew Gottlieb, Esq., for the Trustee
Philip Underwood, Esq.,

Kiran Patel, Esq., for Morneau Shepell

Richard Swan, Esq., for the Board of
Directors

Avram Spatz, Esq., for ESL

Sarah Bittmans, Esq., for Sears Holdings

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I N D E X

PAGE

WITNESS: Donald Ross

Cross-Examination by Mr. Gottlieb8

1 The following list of undertakings,
2 advisements and refusals is meant as a guide
3 only for the assistance of counsel and no other
4 purpose.

5

6

INDEX OF UNDERTAKINGS

7

The questions/requests undertaken are noted by
8 U/T and appear on the following page/line:
9 32/1.

10

11

12

INDEX OF ADVISEMENTS

13

The questions/requests taken under advisement
14 are noted by a U/A and appear on the following
15 page/line: None noted.

16

17

INDEX OF REFUSALS

18

The questions/requests refused are noted by R/F
19 and appear on the following page/line: 16/16,
20 16/23, 17/3, 17/8.

21

22

23

24

25

1 ---Upon commencing at 12:58 P.M.
2 CROSS-EXAMINATION BY MR. GOTTLIEB:
3 1 Q. Mr. Ross.
4 A. Yes.
5 2 Q. Good afternoon.
6 A. Good afternoon.
7 3 Q. I'm Matthew Gottlieb.
8 A. Hello.
9 4 Q. So I've just got some questions
10 I'm going to ask. If you can't hear me because
11 of the acoustics, if you need me to repeat
12 something, please just say so because it's
13 difficult when we're not looking at each other
14 directly to know whether you're picking it up or
15 not. Okay?
16 A. Okay.
17 5 Q. So far so good? You can hear me
18 fine?
19 A. Yes, I can hear you quite well.
20 6 Q. Okay, great. Just a little bit
21 of background to start off. I understand you
22 live in Bridgeport, Connecticut?
23 A. Yes.
24 7 Q. And what's the address of that
25 home?

1 A. Are you coming to visit?

2 8 Q. If you're inviting, I sure am. I
3 hear it's nice there.

4 A. 125 Battery Park Drive.

5 9 Q. Thank you very much. And I
6 understand you also own a home in Toronto?

7 A. That's correct.

8 10 Q. And what's the address of that
9 home?

10 A. 73 Donwoods Drive.

11 11 Q. Donwoods?

12 A. Donwoods.

13 12 Q. Where's that? Is that at Don
14 Valley Parkway and Don Mills?

15 A. No, it's in what's called Hoggs
16 Hollow or York Mills Valley.

17 13 Q. I knew I'd seen it, okay. All
18 right. Do you own any other property or an
19 interest in any other properties?

20 A. No.

21 14 Q. Now, I understand, and we'll go
22 back a little bit, you're senior counsel at
23 Covington and Burling in New York?

24 A. I'm senior out counsel at
25 Covington and Burling.

1 15 Q. Thank you for that clarification.
2 And you've held that position since September
3 2013; correct?

4 A. That's correct.

5 16 Q. And on a yearly basis for the
6 last three or four years what has your
7 remuneration been from that firm?

8 A. Well, last year as I provided, it
9 was an annual salary of [REDACTED] and a bonus of
10 [REDACTED]. In prior years the annual salary was
11 the same. The bonus varied slightly. I can't
12 tell you exactly what it was off the top of my
13 head, but it wasn't -- it was either similar to
14 or somewhat less than last year's bonus.

15 17 Q. In the range. In the range.

16 A. Maybe [REDACTED].

17 18 Q. Okay. And that's US dollars,
18 obviously as you set out in the sheet; correct?

19 A. That's correct.

20 19 Q. Okay. Thank you for that. And
21 you were previously a partner at the Osler Law
22 Firm. From my math is in the neighbourhood of
23 25 years; correct?

24 A. That's correct.

25 20 Q. And in the last few years at that

1 firm, what was your remuneration?

2 Approximately, obviously. I don't expect --

3 A. It would have been
4 approximately -- Osler's have a wind down
5 policy. Or had at that time. That was
6 approximately, probably about [REDACTED]

[REDACTED] year.

8 21 Q. So in the range of [REDACTED]
[REDACTED] for the last few years of your
10 position there?

11 A. Yes, that's right.

12 MR. BIRCH: Counsel, if I could just
13 jump in for a second, obviously just to make
14 sure for the record, that the provision of this
15 information is obviously subject to the
16 confidentiality undertaking that counsel had
17 signed. And obviously the portions of the
18 transcript that contain this financial
19 information would of course be subject to that
20 agreement. I just want to make sure that was
21 clear on the record.

22 MR. GOTTLIEB: Yes. And subject to
23 all the provisions that are in there. Of
24 course, understood.

25 BY MR. GOTTLIEB:

1 22 Q. Mr. Ross, are there any other
2 positions you've held over the last ten years
3 for which you were remunerated?

4 A. I think only being a director of
5 Sears Canada.

6 23 Q. And that was from, according to
7 what I've seen, May 2012 to April 2014; correct?

8 A. That's correct.

9 24 Q. And I know you got some
10 director's fees from that position; correct?

11 A. Yes.

12 25 Q. All right. So before we touch on
13 Sears, any other positions that you held for
14 which you received remuneration?

15 A. No.

16 26 Q. Okay. And did you ever get from
17 Sears, or as a result of your position at Sears,
18 share grants or options or warrants or anything
19 of the sort?

20 A. No.

21 27 Q. Okay. And have you ever served
22 on any other boards other than the Sears board?

23 A. I served years ago on the board
24 of a company called Philex Mining.

25 28 Q. Can you spell that for me? It's

1 just tough to hear over.

2 A. P-H-I-L-E-X Mining; M-I-N-I-N-G.

3 29 Q. Okay. That was a Canadian
4 company?

5 A. Yes, it was a Canadian public
6 company that had a mine in the Philippines.

7 30 Q. Okay. And when did that end?
8 Are we talking way back?

9 A. Yes, we would be talking more
10 than ten years ago.

11 31 Q. Okay. Now, the 2013 dividend
12 that's the subject of the litigation, you're
13 aware that's -- if I can say in general terms
14 what the litigation is about; correct?

15 A. That's correct.

16 32 Q. That dividend was approved at a
17 board meeting you attended on November 18th and
18 19th, 2013; correct?

19 A. Yes, that's right.

20 33 Q. And by that time you had been a
21 corporate lawyer for in the neighbourhood of 25
22 years; correct?

23 A. Yes.

24 34 Q. Is that about right, 25 years?

25 A. It might be slightly longer.

1 35 Q. Slightly longer. Okay. Not
2 lesser, but possibly a little bit longer.
3 Understood. Okay. And you had done over your
4 time as a corporate lawyer, corporate governance
5 issues I've noted from certain documents;
6 correct?

7 A. That's correct.

8 36 Q. And how many times up until that
9 meeting in November of 2013 had you seen an
10 extraordinary dividend of more than half a
11 billion dollars approved by a board of
12 directors?

13 MR. BIRCH: This is going to the
14 merits of the case. This has no relevance.

15 BY MR. GOTTLIEB:

16 37 Q. Well, Mr. Ross's affidavit says
17 at paragraph 5: I believe the actions are
18 entirely without merit.

19 A. That's correct.

20 MR. GOTTLIEB: So that merits had been
21 raised in Mr. Ross's affidavit. And if you're
22 going to put in a statement about the merits,
23 you can't refuse questions about the merits.

24 MR. BIRCH: Well, you have to read
25 that in the context that Mr. Ross made the one

1 statement and simply attached the defence
2 basically here are the defences we're going to
3 raise, but for the purposes of this motion,
4 whether there are great merits to the defence or
5 poor merits to the defence doesn't affect the
6 outcome of this motion.

7 MR. GOTTLIEB: Well, Mr. Birch, it
8 shouldn't have been put in the affidavit if it
9 wasn't relevant. But now that it's been put in
10 the affidavit as a statement of relevance, I'm
11 allowed to question on it. You can't have it
12 both ways. You can't put in a statement and
13 then say but it's not relevant to the motion.

14 MR. BIRCH: Well, the statement was as
15 part of introducing the Statement of Defence as
16 an exhibit. So you can take it that the
17 defences being raised are those set out in the
18 Statement of Defence, but beyond that there's no
19 relevance.

20 MR. GOTTLIEB: I'm sorry, you don't
21 get it both ways. It's in there. It's in there
22 as a bald statement regarding the merits and I'm
23 allowed to cross-examine on it.

24 MR. BIRCH: Well, I'm not allowing
25 questions on the merits of the case. If you

1 convince me that any particular question has a
2 specific relationship to this motion, I'm happy
3 to consider that.

4 MR. GOTTLIEB: Like I said, you are
5 trying to have it both ways, but we'll deal with
6 it elsewhere. It's highly inappropriate to put
7 in a statement and then refuse to allow
8 questions on it. But I'll just ask the
9 questions and we'll see if you will allow the
10 witness to answer given his statement about the
11 merits.

12 BY MR. GOTTLIEB:

13 38 Q. The issue of the dividend wasn't
14 even on the agenda for the meetings on November
15 18 and 19, 2013; correct?

16 R/F MR. BIRCH: We're not answering
17 questions about the merits. It's not necessary
18 to put all the question on the record.

19 BY MR. GOTTLIEB:

20 39 Q. An independent committee of the
21 board wasn't even established to consider
22 whether the dividend was appropriate; correct?

23 R/F MR. BIRCH: Refused.

24 BY MR. GOTTLIEB:

25 40 Q. An independent financial advisor

1 was not even retained to provide independent
2 advice to the board; correct?

3 R/F MR. BIRCH: Refused.

4 BY MR. GOTTLIEB:

5 41 Q. The directors did not retain
6 outside counsel to advise on the appropriateness
7 of the dividend; correct?

8 R/F MR. BIRCH: Refused.

9 MR. GOTTLIEB: So I've got a list of
10 questions here and each one of them is going to
11 be refused, notwithstanding that statement at
12 the beginning of the affidavit. Is that it,
13 Mr. Birch?

14 MR. BIRCH: That's right. Questions
15 going to the merits are refused. If you think
16 that any particular question has some other
17 relevance to this motion, by all means, pose it,
18 but as a general proposition, we refuse
19 merits-based questions.

20 MR. GOTTLIEB: Okay. You've got my
21 position and I think I understand yours.

22 BY MR. GOTTLIEB:

23 42 Q. Mr. Ross, you retained Cassels
24 Brock and Blackwell -- but I'll probably refer
25 to Cassels or CBB -- in the spring of 2018;

1 correct?

2 A. That's correct.

3 43 Q. And it was in or around March
4 2018 or before that. I can't figure out the
5 exact date, but it's around then?

6 A. Around then, yes.

7 44 Q. Okay. And was a retainer letter
8 entered into at that time between you and
9 Cassels Brock?

10 A. Yes, there's an engagement
11 letter.

12 45 Q. And under that engagement letter,
13 sir, you're responsible to pay Cassels Brock's
14 legal fees; correct?

15 A. That's correct.

16 46 Q. Okay. And did all the directors,
17 to your knowledge, sign an engagement letter?

18 A. That I don't know.

19 47 Q. Is there an agreement amongst --
20 pardon me for a second.

21 --OFF-THE-RECORD DISCUSSION--

22 BY MR. GOTTLIEB:

23 48 Q. And is there an agreement amongst
24 the six directors as to how to split legal fees
25 of Cassels Brock?

1 A. No, there is no agreement.

2 49 Q. Now, I know from the documents
3 I've seen in the record that no insurer agreed
4 to cover legal fees until late October 2018;
5 correct?

6 A. That's correct.

7 50 Q. Okay. Who paid Cassels' legal
8 fees between the time it was retained and, say,
9 November when legal fees were paid by the
10 insurer?

11 A. We paid or at least I can speak
12 for myself, I paid a portion of their legal fees
13 to cover that period. And they agreed that if
14 insurance were obtained, which it ultimately
15 was, they would refund the amount that had been
16 paid to them, which they did.

17 51 Q. Okay. Thank you. And at the
18 outset of the litigation was a budget given to
19 you by Cassels Brock regarding the forecasted
20 cost of the litigation?

21 A. Not that I recall.

22 52 Q. Has a budget ever been given to
23 you by Cassels Brock for any portion of the
24 litigation?

25 A. No, we haven't been given a

1 budget. We've been given sort of general orders
2 of magnitude. I think because it's difficult to
3 forecast what the costs will be.

4 53 Q. And when were you given general
5 orders of magnitude?

6 A. I can't really recall. I think I
7 just went along with from time to time.

8 54 Q. Okay. And before I get to that,
9 when was the last time you were given a general
10 order of magnitude?

11 A. I guess about a week ago in the
12 context of what I would call a skinny defence.
13 In other words not doing what --

14 MR. BIRCH: Well, I want to be careful
15 here because I don't want to get into what was
16 communicated.

17 THE WITNESS: Okay. So a week ago.

18 BY MR. GOTTLIEB:

19 55 Q. Okay. I do want to get into what
20 was communicated, but it's important that you
21 not, by giving your answer, touch on any advice
22 or strategy or any other types of material
23 information that was discussed between counsel
24 Cassels Brock and any of the directors; okay?
25 And it might seem like a fine line at parts, but

1 I don't want you to divulge that information.
2 If I don't think you've given enough, I'll ask
3 for more, but otherwise I just want to try to be
4 careful not to step on that type of privilege
5 information. Okay? Just give me one second,
6 please.

7 --OFF-THE-RECORD DISCUSSION--

8 BY MR. GOTTLIEB:

9 56 Q. Has Cassels Brock given you a
10 budget for going forward with the litigation
11 from this point?

12 A. Not a budget.

13 57 Q. Have they given you an estimate
14 of legal fees going forward from this point?

15 A. They've given us or they have
16 given me an estimate of legal fees if there were
17 -- if there were insurance and they were able to
18 do a proper job.

19 58 Q. Okay. I'm going to come back in
20 a moment. You were also retained beyond Cassels
21 Brock, Covington, your firm, as US coverage
22 counsel; correct?

23 A. Correct.

24 59 Q. And when was Covington retained?

25 MR. BIRCH: I can tell you if that

1 assists.

2 MR. GOTTLIEB: Yes, please.

3 MR. BIRCH: I think it was around June
4 2018.

5 THE WITNESS: That right. That sounds
6 right.

7 BY MR. GOTTLIEB:

8 60 Q. Okay. And Covington was retained
9 because you needed assistance with regarding the
10 insurers; correct?

11 A. Particularly with XL, yes, at
12 that time.

13 61 Q. To try to ensure that XL was
14 going to cover the legal costs?

15 A. Yes, that's correct.

16 62 Q. And the directors are paying
17 Covington directly; correct?

18 A. That's correct.

19 63 Q. And how is that split?

20 A. It's being paid on a pro rata
21 basis.

22 64 Q. Does that mean one-sixth or
23 one-eighth? What does that mean, pro rata?

24 MR. BIRCH: Just for clarity, it's
25 only the six directors that Cassels Brock

1 represents that are represented by Covington,
2 not the other two.

3 MR. GOTTLIEB: Thank you, Mr. Birch.

4 THE WITNESS: Right. So it's a sixth.

5 BY MR. GOTTLIEB:

6 65 Q. So each is paying a sixth;
7 correct?

8 A. That's correct.

9 66 Q. Okay. You sure? You seem a
10 little bit unsure about that.

11 A. Well, I know I paid my sixth. I
12 know exactly how much it is.

13 67 Q. Okay. So you don't know if
14 everyone else has paid their sixth but you know
15 the requirement is for each to pay a sixth?

16 A. That's correct.

17 68 Q. Okay. And is there a retainer
18 letter with Covington and the directors?

19 A. There is.

20 69 Q. And is under that retainer letter
21 each director responsible for one-sixth or is
22 each director responsible for the full legal
23 fees?

24 A. The full legal fees.

25 70 Q. Also Jim Doris was retained by

1 the directors; correct?

2 A. That's correct.

3 71 Q. And is the retainer on the same
4 basis as Covington was retained?

5 A. Yes, it is. Yes.

6 72 Q. Okay. So I needn't go through
7 those questions again?

8 A. That's correct.

9 73 Q. Okay. Thanks. So you were
10 familiar obviously with XL and the fact that XL
11 agreed to provide coverage of defence costs in
12 October of 2018; correct?

13 A. Yes.

14 74 Q. And you understand throughout the
15 time that you retained Cassels and Covington,
16 and Covington who was dealing with XL, that the
17 former directors, you six were not the only ones
18 who were able to access funds under that policy;
19 correct?

20 A. Yes. We knew that it covered
21 Sears Holdings directors and officers and the
22 directors and officers of Sears Holdings
23 subsidiaries.

24 75 Q. And at the time in November you
25 understood because you were told there was only

1 \$3 million remaining on the \$15 million first
2 tier XL policy; correct?

3 A. I don't think we knew that in
4 November. The original retainer was to get XL
5 to pay anything at all.

6 76 Q. Give me one second, please,
7 because I believe I can help you out with that.
8 Do you have your reply motion record in front of
9 you? Can I ask Mr. For Birch to put that in
10 front of you?

11 MR. BIRCH: Yes, he's got it.

12 BY MR. GOTTLIEB:

13 77 Q. Thank you very much. And you
14 see, sir, that this is your affidavit sworn on
15 September 6th. Do you see that?

16 A. Yes, I do.

17 78 Q. All right. And you attached and
18 exhibited several documents; correct?

19 A. That's correct.

20 79 Q. All right. Now, if you go to S,
21 tab S, you'll see a letter that you've attached
22 there. And it's a November 7, 2018 letter from
23 Gowlings, Paul Stein to Mr. Birch sitting to
24 your right.

25 A. Mm-hmm.

1 80 Q. At Cassels Brock. And what it
2 says at the bottom of the first page, top of the
3 second page, there is \$3 million US left of the
4 original 15 million limit of that policy.

5 A. Yes, that's correct.

6 81 Q. Okay. And that's information
7 that I'm sure you became aware of in November
8 of 2018; correct?

9 A. I don't know if I became aware of
10 it at that time. Mr. Birch obviously did.

11 82 Q. Okay. All right. So as your
12 counsel, obviously, Mr. Birch became aware of
13 it. That's fair.

14 A. Yes.

15 83 Q. Okay. And where did you
16 understand or at the time or thereabouts that
17 the other \$12 million had gone on that policy?

18 A. I understood that there had been
19 some other claim made because this was a Sears
20 Holdings policy.

21 84 Q. Okay.

22 A. That related to some other matter
23 involving directors of Sears Holdings or one of
24 its subsidiaries and that XL had paid out in
25 connection with that other matter, whatever it

1 was.

2 85 Q. Okay. So you understood that of
3 the \$3 million remaining that some of that
4 money, all of that money, a part of that money
5 may be used up, not by you and the other
6 Canadian former directors, but by others as
7 well; correct?

8 A. Yes.

9 86 Q. That \$3 million wasn't dedicated
10 to you and your colleagues, if I can call them
11 that; correct?

12 A. That's correct.

13 87 Q. Okay. And that was in November
14 of 2018; correct?

15 A. I'm not sure when I got to know
16 that. As I said earlier, that's certainly when
17 Mr. Birch learned about the \$3 million. But at
18 some point I did learn that there was about
19 \$3 million. I suspect it was some time after
20 this letter.

21 88 Q. But around that time?

22 A. It might have been in -- within a
23 few months of that time.

24 89 Q. Okay. Well, we can come back to
25 that. But as at November 2018 you were aware,

1 I'm sure, that the second level insure, that
2 I'll just call generically QBE, had not yet
3 agreed to provide coverage on the second tier
4 for these claims; correct?

5 A. Yes, I knew that.

6 90 Q. And when did your firm first make
7 the request of QBE?

8 A. I'm sorry. I think that -- I
9 believe that was in November.

10 91 Q. Okay.

11 A. I think you used the word "make
12 the request." I think that was more a matter of
13 letting them know the situation that they were
14 next in line.

15 92 Q. I think it -- sorry, I apologize
16 for interrupting. You go ahead.

17 MR. BIRCH: Yes, Mr. Ross is just
18 trying to find the November letter, if it was a
19 November communication.

20 MR. GOTTLIEB: No problem. Thank you.

21 THE WITNESS: Yes, there's an email
22 which is Exhibit E to my affidavit of September
23 6 from Andrew Hahn to QBE.

24 BY MR. GOTTLIEB:

25 93 Q. Did you say Exhibit B?

1 THE WITNESS: E as in Edward.

2 BY MR. GOTTLIEB:

3 94 Q. Thank you. Right. Okay. And
4 this is November --

5 A. 2018.

6 95 Q. Yes. Thank you very much. Well,
7 unfortunately the letter's all blacked out, so
8 we can't really see what it says because what we
9 know is that by May 2019 your firm is writing
10 and saying, "We've made repeated requests to
11 confirm that QBE will pick up coverage after the
12 XL policy has expired but still haven't had a
13 response."

14 So I'm asking, sir, when was the first
15 request made, to your knowledge?

16 MR. BIRCH: Didn't he just say
17 November? This email, November 7?

18 MR. GOTTLIEB: No, Mr. Birch. We're
19 talking apples and oranges. So I asked when the
20 request was made by Covington of QBE to confirm
21 coverage, and Mr. Ross said that the November
22 letter didn't request coverage, it was just
23 providing information.

24 And if we go to Exhibit F, and you can
25 take your time.

1 MR. BIRCH: I'm sorry, Exhibit F is
2 the letter that ends on the drop-down?

3 MR. GOTTLIEB: Yes. So if you look on
4 page 34 of the record of this letter, the second
5 paragraph, it says: As you are aware, the
6 former directors have through counsel provided
7 regular detailed updates to XL and its excess
8 insurers, including QBE and Lloyds, regarding
9 the progress of the CCAA proceedings and other
10 related litigation. In addition, as the
11 anticipated exhaustion of the 2015 policy
12 approached, the former directors made repeated
13 requests of QBE to confirm that their ongoing
14 defence expenses would be seamlessly reimbursed
15 under the 2015 QBE policy. Upon exhaustion of
16 the 2015 XL policy, QBE failed to respond until
17 May 2016., et cetera.

18 So my point is there, sir, your firm
19 is writing saying repeated demands had been made
20 to QBE to confirm they would pick up coverage
21 after the XL policy was exhausted. And I want
22 to know when the first time was. Because my
23 understanding is even though the letter's
24 blocked out, the November letter is: While an
25 update is being provided on the litigation being

1 told what the litigation is is commenced, at the
2 same time counsel would ask for confirmation
3 that the second-tier coverage would pick up
4 after the first.

5 MR. BIRCH: Just while Mr. Ross is
6 looking at this and just to try to speed this
7 process along, we've obviously given you,
8 Mr. Gottlieb, an email from May from Covington
9 prior to May 16. It's my understanding that
10 Covington made a variety of requests verbally.
11 I don't have particulars of that.

12 MR. GOTTLIEB: Okay.

13 MR. BIRCH: Would it make sense for us
14 just to give you an undertaking on that to
15 check? Because, I mean, if Mr. Ross doesn't
16 know --

17 MR. GOTTLIEB: Yeah. Let me come back
18 on that. Thank you for the offer.

19 MR. BIRCH: We'll check. We'll check
20 and get back to you because obviously that's
21 something -- I mean, Mr. Ross is obviously not
22 the coverage lawyer at Covington's.

23 THE WITNESS: I'm in the role of
24 counsel -- I'm not counsel, the client here.
25 Not counsel. So --

1 U/T MR. BIRCH: We'll ask Covington
2 counsel about those requests.

3 BY MR. GOTTLIEB:

4 96 Q. Thank you. So as of November,
5 your counsel was aware that there was only
6 \$3 million left on the first policy, repeated
7 requests had been made for confirmation that QBE
8 would pick up, but QBE had not confirmed at any
9 time that it would, in fact, pick up defence
10 costs; correct? We know that from the record.

11 A. QBE basically had not answered.

12 97 Q. Correct. So they had not agreed
13 that they were picking up second-tier coverage,
14 if I can put in those very generic terms?

15 A. Yes, that's correct.

16 98 Q. Okay. And how much did Cassels
17 Brock and Bennett Jones bill and have paid by
18 the insurance company after November 7th when
19 you were notified that there was \$3 million
20 available?

21 A. I don't know.

22 99 Q. Were you ever told?

23 A. No, Cassels Brock was dealing
24 directly with the insurers XL on their accounts.

25 MR. BIRCH: And obviously we wouldn't

1 know what Bennett Jones billed.

2 BY MR. GOTTLIEB:

3 100 Q. Well, you say obviously, and I
4 don't agree with that, for what it's worth, but
5 we'll just move on. But the bottom line is,
6 sir, even though in November of 2018 you
7 understood there was only \$3 million left on
8 that policy, you didn't make inquiries to find
9 out ongoing how much was left on an ongoing
10 basis and what your law firm and Bennett Jones
11 had billed; correct? That's fair?

12 A. That's correct. We didn't.

13 101 Q. Okay.

14 A. We didn't. We were not involved
15 in looking at Cassels Brock's accounts or their
16 correspondence with the insurers.

17 102 Q. So you didn't look at Cassels
18 Brock's accounts?

19 A. That's correct.

20 103 Q. Now, you were aware, sir, that
21 \$3 million or the less than \$3 million that
22 would be available wouldn't get you through and
23 the other eight directors through to the end of
24 trial; correct? You knew you were going to have
25 to rely on a second tier for defence costs;

1 correct?

2 MR. BIRCH: Sorry, that question is
3 based on the assumption that the case actually
4 goes to the end of trial. You're asking
5 Mr. Ross to assume that for the purpose of your
6 question?

7 BY MR. GOTTLIEB:

8 104 Q. Yes, correct. I mean, the claim
9 hadn't even been served by this point in time,
10 sir. The claim wasn't served until right before
11 Christmas in December of 2018. We're talking
12 November. You knew that those potential
13 available fees wouldn't take you through to the
14 end of trial, assuming this matter proceeded all
15 the way to trial; correct?

16 A. I didn't know that for sure, but
17 I did expect that we might well end up needing
18 to get coverage from QBE.

19 105 Q. That was your expectation;
20 correct? To be fair?

21 A. No, I think that's overstating
22 it, to be fair.

23 106 Q. Really? You thought that Cassels
24 Brock and Bennett Jones and the other firms
25 dealing with the other, would be enough money to

1 represent all eight directors for a \$500 million
2 claim through all steps to the end of trial from
3 before the pleading had even been served? That
4 was your belief?

5 MR. BIRCH: Well, he's answered the
6 question. There's no need to repeat it.

7 MR. GOTTLIEB: I'm allowed to go back,
8 Mr. Birch, and you're not allowed to interrupt.
9 And you wouldn't be able to do it that front of
10 a judge, as you know. So you shouldn't be doing
11 it here.

12 MR. BIRCH: He's answered the
13 question. Do you have another question?

14 BY MR. GOTTLIEB:

15 107 Q. Mr. Ross, did you understand the
16 question I just asked you? I'm entitled to ask
17 you what your understanding was, and I'm
18 actually allowed to ask it again when you've
19 changed the way you put the answer. So is it
20 your evidence for the Court that you thought
21 that the \$3 million was enough to represent you
22 and the other seven directors and anyone else
23 who may be pulling at the same pot for a
24 \$500 million claim when the claim hadn't even
25 been issued yet? Is that your evidence, that

1 you thought that would cover it all?

2 MR. BIRCH: He's answered the
3 question. So if there's any issue, we can refer
4 to the transcript as to what was already said.

5 MR. GOTTLIEB: Well, he said was I
6 anticipated that we would have to use QBE and
7 then qualified his answer. So I want to know
8 what the answer is.

9 MR. BIRCH: I think the answer that he
10 gave --

11 MR. GOTTLIEB: No, no, no, I don't
12 want you to give his answer, Mr. Birch. I don't
13 want you to give his answer.

14 MR. BIRCH: I'm not.

15 MR. GOTTLIEB: That's why you're not
16 allowed to speak.

17 MR. BIRCH: No, what I'm saying
18 is that --

19 BY MR. GOTTLIEB:

20 108 Q. All right. Well, let's move on
21 then. If you're not going to let him answer the
22 question, then we'll move on but you've heard my
23 question. By May 7th, 2019, the second tier
24 still had not agreed to cover costs; correct?

25 A. That's correct.

1 109 Q. So you understood there was a
2 possibility that the second tier was going to
3 say no because they hadn't said yes; correct?

4 A. Well, I don't think that's a fair
5 characterization. When we knew that we hadn't
6 heard from them, we didn't know what that
7 silence meant. And as you'll see, if you read
8 through all this material, insurance companies
9 seem to be able to get asked a question and not
10 answer them for months.

11 110 Q. So you just assumed, sir, that
12 notwithstanding you had been asking for five
13 months and they hadn't responded, you were
14 certain that their answer was going to be yes?

15 A. No, I wasn't certain. I didn't
16 know what their answer would be.

17 111 Q. That was my question. You knew
18 there was a possibility they might say no is my
19 point. That was all I asked. You knew that was
20 possible?

21 A. Yes, it's a possibility they
22 might say no.

23 112 Q. Okay.

24 A. And it's a possibility they might
25 say yes.

1 113 Q. Absolutely. Understood.

2 A. All right.

3 114 Q. All right. Now, as at the
4 beginning of May, just to be clear, and I just
5 want to be sure we're in the right frame here,
6 you were aware that no Statement of Defence had
7 been served to the claim?

8 A. May 2019 are you talking about?

9 115 Q. Yes, sir.

10 MR. BIRCH: Mr. Gottlieb, wasn't it in
11 some point in May that it was served?

12 MR. GOTTLIEB: I have it as July 29th,
13 I think.

14 MR. BIRCH: No, but that's in one
15 action. That's in one action. But about the
16 other actions?

17 MR. GOTTLIEB: I apologize. I'm
18 talking about in the litigation trustee action.

19 MR. BIRCH: Okay. The other defences
20 were served much earlier. I think in May, in
21 fact.

22 MR. GOTTLIEB: I'll take a look and
23 I'll come back on that. Thank you.

24 BY MR. GOTTLIEB:

25 116 Q. So you knew, sir, that in May

1 of 2019 there were motions outstanding to be
2 adjudicated by the Court, for example, with
3 respect to litigation trustee's claim; correct?

4 Sir, were you aware that your counsel
5 had brought a motion with respect to the
6 litigation trustee's Statement of Claim or were
7 you not aware of that? Mr. Ross, no disrespect,
8 but there's nothing to look at in the brief on
9 this.

10 The question is were you aware that
11 your counsel, Cassels Brock, had brought a
12 motion to challenge the litigation trustee's
13 claim?

14 A. I don't recall.

15 117 Q. Okay. You were aware that as at
16 May 2019 production of documents had not
17 occurred; correct?

18 A. I knew they hadn't been
19 completed, yes.

20 118 Q. Did you know they hadn't started?

21 A. I don't think I knew that.

22 119 Q. Okay. Did you know that your
23 counsel hadn't begun reviewing any productions
24 by this point?

25 MR. BIRCH: Mr. Gottlieb, I'm not sure

1 what that question is based on. There's
2 certainly no evidence in the record indicating
3 whether or not Cassels had started reviewing
4 stuff or not.

5 MR. GOTTLIEB: I didn't say stuff, I
6 said productions.

7 MR. BIRCH: Well, you mean their own
8 productions?

9 MR. GOTTLIEB: No, I mean the
10 productions because no productions had been made
11 yet. The productions in the litigation.

12 MR. BIRCH: I think Mr. Ross and I
13 both misunderstood the question. We were
14 thinking about the document data room by Cassels
15 of its clients' claims.

16 MR. GOTTLIEB: I'm not sure why you're
17 telling me what Mr. Ross understood about a
18 question I asked, but I wish you'd stop doing
19 that, please.

20 MR. BIRCH: Well, just --

21 MR. GOTTLIEB: I'm going to keep
22 going. I'm going to keep going, Mr. Birch. I
23 don't need you to do that. That's not helpful.

24 MR. BIRCH: Well, your question was --

25 BY MR. GOTTLIEB:

1 120 Q. Sir, you understood that there
2 had not yet been Affidavit of Documents
3 exchanged by the parties by May 2019; correct?

4 MR. BIRCH: Sorry, I didn't even hear
5 the question. You were talking over me, Mr.
6 Gottlieb.

7 BY MR. GOTTLIEB:

8 121 Q. You understood, sir, that by May
9 of 2019 Affidavit of Documents had not yet been
10 exchanged; correct?

11 A. I certainly didn't know that
12 there had been any exchanged.

13 MR. GOTTLIEB: Pardon me for a second,
14 Mr. Ross. I'm sorry.

15 THE WITNESS: Okay.

16 ---OFF-THE-RECORD DISCUSSION.

17 BY MR. GOTTLIEB:

18 122 Q. Okay. As at May 2019, did you
19 have any form of understanding as to what the
20 legal fees were going to be to the end of trial?

21 A. No.

22 123 Q. And you became aware, sir, that
23 the second tier, QBE, advised that it was not
24 picking up coverage after XL's first tier
25 expired; correct?

1 A. After it sent its letter of May
2 16 saying that, I understood that, yes.

3 124 Q. Okay. So you learned on or
4 around May 16 that QBE wasn't going to pick up
5 coverage; correct?

6 A. That's correct.

7 125 Q. Okay. So on May 16th you found
8 out that second tier had said that it wasn't
9 going to pick up and you were aware that the
10 first tier was about to be exhausted; correct?
11 As around the same time?

12 A. I was aware that QBE was not
13 going to -- was taking the position that it
14 wouldn't accept outreach. And I expected that
15 the XL policy would at some point in the not too
16 distant future be used up.

17 126 Q. Okay. All right. And, in fact,
18 it was in early June of 2019 that you retained
19 Jim Doris to challenge QBE's denial of coverage;
20 correct?

21 A. That's correct.

22 MR. GOTTLIEB: All right. Can we just
23 take, if you don't mind, Mr. Birch and Mr. Ross,
24 just a five-minute break, please?

25 MR. BIRCH: Yeah, that's fine. Are

1 you getting near the end or should I get some
2 water and coffee for round 2?

3 MR. GOTTLIEB: I guess some water and
4 coffee for round 2. And, Mr. Ross, I'm going to
5 tell you, you are not allowed to discuss
6 anything with Mr. Birch at this point or anyone
7 else about this case. So you're kind of in a --
8 what do they call it on Get Smart -- the cone of
9 silence, if I'm not mistaken?

10 MR. BIRCH: I'm familiar with cones of
11 silence.

12 MR. GOTTLIEB: Okay. So I need you to
13 put yourself in one until we come back in a few.

14 MR. BIRCH: He'll be sitting here when
15 you come back.

16 --RECESS TAKEN AT 1:45 P.M.--

17 --UPON RESUMING AT 1:58 P.M.--

18 BY MR. GOTTLIEB:

19 127 Q. I just got a couple more areas,
20 Mr. Ross. Thanks for your patience.

21 A. Okay.

22 128 Q. I don't want to spend, frankly, a
23 lot of time on this but in your reply affidavit
24 at paragraph 6 you on hearsay evidence tell what
25 Mr. Horkins told you about what happened in

1 court on July 12th. Do you recall that?

2 A. Yes, I see it.

3 129 Q. Now, I'm just going to put a
4 couple of obvious propositions to you. You
5 weren't there in court on July 12th; correct?

6 A. That's correct.

7 130 Q. You have no way of knowing
8 whether what Mr. Horkins told you happened,
9 happened; correct?

10 A. I'm relying on him telling me
11 what he told me.

12 131 Q. I know, but you don't know
13 whether it's true first-hand. He could have
14 misinterpreted it; he could have got it wrong;
15 he could have misremembered it; correct?

16 A. I don't know whether it is true
17 or false.

18 132 Q. Okay. Thank you for that. Now,
19 I'm sorry to repeat myself but you said in your
20 affidavit, and we all this is the case, nothing
21 fancy, that Mr. Doris was retained in June to
22 bring the application in Ontario against QBE;
23 correct?

24 A. That's correct.

25 133 Q. And you say in your affidavit,

1 and, again, I'm not going to turn it up unless
2 you want to see it, at paragraph 40, that you
3 thought all the issues would be heard on or
4 around August 27th.

5 A. That's correct. We thought it
6 would be heard on August 27th.

7 134 Q. And you knew at that time and
8 you, in fact, knew when you swore your
9 affidavit, that QBE had said much earlier that
10 it was going to seek to lift the stay in the
11 United States bankruptcy court so it could bring
12 an application regarding this matter of coverage
13 in Illinois; correct?

14 A. Yes, that's correct.

15 135 Q. And that was long before Doris
16 was retained even; correct? It was before June.

17 A. Yeah. I wouldn't say it was long
18 before.

19 136 Q. It was before?

20 A. It was before.

21 137 Q. The record will show when it was.
22 Okay?

23 A. Exactly.

24 138 Q. And you therefore knew that one
25 of the possibilities was that QBE would contest

1 with the Ontario court's jurisdiction to deal
2 with the application that Mr. Doris was writing
3 on your behalf; correct?

4 A. That was a possibility.

5 139 Q. Right. And therefore you knew
6 that there was a possibility that the matter may
7 not proceed on the merits on August 27th;
8 correct?

9 A. No, I don't think that's correct.
10 I didn't know what was going to happen on August
11 27th.

12 140 Q. And that's exactly my point, sir.
13 You didn't know for certainty that the matter
14 was going to proceed on the merits of
15 Mr. Doris's application on August 27th.

16 A. I didn't know for certain. I was
17 expecting that it would.

18 141 Q. But you were aware, sir, that if
19 there was a jurisdiction challenge by QBE, I
20 mean, you're an Ontario lawyer, you know these
21 things, that one of the outcomes might have been
22 on August 27 that His Honour wouldn't have heard
23 the application on the merits. You knew that
24 was a possibility; correct?

25 A. I didn't know what His Honour was

1 going to do if they raised a jurisdictional
2 issue.

3 142 Q. Correct. And I'd like you just
4 to confirm the obvious, which is and therefore
5 you didn't know for certainty that the matter
6 would proceed on the merits on October 27th?

7 MR. HORKINS: August.

8 MR. SWAN: August.

9 BY MR. GOTTLIEB:

10 143 Q. August 27. Thank you very much,
11 Mr. Swan. That's fair; isn't it?

12 A. I think that overstates it.

13 144 Q. Sir, are you telling me that you
14 had absolute --

15 A. You're interrupting me.

16 145 Q. I apologize. Go ahead, please.

17 A. Thank you. I thought that this
18 matter would have been brought on the 27th of
19 August. I didn't know whether they would raise
20 jurisdiction, but if they did, I didn't know how
21 it would be handled. Certainly one possibility
22 would have been to move the date, but I think it
23 overstates it to say that I knew that that was a
24 possibility. I was actually working on the
25 assumption that this was a pressing matter and

1 August 27th was an important date.

2 146 Q. Right. Okay. I will tell you,
3 sir, your answer contradicted yourself because
4 you said you knew possibly the date would have
5 to be moved, but I didn't think that that was a
6 possibility.

7 A. Maybe I should change that to say
8 I didn't think that that was -- I didn't know
9 whether that would happen.

10 147 Q. Okay.

11 A. I wasn't sure whether that was
12 likely.

13 148 Q. Okay. I understand.

14 A. Yeah.

15 149 Q. You were also aware that no
16 matter when the matter proceeded, whether it was
17 August 27 on the merits or at a later date --

18 A. Right.

19 150 Q. -- His Honour would take some
20 time to decide. He wouldn't decide from the
21 bench. You know that was a likely outcome;
22 correct?

23 A. I expected that he would take --
24 I didn't know whether -- I didn't know what he
25 would do, but I expected that there would be

1 some form of recess.

2 151 Q. Okay. Correct. So it wouldn't
3 get resolved on the 27th exactly. Even at the
4 earliest, there would be some time for His
5 honour to consider and issue reasons; correct?

6 A. I think that's likely right. I
7 have actually in Ontario courts seen a judge say
8 the outcome and he would provide written
9 reasons.

10 152 Q. Right. And I want you to be fair
11 on the evidence, sir. You're not suggesting
12 that you thought that's what was going to happen
13 here though?

14 A. No, I think what I thought was
15 that we would probably get an answer quite
16 quickly but probably not at the end of the
17 hearing.

18 153 Q. Right. And one of the outcomes
19 was that the directors wouldn't be successful on
20 the outcomes; correct?

21 A. That's a possibility.

22 154 Q. Right. Okay. And you also
23 understood that as a result of that, it might
24 mean that QBE wasn't going to cover the
25 second-tier legal fees at that time unless that

1 judgment was overturned at some later time;
2 correct?

3 A. That's correct.

4 155 Q. And you also understood that if
5 the directors were successful, QBE might appeal?

6 A. Yes.

7 156 Q. And you were aware obviously that
8 that could take months at a minimum; correct?

9 A. I don't think I really knew what
10 the timing of an appeal would be.

11 157 Q. Well, to be fair, you didn't
12 think it would take a matter of a couple weeks,
13 did you?

14 A. No, not a couple of weeks.

15 158 Q. Okay. You knew it would be
16 months before an appeal was dealt with in
17 Ontario. I mean, you know enough about the
18 system to know that appeals don't happen
19 overnight in this province. You knew that;
20 correct?

21 A. Yes, I knew that.

22 159 Q. Okay. And you also knew that
23 there was going to be proceedings in Illinois
24 and that those could take a year or longer;
25 correct?

1 A. Yes.

2 160 Q. And --

3 A. If There are proceedings in
4 Illinois, I expect they will take over a year.

5 161 Q. Right. And those proceedings
6 could have some bearing on what's going on in
7 Ontario; correct? You're aware of that?

8 A. I'm not sure about that.

9 162 Q. You thought the Illinois
10 proceedings would be completely irrelevant? Is
11 that your evidence?

12 A. The Illinois courts, as I
13 understand it, have no personal jurisdiction
14 over any of the former directors.

15 163 Q. But, sir, that was an argument to
16 be made. Are you saying that it was your view
17 at the time that regardless of what the Illinois
18 court did, that was irrelevant to the coverage
19 issue? That if QBE was successful in Illinois,
20 it would just pay regardless?

21 A. If a Canadian court takes
22 jurisdiction, I believe this matter would get
23 presided in Ontario because the Illinois court
24 actually has no personal jurisdiction over any
25 of the former directors. And without personal

1 jurisdiction, it can't do anything.

2 164 Q. That is interesting. I'll put it
3 as that only, sir. You understood that QBE
4 wasn't going to agree with your position on that
5 because it was proceeding in Illinois; correct?

6 A. I knew they were proceeding in
7 Illinois. I also don't believe they have any
8 jurisdiction --

9 165 Q. Sir, I know that --

10 A. -- to be able to carry that out.

11 166 Q. I know that's your belief, but my
12 point is, sir --

13 A. No, no, my point to you is they
14 won't -- it's hard to proceed if you don't have
15 jurisdiction over the other side.

16 167 Q. That's an argument, sir. You're
17 not making a ruling on that; correct?

18 A. I've been advised that that's the
19 outcome.

20 168 Q. You've been advised that that's
21 the outcome?

22 A. That an Illinois proceeding has
23 no personal jurisdiction over any of the former
24 directors is not going to be something that if
25 Ontario takes jurisdiction will interfere with

1 Ontario.

2 169 Q. Okay. You don't know that the
3 Illinois court is going to agree with that, to
4 be fair?

5 A. I don't know what the Illinois
6 court will do. I only know what I have been
7 advised will happen.

8 170 Q. Sir, you don't know what the
9 Illinois court will do; correct?

10 MR. BIRCH: He's answered that.

11 THE WITNESS: I think I've answered
12 your question.

13 BY MR. GOTTLIEB:

14 171 Q. Well, you have, but you then add
15 a little zip on to the end of it about what
16 you've been advised.

17 A. Well, I thought --

18 172 Q. I wish my advice was always right
19 and always followed by the courts. And
20 sometimes it is, sometimes it isn't. My point
21 is, sir, sitting here today, you don't know what
22 the Illinois court's going to do is my only
23 point; is that fair?

24 MR. BIRCH: He's answered that. He's
25 answered the question.

1 MR. GOTTLIEB: Okay.

2 MR. BIRCH: And he's not going to
3 answer that again.

4 BY MR. GOTTLIEB:

5 173 Q. All right. And, sir, you
6 understand that the Ontario court may refuse
7 jurisdiction?

8 A. Yes, I understand that.

9 174 Q. And then you're off to the
10 Illinois court; correct?

11 A. Yes.

12 175 Q. All right. So the bottom line is
13 sitting here today, you actually have no idea
14 how long it's going to take for this dispute to
15 be finally resolved over coverage; correct?

16 A. That's correct if Ontario says it
17 has no jurisdiction.

18 176 Q. And even if Ontario says it has
19 jurisdiction, which you obviously don't know if
20 the Court's going to say that --

21 A. Right.

22 177 Q. -- you don't know when that
23 hearing's going to go forward.

24 A. Sorry, the Ontario court hearing
25 on jurisdiction I think we can know and do know.

1 178 Q. Yes, I apologize. If the case
2 goes forward and jurisdiction is denied, there
3 could be an appeal; correct?

4 A. Yes.

5 179 Q. If it's taken, there could be an
6 appeal; correct?

7 A. Yes, either side can appeal.

8 180 Q. And if on the merits the
9 directors are successful, there could be an
10 appeal; correct?

11 A. That's correct.

12 181 Q. And if on the merits the
13 directors are unsuccessful, there could be an
14 appeal; correct?

15 A. Yes.

16 182 Q. And you have no idea how long all
17 of that will take to get the matter resolved, to
18 be fair; correct?

19 A. It's correct that I don't know
20 when, how long that will take.

21 MR. GOTTLIEB: Okay. All right.
22 Counsel, I believe that it's going to be handed
23 to you now what I am going to call the net worth
24 statement, for want of a better description.

25 MR. BIRCH: Yes, but the law clerk

1 from Norton Rose left a long time ago.

2 MR. GOTTLIEB: Oh.

3 MR. BIRCH: No, I -- but she left.

4 THE WITNESS: She's deputized. Gone.

5 MR. BIRCH: But she left two exhibits,
6 or one exhibit, two copies, which I think is
7 Mr. Ross's statement of affairs we provided to
8 you yesterday. So we've got that there.

9 BY MR. GOTTLIEB:

10 183 Q. Okay. Got it. My reading of
11 this, sir, and we talked about a little of it
12 before, and, again, I think we can just go
13 through this pretty quickly, we've got the
14 annual salary plus the bonus in the range, we
15 know 2018, 2019, we're going to assume, sir, it
16 will be in the approximate range; correct? Give
17 or take.

18 MR. BIRCH: You're asking what
19 his 2018 bonus will be?

20 THE WITNESS: I don't know the answer
21 to that question.

22 BY MR. GOTTLIEB:

23 184 Q. Okay. You can't give a view that
24 it's going to be higher or lower or the same;
25 correct?

1 A. I've learned not to second guess
2 the management committee here.

3 185 Q. Safe advice.

4 A. Thank you.

5 186 Q. Okay. So I've got all those
6 numbers. [REDACTED]

[REDACTED]

[REDACTED]

9 A. [REDACTED]

[REDACTED] was taken this
11 year.

12 187 Q. When this year?

13 A. May or June. I can't remember
14 which.

15 188 Q. May or June. And why was that
16 [REDACTED]?

17 A. That's taken because as you may
18 be able to figure out [REDACTED]

[REDACTED].

20 189 Q. Okay. Got it. And of the

21 [REDACTED]

22 [REDACTED]

23 A. Yes.

24 190 Q. Okay. And where does the
25 estimated market value of the home come from?

1 That's just your guesstimate?

2 A. No, it comes actually from
3 talking to a real estate agent who works in our
4 area.

5 191 Q. Got it. And the Bridgeport home,
6 [REDACTED], is that the full
7 amount as well?

8 A. Yes, it is.

9 192 Q. Okay. And, sir, I had asked you
10 earlier about you said you signed a retainer
11 agreement with Cassels Brock; correct?

12 A. That's correct.

13 193 Q. And I asked you about the
14 retainer agreement with Covington. The
15 agreement with Cassels Brock that you signed, it
16 was to pay all legal fees in connection with
17 Cassels Brock's work; correct?

18 A. Yes, in the sense that the
19 liability is joint and separate.

20 MR. GOTTLIEB: Okay. All right. If
21 you can just give me a second, I think I'm done,
22 Mr. Ross. I just want to confirm with my
23 colleagues over here.

24 THE WITNESS: Okay.

25 BY MR. GOTTLIEB:

1 194 Q. I assumed, and I shouldn't have
2 assumed, as my colleagues remind me, that when
3 you said joint and several, it's amongst the six
4 directors that it was joint and several; that it
5 joint and several?

6 A. Yes.

7 MR. GOTTLIEB: Okay. Mr. Ross, thanks
8 very much for making yourself available. I
9 appreciate it. Have a good rest of the day.

10 THE WITNESS: And you too.

11 ---Whereupon the examination concluded at 2:15
12 p.m.

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REPORTER'S CERTIFICATE

I, Amy Armstrong, RVR-CVR, Certified
Verbatim 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
accurate transcript of my shorthand notes so
taken. Dated this 12th day of September, 2019.



PER: AMY ARMSTRONG

REALTIME VERBATIM REPORTER

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SEARS CANADA INC., by its Court-appointed Trustee, J. Douglas Cunningham, Q.C. Plaintiff	-and-	ESL INVESTMENTS INC. et al. Defendants	Court File No. CV-18-00611214-00CL
FTI CONSULTING CANADA INC. Plaintiff	-and-	ESL INVESTMENTS INC. et al. Defendants	Court File No. CV-18-00611219-00CL
MORNEAU SHEPELL LTD. Plaintiff	-and-	ESL INVESTMENTS INC. et al. Defendants	Court File No. CV-18-00611217-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

**JOINT TRANSCRIPT BRIEF OF THE MONITOR, THE
LITIGATION TRUSTEE,
AND THE PENSION ADMINISTRATOR
(TIMETABLE MOTION)**

**BLAKE, CASSELS & GRAYDON
LLP**
199 Bay Street, Suite 4000
Commerce Court West
Toronto, ON M5L 1A9

Michael Barrack LSO #21941W
michael.barrack@blakes.com
Tel: 416 863 5280

Kathryn Bush LSO #236360
kathryn.bush@blakes.com
Tel: 416 863 2633

Kiran Patel LSO #58398H
kiran.patel@blakes.com
Tel: 416 863 2205
Fax: 416 863 2653

Lawyers for Morneau Shepell Ltd., in its capacity as administrator of the Sears Canada Inc. Registered Retirement Plan

**NORTON ROSE FULBRIGHT
CANADA LLP**
222 Bay Street, Suite 3000,
P.O. Box 53
Toronto ON M5K 1E7

Orestes Pasparakis LSO#: 36851T
orestes.pasparakis@nortonrosefulbright.com
Tel: 416 216 4815

Robert Frank LSO#: 35456F
robert.frank@nortonrosefulbright.com
Tel: 416 202 6741

Evan Cobb LSO#: 55787N
evan.cobb@nortonrosefulbright.com
Tel: 416 216 1929
Fax: 416 216 3930

Lawyers for FTI Consulting Canada Inc., in its capacity as Court-appointed monitor

LAX O'SULLIVAN LISUS GOTTLIEB LLP
Counsel
Suite 2750, 145 King Street West
Toronto ON M5H 1J8

Matthew P. Gottlieb LSO#: 32268B
mgottlieb@lolg.ca
Tel: 416 644 5353

Andrew Winton LSO#: 54473I
awinton@lolg.ca
Tel: 416 644 5342

Philip Underwood LSO#: 73637W
punderwood@lolg.ca
Tel: 416 645 5078
Fax: 416 598 3730

Lawyers for Sears Canada Inc., by its Court-appointed Litigation Trustee, J. Douglas Cunningham, Q.C.