

**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 ~~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
and SEARS HOLDINGS CORPORATION

Defendants

**MOTION RECORD OF THE DEFENDANTS
(MOTION RE EXAMINATION OF WITNESSES - RULE 31.03(8))
RETURNABLE NOVEMBER 15, 2019**

October 25, 2019

POLLEY FAITH LLP
The Victory Building
80 Richmond Street West
Suite 1300
Toronto, ON M5H 2A4

Andrew Faith (47795H)

afaith@polleyfaith.com

Jeffrey Haylock (61241F)

jhaylock@polleyfaith.com

Emma Carver (68034E)

ecarver@polleyfaith.com

Tel: 416.365.1600

Fax: 416.365.1601

Lawyers for the defendants ESL Investments Inc., ESL Partners, LP, SPE I Partners, LP, SPE Master I, LP, ESL Institutional Partners, LP and Edward S. Lampert

LENCZNER SLAGHT ROYCE SMITH GRIFFIN LLP

Barristers and Solicitors
130 Adelaide Street West
Suite 2600
Toronto ON M5H 3P5

Peter J. Osborne (33420C)

posborne@litigate.com

Matthew Lerner (55085W)

mlerner@litigate.com

Chris Kinnear Hunter (65545D)

chunter@litigate.com

Chris Trivisonno (73997C)

ctrivisonno@litigate.com

Tel: 416.865.9500

Fax: 416.865.9010

Lawyers for the defendant
Sears Holdings Corporation

CASSELS BROCK & BLACKWELL LLP

Scotia Plaza
40 King Street West
Suite 2100
Toronto, ON M5H 3C2

Wendy Berman (31848J)

wberman@casselsbrock.com

John N. Birch (38968U)

jbirch@casselsbrock.com

Tel: 416.869.5300

Fax: 416.360.8877

Lawyers for the defendants

William Harker, William Crowley, Donald Campbell Ross,
Ephraim J. Bird, James McBurney and Douglas Campbell

BENNETT JONES LLP

Barristers and Solicitors
1 First Canadian Place
Suite 3400
P.O. Box 130
Toronto ON M5X 1A4

Richard Swan

swanr@bennettjones.com

Jason Berall

berallj@bennettjones.com

Tel: 416.863.1200

Fax: 416.863.1716

Lawyers for the defendants

Deborah E. Rosati and R. Raja Khanna

TO: **KOSKIE MINSKY LLP**
20 Queen Street West
Suite 900, Box 52
Toronto, ON M5H 3R3

Andrew J. Hatnay
ahatnay@kmlaw.ca

Tel: 416.595.2083
Fax: 416.2014.2872

Lawyers for Ken Eady and Bill Turner

AND TO: **PALIARE ROLAND ROSENBERG ROTHSTEIN LLP**
155 Wellington St West, 35th Floor
Toronto, Ontario M5V 3H1

Ken Rosenberg
ken.rosenberg@paliareroland.com

Lily Harmer
lily.harmer@paliareroland.com

Max Starnino
max.starnino@paliareroland.com

Elizabeth Rathbone
elizabeth.rathbone@paliareroland.com

Tel: 416.646.4300
Fax: 416.646.4301

Lawyers to the Financial Services Regulatory Authority of Ontario

AND TO: **THE LITIGATION SERVICE LIST**

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Defendants

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Tab 1

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
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MORNEAU SHEPELL LTD. in its capacity as administrator of the
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and SEARS HOLDINGS CORPORATION

Defendants

**NOTICE OF MOTION
(EXAMINATION OF WITNESSES - RULE 31.03(8))**

The Defendants will make a motion to The Honourable Justice McEwen on November 15, 2019 at 10:00 a.m., or as soon after that time as the motion can be heard at the court house, 330 University Avenue, 8th Floor, Toronto, Ontario, M5G 1R7.

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

THE MOTION IS FOR:

- (a) An order compelling Bill Turner and Ken Eady to attend for oral examinations for discovery under Rule 31.03(8);
- (b) An order compelling the Financial Services Regulatory Authority of Ontario (“FSRA”) and/or Morneau Shepell to identify the SCI pensioners known as Person 6, Person 13 and Person 16;

- (c) An order permitting the defendants to serve Persons 6, 13 and 16 with summons to witness for oral examinations for discovery under Rule 31.03(8);
- (d) An order compelling FSRA to produce a representative for oral examination for discovery under Rule 31.03(8);
- (e) An order for substituted service allowing the Defendants to serve the summons to a witness by courier to counsel for all persons ordered to be examined;
- (f) The costs of this motion; and
- (g) Such further and other relief as to this Honourable Court may seem just.

THE GROUNDS FOR THE MOTION ARE:

Overview

- (a) The defendants seek to examine a very small number of the over 15,000 immediate beneficiaries of the Morneau Shepell action in accordance with Rule 31.03(8) of the *Rules of Civil Procedure*;
- (b) Rule 31.03(8) grants the defendants the presumptive right to examine any person who stands to “immediately benefit” from the litigation in addition to the party bringing or defending an action;
- (c) The defendants seek to examine the following six immediate beneficiaries of the Morneau Shepell action:

- (i) two pensioners, Bill Turner and Ken Eady, who were leaders of a representative retiree group and who actively negotiated with SCI and the Financial Services Commission of Ontario (“**FSCO**”);
 - (ii) three pensioners who wrote to FSCO independently and who alleged underfunding of the pension and asset stripping by Sears Holdings Corporation and Edward Lampert; and
 - (iii) a representative from FSRA in relation to its work under the *Pension Benefits Act*;
- (d) The presumptive right under Rule 31.03(8) to examine these persons is limited only where the examination would be oppressive, vexatious or unnecessary. The defendants’ proposed examinations are the opposite—they are crucial to make full answer and defence and neither prejudicial nor oppressive to the persons to be examined;

Turner and Eady

- (e) Bill Turner was an employee of SCI for 36 years. At the time he retired, he held the position of President, Merchandising, Marketing and Logistics. Mr. Turner is currently the President of the Sears Store and Catalogue Retiree Group (“**SCRG**”);
- (f) Ken Eady was an employee of SCI for 30 years. During that time he worked as an executive in human resources. He is currently a Vice-President of SCRG. At the time of the dividend, Mr. Eady was the Vice President of SCRG and the chair of the Pension Benefits Group within SCRG;

- (g) Turner and Eady are not only beneficiaries of the SCI pension plan, they also led SCRG, an organization that represented the interests of pension beneficiaries at the time of the 2013 dividend. They continue to represent pension beneficiaries by order of the Court in the CCAA proceeding;
- (h) Rule 31.03(8) requires that Turner and Eady attend for examination as they are immediate beneficiaries of the Morneau Shepell action;
- (i) Further, as leaders of SCRG at the time of the 2013 dividend, Turner and Eady have evidence important to the defendants' limitation defence;
- (j) In particular, among other things, SCRG asserted pension beneficiaries' rights in various communications with SCI and FSCO related to the alleged underfunding of the pension plan, the ESL Parties ownership of SCI, and the propriety of the 2013 dividend;

Three SCI Pensioners

- (k) Morneau Shepell has produced correspondence between almost 50 pensioners and FSCO. However, Morneau Shepell has not identified these pensioners, describing them instead as "Person 1" through "Person 47";
- (l) The defendants seek to examine three of these pensioners, identified only as Persons 6, 13 and 16, who alerted FSCO to concerns between July 2012 and December 2014 about the funding of the pension and alleged "asset stripping" by Sears Holdings Corporation and Edward Lampert;

- (m) The produced correspondence reveals that these pensioners had specific information regarding the funding status of the SCI pension plan, SCI's business plans at the time of the dividend, and the ownership of SCI's shares. The pensioners' evidence is crucial to address the defendants' limitation defences;

Financial Services Regulatory Authority of Ontario

- (n) Rule 31.03(8) requires that FSRA produce a representative for examination regarding its administration of the *Pension Benefits Act*;
- (o) At the time of the dividend, FSCO administered and enforced the *Pension Benefits Act* and its regulations. In 2019, FSRA replaced FSCO as the regulator responsible for the *Pension Benefits Act*;
- (p) FSRA administers the Pension Benefits Guarantee Fund (the "**PBGF**"). The PBGF is an insurance scheme for Ontario pensioners. The PBGF guarantees the first \$1,500 per month of benefits owed to each Ontario SCI pensioner, subject to certain conditions;
- (q) FSRA estimates that the PBGF will pay approximately \$125,000,000 to the SCI pension plan. Morneau Shepell's action is brought directly on behalf of FSRA by subrogation, making FSRA an immediate beneficiary of the action;
- (r) FSRA has important evidence related to its activities under the *Pension Benefits Act*, including:
 - (i) FSRA's oversight of SCI regarding compliance with the *Pension Benefits Act* during the period 2010-2018; and

- (ii) Information relating to the allegations by way of subrogated claim, that SCI was not in compliance with the fiduciary duty requirements under the *Pension Benefits Act*;

Other Grounds

- (s) Rule 31.03(8) of the *Rules of Civil Procedure*, RRO 1990, Reg. 194;
- (t) *Financial Services Regulatory Authority of Ontario Act*, 2016, SO 2016, c 37, Sch 8;
- (u) *Pension Benefits Act*, RSO 1990, c P.8; and
- (v) Such further and other grounds as the lawyers may advise.

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

- (w) The Affidavit of Sandy Lockhart, to be affirmed;
- (x) The pleadings in this proceeding; and
- (y) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

October 25, 2019

POLLEY FAITH LLP
The Victory Building
80 Richmond Street West
Suite 1300
Toronto, ON M5H 2A4

Andrew Faith (47795H)

afaith@polleyfaith.com

Jeffrey Haylock (61241F)

jhaylock@polleyfaith.com

Emma Carver (68034E)

ecarver@polleyfaith.com

Tel: 416.365.1600

Fax: 416.365.1601

Lawyers for the defendants ESL Investments Inc., ESL
Partners, LP, SPE I Partners, LP, SPE Master I, LP, ESL
Institutional Partners, LP and Edward S. Lampert

LENCZNER SLAGHT ROYCE SMITH GRIFFIN LLP

Barristers and Solicitors
130 Adelaide Street West
Suite 2600
Toronto ON M5H 3P5

Peter J. Osborne (33420C)

posborne@litigate.com

Matthew Lerner (55085W)

mlerner@litigate.com

Chris Kinnear Hunter (65545D)

chunter@litigate.com

Chris Trivisonno (73997C)

ctrivisonno@litigate.com

Tel: 416.865.9500

Fax: 416.865.9010

Lawyers for the defendant
Sears Holdings Corporation

CASSELS BROCK & BLACKWELL LLP

Scotia Plaza
40 King Street West
Suite 2100
Toronto, ON M5H 3C2

Wendy Berman (31848J)

wberman@casselsbrock.com

John N. Birch (38968U)

jbirch@casselsbrock.com

Tel: 416.869.5300

Fax: 416.360.8877

Lawyers for the defendants
William Harker, William Crowley, Donald Campbell Ross,
Ephraim J. Bird, James McBurney and Douglas Campbell

BENNETT JONES LLP

Barristers and Solicitors
1 First Canadian Place
Suite 3400
P.O. Box 130
Toronto ON M5X 1A4

Richard Swan

swanr@bennettjones.com

Jason Berall

berallj@bennettjones.com

Tel: 416.863.1200

Fax: 416.863.1716

Lawyers for the defendants
Deborah E. Rosati and R. Raja Khanna

TO: **KOSKIE MINSKY LLP**
20 Queen Street West
Suite 900, Box 52
Toronto, ON M5H 3R3

Andrew J. Hatnay
ahatnay@kmlaw.ca

Tel: 416.595.2083
Fax: 416.2014.2872

Lawyers for Ken Eady and Bill Turner

AND TO: **PALIARE ROLAND ROSENBERG ROTHSTEIN LLP**
155 Wellington St West, 35th Floor
Toronto, Ontario M5V 3H1

Ken Rosenberg
ken.rosenberg@paliareroland.com

Lily Harmer
lily.harmer@paliareroland.com

Max Starnino
max.starnino@paliareroland.com

Elizabeth Rathbone
elizabeth.rathbone@paliareroland.com

Tel: 416.646.4300
Fax: 416.646.4301

Lawyers to the Financial Services Regulatory Authority of Ontario

AND TO: **THE LITIGATION SERVICE LIST**

MORNEAU SHEPELL LTD. in its capacity as administrator of the
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-and- ESL INVESTMENTS INC. et al.
Defendants

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

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PROCEEDING COMMENCED AT TORONTO

**NOTICE OF MOTION
(EXAMINATION OF WITNESSES - RULE 31.03(8))**

POLLEY FAITH LLP

The Victory Building
80 Richmond Street West, Suite 1300
Toronto, ON M5H 2A4

Andrew Faith (47795H)

afaith@polleyfaith.com

Jeffrey Haylock (61241F)

jhaylock@polleyfaith.com

Emma Carver (68034E)

ecarver@polleyfaith.com

Tel: 416.365.1600

Fax: 416.365.1601

Lawyers for the defendants,
ESL Investments Inc., ESL Partners, LP, SPE I Partners, LP,
SPE Master I, LP, ESL Institutional Partners, LP and Edward
S. Lampert

Tab 2

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and SEARS HOLDINGS CORPORATION

Defendants

AFFIDAVIT OF SANDY LOCKHART
(MOTION RE EXAMINATION OF WITNESSES - RULE 31.03(8))

I, Sandy Lockhart, of Toronto, Ontario, AFFIRM:

1. I am a lawyer with Polley Faith LLP, counsel to ESL Investments Inc., ESL Partners, LP, SPE I Partners, LP, SPE Master I, LP, ESL Institutional Partners, LP, and Edward S. Lampert (together, the “**ESL Parties**”).

A. Background

2. On this motion, the Defendants to this action seek a direction that Rule 31.03(8) requires that the following immediate beneficiaries of this litigation attend for examination during the time set aside for oral discoveries in this matter:

- (a) two pension beneficiaries who were directly involved in asserting pensioners' rights prior to and following the 2013 dividend by Sears Canada Inc ("SCI");
 - (b) three pensioners who wrote to the Financial Services Commission of Ontario alleging an underfunding of SCI's pension and asset stripping by the shareholder defendants in this action; and
 - (c) a representative of the Financial Services Regulatory Authority of Ontario.
3. At the time of the dividend, the Financial Services Commission of Ontario ("FSCO") administered and enforced the *Pension Benefits Act*, RSO 1990, c P.8 and its regulations. In 2019, the Financial Services Regulatory Authority of Ontario ("FSRA") replaced FSCO as the regulator responsible for the *Pension Benefits Act*.

B. Bill Turner & Ken Eady

The Sears Store and Catalogue Retiree Group Represents Pensioners

4. I understand that the Sears Store and Catalogue Retiree Group ("SCRG") represents SCI retirees in a number of ways, including in relation to SCI's dividends and pension. Attached as **Exhibit "A"** is a print-out from the website of SCRG. On its website, SCRG describes itself as follows:

SCRG represents Sears Canada retirees, speaking on their behalf to government agencies, court appointed representatives and lawyers. SCRG communicates timely pension and benefit information and encourages its national membership to be informed and involved.

Our Mission: SCRG is a federally incorporated, not-for-profit volunteer organization committed to the protection of the company pensions and benefits of all Sears Canada retirees and their surviving beneficiaries.

Our Vision: To be recognized by all retirees, government agencies and corporations as Canada's most successful advocate for pensions and benefits protection.

SCRG was created by joining two Sears Canada retiree groups: SRG, the original retiree group that was formed in the 90's, and ASCR, the retiree group formed in 2008. Sears Canada retirees have been well represented by these groups since 1996. SCRG is a federally incorporated, not-for-profit organization.

5. According to William (“Bill”) Turner, as of August 11, 2017, SCRG had approximately 6,000 members. An affidavit attesting to SCRG’s membership, sworn by Bill Turner on August 11, 2017 in connection with SCI’s CCAA proceedings, is attached to this affidavit as **Exhibit “B”**.

Bill Turner and Ken Eady represent SCRG

6. I have reviewed SCRG’s website, including the section about its board members. Attached as **Exhibit “C”** is a printout of SCRG’s website with biographies for its board members, including Bill Turner and Ken Eady. Attached as **Exhibit “D”** is a copy of a Globe and Mail article dated January 23, 2018 which describes Mr. Eady’s position with SCI.

7. I understand that Bill Turner was an employee of SCI for 36 years. At the time he retired, he held the position of President, Merchandising, Marketing and Logistics. Mr. Turner is currently the President of SCRG. I understand from correspondence described later in this affidavit that this is at least the second time Mr. Turner has been the president of SCRG: he was the president in 2013, before SCI declared the 2013 dividend, and was the past president in 2014, after SCI declared the 2013 dividend.

8. I understand that Ken Eady was an employee of SCI for 30 years. During that time he worked as an executive in human resources. He is currently a Vice-President of SCRG. I

understand from correspondence described later in this affidavit that at the time of the dividend, Mr. Eady was the Vice President of SCRG and the chair of the Pension Benefits Group within SCRG.

9. On July 13, 2017, the Honourable Justice Haaney of the Ontario Superior Court of Justice appointed Mr. Turner and Mr. Eady as representatives of all non-unionized retirees and non-unionized active and former employees (other than those who opted out from representation) of the Applicants in SCI's CCAA proceedings, including SCI. In the same order, Koskie Minsky LLP was appointed as representative counsel, instructed by three pensioners including Mr. Turner and Mr. Eady. I have attached a copy of this order as **Exhibit "E"**.

10. Paragraphs 1 and 2 of the order appointing Mr. Turner and Mr. Eady read as follows (emphasis added):

1. THIS COURT ORDERS that Koskie Minsky LLP (the "Representative Counsel") is hereby appointed as representative counsel to represent the interests of the non-unionized retirees and non-unionized active and former employees of the Sears Canada Entities (collectively, the "Represented Parties") in these CCAA proceedings, solely with respect to (a) entitlements of the Represented Parties under the Sears Pension Plan and the Supplemental Plan (each as defined in the Wong Affidavit), and any other pension or retirement plan of the Sears Canada Entities; and (b) Represented Parties' other post-employment benefits entitlements (the "Purpose"). As used herein, "Represented Parties" shall (x) exclude the senior management of the Sears Canada Entities; and (y) include any person claiming an interest under or on behalf of a Represented Party.

2. THIS COURT ORDERS that Bill Turner, Ken Eady and Larry Moore (collectively, the "Representatives") are hereby appointed as representatives of all Represented Parties (excluding the Opt-Out Individuals (as defined below), if any) in these CCAA proceedings, to act in the overall best interests of the Represented Parties, and to advise and where appropriate instruct the Representative Counsel, in every case, solely for the Purpose. The Representative Counsel may rely upon the advice, information and instructions received from the Representatives in carrying out the mandate of the Representative Counsel without further

communications with or instructions from the Represented Parties, except as may be recommended by the Representative Counsel or ordered by this Court.

Mr. Turner, Mr. Eady, and SCRG took steps to address SCI's allegedly underfunded pension

11. I understand from reviewing the productions of the Monitor and Morneau Shepell (summarized below) that Mr. Turner, Mr. Eady and their counsel Koskie Minsky LLP were actively involved in discussions with SCI, the Ontario Government, and FSCO from as early as 2013 and at least until 2017. During that time, they raised concerns regarding:

- (a) the involvement of ESL and Mr. Lampert in SCI's affairs;
- (b) the financial health of SCI;
- (c) SCI's declaration of dividends; and
- (d) the solvency of the SCI pension plan.

Turner Affidavit

12. In his affidavit submitted in SCI's CCAA proceeding, sworn August 11, 2017 and described above as Exhibit "B" to this affidavit, Mr. Turner:

- (a) Attached a timeline of efforts SCRG has taken to protect the pension between 2012 and 2017 (Exhibit "A" to the Turner Affidavit);
- (b) Referred to a letter he wrote on January 30, 2013 expressing concern about SCI's payment of dividends, SCI's long-term business strategy, and whether SCI would be in a position to fund the pension plan (Exhibit "B" to the Turner Affidavit);
- (c) Referred to a letter from SCRG's counsel, Andrew Hatnay of Koskie Minsky LLP, to Mitch Frazer, then SCI's counsel, dated January 20, 2014, in which Mr.

Hatnay questioned SCI dividends to shareholders, including the 2013 dividend, and alleged oppression of pension plan members by SCI and its directors (Exhibit “C” to the Turner Affidavit);

- (d) Referred to a letter from Mr. Hatnay to Mr. Frazer dated November 6, 2014, in which Mr. Hatnay demanded that SCI immediately provide funds to the pension plan and alleging that failure to do so would constitute a breach of fiduciary duty, oppression and “other causes of action” (Exhibit “D” to the Turner Affidavit); and
- (e) Referred to correspondence from Mr. Hatnay to FSCO from 2015 and 2016 expressing fears about SCI’s potential insolvency, expressing concerns about the plan’s underfunded state, and asking FSCO to require SCI to fund the plan or wind it up (Exhibits “F”, “G”, “H”, “M”, “T”, “V” and “W” to the Turner Affidavit).

Productions

13. I understand from reviewing an email from Mr. Frazer, dated April 20, 2015, that SCRG provided submissions in March, 2015 to FSCO about SCI’s alleged “asset stripping”, questioning its business strategy, and expressing the belief that the payment of dividends, among other things, would result in SCI’s insolvency. I have attached as **Exhibit “F”** the April 20, 2015 email, without its attachments other than a presentation entitled “Submission Regarding Asset Stripping at Sears Canada and Why Wind Up is Appropriate Presented By SCRG to Financial Services Ontario March 24, 2014”. I have attached the presentation to this affidavit as **Exhibit “G”**.

14. Despite the date in the title of the presentation, I believe the presentation was actually given on March 24, 2015, rather than 2014 because (i) some the events listed on the fourth page of this document and the attachments listed on the fifth page of this document are later in 2014 and (ii) the final page of the document indicates the date of the meeting was March 24, 2015 and that Mr. Turner and Mr. Eady were among the four representatives of SCRG in attendance.

15. Included in the same document as the presentation regarding asset stripping are certain appendices (which the presentation refers to as attachments). The first, beginning on page 5, sets out Edward Lampert's control of SCI shares at the end of 2014, and provides brief biographies for SCI board members, including their connections to ESL or SHC.

16. On January 20, 2014, Mr. Eady and Ms. MacLavery of SCRG wrote to the Honourable Jeff Leal, Minister of Rural Affairs. I have attached this letter as **Exhibit "H"**. In that letter they alleged to the Minister, among other things, that the SCI plan was underfunded, SCI had a fiduciary duty to fund the plan, and that SCRG had met with SCI representatives about its concerns. Mr. Eady and Ms. MacLavery ended the letter by asking the government to intervene.

17. Ken Eady had further communications and meetings with FSCO:

- (a) In a letter to Gino Marandola of FSCO dated September 12, 2016, Mr. Hatnay referred to "discussions you have had with our client, Ken Eady." I have attached a copy of this letter as **Exhibit "I"**;
- (b) In a further letter to Mr. Marandola dated October 20, 2016, Mr. Hatnay referred to discussions Mr. Marandola had had with Mr. Eady after September 12, 2016. I have attached this letter as **Exhibit "J"**; and

- (c) In a letter to the then-Premier of Ontario, Kathleen Wynne, dated July 7, 2014, Mr. Eady wrote that “Funds have been flowing to the American owners that should have been invested in our underfunded pension and benefit plans.” I have attached this letter as **Exhibit “K”**.

C. Person 6, Person 13 and Person 16

18. Morneau Shepell produced correspondence between almost 50 unique pensioners and FSCO. Morneau has not identified the identities of these pensioners. Instead, it has identified the pensioner with the pseudonyms “Person 1” through “Person 47”. This allows the defendants to know where one individual has sent more document to FSCO, but it does not allow the defendants to know the identity of the pensioners.

19. Three of those pensioners, Person 6, Person 13 and Person 16, complained about the funding of the pension and alleged that Sears Holdings Corporation and Edward Lampert were engaged in asset stripping.

Person 6

20. On June 21, 2012, Person 6 wrote to FSCO indicating that he or she was concerned about “Sears Canada’s ability to meet its obligation to fund the Defined Benefit component of [the] Pension Plan”. Person 6 also wrote that certain events were of particular concern. These events included closing large stores, an announcement by Sears Holdings Corporation that it would be “selling a considerable stake in Sears Canada”, and that ESL Investment’s investors would be able to “take advantage of the fact that the five-year lock-up period for ESL Investments expires this month which allows them to exit ESL”. Person 6 goes on to express concern that “much of Sears Canada’s cash balance has been distributed via dividend” and that it was Person 6’s

“concern that this could place Sears Canada in a position where [it has] debt obligations, like the Pension Plan, that could have been met previously on wind up of the pension plan that under current reduced cash circumstances might not be met.” I have attached this letter as **Exhibit “L”**.

Person 13

21. On December 27, 2013, Person 13 wrote to FSCO alleging that Mr. Lampert was responsible for certain changes at SCI, that SCI had declared the dividend despite having an underfunded pension plan, and that SCI was nearing insolvency. I have attached an email produced by Morneau that contains Person 13’s original email as **Exhibit “M”**.

22. On January 14, 2014, Person 13 again wrote to FSCO indicating that the pensioner was aware that “the shareholders have been giving themselves incredible dividends despite the fact that Sears Canada has been suffering large losses in the last few years...major assets of Sears Canada have been sold off and those monies have also gone to the American owner of Sears Canada, M Lampert and Sears Holdings”. I have attached an email produced by Morneau that contains Person 13’s original email as **Exhibit “N”**.

23. On July 7, 2014, Person 13 wrote to FSCO asking “is it legal for an owner(foreign or domestic) [sic] to financially dismember a profitable and well known company, pocket all of the proceeds from the dismemberment while at the same time reinvesting virtually nothing back into the company and allowing his/her company to founder [sic] as well as the members’ pensions and health trust to enter a state of being severely underfunded.” I have attached FSCO’s reply to Person 13, which contains Person 13’s original email as **Exhibit “O”**.

Person 16

24. On December 5, 2014, Person 16 wrote to FSCO about the “continued strategy of selling off assets and moving most of the resulting funds to the controlling owner, Edward Lampert.” Person 16 explained that it was “likely that [SCI] will comply in this way until they choose the right moment to declare insolvency at which time they will no longer be liable for funding the pension plan and will leave it in an underfunded, position, shortchanging the pensioners”. I have attached an email which contains Person 16’s original email as **Exhibit “P”**.

D. FSRA stands to benefit from Morneau’s action

25. I have reviewed the affidavit of Brian Mills sworn August 24, 2018 in his capacity as the Chief Executive Officer and Superintendent of Financial Services of FSCO. I have attached the affidavit as **Exhibit “Q”**.

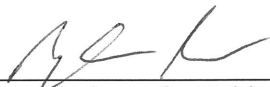
26. I understand that FSRA now administers the Pension Benefits Guarantee Fund (the “**PBGF**”). The PBGF is an insurance scheme for Ontario pensioners. Subject to certain technical exceptions, the PBGF guarantees the first \$1,500 per month of benefits owed to an SCI pensioner.

27. I also understand from paragraph 39 of Mr. Mills’ affidavit that FSCO estimates the PBGF will pay approximately \$125,000,000 into the SCI pension plan.

28. I understand from the *Pension Benefits Act* and from Morneau Shepell’s statement of claim in this action that FSRA is subrogated to this action for the amount it pays out from the PBGF.

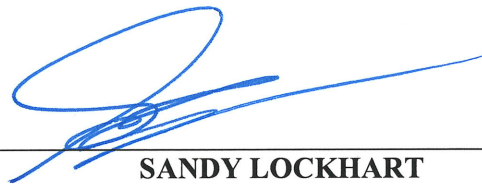
29. I also understand from correspondence produced by Morneau Shepell that FSCO has previously stated that it has no evidence to suggest that Sears Canada Inc. has failed to comply with the requirements of the *Pension Benefits Act*. For example, attached as **Exhibit "R"** is a letter dated July 7, 2014, from Penny McIlraith, the pension officer at FSCO responsible for the SCI pension plan, to that effect.

AFFIRMED BEFORE ME at the City of Toronto, in the Province of Ontario on October 29, 2019



Commissioner for Taking Affidavits
(or as may be)

Matthew Rowe
72251R



SANDY LOCKHART

Tab A

This is Exhibit "A" referred to in the Affidavit of Sandy Lockhart
affirmed October 29, 2019.

A handwritten signature in black ink, appearing to be the initials 'RL' followed by a stylized flourish.

Commissioner for Taking Affidavits (or as may be)



[About Us](#) [Join SCRG](#) [Our People](#) [Reference Materials](#) [Members Only](#) [Français](#)

Our Purpose

SCRG represents Sears Canada retirees, speaking on their behalf to government agencies, court appointed representatives and lawyers. SCRG communicates timely pension and benefit information and encourages its national membership to be informed and involved.

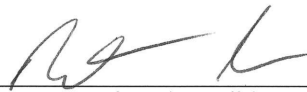
Our Mission: SCRG is a federally incorporated, not-for-profit volunteer organization committed to the protection of the company pensions and benefits of all Sears Canada retirees and their surviving beneficiaries.

Our Vision: To be recognized by all retirees, government agencies and corporations as Canada's most successful advocate for pensions and benefits protection.

SCRG was created by joining two Sears Canada retiree groups: SRG, the original retiree group that was formed in the 90's, and ASCR, the retiree group formed in 2008. Sears Canada retirees have been well represented by these groups since 1996. SCRG is a federally incorporated, not-for-profit organization.

Tab B

This is Exhibit "B" referred to in the Affidavit of Sandy Lockhart
affirmed October 29, 2019.



Commissioner for Taking Affidavits (or as may be)

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

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

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

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

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

MAKE OATH AND SAY:

My Background

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

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

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

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

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

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

The pensions and benefits are the deferred wages of Sears employees

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

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

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

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

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

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

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

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

The vital importance of pension benefits for retirees

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

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

Importance of a Wind-Up

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

The Sears Canada CCAA Proceedings

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

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

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

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

The rise and fall of Sears Canada

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

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

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

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

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

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

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

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

The collapse of Sears Canada

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

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

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

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

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

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

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

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

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

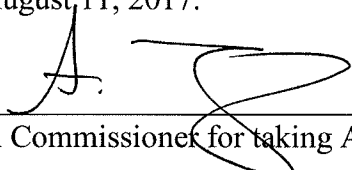
32. Prior to Sears Canada's CCAA filing, the company had already sold its most valuable properties and assets. Further, after June 22, 2017, I am aware that the company has announced the closing of 20 full-line locations, plus 15 "Sears Home" Stores, 10 "Sears outlet" and 14 "Sears Hometown" locations.

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

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

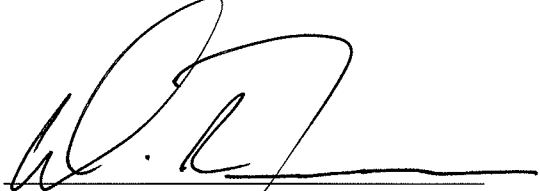
35. I swear this affidavit in support of the motion by Representative Counsel to wind up the Sears Canada Plan.

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



A Commissioner for taking Affidavits, etc.

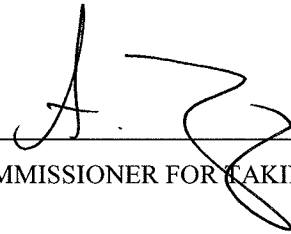
AMY TANG



WILLIAM TURNER

This is **Exhibit "A"**

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

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

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

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

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

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

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

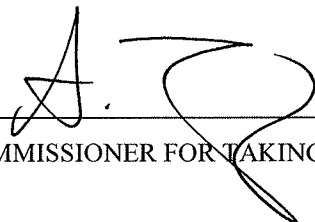
Monday, July-10-17

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

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

This is **Exhibit "B"**

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

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

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.



January 30, 2013

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

Dear Mr. McDonald:

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

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

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

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

Background

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

a) Sears Registered Retirement Plan

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

b) Health & Welfare Trust

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

c) Sales of Assets

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

d) Dividends and Capital Distributions

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

e) Share Buybacks

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

f) Capital Expenditures

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



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

g) Revenues

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

h) Cash Flow from Operations

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

i) December 2012 Dividend

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

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

Our Position

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



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

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

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

With that in mind, we request the following:

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

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

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



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

Yours truly

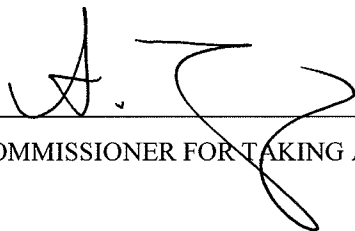
Bill Turner
President, SCRG.

cc: SCRG Board of Directors



This is **Exhibit "C"**

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

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

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

January 20, 2014

Via Email and Regular Mail

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

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

Attention: Mitch Frazer, counsel to Sears Canada Inc.

Dear Mr. Frazer:

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

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

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

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

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

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

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

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

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

The payment of dividends is unlawful and inappropriate

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

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

Sears Canada is failing and not turning around

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

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

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

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

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

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

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

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

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

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

Requests for annual Sears Canada Plan valuation reports

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

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

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

Meeting Request

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

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

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

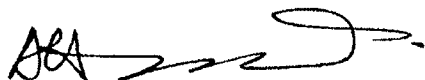
As set out in our prior letter, the failure of Sears Canada to fund the Sears Canada Plan and to secure retiree benefits in its current financial circumstances is a breach of fiduciary duty by the company and the directors to the pension plan members, is oppressive under the CBCA and in addition, is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

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

We look forward to hearing from you.

Yours truly,

KOSKIE MINSKY LLP



Andrew J. Hatnay
AJH/vdl
Encl.

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

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

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

20-Jan-14

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

(\$ millions)

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

Total pre-tax proceeds from sale of assets

3,767

Sears Canada Inc.
Payments to Shareholders
2005 - 2013

(\$ millions)

Dividend	1,557
Capital distribution	470
Share buyback	-18
	2,009
Dividend	13
	0
	0
Dividend	753
Share buyback	43
	796
Share buyback	42
Dividend	102
Share buyback	10
	112
Dividend (Dec. 6)	509
	509
Total payments to Shareholders	3,481

EXECUTION COPY

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

BETWEEN:

SEARS CANADA INC., as Borrower

and

THE LENDERS NAMED HEREIN

and

THE L/C ISSUING BANK NAMED HEREIN

and

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

and

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

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

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

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

- 2 -

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

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

Section 1 General

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

Section 2 To be Read with Credit Agreement

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

Section 3 Headings

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

Section 4 Number

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

Section 5 Amendments

5.1 Definitions.

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

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

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

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

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

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

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

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

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

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

5.2 Wind-up Reserve.

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

"SECTION 2.20 Wind-up Reserve

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

- 4 -

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

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

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

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

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

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

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

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

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

5.3 Covenants

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

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

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

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

Section 6 Representations and Warranties

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

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

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

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

Section 7 Conditions Precedent

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

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

Section 8 Expenses

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

Section 9 Continuance of Credit Agreement and Security

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

Section 10 No Waiver

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

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

Section 11 Liability and Continuing Security of Guarantors.

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

Section 12 Counterparts

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

Section 13 Governing Law

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

[Signature Page to Follow]

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

SEARS CANADA INC., as Borrower

By:

Name: SHARON DRISCOLL

Title: SUP & CFO

CORBEL ÉLECTRIQUE INC., as Guarantor

By:

Name: SHARON DRISCOLL

Title: SUP & CFO


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

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

By:

Name:

Title:



**Raymond Eghobarnien
Vice President**

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

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

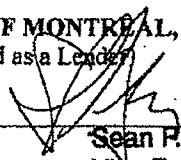
By: _____

Name: Italo Franco

Title: Its Duly Authorized Signatory

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

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

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

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

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

By: _____
Name:
Title:

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

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

By: _____
Name:
Title:

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

DEUTSCHE BANK AG, CANADA BRANCH,
as a Lender

By: _____
Name:
Title:

By: _____
Name:
Title:

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

ROYAL BANK OF CANADA, as a Lender

By: _____
Name:
Title:

By: _____
Name:
Title:

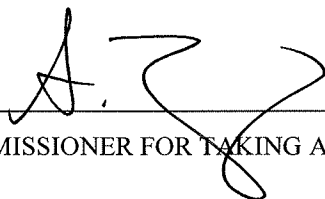
IN WITNESS WHEREOF the parties hereto have executed this Amending Agreement as of the day and year first above written.

THE TORONTO-DOMINION BANK, as a Lender

By: _____
Name:
Title:

This is **Exhibit "D"**

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



A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

November 6, 2014

Via Email

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

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

Dear Mr. Frazer:

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

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

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

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

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

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

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

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

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

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

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

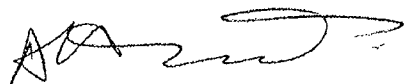
The failure of Sears' board of directors and management, who have full knowledge of the company's poor financial situation and the heightened risk of losses to pension benefits from the underfunded SRRP, to take steps to protect the pension plan members will give rise to claims against the directors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

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

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

Yours truly,

KOSKIE MINSKY LLP

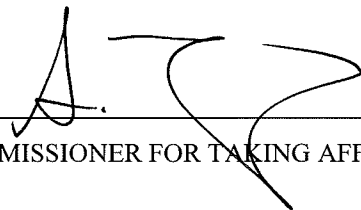


Andrew J. Hatnay
AJH/vdl

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

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

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

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

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

TORYS
LLP

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

Mitch Frazer
mfrazer@torys.com
P. 416.865.8220

November 21, 2014

VIA E-MAIL

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

Attention: Andrew J. Hatnay

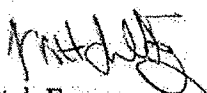
Dear Mr. Hatnay:

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

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

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

Regards,

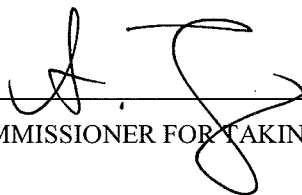

Mitch Frazer

MF/cd

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

This is **Exhibit "F"**

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



A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

February 27, 2015

Via Regular Mail and Email

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

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

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

Dear Sirs and Mesdames:

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

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

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

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

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

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

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

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

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

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

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

¹ (2002), 58 O.R. (3d) 367 (C.A.)

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

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

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

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

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

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

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

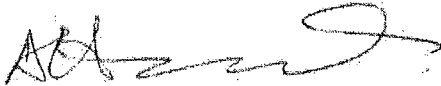
² (2002), 58 O.R. (3d) 380 (C.A.)
³ (2013) SCC 6

**KOSKIE
MINSKY** LLP
BARRISTERS & SOLICITORS

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

Yours truly,

KOSKIE MINSKY LLP

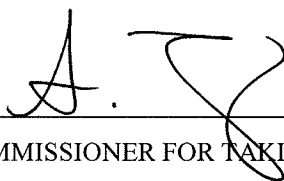


Andrew J. Hatnay
AJH/vdl
encl.

cc. SCRG
Mark Zigler, *Koskie Minsky LLP*

This is **Exhibit "G"**

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

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

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

**KOSKIE
MINSKY** LLP
BARRISTERS & SOLICITORS

May 4, 2015

Via Email

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

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

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

Dear Sirs and Mesdames:

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

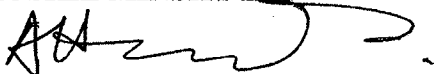
Further to our meeting of March 24, 2015, our e-mail to Mr. Marandola of April 14, 2015, and his response thereto of April 16, 2015, we enclose a summary of our client's analysis further explaining why Sears Canada Inc. is insolvent. This is provided to you with respect to our client's request in our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

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

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

Yours truly,

KOSKIE MINSKY LLP



Andrew J. Hatnay
AJH:vdl/encl.

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

1654397v1

WITHOUT PREJUDICE**Why Sears Canada is Insolvent**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

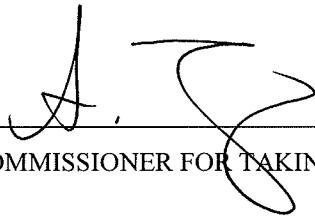
Any further sale of assets would likely worsen the situation by further increasing on-going operating losses and negative cash flow. It would also leave fewer assets to secure Sears obligations. One would assume that Sears will not attempt to pay further dividends in light of their financial performance.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

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

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

This is **Exhibit "H"**

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

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

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

June 5, 2015

Via Email

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

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

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

Dear Sirs and Mesdames:

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

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

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

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

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

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

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

a) Sears Canada is insolvent

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

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

...

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

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

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

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

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

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

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

...

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

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

b) Increased Pension Benefit Guarantee Fund Liability

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

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

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

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

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

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

³ *Ibid* at para. 59.

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

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

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

Thank you for your attention to this matter.

Yours truly,

KOSKIE MINSKY LLP



Andrew J. Hatnay
AJH/vdl
encl.

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

MEMORANDUM

DATE: June 5, 2015

TO: Financial Services Commission of Ontario

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

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

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

FILE NO: 13/2022

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

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

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

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

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

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

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

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

- 2 -

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

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

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

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

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

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

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

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

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

- 3 -

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

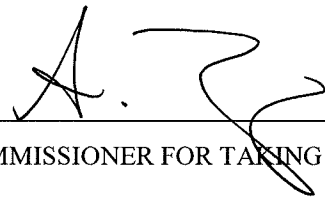
It is our view that Sears clearly meets the test for Balance Sheet Insolvency at this time.

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

1684731v1

This is **Exhibit "I"**

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

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

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

**Financial Services
Commission
of Ontario**

Pension Plans Branch

5160 Yonge Street
Box 85
Toronto ON M2N 6L9

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

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

Direction des régimes de retraite

5160, rue Yonge
Boîte 85
Toronto ON M2N 6L9

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



June 11, 2015

Registration Number: 0360065

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

JUN 16 2015

Dear Mr. Frazer:

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

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

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

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

Yours truly,

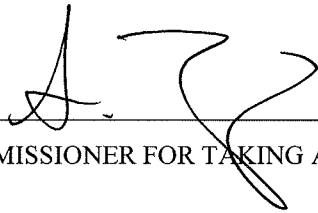
Gino Marandola
Director, Pension Plans Branch (Interim)

GM/sp

SP

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

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

A handwritten signature in black ink, consisting of a large, stylized 'A' followed by a series of loops and a long tail that extends downwards and to the right.

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

**Financial Services
Commission
of Ontario**

Pension Plans Branch

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Toronto ON M2N 6L9

Telephone: (416) 226-7776
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**Commission des
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de l'Ontario**

Direction des régimes de retraite

5160, rue Yonge
Boîte 85
Toronto ON M2N 6L9

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



JUN 17 2015

June 11, 2015

Registration Number: 0360065

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

Dear Mr. Hatnay:

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

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

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

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

Yours truly,

Gino Marandola
Director, Pension Plans Branch (Interim)

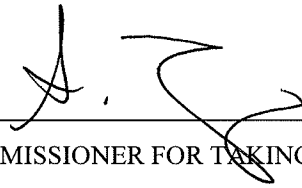
GM/sp

SP

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

This is **Exhibit "K"**

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



A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.



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

Mitch Frazer
 mfrazer@torys.com
 P. 416.865.8220

June 22, 2015

VIA EMAIL

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

Dear Mr. Marandola:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

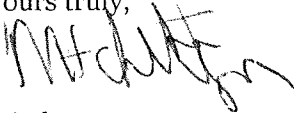
As of December 31, 2013, the Sears Canada Plan had a solvency deficiency of approximately \$76 million on solvency assets of approximately \$1.3 billion. This calculates to a solvency ratio of 95%. The funded status of the Sears Canada Plan actually **increased** since the previous actuarial valuation,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

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

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

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

Yours truly,



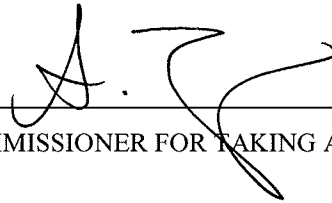
Mitch Frazer

MF/SAB/cp

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

This is **Exhibit "L"**

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

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

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

**Financial Services
Commission
of Ontario**

Pension Plans Branch

5160 Yonge Street
Box 85
Toronto ON M2N 6L9

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

**Commission des
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Direction des régimes de retraite

5160, rue Yonge
Boîte 85
Toronto ON M2N 6L9

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



June 23, 2015

Registration Number: 0360065

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

JUN 26 2015

Dear Mr. Hatnay:

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

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

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

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

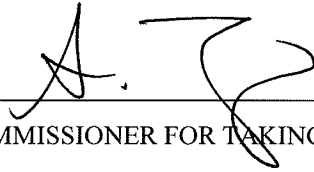
Yours truly,

Gino Marandola
Director, Pension Plans Branch (Interim)

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

This is **Exhibit "M"**

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



A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

July 7, 2015

Via Email

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

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

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

Dear Sirs and Mesdames:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Thank you for your attention to this matter.

Yours truly,

KOSKIE MINSKY LLP



Andrew J. Hatnay
AJH:vdl/encl.

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

Desjardins: Now or never for Sears Canada

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

20

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

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

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

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

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

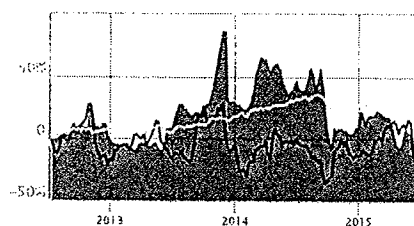
For Sears Canada to breakeven, the company would need a \$750-million increase in sales, a 4.72 percent increase in profit margins and to reduce expenses by \$150 million – an unlikely operating turnaround, which is why Howlett recommends investors sell.

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

SEARS CANADA

Stock data delayed up to 20 minutes

\$7.58 \$0.05 0.66%



■ SCC.TO — SHLD.O ··· GSPTSE

chart type: 3year, Comparative

[See Full Stock Page »](#)

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

Liquidation Situation: The slow dismantling of Sears Canada

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

13

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

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

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

SEARS CANADA

Stock data delayed up to 20 minutes

\$7.58 \$0.05 0.66%

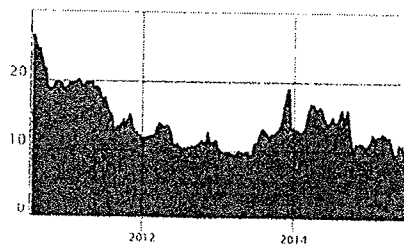
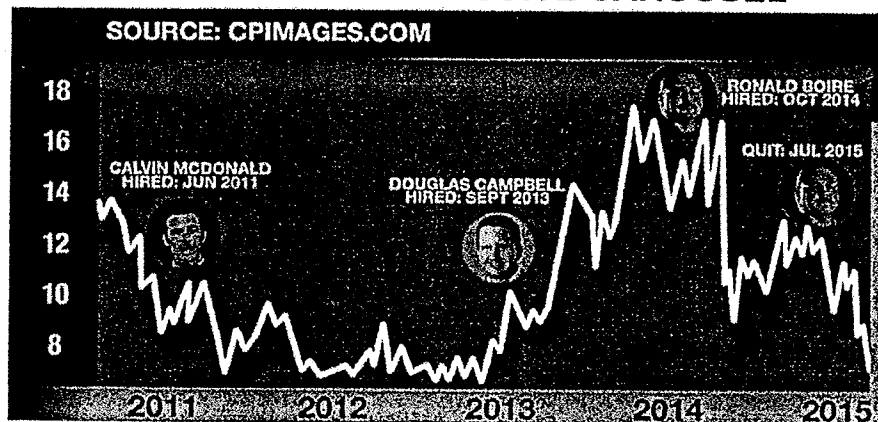


chart type: 5year

[See Full Stock Page »](#)

SEARS CANADA'S C-SUITE CAROUSEL

SOURCE: CPIMAGES.COM



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

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

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

THE LIQUIDATION OF SEARS CANADA

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Marie Cabural

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PBGC and its involvement in strategic corporate transactions

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

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

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

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

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

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

Company	Year	Transaction	Protection sought by PBGC
Home-Global Corrections, Inc.	2014	Sale of a subsidiary	PBGC obtained the proceeds to involuntarily provide to the plan when the company did not actually agree to a deal with the agency.
Safeway Inc.	2014	R.O.	100% cash contribution of \$200 million Secured additional cash contributions of \$211 million from the 19 new Central Credit Management
Quaker Chrysler	(a) 2007 (b) 2009	(a) Sale of a controlling interest (b) Sale of remaining ownership stake	(a) Secured additional cash contributions of \$50 million and an extension of the guarantee (b) Secured additional cash contributions of \$30 million over
National Services	2011	Sale off	five years above and beyond legal requirements Reserved right to come back at the previous (five more profitable) plan sponsor, if sponsor ever declares bankruptcy or otherwise default
Solo Corp.	2011	Sale off	100% additional cash contributions of \$10 million

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

CHAPTER 80

An Act to amend The Pension Benefits Act

Assented to December 12th, 1980

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

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

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

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

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

R.S.C. 1952, c. 148

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

s. 21 (3) (b), amended

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

s. 23a, re-enacted

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

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

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

Idem: payroll deductions

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

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

s. 25, amended

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

Idem

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

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

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

Commission as administrator

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

s. 25 (2), amended

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

s. 25 (3), amended

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

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

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

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

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

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

(a) all pension benefits payable under clause (a) of section 25 with respect to the date of winding up of the plan if the member has attained the age of 65 years or is permanently and totally disabled;

(b) all pension benefits payable under clause (b) of section 25 to a member of the plan who has attained the age of 65 years or is permanently and totally disabled;

(c) all pension benefits payable under clause (c) of section 25 to a member of the plan who has attained the age of 65 years or is permanently and totally disabled and who has been a member of the plan for a period of not less than forty-five years;

(d) the value of the pension benefits in respect of the member's accrued pension benefits.

dures to be followed by the pension plan in the distri-
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by the Statutes of Ontario,
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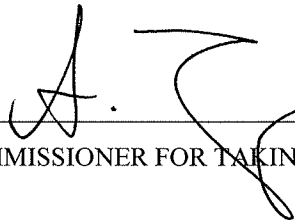
(4) No proceeding under this section shall be commenced more
than two years after the time when the subject-matter of the
proceeding arose. Time limit
for
commencing
proceedings

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

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

This is **Exhibit "N"**

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



A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

**Financial Services
Commission
of Ontario**

Pension Plans Branch

5160 Yonge Street
Box 85
Toronto ON M2N 6L9

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

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

Direction des régimes de retraite

5160, rue Yonge
Boîte 85
Toronto ON M2N 6L9

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



July 30, 2015

Registration Number: 0360065

AUG 16 2015

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

Dear Mr. Hatnay:

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

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

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

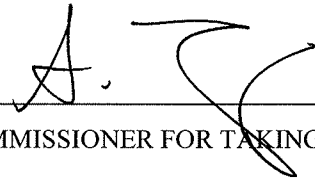
If at any time you have any questions or concerns, you may contact me either at the address above, or directly by telephone at (416) 226-7820, or Sharon Polischuk, Pension Officer, directly by telephone at (416) 590-7248, or toll free at 1-800-668-0128, extension 7248. Please quote the registration number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

Yours truly,

Gino Marandola
Director, Pension Plans Branch (Interim)

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

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

A handwritten signature in black ink, appearing to be 'A. T.', written over a horizontal line.

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

KOSKIE MINSKY

November 3, 2015

VIA EMAIL

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

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

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

Dear Sir and Mesdames:

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

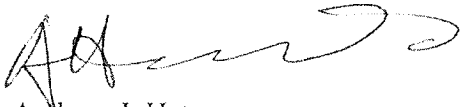
We are writing further to our meeting of September 11, 2015 at your offices with representatives of Sears Canada Inc.

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

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

Yours truly,

KOSKIE MINSKY LLP



Andrew J. Hatnay
AJH:vdl

c. Clients
Barbara Walancik, *Koskie Minsky LLP*

This is **Exhibit "P"**

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

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

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

**Financial Services
Commission
of Ontario**

Pension Plans Branch

5160 Yonge Street
Box 85
Toronto ON M2N 6L9

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

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

Direction des régimes de retraite

5160, rue Yonge
Boîte 85
Toronto ON M2N 6L9

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



November 6, 2015

Registration Number: 0360065

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

Dear Mr. Frazer:

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

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

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

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

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

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

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

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

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

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

Information to determine grounds for full wind up

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

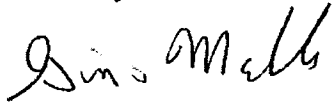
1. Financial Information (see Appendix).
2. An actuarial funding valuation report for the Plan with an effective date as at September 30, 2015, containing information for the defined benefit portion of the Plan that is identical to that shown in the Plan's filed December 31, 2013, valuation report.
3.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

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

Registration Number: 0360065
November 6, 2015
Page 3

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

Yours truly,



Gino Marandola
Director, Pension Plans Branch (Interim)

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

Appendix Information Request/Questions

General

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

Financial statements

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

Receivables

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

Secured lenders

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

Payables

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

Appendix Information Request/Questions

Inventory

- estimated value of inventory
- estimated salvage value of inventory

Fixed Assets

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

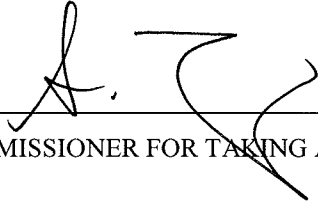
Pension and related

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

Other

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

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

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

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.



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

Mitch Frazer
 mfrazer@torys.com
 P. 416.865.8220

December 9, 2015

VIA EMAIL

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

Dear Mr. Marandola:

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

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

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

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

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

- 2 -

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

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

Yours truly,



Mitch Frazer

MF

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

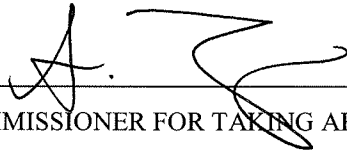
**Appendix “A”
Responses to Information Requests**

The following documents are included as attachments to this email:

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

This is **Exhibit "R"**

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

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

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

**Financial Services
Commission
of Ontario**

Pension Plans Branch

5160 Yonge Street
Box 85
Toronto ON M2N 6L9

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

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

Direction des régimes de retraite

5160, rue Yonge
Boîte 85
Toronto ON M2N 6L9

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



January 15, 2016

Registration Number: 0360065

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

Dear Mr. Frazer:

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

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

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

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

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

Registration Number: 0360065
January 15, 2016
Page 2

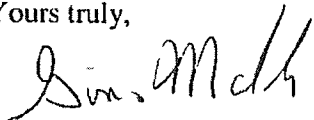
Information and documents provided to us in response to the above requests will be kept confidential and will not be disclosed to any person, except in the following circumstances:

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

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

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

Yours truly,

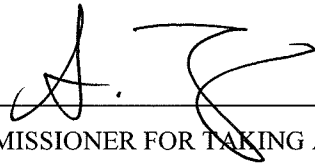


Gino Marandola
Director, Pension Plans Branch (Interim)

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

This is **Exhibit "S"**

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



A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

TORYS
LLP

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

FEB 16 2016

February 16, 2016

VIA MAIL

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

Dear Mr. Marandola:

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

Thank you for your letter dated January 15, 2016 (the "Letter").

In response to your request for additional documentation and information in respect of the Plan as set out in the Letter, Sears Canada Inc. ("Sears") wishes to be appropriately responsive and is therefore providing the documents and information outlined in Appendix "A", which are the documents and information that Sears is able to provide at this time.

Sears respectfully requests a private meeting with you and your team, so that representatives of Sears can meet with you to discuss the various funding alternatives for the Plan. In our view, the meeting we propose would help to ensure that Sears' actions will be appropriately responsive to your concerns. Subject to your availability, we'd like to schedule the meeting as soon as practicable.

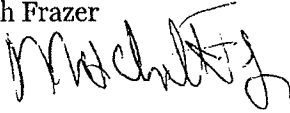
We also note that the broad range of documents requested by the Financial Services Commission of Ontario ("FSCO") contain a significant amount of commercially sensitive information related to various aspects of Sears' business. Given the broad scope of FSCO's request, and given that the scope of what is commercially sensitive can and does change with changing business conditions, Sears does not propose to pinpoint the information contained in what Sears is providing to FSCO that Sears currently considers commercially sensitive. Among other things, doing so now would slow the rate at which Sears could produce to FSCO the documents and information that FSCO has requested. Sears expects that FSCO would see the resulting delay in responding to its request as undesirable.

Accordingly, Sears would be grateful if FSCO could advise at this time of the procedure and timelines regarding notice to Sears in the event that a request for disclosure is made in respect of these documents or any information contained in these documents under the *Freedom of Information and Protection of Privacy Act* ("FIPPA"). FSCO is no doubt aware that it is essential for Sears to have an adequate opportunity to carefully review any documents that FSCO may consider producing pursuant to a FIPPA request to ensure that all of Sears' commercially sensitive information is protected, as contemplated by s. 28 of FIPPA.

Please do not hesitate to contact me should you have any further requests.

Yours truly,

Mitch Frazer

A handwritten signature in black ink, appearing to read "Mitch Frazer", written in a cursive style.

MF

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

Appendix "A"
Responses to Information Requests

The following documents and information are included as attachments to this letter (see USB key):

A. Documents and information requested in the Letter:

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

B. Documents and information requested in FSCO's letter dated November 6, 2015:

B.1. General

1. a copy of the three year Strategic Business Plan, supporting documents including budgets, financial projections and amendments;
2. minutes of all 2015 Board of Directors meetings;
3. corporate structure and management organizational structure;
4. listing of all merchandising operation locations by retail channel;

B.2. Financial Statements

1. copies of the Sears Canada Inc. Annual Reports including audited financial statements for the past three years;
2. copies of all interim quarterly financial statements and management discussions & analysis since the last audited financial statements;
3. copy of a similar report to the CICA Section 5970 report on internal controls;
4. cash flow projections going forward;

B.3. Receivables

1. detailed aged accounts receivables listing;
2. summary aged accounts receivables listing;
3. please identify any doubtful or bad debts;

B.4. Secured Lenders

1. identify all banks and secured lenders;
2. copy of any Bank Credit Agreement;
3. latest copy of borrowing base and availability from operating (line of credit) lender;

B.5. Payables

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

B.6. Inventory

1. estimated value of inventory;
2. estimated salvage value of inventory.

B.7. Fixed Assets

1. details of land and buildings;
2. copy of mortgages;
3. listing of leased assets;

B.8. Pension & Related

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

B.9. Other

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

C. Documents and information requested by FSCO but that are not applicable to Sears:

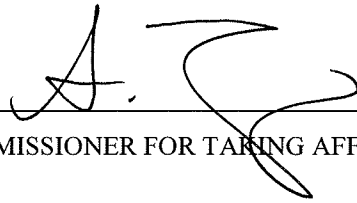
- 5 -

1. minutes of all Pension Committee meetings;
2. copies of auditor's management reports;
3. copies of an assessment or credit report;
4. details of any personal guarantees to lenders or otherwise; and
5. any shareholders loans with an indication of whether they are secured.

20796393.3

This is **Exhibit "T"**

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

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

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

KOSKIE MINSKY

JUSTICE MATTERS

March 1, 2016

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

Via Email

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

Attention: Gino Marandola, Director, Pension Plans Branch (Interim)

Dear Mr. Marandola:

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

We are writing with respect to the letter dated February 16, 2016 to you from counsel to Sears Canada Inc. which enclosed some of the documentation that had been requested by FSCO in its letters to Sears Canada of November 6, 2015 and January 15, 2016.

We have the following comments:

1. Since the meeting at your office on September 11, 2015 with our clients and Sears Canada representatives, it has been reported that the financial situation for Sears Canada continues to deteriorate. The members of the Sears Canada Plan are gravely worried that Sears Canada and its ultimate corporate parent, Sears Holdings Inc., will both fail¹, and that the Sears Canada Plan will be wound up in an underfunded state resulting in reductions to monthly pension benefits. Accordingly, we request copies of all the documentation provided to your office by Sears Canada. Please provide those to us at your earliest convenience.
2. We note that Sears Canada has not provided all the information requested by FSCO in its letters of November 6, 2015 and January 15, 2016. In particular, in addition to the documents requested above, our clients require the documents that had been requested in paragraphs 1, 2 and 3 of the FSCO letter dated November 6, 2015, i.e., the Financial Information, an Actuarial Valuation Report as at September 30, 2015, and the other requested pension plan documentation.

¹ See, for example, the enclosed article, *Sears Holdings: Retailing's Headless Horseman*, Forbes, February 29, 2016

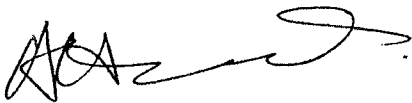
3. We request to be present at any meetings between Sears Canada representatives and FSCO. The issues we have raised with FSCO and Sears Canada in prior correspondence and at the meeting of September 11, 2015 pertain to the provision of our clients' earned pension benefits, and it is appropriate and fair that they be part of any discussions with FSCO and Sears Canada that pertain directly or indirectly to their pension benefits.
4. We request a meeting with FSCO and Sears Canada to discuss next steps. The last such meeting took place several months ago on September 11, 2015. Sears Canada continues to financially deteriorate and is not restructuring, and the risk of pension benefit (and other) losses to our clients continues to increase.

We ask that you schedule a meeting at your earliest convenience.

We look forward to hearing from you.

Yours truly,

KOSKIE MINSKY LLP



Andrew J. Hatnay
AJH:vdI

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

KM-2079704v2



Mark Cohen Contributor

I cover retail through the lens of a CEO.

Opinions expressed by Forbes Contributors are their own.

RETAIL 2/29/2016 @ 7:00AM | 1,686 views

Sears Holdings: Retailing's Headless Horseman

Like the Headless Horseman of myth, Sears Holdings rides aimlessly through the night desperately looking for its missing body part. Unfortunately Sears' head, long gone, will never be found.

As a result, we should all stop talking about this Eddie Lampert driven travesty and begin to focus on why this tragedy occurred and how the retail landscape will change when Sears Holdings disappears. The hard and cold reality is that Sears Holdings will disappear. The only question yet to be answered is when.

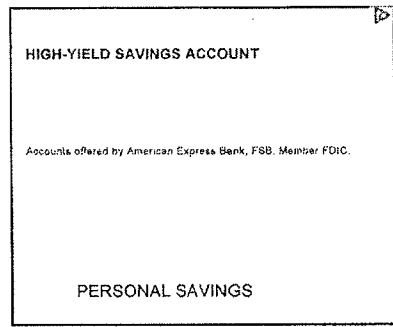
The dirty little secret behind Eddie Lampert's self described transformational strategy is that there never was one, there certainly isn't one now, and there won't be one anytime soon. The coffin nails that came into view the day Alan Lacy became CEO of Sears Roebuck in 2000 have been pounded in ever since by Lampert, who took control of the company with Lacy's help in 2005 and combined it with Kmart.



Alan J. Lacy, vice chairman and CEO of Sears Holdings; Edward S. Lampert, chairman, Sears Holdings; and Aylwin B. Lewis, president of Sears Holdings and CEO of Kmart and Sears Retail, answers following

approval of the merger of Sears, Roebuck and Co. and Kmart Holding Corporation by shareholders of both companies March 24, 2005, in Hoffman Estates, Illinois. (Photo by PRNewsFoto via Getty Images)

Lampert would like us to believe that he and Sears Holdings are being treated unfairly. That he and his company's strategy are misunderstood. That Amazon and Tesla and Uber are being given undue credit and support from the investment community because, after all, like Sears Holdings, they too are operating at a loss. Really? You think you belong in the same conversation as these companies?



Sorry Eddie, your complaints and the analogies you cite are pathetically inadequate. You took control of a viable retail enterprise, and in the process of turning it into a private ATM machine, you have destroyed it. The new companies you mention in your most recent investment letter are investing cash to build out their business, not harvesting and withdrawing that cash as you have done at Sears Holdings since you took control. Further, legacy companies, like yours, in the process of transformation, reinvest in themselves and in their future. They don't repeatedly dividend out the proceeds of asset sales for the purpose of lining the pockets of shareholders.

Question: What could the Sears Roebuck Board of Directors have been thinking when, in 2005, they handed the company over to a hedge fund operator? Answer: They had no earthly idea what they were doing. Maybe they were just trying to rid themselves of their feckless CEO, Alan Lacy?

It's now evident, that by the time the Sears Holdings coffin is lowered into the ground, the box will be almost empty. Lampert's mismanaged initiatives have amounted to nothing more than a long running sell off of the company's valuable body parts. First, to enrich himself, and then, more recently, to keep the enterprise alive. Valuable real estate – mostly gone. Intellectual property rights to Kenmore, Craftsman and Die Hard – gone. Free cash flow generated from normal ongoing operations, long gone. Cash flow, when there was any, reinvested in derivatives, rather than stores, people, products and marketing.

Whereas Alan Lacy had no clue how to manage Sears Roebuck's performance, or, to position the company for the future, Lampert's tenure falls into a category all by itself. Whether grossly incompetent, disingenuous, delusional or intellectually deficient, who knows? Read his

shareholder letters and try to find a scintilla of realistic or rational thinking in what he has written and you come up completely short. Try to connect what he has written with real performance? Not possible.

Question: If you are one of the few who have aligned yourself with Lampert's various investment theses over the past 11 years, what investment returns will you have earned? Answer: Maybe nothing. Think the remaining Sears Holdings real estate portfolio has significant value? Think again. Are there any buyers out there willing to pay a premium for large numbers of tired outmoded and poorly located stores? I don't think so.

Was this insidious liquidation of a \$50 billion company Eddie Lampert's plan all along? We may never know. There is some evidence to suggest that, at the outset, he actually expected to run this company as a legitimate retailer, albeit, in his own unorthodox way. If that's true, his strategy didn't work and didn't last very long. We may discover, when all is said and done, that this unwarranted, disruptive and destructive saga will be revealed as a failed investment play. That Lampert, himself, will have lost a fortune in all of this – not just in opportunity losses, but in hard dollars as well.

Lampert is leading the company into its final hours. He and his hired gun PR team have no credible explanation to offer to the contrary. Is there anyone out there looking to stick up for him? Not customers. Not employees. Not investors. Not suppliers. No one. Even members of the business media, who in the past have attempted to describe Lampert and the company's behavior in a positive light, have disappeared. How could they not?

Just a few years ago, Lampert was heralded as the next Warren Buffett. Nothing could be further from the truth. Warren Buffett's success has come from careful investments in companies and their management teams with an intent to aid and abet those company's ongoing success and growth. Any comparison between Warren Buffett and Eddie Lampert is complete nonsense.

Most legitimately managed retailers have by now reported their 2015 fall and holiday performance. They have revealed their shortfalls in sales and profits to expectations and in some cases to the

prior year. Lampert is trying to use those poor peer results, as air cover to hide his own ongoing and catastrophic losses. He has fooled no one.

Sears Holdings eventual demise will bring with it the closure of almost 2000 mall and off mall stores. Though some locations may be successfully repurposed by either Lampert's Seritage Real Estate Trust, or other involved landlords, most may very well go dark and stay dark. Coupled with store closings at Macy's, JC Penney, other mall anchors and specialty tenants, Sears' closures may signal the eventual death rattle of many of the B, C and D level malls throughout the US.

The major appliance market share that Sears still holds, though drastically diminished under Lampert's watch, will become a significant windfall for Home Depot, Lowe's, Best Buy, and super regionals such as H.H. Gregg and P.C. Richards. JC Penney's ill advised attempt to re enter this business will not succeed in my opinion, but they will continue to benefit from the ongoing and now near complete collapse of Sears' apparel, accessories, footwear, housewares and soft home businesses. Kohl's will benefit in that regard as well. Sears' hardware and lawn and garden businesses will be an ongoing source of opportunity for DIY and discount retailers, both national, regional and local. Walmart and Target, along with various dollar stores will also see market share opportunities coming to them when Kmart ceases to exist.

I have heard various pundits and so-called industry experts say that the collapse of Sears was inevitable. That's nonsense. Sears' failure is a catastrophic failure of governance and leadership. The customer hasn't walked away because Sears and Kmart were no longer brands they wanted to be associated with. They've walked away because Sears and Kmart have been grossly incapable of satisfying their needs and wants.

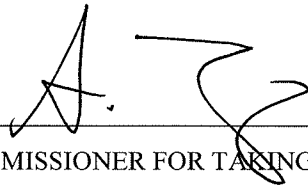
It's time for us to stop looking for the Headless Horseman's head, and, instead, start picking out his headstone.

RECOMMENDED BY FORBES

[The World's Highest-Paid Actors 2015](#)

This is **Exhibit "U"**

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



A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

From: Andrew J. Hatnay
Sent: March-10-16 10:28 AM
To: Gino Marandola
Cc: Ken Eady; Barbara Walancik
Subject: Sears Canada - FSCO meeting with Sears Canada re partial plan wind-up

Gino, we have spoken with our clients with respect to your request that FSCO proceed with a meeting with Sears Canada and its advisers at this time without our clients present, in order to raise the issue of a partial plan wind up being ordered by FSCO and possible settlement discussions.

Our clients can agree to such a meeting with two provisos.

First, if any funding or other settlement is discussed with Sears Canada at the meeting, our clients will have the ability to review, provide input, and approve any settlement or other arrangement before it is finalized.

Second, we request that the meeting occur within the next ten business days. As you know, the last meeting with FSCO, Sears Canada, and our clients took place on September 11, 2015. We are concerned with the delays caused by Sears Canada in its response times to the information requests since that meeting. Sears Canada's business is failing and we believe there is a high possibility that it could enter insolvency proceedings at any time and without notice. Accordingly, please convene the meeting occur as soon as possible.

Finally, we would like copies of all the documentation provided by Sears Canada, as indicated in our last letter.

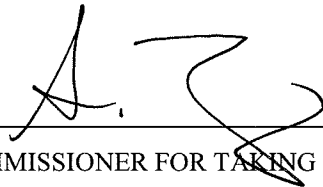
Thank you for your attention to this matter.

Regards,
AJH

Sent from my BlackBerry 10 smartphone on the Rogers network.

This is **Exhibit "V"**

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

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

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

KOSKIE MINSKY

OF ATTORNEYS

September 12, 2016

Via Email

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

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

Attention: Gino Marandola, Director, Pension Plans Branch (Interim)

Dear Mr. Marandola:

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

We are writing further to our discussions and the discussions you have had with our client, Ken Eady of SCRG.

As you know, our clients are gravely concerned that Sears Canada's retail business is failing and that the company is insolvent. We have provided you in the past with numerous media reports and memoranda prepared by our clients setting out the deteriorating financial situation at Sears Canada which continues to this day. Last week, Sears Canada released its quarterly results for the second quarter ending July 31, 2016 reporting that total retail revenues have fallen by a further 15.6%. That loss is on top of the \$1 billion in operating losses that Sears has reported over the past five years.

The evidence is overwhelming that Sears Canada will not survive as a retailer. We believe that it is only a matter of time before it seeks protection from its creditors in an insolvency proceeding.

The Sears Canada Plan remains underfunded, and as we have articulated to your office on many occasions and as you are aware, in the event the plan is wound up in its underfunded state in an insolvency proceeding, there is a high likelihood that pension benefit losses will be imposed on elderly retirees.

In the circumstances, and considering the duty of a pension plan administrator to act in the best interest of pension plan members, our clients requested several months ago that the Sears Canada Plan be wound up. As your office is aware, we have communicated this request to Sears. Sears is opposed to winding up the plan because of the crystallization of wind up liability that Sears Canada wishes to avoid paying. A wind up of the plan is also expected to generate a significant PBGF payment obligation. Nevertheless, in the context of Sears Canada's financial situation, our

clients position is that the wind up of the plan is both highly appropriate and legally necessary for the protection of the plan members' earned pension benefits, which are their deferred wages.

You will recall that we attended a meeting at your office with Sears Canada representatives on September 11, 2015, which is now over a year ago. At that time we put forward the wind up demand. We are aware that your office has engaged in discussions with Sears Canada flowing from the wind up demand. Our clients have been prepared to engage Sears to see if a satisfactory arrangement can be achieved which would involve the company making additional contribution(s) to the pension plan at this time. However, our clients are now very concerned that the discussions with Sears Canada over the past several months have not produced any tangible or credible proposal by Sears Canada. Instead, Sears Canada's conduct has been to take inappropriately long periods of time to respond, cancel or reschedule meetings, and only respond after numerous follow ups. This in our view reveals a deliberate plan to stall and delay dealing with the pension plan and the wind up demand. A recent example of another delay is the meeting that had been scheduled between your office and Sears Canada for September 7, 2016, which Sears abruptly rescheduled to September 28, 2016.

There are numerous other instances of delay and obfuscation by Sears Canada in the course of our dealings with the company over the past 24 months. We do not believe that Sears Canada is dealing with us, nor FSCO, in good faith and is instead orchestrating a series of delays in order to avoid dealing with the underfunded pension plan, its insolvency, and evade a wind up order.

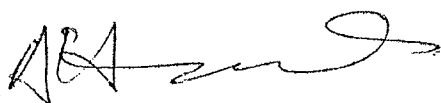
Accordingly, we request that the Superintendent proceed with the issuance of a Notice of Proposal to Wind Up the Sears Canada Plan under section 69 of the PBA. We have discussed the various categories in that section that we say apply, and we believe there is no debate with respect to the applicability of section 69(1)(g), which we understand FSCO is also considering for other pension plans situations.

We appreciate the efforts of your office over the past months. However, as set out herein, we do not believe that Sears Canada is dealing in good faith. Accordingly, our clients wish to press forward with the wind up of the Sears Canada Plan as soon as possible.

We look forward to hearing from you.

Yours truly,

KOSKIE MINSKY LLP

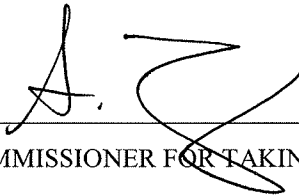


Andrew J. Hatnay
AJH:vdl

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

This is **Exhibit "W"**

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

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

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

**KOSKIE
MINSKY**

JUSTICE MATTERS

October 20, 2016

Andrew J. Hatnay
Direct Dial: 416-595-2083
Direct Fax: 416-204-2872
ahatnay@kmlaw.ca**Via Email**Financial Services Commission of Ontario
5160 Yonge Street, P.O. Box 85
Toronto, ON M2N 6L9**Attention: Gino Marandola, Director, Pension Plans Branch (Interim)**

Dear Mr. Marandola:

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

We are writing further to our letter of September 12, 2016 and your subsequent discussions with our client, Ken Eady of SCRG.

Our clients are increasingly concerned about Sears Canada's delays and lack of good faith in addressing the underfunded Sears Canada Plan as their retail business continues to deteriorate. They are particularly concerned about Sears Canada's failure to deliver a proposal for additional funding for the Sears Canada Plan that they undertook to provide several months ago.

Our clients request a meeting with FSCO prior to any further meetings or discussions with Sears Canada so that they can obtain an understanding of the status of the discussions about the proposal that was promised by Sears and any other relevant information that impacts the provision and security of their earned pension benefits. To be clear, our clients need to be closely involved and part of any future discussions or negotiations between FSCO and Sears Canada.

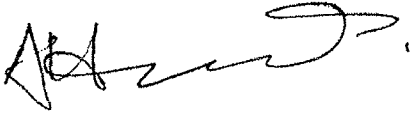
Our clients maintain their request to FSCO that the Sears Canada Plan should be ordered to be wound up by the Superintendent at this time. The wind up is growing more urgent given the steady deterioration of Sears Canada's retail business and its worsening financial situation, which we have explained in prior correspondence. The strong potential for pension losses that is facing the members of Sears Canada Plan is compounded by Sears Canada's lack of good faith in its dealings with our clients.

Please let us know if you are able to meet in the week of October 31, 2016 at your earliest convenience.

Thank you for your attention to this matter.

Yours truly,

KOSKIE MINSKY LLP

A handwritten signature in black ink, appearing to read "Andrew J. Hatnay". The signature is stylized with a large, sweeping initial "A" and a long, horizontal flourish.

Andrew J. Hatnay
AJH/vd;

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

KM-2400154v1

This is **Exhibit "X"**

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

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

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

KOSKIE MINSKY

May 19, 2017

Via Email and Mail

Marc Wasserman
Osler, Hoskin & Harcourt LLP
100 King Street West
1 First Canadian Place
Suite 6200, P.O. Box 50
Toronto ON M5X 1B8

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

Dear Mr. Wasserman:

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

As you are aware, we represent SCRG, an organization comprised of over 6,000 retirees of Sears Canada Inc. ("**Sears Canada**") who have performed work and earned entitlements to pension benefits from Sears Canada.

We understand that in addition to its on-going retainer of Torys, Sears Canada has recently retained Osler as "insolvency counsel" with respect to the possibility of the company filing for protection from its creditors under the *Companies' Creditors Arrangement Act* ("CCAA") or another insolvency process. In the event the company proceeds in that direction, we hereby request that the company wind up the Sears Canada Plan prior to it applying for CCAA protection or becoming involved in any other insolvency proceeding.

As you and the company are aware, the Sears Canada Plan is underfunded. If the plan is wound up in its underfunded state, it will result in losses to the monthly pension benefits being paid to the retirees. A large number of the Sears retirees receive modest pension benefits the receipt of which they rely for their daily livelihoods. Any losses to such benefits have a material and prejudicial impact on the retirees' standard of living, and create hardships for them and their families.

We are also requesting that you contact us to make arrangements for the court appointment of suitable individuals from SCRG to be the representatives of all retirees of Sears Canada in any insolvency proceeding, our firm as Representative Counsel to the retirees, and that the legal costs of the retirees be paid by the company, and that these arrangements be put in place and confirmed prior to any insolvency filing.

**KOSKIE
MINSKY**

Page 2

The pension plan beneficiaries have statutory deemed trust priorities in their favour under the Ontario *Pension Benefits Act* (PBA) and the Ontario *Personal Property Security Act* (PPSA) for amounts owing to the Sears Canada Plan with respect to going-concern payments, special payments, and wind up payments, which they intend to advance for first priority recovery in any insolvency proceeding involving Sears Canada.

The law is well-established that Sears Canada, as the administrator of the Sears Canada Plan, owes fiduciary duties under both the PBA and the common law to act in the best interests of the pension plan members. This duty includes that Sears Canada, and its directors and officers, take all steps to protect the pension plan members from pension benefit losses.

As we expect you are aware, there has been some debate over whether the PBA wind-up deemed trust remains effective if the pension plan wind-up occurs after the issuance of a CCAA initial court order. In order to protect the pension plan members in the context of Sears Canada's contemplation of a CCAA application or other insolvency proceeding, and to avoid any debate over the significance, if any, of the "timing" of the wind up that could be prejudicial to the pension plan members, we direct Sears Canada to ensure that the Sears Canada Plan be wound up prior to any CCAA or other insolvency filing.

We are required to put Sears Canada, its directors, and its officers on notice that the failure to wind up the Sears Canada Plan, and any resulting loss of priority recovery for the pension plan members in a CCAA or other proceeding, will lead to claims for damages against Sears Canada directors and officers in their personal capacities for any losses suffered by the pension plan members and beneficiaries.

If you do not represent the Sears Canada directors and officers, please advise and we will send a copy of this letter to them directly.

If you wish to discuss this further, please do not hesitate to contact the undersigned.

Yours truly,

KOSKIE MINSKY LLP

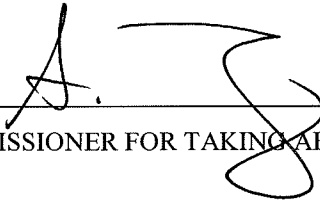


Andrew J. Hatnay
AJH/vdl

cc. Mitch Frazer, *Torys LLP*
Clients
Amy Tang, *Koskie Minsky LLP*

This is **Exhibit "Y"**

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

A handwritten signature in black ink, consisting of a stylized 'A' followed by a large, looping flourish.

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

June 5, 2017

Marc S. Wasserman
Direct Dial: 416.862.4908
MWasserman@osler.com
Our Matter Number: 1179649

Confidential

Sent By Electronic Mail

Andrew Hatnay
Koskie Minsky LLP
Suite 900
20 Queen Street West
Toronto, ON M5H 3R3

Dear Mr. Hatnay:

**Re: Store and Catalogue Retiree Group (“SCRG”)
The Sears Canada Inc. Registered Retirement Plan, Registration No. 0360065 (the
“Plan”)**

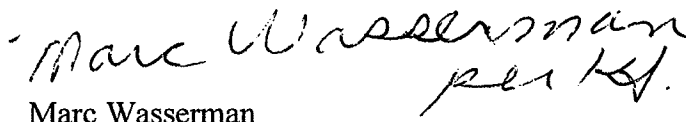
Thank you for your letter of May 19, 2017.

As you know, the Plan is a combination defined benefit and defined contribution plan that provides benefits to active employees of Sears Canada Inc. (the “Company”) as well as to pensioners and those with a deferred vested pension entitlement.

Any decision by the employer to wind-up a pension plan impacts all plan members, not just retirees. The Company is also conscious of the obligations of pension plan administrators to all pension plan members (including active plan members and retirees) whether the plan is an ongoing plan or a wound-up plan.

The Company appreciates you drawing attention to the concerns of retirees under the Plan. We look forward to discussing these matters with you in the near term.

Yours very truly,


Marc Wasserman

MSW:krs

c: M. Frazer, Torys LLP

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

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

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

Proceeding commenced at TORONTO

**AFFIDAVIT OF WILLIAM TURNER
(SWORN ON AUGUST 11, 2017)**

KOSKIE MINSKY LLP

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

Andrew J. Hatnay – LSUC No. 31885W

Tel: 416-595-2083 / Fax: 416-204-2872
Email: ahatnay@kmlaw.ca

Mark Zigler – LSUC No. 19757B

Tel: 416-595-2090 / Fax: 416-204-2877
Email: mzigler@kmlaw.ca

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

Tab C

This is Exhibit "C" referred to in the Affidavit of Sandy Lockhart
affirmed October 29, 2019.

A handwritten signature in black ink, consisting of a stylized 'R' followed by a horizontal line and a vertical stroke.

Commissioner for Taking Affidavits (or as may be)

The Board of Directors



President - Bill Turner

Bill retired from Sears in 2002 after 36 years with the Company. He began his career as a Trainee in the Ottawa Carlingwood store and after a short stay was moved to Headquarters in Toronto where he spent the balance of his career in merchandising. He held various management positions and retired as President, Merchandising, Marketing and Logistics.

Bill has held volunteer positions such as President, Boy's and Girl's Clubs of Canada, and founding Chair of the Ryerson Advisory Board in the School of Retailing. He continues to live in the house he and his wife bought in Leaside (Toronto) in 1973.



Past President - Nina MacLavery

Nina retired in October 2005 after 36 years with the Company. She held positions in the Thunder Bay and Oshawa retail stores, Training, Merchandising, and was Group Vice-President Consumer Marketing. She retired as Vice President and General Merchandise Manager, Home and Hardlines.

Currently, Nina is an independent retail strategy consultant. She is a member of the St. Joseph Communications Advisory Board, providing retail expertise and strategy leadership for New Business Development. Nina also serves as a member of CMA's Branding and Strategic Planning Council.



Vice-President - Ken Eady

Ken retired from Sears in 2003 after 30 years. He and his wife Carole now live in Milton Ontario. Since retiring he has served as volunteer Board Chair of the Housing Resource Centre of South Georgian Bay and Orillia, and been a member of the Committee of Adjustment and Consent for the Municipality of Wasaga Beach. After 13 years in Wasaga Beach the Eadys returned to live in Milton in 2016. Ken recently joined the Board of Directors of Milton Transitional Housing.



Vice-President - Barry Carnegie

Barry retired from the Company in 2009 after 33 years of service. He started in the Kingston retail store and held a variety of positions, moving to Headquarters where he held positions as a Buyer and a Retail Marketing Manager. He was promoted to General Manager HIPS and also held positions as General Sales Manager, Outlet Store Channel, General Manager, Store Support - Off Mall Stores and Divisional VP, Home Installed Products and Services.

Since retiring, Barry has been a consultant in the retail home services industry. He actively participates in softball, curling, and golf and is an avid cottager and gardener.



Secretary - John Pullam

John retired from Sears Canada in 2000 after 31 years of service. During his career he held positions in Information Systems, Corporate Planning and Merchandising. He retired as National Manager, Electronic Commerce where he created and launched www.sears.ca.

Currently John is President of McLean Systems Inc. performing technology



Currently John is President of McLean Systems Inc., performing technology consulting and website development. 167



Treasurer - Ken Davids

Ken retired from Sears Canada in October 2005 after completing nearly 31 years of service. He spent his entire career in Finance, initially as Store Controller in Thunder Bay followed by a variety of management positions, including National Manager Corporate Policy & Procedures and National Manager Merchandise Accounting. He completed his Sears career as a senior auditor.

Ken has a small audit consulting business, and with his wife, spends a lot of his time helping out with his new grandchildren.



Director - Gary Charlton

Gary retired in June 2008 after 38 years with the Company. He held various positions in Information Technology including operations, technical and application development. He retired as Vice President of Information Technology.

Over the years Gary has held numerous volunteer positions; over 20 years as a coach in both boys and girls Minor Hockey, 9 years in Scouts Canada, Past President of the Brampton Junior Chamber of Commerce and he is currently Secretary of the Kawartha ATV Association. Gary and his wife Janet are now enjoying an active retirement life on the lake having moved to Lakefield, Ontario.



Director - Jack Connell

Jack retired from Sears in October 2008 having worked for 20 years in the tax department. He represented Sears Canada on the Retail Council of Canada as a member of the Taxation Committee and the Environmental Committee. He has also been an active volunteer in the community helping with the AIDS Committee of Toronto, the People with AIDS Foundation and the Casey House Foundation.



Director - Larry Moore

Over the span of 34 years with Sears Canada Inc. Larry held a number of positions including Store Manager, Regional Personnel Superintendent, General Manager Quebec Stores and Senior Vice-President, the position he held upon retirement in 2005.

Following retirement from Sears, Larry has worked as consultant and contractor to association and governmental agencies within the travel, service and major appliance industry on matters of product safety, energy efficiency and environmental sustainability.



Director - John Purkis

John retired in 1994 after 30 years of service with Sears. After graduating from The Ryerson School of Business in 1964 he joined Sears Headquarters and held several positions in merchandising and marketing. He was a buyer in appliances, toys/Christmas decorations, dinnerware/crystal and sporting goods. He also held positions as catalogue/retail sales manager and Manager of Direct Response Marketing. Eighteen months after retirement he rejoined Sears for 10 years as a Sales Associate in appliances at the Sears Whole Home Store in Mississauga.

He now pursues his hobbies of golf, travel, reading and jogging.

Director - Claude Sénéchal

Claude worked for Sears Canada for 33 years. He occupied different functions in the Quebec region including assignments as store manager, General Manager Catalogue Operations, General Manager Retail Stores, and when Sears acquired the Cantrex Group he became the President of Cantrex, the position in which he retired in 2005.



Since he retired from Sears, Claude has been a consultant in the retail industry and he acts as a director on some retailer boards. Claude looks forward to his participation on the SCRG Board to protect the assets we retirees have built over many years at Sears.



Director - Rejeanne Steingart

Rejeanne retired from Sears Canada in 2006 after 32 years of service. She began her career in Finance as an auditor and subsequently moved into Information Technology. She held positions throughout I.T. for over two decades, including communications, operations and systems development. She retired as National Manager Information Technology Operations & Support.

Since retiring Rejeanne holds a director position on the Board of Nazareth House and pursues her interest in travel and art.



Director - Duke Stregger

Clarence M (Duke) Stregger was hired in Regina in July 1953. He began his management training in Austin and Rochester, Minnesota returning to Regina to introduce credit desks in Catalogue Sales Offices through out Alberta, Saskatchewan and Manitoba. He held Collection Manager and Credit Sales Manager assignments in Regina, Winnipeg, Ottawa, Vancouver and was transferred to Toronto in 1976 to Regional Credit Manager, Eastern Canada. Duke was appointed Corporate General Manager, Credit Field Operations and National Services in 1986 and held this position until retirement in 1990.

Following Sears, Duke was Executive Director and CEO for the Credit Counselling Service Toronto (now known as Credit Canada). He is the Founding Chairman of the Canadian Credit Counselling Service (CACCS) and currently is on the Board Of Directors for CACCS.

Tab D

This is Exhibit "D" referred to in the Affidavit of Sandy Lockhart
affirmed October 29, 2019.



Commissioner for Taking Affidavits (or as may be)

After the Sears debacle, why is Ontario making it easier to underfund pensions?

 theglobeandmail.com/report-on-business/rob-magazine/sears-pensioners-are-in-troubleso-why-is-ontario-

23 January
2018

Rita Trichur

Special to The Globe and Mail

Published January 23, 2018 Updated January 23, 2018

During the 25 years Ken Eady worked as an executive in human resources at Sears Canada, he assured thousands of employees that they could count on their pensions. Now Sears is in bankruptcy protection, its pension is underfunded, and Eady himself likely won't get the retirement income he was promised.

Eady is among the 18,000 current and former Sears Canada workers bracing for the worst. The 74-year-old is now a spokesperson for the Sears Canada Retiree Group, and he says he feels guilty about his role in the disaster. "I think many of us who worked in executive positions feel that way. You know, not guilty to the extent that we did something wrong, but guilty about the fact that the company is not keeping its promise to those people."

If anyone should feel guilty, though, it's the politicians and regulators who turned a blind eye when Sears Canada skimmed on pension contributions over the years—even as it paid out billions of dollars in excess cash to shareholders.

For years, the Ontario government and the Financial Services Commission of Ontario (the provincial pension regulator) knew that Sears Canada—which offered a defined-benefit pension plan that guaranteed workers a set payout—risked joining the ranks of Stelco, Algoma and Nortel in defaulting on its promise.

Now Sears Canada is under court protection from creditors, and it's estimated that pension payouts could be slashed by 19%. You'd think the Ontario government would take this opportunity to crack down on companies that leave retirees in the lurch. Shockingly, it has chosen to do the opposite: It recently announced proposals that will make it easier—not harder—for corporations to underfund their pensions.

Bill 177, which received royal assent in December, lays the groundwork for a coming regulatory change that will reduce the pension solvency funding requirement from 100% to 85%. The idea is to give companies some leeway when money is tight.

But when Sears underfunded its pension, money wasn't tight. The company spent years selling off assets and paying out the proceeds to investors, mainly its majority owner, U.S. hedge fund manager Edward Lampert. In fact, Sears Canada has shovelled out \$1.5 billion to investors through dividends and share buybacks since 2010—an amount that is five and a half times the cost of filling the \$267-million hole in its defined-benefit pension plan, according to a study by the Canadian Centre for Policy Alternatives (CCPA).

Ontario's proposed regulatory changes would make such pension underfunding perfectly legitimate. More pensioners will likely need bailing out, so the province also proposes to increase benefits under its Pension Benefits Guarantee Fund—which helps cover the payout gap when underfunded pensions are wound up. When that fund is tapped out, taxpayers can expect to cover the difference.

Pension defaults are rare, but the CCPA study found that of the 39 largest publicly traded companies that have defined-benefit pensions, only nine had plans that were fully funded last year. Rather than loosening restrictions, Ontario should amend the Ontario Pension Benefit Act to require businesses to fund 100% of their pensions. Those that can't shouldn't offer pensions in the first place.

The federal government could also do its part to prevent future pension disasters. For instance, it should change Canada's insolvency laws so that pensioners have "super-priority" status when companies seek court protection from creditors. That would give pensioners front-of-the-line standing over other creditors when companies go bust.

Critics will counter that such a move would drive up borrowing costs for companies because banks will view them as higher-risk debtors. Currently, secured creditors, such as banks, get first dibs on any money that's left over after a bankrupt company's assets are sold off.

But it's not like companies are clamouring to start new defined-benefit pension plans. We're talking about a dwindling group of Canadians who've been cheated out of financial security.

Leaving retirees to scramble in their golden years is cruel, and it is unconscionable to expect an overtaxed middle class to foot the bill for corporate chicanery. If governments won't stop companies from dodging their pension obligations, it's just a matter of time before we see the next Sears Canada. And that's a prospect that should worry us all.

Tab E

This is Exhibit "E" referred to in the Affidavit of Sandy Lockhart
affirmed October 29, 2019.

A handwritten signature in black ink, appearing to be "RJH", written above a horizontal line.

Commissioner for Taking Affidavits (or as may be)

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

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



THE HONOURABLE MR.)

JUSTICE HAINEY)

THURSDAY, THE 13TH

DAY OF JULY, 2017

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

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

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

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

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

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

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

APPOINTMENT OF REPRESENTATIVE COUNSEL

1. **THIS COURT ORDERS** that Koskie Minsky LLP (the “**Representative Counsel**”) is hereby appointed as representative counsel to represent the interests of the non-unionized retirees and non-unionized active and former employees of the Sears Canada Entities (collectively, the “**Represented Parties**”) in these CCAA proceedings, solely with respect to (a) entitlements of the Represented Parties under the Sears Pension Plan and the Supplemental Plan (each as defined in the Wong Affidavit), and any other pension or retirement plan of the Sears Canada Entities; and (b) Represented Parties’ other post-employment benefits entitlements (the “**Purpose**”). As used herein, “Represented Parties” shall (x) exclude the senior management of the Sears Canada Entities; and (y) include any person claiming an interest under or on behalf of a Represented Party.

2. **THIS COURT ORDERS** that Bill Turner, Ken Eady and Larry Moore (collectively, the “**Representatives**”) are hereby appointed as representatives of all Represented Parties (excluding the Opt-Out Individuals (as defined below), if any) in these CCAA proceedings, to act in the overall best interests of the Represented Parties, and to advise and where appropriate instruct the Representative Counsel, in every case, solely for the Purpose. The Representative Counsel may rely upon the advice, information and instructions received from the Representatives in carrying out the mandate of the Representative Counsel without further communications with or instructions from the Represented Parties, except as may be recommended by the Representative Counsel or ordered by this Court.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

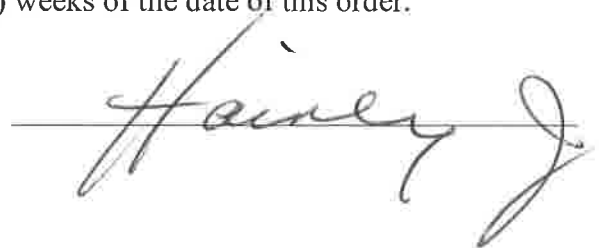
13. **THIS COURT ORDERS** that the Representative Counsel shall be at liberty, and is hereby authorized, at any time, to apply to this Court for advice and directions in respect of its appointment or the fulfillment of its duties in carrying out the provisions of this Order or any variation of the powers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

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

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

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

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



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

JUL 13 2017

PER / PAR:



SCHEDULE “A”

ENGLISH NEWSPAPER NOTICE

SEARS CANADA INC., CORBEIL ÉLECTRIQUE INC., S.L.H. TRANSPORT INC., THE CUT INC., SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611 CANADA INC. (collectively referred to as the “Sears Canada Entities”)

NOTICE TO RETIREES, FORMER EMPLOYEES and CERTAIN ACTIVE EMPLOYEES

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

TAKE NOTICE THAT pursuant to an Order of the Court:

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

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

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

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

Attention: Jim Robinson

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

SCHEDULE “B”

AVIS DANS LES JOURNAUX FRANÇAIS

SEARS CANADA INC., CORBEIL ÉLECTRIQUE INC., TRANSPORTS S.L.H. INC., THE CUT INC., SERVICES CLIENTÈLE SEARS INC., INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., CENTRE DE REVÊTEMENTS DE SOL SEARS INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC. ET 3339611 CANADA INC. (collectivement appelées les « entités Sears Canada »)

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

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

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

1. Le cabinet Koskie Minsky LLP (les « conseillers juridiques des représentants ») a été nommé à titre de conseiller juridique dans le but de défendre les intérêts des retraités non syndiqués et des anciens employés et des employés actifs non syndiqués des entités Sears Canada, uniquement en ce qui a trait à leurs droits aux termes du régime de retraite agréé de Sears Canada Inc. ou des autres régimes de retraite (collectivement, les « régimes de retraite ») offerts par les entités Sears Canada, des personnes physiques qui ont droit à d'autres avantages postérieurs à la retraite (dont l'assurance santé et dentaire et l'assurance-vie pour les retraités) (collectivement, les « avantages des retraités ») et des personnes physiques qui revendique un droit par l'intermédiaire de ces personnes physiques ou au nom de celles-ci (collectivement, les « parties représentées »), ainsi que pour conseiller les représentants à l'égard des régimes de retraite et des avantages des retraités en lien avec l'instance en vertu de la LACC ou toute autre procédure portant sur cette question.
2. Bill Turner, Ken Eady et Larry Moore (collectivement, les « représentants ») ont été nommés pour défendre les intérêts fondamentaux des parties représentées et pour donner des conseils et des directives aux conseillers juridiques des représentants.
3. Pour de plus amples renseignements, veuillez consulter le site Web des conseillers juridiques des représentants à <https://kmlaw.ca/cases/sears-canada/?lang=fr>.

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

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

À l'attention de Jim Robinson

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

SCHEDULE "C"

FORM OF OPT-OUT NOTICE

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

Attention: Jim Robinson

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

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

 Witness

 Signature

Name [please print]: _____

Address: _____

Telephone: _____

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

ANNEXE "C"

AVIS DE RETRAIT

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

À l'attention de Jim Robinson

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

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

Témoin

Signature

Nom [en caractères d'imprimerie] : _____

Adresse : _____

Téléphone : _____

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

Proceeding commenced at Toronto

REPRESENTATIVE COUNSEL ORDER

OSLER, HOSKIN & HARCOURT LLP

Box 50, 1 First Canadian Place
Toronto, Canada M5X 1B8

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

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

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

Lawyers for the Applicants

Tab F

This is Exhibit "F" referred to in the Affidavit of Sandy Lockhart
affirmed October 29, 2019.

A handwritten signature in black ink, appearing to be the initials 'R. M.' with a stylized flourish extending to the right.

Commissioner for Taking Affidavits (or as may be)

From: Frazer, Mitch
Sent: Monday, April 20, 2015 2:39 PM
To: Edwards, Stacie
Subject: Fw: Sears Canada Inc. Registered Retirement Plan
Attachments: submission(1).pdf; submission(2).pdf; submission(3).pdf; submission(4).pdf; submission(5).pdf

Please print.

Sent from my BlackBerry 10 smartphone on the Rogers network.
P. 416.865.8220

From: Gino Marandola <Gino.Marandola@fsco.gov.on.ca>
Sent: Monday, April 20, 2015 2:32 PM
To: Frazer, Mitch
Cc: Sharon Polischuk; Deborah McPhail; Jessica Spence
Subject: Sears Canada Inc. Registered Retirement Plan

Mitch:

Further to our conference call on April 14, 2015, I have attached the submission by SCRG that was provided to us.

Please confirm whether Wednesday, May 13, 2015, from 11 am to noon works for the attendees of Sears Canada Inc. for the joint meeting w

ith SCRG.

This meeting will be a without prejudice meeting to discuss the funding status of the Sears Canada Inc. Registered Retirement Plan.

The SCRG has suggested that it would be a more productive meeting if the following individuals from Sears Canada Inc. attend:

Mr. E.J. Bird (CFO and Executive VP)

Mr. William Charles Crowley (Chairman of Board of Directors)

Mr. Ronald D. Boire (President & CEO)

Please confirm the individuals attending for Sears Canada Inc.

Regards,

Gino

If you have received this message in error, please notify me immediately and delete this e-mail and any attachments without copying, distributing or disclosing their contents.

Si vous avez reçu ce message par erreur, veuillez nous en aviser immédiatement et détruire ce courriel ainsi que toute pièce jointe en vous abstenant d'en faire une copie, d'en divulguer ou d'en diffuser le contenu.

Tab G

This is Exhibit "G" referred to in the Affidavit of Sandy Lockhart
affirmed October 29, 2019.

A handwritten signature in black ink, appearing to be the initials 'AL' followed by a stylized flourish.

Commissioner for Taking Affidavits (or as may be)



**Submission
Regarding**

**Asset Stripping at Sears Canada
and
Why Pension Plan Windup is Appropriate**

Presented By SCRG
to
Financial Services Commission of Ontario

March 24, 2014

Asset Stripping at Sears Canada and Why Pension Plan Windup is Appropriate

The purpose of this document is to draw attention to a situation that currently affects Sears Canada retirees who are members of Sears defined benefit pension plans. Sears owners (its shareholders) are deriving more value from selling the assets of the Company than they would from its ongoing operations. The shareholders are receiving substantial dividends and capital distributions from the sale of the Company's assets. While this may be a valid financial strategy from the shareholder perspective, it is a significant problem for pensioners. The sale of income generating assets is weakening the Company's overall position. If this strategy continues, the Company will become insolvent and unable to meet its obligations.

Sears Canada Inc.'s Financial Situation

In 2005, Sears Canada Inc. ("SC") became controlled by a U.S. hedge fund. This has resulted in many changes to SC's business model and operational goals, resulting in the systematic sale of valuable assets with the proceeds being distributed to shareholders and a steady stream of financial losses and store closures. These changes, when coupled with the underfunding of Sears Canada's registered pension plans, have been the cause of much concern for the members of SCRG (Store and Catalogue Retiree Group). They do not wish to be left with pension and benefit losses when Sears Canada becomes insolvent or otherwise fails, as has been the situation for many other Canadian retirees (e.g., Nortel retirees).

The following shows the facts related to Sears Canada's decline

1) Proceeds from the sale of Sears Canada Assets

Over the past ten years, the Company sold many of its major revenue generating assets (e.g., retail store locations) for net pre-tax cash proceeds in excess of \$3.7 billion.

2) Payments to Shareholders

Over the past ten years, the Company paid out cash dividends and capital distributions of \$3.5 billion to shareholders. At the beginning of 2005, Sears market capitalization was \$1.8 billion (106 million shares multiplied by the share price of \$16.99). Therefore, the average annual dividend yield (dividends and capital distributions paid as a percentage of the beginning market capitalization of the Company) for those ten years was 17.8% per year. In contrast, the average dividend yield for companies listed on the TSX is significantly lower, at approximately 3%.

3) Capital Expenditures / Depreciation

While the Company has been paying a considerable amount of cash to its shareholders, it has invested very little in maintaining or improving its existing operations in Canada. In the past ten years, depreciation expense has totaled \$1.243 billion, while total capital expenditures have been only \$724 million. Assets are being replaced at about half the rate of depreciation. This lack of spending appears to have dramatically affected sales.

4) Same-store sales

Same-store sales have decreased by 34.7% between 2004 and 2014, before accounting for inflation.

5) Total Revenues

Total revenues have decreased from \$6.2 billion in 2004 to \$3.4 billion in 2014--a 45.9% decrease before inflation.

6) Operating losses

Operating results have declined in each of the last six years. The Company has reported pre-tax operating losses in each of the past 4 years totaling \$741 million.

7) Free Cash Flow

Free Cash Flow is also down significantly—from \$185 million in 2005 to a loss of \$319 million in 2014. Sears has reported negative free cash flow for the past three years totaling \$594 million. A continuation of this trend will render the Company insolvent.

(see attachments 1 & 2)

The Pension Plan

At Sears Canada, employees were required to participate in the Registered Retirement Plan as a condition of their employment. The pension plan was contributory, requiring all employees to pay a portion of their earnings into the plan. In return, Sears Canada made a commitment to provide lifelong pension benefits to retirees from the plan. The intent of these employment arrangements was to provide a secure retirement for employees and to encourage long service and single company careers. Employees were told that although their income may not be as high as in other industries, they were being looked after by the provision of the pension and health benefits. In many cases, plan members were restricted in their ability to put other funds away for retirement, both because of reduced RRSP contribution space and because less funds were available after payroll deductions to fund pension contributions.

On the other hand, the plan sponsor was able to participate in the pension plan with very limited financial contributions. For many years, when employees left the plan before retirement, the Company paid back only the member's contributions and simple interest. This allowed it to use the monies earned with employee contributions to fund the plan. Between 1997 and 2011 the Company took a contribution holiday, while members continued to contribute to the plan. In 2008 and 2009 it took funds (\$27.0 million) from the defined benefit component of the pension plan to make the Company contribution to the recently introduced defined contribution component of the plan. In 2011 and 2014 the Company was allowed to defer making special payments to correct its solvency deficit. The Sears Pension Plan was underfunded on a solvency basis by 10% at the end of 2013. Published trends show that it would much worse at the end of 2014. (see attachment 3 & 4)

Summary

The assets of Sears Canada are being stripped from the Company. The majority of the proceeds are being sent to an American hedge fund and its owner. The Company is drifting into bankruptcy and Canadian pensioners will be left to pay the price. The owners of the Company openly state that they are seeking to monetize Sears Canada's assets (see attachment 5). Sears Canada's Board of Directors (see attachment 6) is cooperating with this plan of action. The Company further states that it will only do what the Pension Benefits Act of Ontario requires (see attachment 7, 8) and that it has no other

fiduciary responsibility to the pension plan. Sears Canada retirees need protection against such a flagrant abuse.

We are Trying to Prevent the Worst

- For many years SCRG has worked with Sears Canada in an attempt to protect retiree pensions and benefits.
- SCRG has supported Sears, in its business endeavours by encouraging its members to shop at Sears and to be positive when speaking about Sears.
- During the past few years we became increasingly concerned about our pension and benefits plans.
- SCRG has written to or met with Sears on numerous occasions to express concerns about the security of our pensions and health and dental plans. Sears' position is that it will meet its legal obligations. Sears has failed to agree to our repeated requests or to change the strategy that threatens our pensions and benefits.
- May 14, 2013: SCRG wrote to FSCO expressing concern about Sears' business strategy and the underfunded pension plan.
- September 24, 2013: SCRG met with a number of FSCO's management. SCRG expressed concerns about Sears business strategy and the underfunded pension plan.
- October 2, 2013: SCRG emailed the Director of Policy in the Premier's office expressing concerns about Sears business strategy and the underfunded pension plan.
- January 7, 2014: SCRG wrote to Premier Wynne with concerns about Sears business strategy and the underfunded pension plan.
- January 15, 2014: SCRG wrote to all Ontario MPP's informing them of its concerns about Sears business strategy and the underfunded pension plan.
- SCRG received a letter from Minister Sousa dated February 18th 2014. This letter opened the door to a meeting with the Minister's Director of Policy.
- February 2014: Sears significantly reduced the value of the retiree health and dental plan and made changes to the defined benefit pension plan (inflation protection) without discussion or consultation.
- March 26, 2014; SCRG participated in a stakeholder meeting held by FSCO.
- July 16, 2014; SCRG met with The Director of Policy for the Minister of Finance in Ontario.
- October 23, 2014; SCRG meet with members of the Federal Department of Industry, the Department of Finance and staff from the office of the Minister of Industry.
- November 6, 2014; SCRG asked Sears Canada to voluntarily wind up the Sears Pension. (see attachment 9)
- November 21, 2015 Sears responded to the request without providing an answer and in a dismissive manner. (see attachment 9 & 10)

Sears US Pension Plan

- The Sears Pension Plan in the US is substantially underfunded.
- Between 2006 and 2014 SHLD made payments of \$2.9 billion
- Sears Holding CFO said: "*funding of pension obligations, which we consider to be a form of debt repayments.*"

(see attachments 11 & 12).

Time is Running Out

We believe that time is running out for the Company. Sears Canada retirees can see themselves becoming another sad news item like the Nortel or Stelco retirees. It appears that we face years of legal wrangling to try to get what is ours. We now believe that legislative and regulatory change will not provide a timely remedy. We believe that Sears Canada will become insolvent within 24 months or less, if current trends continue. Now is the time for FSCO to take action to prevent this unnecessary burden being placed on Ontario taxpayers. We need the help of FSCO to protect our pensions from this looming disaster.

Our Request

We ask the Financial Services Commission of Ontario to intervene now. This is necessary to prevent thousands of Canadians from falling victim to Sears Canada's lack of concern for its retirees. We therefore request the following:

- That the Financial Services Commission of Ontario require Sears Canada Inc. to fully fund the defined benefit component of our pension plan now.

or

- That the Financial Services Commission of Ontario require Sears Canada Inc. to wind up the defined benefit component of its pension plan in accordance with the PBA windup regulations.

SCRG is a Sears Canada Retiree Association. It has over five thousand members and is a founding member of the Canadian Federation of Pensioners. Its primary purpose is to protect the post-retirement pension and benefits that Sears retirees earned at Sears Canada prior to their retirement. For additional information on SCRG, please visit its website, www.scretireegroup.ca.

Attachments:

1. Sears results 2005 to 2014.
2. Sears asset sales / payment to shareholders 2005 to 2013.
3. Pension Data Recap 2014 from AR.
4. Pension Data Recap 2013 from AV.
5. Sears Canada Inc. Ownership & Board of Directors Profiles.
6. SHLD Earnings Call see Page 7 Paragraph 4 Aug 21 2014.
7. Letter from Sears/Tory's July 21, 2014.
8. Response from SCRG August 26, 2014.
9. Letter to Sears Tory's from SCRG K&M November 6, 2014.
10. Letter from Sears Tory's to SCRG K&M November 21, 2014.
11. Chairman Letter (Lampert) 2015 re 2014 Highlighted reference to SEARS Canada Inc.
12. Sears Holdings CFO Sept 2014.

SEARS CANADA INC. OWNERSHIP CONTROL AND WHO BENEFITS FROM SHAREHOLDER PAYMENTS

As of Sept 18, 2014 Edward Lampert controls 48.5% of the shares of SLHD

1. ESL (Edward Lampert privately owned Hedge Fund) owned 24.8% of SHLD (Sears Holding).
2. Edward Lampert personally owns. 23.7% of SHLD.

As of Sept 19, 2014 Edward Lampert controls 78.6% of the shares of Sears Canada.

1. SHLD owns 51.0% of Sears Canada's shares,
2. ESL owns 17.4% of Sears Canada's shares.
3. Edward Lampert personally owns 10.2% of Sears Canada shares.

As of Dec 31, 2014 Edward Lampert controlled 60.9% of Sears Canada shares.

1. SHLD owns 11.4% of Sears Canada's shares.
2. ESL owns 49.5% of Sears Canada shares.

Note: This information was taken from a number of publicly available sources.

Edward Scott Lampert

Chairman, Chief Executive Officer and Chairman of Finance Committee, Sears Holdings Corporation

Mr. Edward Scott Lampert, also known as Eddie, has been the Chief Executive Officer of Sears Holdings Corporation since February 1, 2013 and its Chairman since 2004. Mr. Lampert is the Founder at ESL Investments, Inc. since April, 1998, and has been its Chief Executive Officer since 2013 and Chairman and Chief Compliance Officer. He serves as a Director of Sears Holdings Corporation. Mr. Lampert serves as the Chairman of Kmart Holding Corp. Prior to that, he was a Director of AutoNation Inc. Mr. Lampert served as a Director of AutoZone Inc. since 1999. He was a Member of Skull and Bones and Phi Beta Kappa during his graduation at Yale University. Mr. Lampert received a B.A. in Economics, Summa Cum Laude, from Yale University in 1984.

Sears Canada Inc. Board of Directors Profiles

W. C. Crowley

Chairman of the Board

William Charles Crowley, also known as Bill, J.D., serves as Portfolio Manager at Ashe Capital and Ashe Capital Partners, LP. Mr. Crowley co-founded Ashe Capital. Prior to this, **he served as the President and Chief Operating Officer at ESL Investments, Inc. until 2012.** He was a Senior Vice President of Finance at Kmart Holding Corp. and has served as an Officer and Director of Kmart Holding Corp. since 2003. Previously, Mr. Crowley served as a Consultant at Sears Holdings Corp. since May 2010, where he previously served as the Chief Administrative Officer from September 30, 2005 to May 2010, Executive Vice President since March 2005, and Executive Director till May 2010, Chief Financial Officer from January 2007 to October 2007, Senior Vice President of Finance, Director, and also Interim Chief Financial Officer since January 31, 2007.

Mr. Crowley was an employee of ESL until 2012.

Ronald D. Boire

President and Chief Executive Officer

Ronald D. Boire appointed as acting President and Chief Executive Officer, effective October 15, 2014, and confirmed in the same role on January 26, 2015. Mr. Boire was most recently Executive Vice President, Chief Merchandising Officer and President, Sears and Kmart Formats, Sears Holdings Corporation in Hoffman Estates, Illinois. Prior to joining Sears Holdings in January, 2012, Mr. Boire was President and CEO at Brookstone, Inc., a position he held from October, 2009. Mr. Boire joined Toys R Us in 2006 eventually becoming President, North America. From 2003 to 2006, he served as Best Buy's Executive Vice President, Global Merchandise Manager and before that spent 17 years at Sony Electronics Inc. in a variety of increasingly senior roles.

Mr. Boire was an employee of Sears Holding until October, 2014.

William R. Harker

Vice-Chairman of the Board

William R. Harker serves as a Portfolio Manager of Ashe Capital Partners, LP. Mr. Harker also co-founded Ashe Capital Partners. Prior to this, Mr. Harker served as the General Counsel of ESL Investments, Inc. until 2012. Prior to this, he was a Consultant at Sears Holdings Corporation and served as its Senior Vice President from April 2006 to August 15, 2012.

Mr. Harker was an employee of ESL until 2012.

R. Raja Khanna

Lead Director

R. Raja Khanna is currently the Chief Executive Officer of Blue Ant Media Inc. and assumed this position in February 2008. Mr. Khanna co-founded QuickPlay Media Inc., a mobile video company, and served as its Chief Marketing Officer from 2004 until 2007.

Klaudio Leshnjani

Director and Executive Vice-President and Chief Operating Officer, Sears Canada Inc.

Mr. Klaudio Leshnjani serves as Chief Operating Officer and Executive Vice-President at Sears Canada Inc. Mr. Leshnjani served as an Executive Vice-President of Corporate Communications, Human Resources & Financial & Home Services of Sears Canada Inc. and its General Counsel since February 2008. Mr. Leshnjani served as Senior Vice President of Sears Canada Inc., since March 2011.

Mr. Leshnjani is an employee of Sears Canada.

James McBurney

Director

James Ronald Gordon McBurney, also known as Jim, served as the Chief Executive Officer of White Tiger Gold Ltd., (now Mangazeya Mining Ltd.) since July 18, 2012 until April 2013. Mr. McBurney has over 25 years experience advising many of the U.S.'s largest power and gas companies. He served as the Chief Executive Officer at HCF International Advisers Limited. He was employed at Bank of America Securities LLC as Head of Natural Resources Banking.

Deborah E. Rosati

Director

Deborah E. Rosati, also known as Debi, CA., ICD.D, Founded RosatiNet Inc., in 2001 and serves as its President. Ms. Rosati serves as General Partner of Celtic House Venture Partners. She has over 20 years experience in the field of finance and management. She has also held senior finance positions with Tundra Semiconductor Corporation (formerly Newbridge Microsystems, a division of Newbridge), Cognos, and BDO Dunwoody.

Danita Stevenson

Director and Senior Vice-President, Apparel & Accessories and Marketing, Sears Canada Inc.

Danita Stevenson serves as Senior Vice-President for Apparel & Accessories & Marketing at Sears Canada Inc. Ms. Stevenson served as Senior Vice-President of Apparel & Accessories at Sears Canada Inc. She served as Senior Vice-President of Apparel & Accessories and Marketing at Sears Canada Inc. and served as its Senior Vice-President of Apparel and Accessories since January 2014. Ms. Stevenson served as Senior Vice-President of Private Brands, Dresses and Outerwear at Sears Canada Inc. since 2013.

Mr. Stevenson is an employee of Sears Canada.

S. Jeffrey Stollenwerck

Director

Jeffrey Stollenwerck, also known as Jeff, has been President of Real Estate Business Unit of Sears Holdings Corporation since March 2012. Mr. Stollenwerck served as the Senior Vice President, Real Estate for Sears Holdings from March 2005 to February 2008 and the Vice President, Real Estate for Kmart Corporation from May 2003 to March 2005, prior to the Sears Holdings/Kmart merger in 2005.

Mr. Stollenwerck is an employee of Sears Holding.

NOTE: This information was taken from a number of publicly available sources.

 Seeking Alpha ^α

Sears Holdings' (SHLD) CEO Eddie Lampert on Q2 2014 Results - Earnings Call Transcript

Sears Holdings Corporation (NASDAQ:SHLD)

Q2 2014 Earnings Conference Call

August 21, 2014 8:00 AM ET

Executives

Robert A. Schriesheim – Executive Vice President and Chief Financial Officer

Edward S. Lampert – Chief Executive Officer and Chairman of the Board

Operator

Good day, ladies and gentlemen, and welcome to the Sears Holdings Corp. Q2 2014 Earnings Conference Call. At this time, all participants are in a listen-only mode. (Operator Instructions) As a reminder, this conference call is being recorded.

I now like to introduce your host for today's conference, Rob Schriesheim, Executive Vice President and Chief Financial Officer for Sears Holdings. You may begin.

Robert A. Schriesheim

Thank you, operator. Ladies and gentlemen, welcome to the Sears Holdings earnings call. I am Rob Schriesheim, Executive Vice President and Chief Financial Officer. Please note that this morning we released our second quarter earnings results which are now available on our website.

Joining me today is Eddie Lampert, our Chairman and Chief Executive Officer. For our call today, you may access the accompanying slide presentation, which is available on the Investors section of our website under Events & Presentations.

Before we begin, on Slide 2, I'd like to remind you that today's discussion will contain forward-looking statements related to future events and expectations. These statements are based on current expectations and the current economic environment or are based on potential opportunities and actual results may differ materially from those expressed or implied in the forward-looking statements.

You can find factors that could cause the Company's actual results to differ materially listed in today's press release, in the presentation for today's call that is posted at the Investor Information section of searsholdings.com, and in our most recent SEC filings.

In addition, on Slide 3, our discussion will include certain non-GAAP financial measures. Reconciliations to the most directly comparable GAAP financial measures can be found in the presentation and today's earnings release. Any reference in our discussion today to EBITDA means adjusted EBITDA, as defined in the earnings release and presentation. Finally, we assume no obligation to update the information presented on this call, except as required by law.

I would now like to turn to Slide 4, and turn the call over to Eddie Lampert.

Edward S. Lampert

Thanks, Rob. I also would like to thank all of you for joining us today.

Beginning on Slide 4, I will provide an update on the progress we are making in our transformation, review key highlights from the second quarter and briefly review some of the actions we are taking to simplify and focus our Company while creating long-term value for our shareholders. Rob will then review our financial results for the quarter and update you on our asset redeployment efforts in more detail.

Following Rob's remarks, I'll provide an update on the framework for profit that I introduced on our last earnings call, outlining our efforts to restore Sears Holdings to profitability. This framework is not meant to give guidance as to our future results or to predict that we will be successful in executing every aspect of this framework, but rather to highlight some of the different levers we're utilizing that could restore profitability.

As the CEO and the largest individual shareholder of Sears Holdings, I am personally committed to driving our transformation, improving our profit performance and ensuring our financial flexibility, all while creating shareholder value.

Slide 6 illustrates our transformation to move from a traditional retail operating model to a member-centric operating model. While retailers continue to be impacted by the same external factors, we are moving aggressively to address what we can control. We have a number of different levers at our disposal that will enable us to return a company of our size and scope to profitability and deliver value to our many stakeholders.

A key component for transforming our business is to move towards a structure that focuses on providing benefits to our members by combining technology, people and stores to form more personalized relationships with them. Our new business model is intended to be less asset-intensive and our new cost structure is intended to be more variable in nature.

Moving now to Slide 7. I will direct my opening summary comments on five key areas of focus: first, while we've continued to show progress on our transformation, as demonstrated by growth in our Shop Your Way penetration rates and our online sales growth, our second quarter earnings are unacceptable.

We are taking steps to address our performance on several levels including reducing costs, investing in the acceleration of our transformation, rationalizing our physical footprint to focus on our better performing stores and markets, and improving our pricing and promotional design to yield higher gross margins.

Given our scale, small changes can have a big impact on our results. For example, a 100 basis point increase in margin rate in the second quarter would have increased EBITDA by approximately \$80 million for the quarter and over \$300 million on an annualized basis.

Second, our transformation continues through Shop Your Way and Integrated Retail. We continue to see increasing engagement from our Shop Your Way members who drove 73% of eligible sales in the quarter. In addition, our Integrated Retail initiatives drove our online and multi-channel sales, up 18% in the quarter and 22% in the first half.

The success of these two platforms is allowing us to maintain relationships with our members as we rationalize our store footprint and place an increased focus on supporting our better performing stores. Despite the fact that adjusting our footprint has resulted in store closures, we continue to have a substantial nationwide footprint with a presence in many of the top malls in the country.

Third, we plan to take short and long-term actions to enhance our financial flexibility. We reduced our inventory by \$1.7 billion over the past three years as we closed stores and improved productivity. As a result, in the future we will be less reliant on inventory as the primary form of collateral in our financing arrangements. In the next six to 12 months, we intend to work with our lenders and others to evaluate our capital structure with a goal of achieving more long-term flexibility.

Fourth, we have a proven record of funding our transformation and our business model. We have a large, valuable, diverse and unencumbered set of assets and businesses. In the first half of 2014, we generated \$665 million in proceeds towards our initial stated goal of \$1 billion for the year.

We also continue to reduce our liabilities by: one, decreasing lease obligations by over \$1 billion over the past three years; two, reducing our underfunded pension status by over \$600 million in the past year; and three, reducing our

overall pension liability, including making \$1.5 billion lump sum payment in 2012 to our pension plan participants, which reduced our exposure to the market risk associated with managing pension plan assets.

Fifth, we continue to add to the talent pool of the company. We have brought in new leaders, and elevated others within the company, as we change our culture to be more accountable and focused on driving performance. We currently expect the combination of these actions to improve our operating results.

We will continue to take actions that we believe will create value and provide us with the financial flexibility to invest in the strategic priorities of the company. As changes occur in and around retail, we intend to be actively involved, focused on investments and acquisitions that we believe will accelerate and enhance our transformation.

I will now hand the call over to Rob who will take you through our second quarter results and financial position followed by a more detailed update of our asset redeployment and reconfiguration activities.

Robert A. Schriesheim

Thanks, Eddie. Slide 9 is a summary of our second quarter and year-to-date consolidated results. As we continue to invest in Shop Your Way and Integrated Retail, as part of our business model transformation, we seek to improve member engagement and enhance margins as we transition to a more variable-based promotional cost model.

In the near-term, we are incurring the cost of two promotional programs while also reducing our inventory levels, both of which impact our gross margins. Longer term, we expect our fixed promotional costs and selling and administrative expenses to decline and our variable promotional costs to result in higher margins.

While our area of greatest leverage is margins and promotional costs, we have continued to reduce fixed expenses. Since 2012 our annual fixed expenses have declined by about \$800 million.

Our significant revenue scale provides us with substantial operating leverage such that small improvements in margin rate and selling and administrative expense can lead to substantial improvements in EBITDA.

Let me now take you through some of the year-over-year changes underlying our results. Slide 10 is a waterfall chart providing components of the decline in revenues year-over-year. As you can see in the box on the upper right, about 95% of the \$858 million year-over-year decline was due to factors other than domestic comparable store sales performance.

The primary drivers of the decline include: domestic closed stores, which account for about 30% of the decline or \$256 million. As we have invested heavily in Shop Your Way and Integrated Retail capabilities, we believe we have the ability to retain a portion of members who shopped the closed stores, the separation of Lands' End accounting for 39% of the decline or \$330 million, \$47 million for domestic comparable store sales, about 6% of the decline, and Sears Canada accounted for 16%, or \$140 million of the decline.

Finally, we also experienced a revenue decline in our Home Services business during the quarter, as well as a decline in delivery revenues which combined, accounted for the majority of the other revenue decline of \$85 million.

Moving to Slide 11, as shown in the top box, the increase in our comparable store sales trends demonstrated a market improvement in the performance of both Sears and Kmart store sales. The steady growth we are seeing in Shop Your Way Members sales penetration and online and multi-channel sales is indicative of the success of the transformation. While we are moving in the right direction, there is more work to be done to get results where we expect them to be and to put other parts of the business on the right path forward.

As you can see in the chart on the lower left, our online and multi-channel sales grew 18% in the quarter and I note our first half was up 22%. We continue to make our online capabilities more robust and appealing for our members. We are also expanding our marketplace assortment and increasing the number of locations with in-store tablet capabilities.

Finally, we continue to invest heavily in our Shop Your Way platform. As a result, we continue to see higher levels of member engagement, demonstrating that our members are becoming even more engaged.

As indicated on Slide 12, for the quarter, our domestic comparable store sales declined by 0.8%, as Kmart experienced a 1.7% decline, which was partially offset by an increase in the Sears Domestic format of 0.1%.

Sears Domestic experienced continued momentum in our appliances and mattresses categories in Q2, leading to a positive comparable store sales growth of 0.1% as compared to a 0.8% decline last year, despite the continuing impact of negative consumer electronics industry trends.

Our electronics business has been a drag on the Sears format for some time. We are addressing this decline by shifting the focus of our electronics business away from simply selling TVs. By transforming the business into one that focuses on empowering Connected Living, we expect that the new electronics business will bring together our capabilities in fitness, electronics, appliances, home services and auto.

Adjusting for the negative impact of the consumer electronics business, Sears Domestic comparable store sales would have been about 150 basis points higher. Our Auto business, despite its efforts to focus on services, experienced a comparable store sales decline in the low double-digits in the second quarter.

Kmart's comparable store sales were down 1.7% as compared to 2.1% decline last year. Our grocery & household business continued its poor performance, which has persisted for more than a year and which we intend to address going forward with assortment updates, private label growth, and pricing promotional effectiveness initiatives. If we exclude the impact of the grocery & household and electronics categories the comparable store sales performance at Kmart would have declined 1%.

Note further, that had it not been for the consumer electronics and grocery & household categories, total Sears Holdings Corp Domestic would have had the comparable store sales increase of 0.4%.

Slide 13 shows that for the quarter, our gross margin decreased by about \$444 million to \$1.7 billion in 2014. About 37% of the year-over-year decline was due to margin rate deterioration, with the remaining change of 63% due to other factors. More specifically, the year-over-year impact of domestic closed stores accounted for approximately \$54 million, or about 12% of the change.

The impact of the Lands' End separation represents about \$126 million, or about 28% of the change. The set of bars labeled Domestic Operating Performance, is a net amount of \$167 million or about 38% of the total margin decline, with the margin rate impact accounting for nearly all the decline. As compared to the prior year, Kmart's gross margin rate declined 250 basis points, with decreases experienced in a majority of categories, particularly apparel, home and grocery & household.

Sears Domestic's gross margin rate declined 330 basis points for the quarter with decreases experienced in a majority of categories, most notably apparel, home appliances partially due to free delivery, tools and footwear.

Next, as indicated, we increased our year-over-year investment in Shop Your Way points by \$43 million. The higher cost of points demonstrates increased member engagement and is an indicator of the progress that we are making in our transformation to be a member-centric integrated retailer.

Furthermore, it is important to understand that we recognized the points expense when points are issued to our members. We expect to see additional revenue and margin benefit from the points that were issued in the first quarter throughout the remainder of 2014 and into 2015 as the points will continue to be redeemed in the future.

Also, as previously noted, we've continued with our traditional promotional programs at historical levels as we plan to move through the transformation in a thoughtful and deliberate manner. Finally, Sears Canada's gross margin declined by \$54 million in the second quarter, accounting for approximately 12% of the year-over-year margin decline.

Slide 14 summarizes some of what we believe are our substantial financial resources. We had \$839 million of cash at quarter-end on a consolidated basis. In addition, we had immediate availability to borrow about \$486 million on our credit facilities, which reflects the effect of both the springing fixed charge coverage ratio covenant and borrowing base requirement of our domestic credit facility.

We also had \$3.9 billion of equity in inventory. Note that inventory is a current asset which can be converted to cash very quickly, or on average in 90 days in the normal course. Taken together, we had about \$5.2 billion of liquidity or liquid assets on a consolidated basis, which could be converted into cash in the near-term.

While I'll provide more detail on our resources later, year-to-date we have generated approximately \$664 million of proceeds from non-core asset dispositions, including \$500 million from a dividend associated with the distribution of

Lands' End and approximately \$164 million derived from the sale of real estate.

We continue to have multiple options to generate additional liquidity given our ability to access diverse funding sources as well as the asset rich nature of our portfolio. More specifically we have a \$500 million uncommitted commercial paper line of which we had \$493 million available as of the end of the second quarter. We have a 51% equity stake in Sears Canada with a current market value of about \$765 million as of August 19.

We have continued to demonstrate our ability to monetize our substantial unencumbered real estate assets and there are numerous other forms of transactions that we could pursue to pursue additional liquidity expeditiously using our real estate. We are permitted to raise up to a maximum of \$760 million of second lien debt, subject to borrowing base requirements.

I would also point out that we have no term debt maturities until June of 2018 and our revolver is in place through April of 2016. We also, as previously disclosed, continue to explore strategic alternatives for Sears Auto Centers.

Slide 15 presents our inventory, payables and net inventory balances for the past three years on a consolidated basis. We have had success reducing the capital required to run our business, as we have reduced our net inventory investment by about \$1.7 billion over the past three years. By reducing our net inventory investment and our payables we have decreased the level of vendor support needed to run our business, improving our business model in a way that benefits both us and our vendor partners.

Inventory productivity has been a key priority this quarter and our efforts have resulted in a decrease of our domestic net inventory by \$510 million year-over-year, excluding the impact of Lands' End. To this end, we have been reducing slower selling inventory and focusing on keeping our overall inventory position fresh and relevant. This initiative has hurt our overall gross margin in the near-term, but we believe that our efforts now to build a fresher and more productive inventory assortment are important and necessary steps to drive better sales, profit and inventory productivity going forward.

On Slide 16 you can see that our Domestic Pension Contributions over the past nine years, including 2014, have totaled \$2.9 billion. We expect this year to mark the peak of our pension funding needs going forward with our pension funding declining through 2019, at which point we expect our pension to be fully funded.

As you can see, prior to taking into account new legislation, our aggregate pension funding requirements over the five-year period ending 2019 are expected to be about \$1.1 billion at which point we expect to be fully funded, as I noted, based on current interest rates and regulations, and possibly sooner should interest rates increase. This should provide relief from the funding pressures we have felt as we have honored our legacy pension obligations.

On August 8, new legislation was enacted that amends existing pension funding requirements. We expect the new legislation to increase the discount rate we use to determine our pension liability, resulting in lower liabilities and lower funding obligations as shown in the yellow highlighted box.

Slide 17 itemizes our debt balance as of the end of the second quarter, and after making some adjustments, provides our adjusted domestic net debt position. Let me offer a few comments. First, as the box on the upper right notes, our revolver borrowings and our commercial paper outstanding are down with our short-term borrowings down by \$352 million. Our domestic cash is up by \$213 million, meaning that our net short-term borrowings are down by \$565 million on a year-over-year basis.

Second, while our total domestic debt has increased by about \$592 million, our adjusted domestic net debt position, when including cash and our unfunded pension obligation, is down about \$220 million year-over-year. Note that the company's legacy pension obligation is essentially a form of debt and has influenced revolver usage. The \$1.1 billion of contributions made in the last 10 quarters have been funded by revolver borrowings. On a pro forma basis, the revolver balance would be \$339 million absent these contributions.

So we have used one form of debt, mainly the revolver, to fund another form of debt, being the pension. Since 2012, about \$1.1 billion of the second quarter revolver balance of \$1.4 billion was driven by pension contributions, which should be distinguished from funding operating expenses.

If we are successful in monetizing our 51% stake in Sears Canada at current market values, this result in cash proceeds of about \$765 million. This would afford us the option to apply these proceeds to our domestic revolver,

which would have the impact of reducing the domestic revolver and adjusted domestic net debt balances, should we decide to do so.

On Slide 18, we show our domestic net short-term debt position was down versus last year by \$565 million to \$808 million, primarily due to lower borrowings under our revolver, lower levels of commercial paper and higher levels of cash.

Next, we show availability on our committed domestic credit facility. I'd make two points about the year-over-year change in the availability on our committed domestic credit facility, both of which are primarily driven by our more efficient management of inventory.

First, our capacity at the end of the second quarter was about \$2.3 billion. Although the credit facility provides for up to \$3.275 billion of revolver commitments, our ability to use the entire facility was limited at quarter's end by our borrowing base, which is determined based on the value of eligible inventory and other collateral. Also, just as last year, we did not have access to about 10% of the total commitments because we would not have met the springing fixed charge coverage ratio covenant.

Second, as we have managed our inventory more efficiently, we have less need to borrow, and our resulting borrowing capacity is about \$665 million lower than this time last year. At seasonal highs, during the 2014 Holiday Season, we currently anticipate that our domestic inventory will be at a level that the borrowing base will not limit access to the credit facility.

After deducting quarter end borrowings and outstanding letters of credit and factoring in the impact of the springing fixed charge coverage ratio covenant and borrowing base requirement, our availability to borrow at the end of the second quarter was \$240 million versus \$759 million at the end of the second quarter last year.

However, similar to net short term debt, that doesn't tell the whole story. Cash was greater than last year and incremental capacity under our uncommitted commercial paper program was also greater than last year. After including the impact of cash and incremental commercial paper capacity, we had \$1.3 billion of potential liquidity compared with \$1.4 billion last year. Note, we also are permitted to raise up to \$760 million in additional second lien debt, subject to borrowing base requirements.

I would also note that we would continue to de-lever our balance sheet and increase our availability to the extent we are successful in monetizing our 51% stake in Sears Canada. Further, we currently have \$500 million of authorization remaining for share re-purchases as well as \$275 million of authorization remaining for re-purchases of our debt.

As we have commented, we believe that we have sufficient liquidity to run the business and also have the benefit of access to a rich portfolio of assets, which we have demonstrated.

Moving to Slide 19, you will see that we have continued to manage down our retail store footprint and the associated present value of lease obligations. As we continue to manage our store footprint, we expect to further reduce these obligations in the coming years. Reducing our net minimum lease payments decreases corporate obligations and further de-risks our business model.

As shown on Slide 20, our debt structure is in place for the next few years, as our domestic revolver extends into 2016, we have negligible term debt maturities over the next several years and we have multiple options available to us for any refinancing we may want to consider.

As indicated earlier we have reduced our inventory by \$1.7 billion over past three years via store closings and productivity. And as Eddie commented this will alter our reliance on inventory as the primary form of collateral in our capital structure. Over the next six to twelve months, we intend to work with our lenders and others to evaluate our capital structure with a goal of achieving more long term flexibility, and may take action sooner, as appropriate.

I would now like to shift gears and spend a few minutes discussing how we are redeploying our portfolio of assets which we believe will accelerate and fund our transformation. On Slide 22, we show the framework we use to evaluate potential strategic transactions.

We believe that these transactions will enable us to accelerate and fund our transformation when they allow Sears Holdings, the separated entity, or both entities to, one, become a more focused company that is more efficient to

manage and easier to understand; two, pursue its own strategic opportunities, and attract talent; three, optimize its capital structures, and allocate capital in a more focused manner; four, enhance its financial flexibility, and five, provide opportunities for our shareholders to continue to participate in the value creation generated by these businesses after separation.

We believe that we are executing on a plan to increase financial flexibility, further de-risk our balance sheet and create shareholder value. We expect to continue with these types of activities during the remainder of 2014.

On Slide 23, we provide an update on our asset reconfiguration activities. On our Q4 and Full Year 2013 Earnings call in February of this year, we disclosed that at the time, we expected that the combination of, one, the Lands' End transaction; two, our continuing to work with the board and management of Sears Canada to increase the value of our investment, and three, our evaluation of strategic alternatives with respect to our Sears Auto Centers when taken together would result in cash proceeds to the company in excess of \$1 billion in 2014 to help fund our transformation and create value. We believe that we are on track to deliver cash proceeds of \$1 billion, having raised \$664 million through the first half of the year.

On April fourth, we completed the separation of Lands' End through a pro rata distribution to our shareholders and received an exit dividend from Lands' End in the amount of \$500 million as anticipated. On May 14th, we announced that we intended to hire an investment banking firm to explore strategic alternatives for our 51% equity stake in Sears Canada, including a potential sale of our 51% interest or of Sears Canada as a whole. We subsequently engaged BofA Merrill Lynch to assist us in connection with these efforts.

Sears Canada's board of directors has advised us that they intend to support Sears Holdings in this process to achieve value for all shareholders. The market value of our 51% interest was about \$765 million as of August 19. As we have previously disclosed, we are continuing to evaluate strategic alternatives for our Sears Auto Centers business. We have had discussions with third parties regarding a variety of opportunities, including partnerships. We cannot give you any assurance that we will be successful in this effort or with Sears Canada.

In addition, we are capitalizing on the flexibility in our real estate portfolio to reduce unprofitable stores as leases expire and in some cases accelerate closings when economically prudent, as well as continuing to benefit from the value of our real estate in both the U.S. and Canada. Through the first half of the year, we have received \$164 million in proceeds from Real Estate transactions.

We have announced that we expect to close about 130 stores in 2014, which include a combination of leased and owned locations. We have closed about 95 to date. To put this into perspective, following these closures, we will still have about 1,900 Sears and Kmart big box stores in operation, representing about 200 million square feet throughout the United States to serve our members. Few companies have this scale and reach.

I would also point out that we believe that our investments in Shop Your Way and Integrated Retail will enable us to migrate the shopping activity of highly engaged members who previously shopped these closed stores to alternative channels. As a result, we would expect to retain a portion of the sales previously associated with these 130 stores by nurturing and maintaining our relationships with the members that shopped these locations.

We expect that the store actions, together with our expected reduction in inventory needs during the regular selling seasons and the holiday peak season, will further de-risk our business model and that of the vendors who sell to us. We also expect that these actions should decrease our working capital needs and improve our profitability going forward.

I would also point out, that while we are adjusting our store base, we continue to operate stores in some of the best malls in America. Two reports have been done over the past six years, one by Goldman Sachs listing the top 100 malls in America, and the other by Morgan Stanley listing the top 100 fashion malls in America. Combining the two lists, in 2007, we were in 63 of the malls and we are now in 61. We are retaining stores in some of the best locations even as we close stores to optimize our store footprint and reduce lease obligations.

Moving to Slide 24, I will now turn the call back over to Eddie who will provide an update on the framework for profit that he outlined on our previous earnings call.

Edward S. Lampert

Thanks, Rob.

Transitioning to this section on Slide 24, I mentioned that I want to use this opportunity to provide an update on the levers we are using to restore profitability to Sears Holdings. As I have said before, the framework I am outlining is not intended to provide guidance as to our future results or predict that we will be successful in executing any aspect of this framework. It is intended to describe the opportunities we are focused on to increase profitability.

Slide 25 highlights that we believe that fostering deep and lasting relationships with our members will drive sustainable and profitable growth. As we pursue this fundamental objective, we will remain disciplined stewards of capital, with an overriding focus on creating value for our shareholders. A transformation of this size and scale is difficult, but our entire management team is committed to its execution.

Slide 26 we outlines the framework of our new model, which leverages our scale and the investments that we continue to make in the Shop Your Way program and Integrated Retail capabilities. These include, optimizing store network and square footage, accelerating Shop Your Way and Integrated Retail as the foundation of our business. Transforming select business models and reducing selling and administrative expenses.

Turning to Slide 27, we've announced plans to close about 130 stores in 2014, having closed about 95 to date. In fiscal 2013, these stores generated almost \$1B in sales; however, they generated an EBITDA loss of about \$26 million. Due to the flexibility in our real estate portfolio we believe we will be able to close these underperforming locations efficiently. So, by closing these locations, we would expect to generate approximately \$26 million of incremental EBITDA on an annualized basis by avoiding the losses they currently produce. Furthermore, closing these locations is expected to reduce our working capital requirements by about \$160 million in 2014.

Additionally, we believe that there is opportunity to retain a portion of the sales associated with the closed locations by maintaining a relationship with the members who shopped those stores. This belief is based on experience we have had to date in stores that we have closed over the last year. As is shown on the slide, we believe that the annualized EBITDA value of retaining these members could be about \$50 million, resulting in a total annualized EBITDA benefit of about \$73M. As our ability to retain members improves, we believe that the potential annualized impact of optimizing our store network could be about \$300 million to \$400 million.

Turning to Slide 28, we have made substantial investments in Integrated Retail capabilities in our stores. We are seeing these investments drive very good results, and we will continue to roll out these capabilities to additional stores throughout the remainder of the year. For example, these abilities include more flexible technology, like the ShopSears app utilized by associates in stores, digital signs, which enable dynamic pricing and marketing, and RFID technology, which enables our associates to do inventory counts in a fraction of the time giving them more time to focus on serving our members.

This has resulted in improved sales and margins in the stores where we have enabled this technology. Based upon this experience, which we have introduced at hundreds of locations, we believe there is the potential to generate about \$500 million in incremental annual revenues and between \$150 million to \$200 million of incremental annual EBITDA for these initiatives alone.

On Slide 29 we wanted to highlight that our In Vehicle Pickup has received very positive feedback from our members. We launched this member benefit in the first half of the year at our Sears Full-Line Stores to make pickup of online orders easier. This is one of the many ways we demonstrate our industry leadership in leveraging online channel and physical stores to enhance the integrated shopping experience. Based on that positive feedback we are looking to expand this capability to Kmart and are piloting it in 115 Kmart stores.

On the bottom half of this slide, we show that during the second quarter we announced new functionality that allows our members and customers to order from sears.com and kmart.com and pick up in either format stores, all over the United States. This will allow members and customers to shop their favorite brands and pickup at the location most convenient to them, with no charge for shipping.

On Slide 30, we show that the difference in annual spend between an average engaged Shop Your Way member and a very engaged Shop Your Way member continues to be significant, with our most actively engaged members spending 75% more than our average active member.

We are focused on targeted actions that will convert more of our average active members to more engaged members

and we continue to see positive signs that these actions are working. Both the number of members that have redeemed points in the last 12 months and the number of contactable members have increased meaningfully. To put this in perspective, moving one million members from average to most engaged status represents \$50M in EBITDA.

We are focused on enhancing margins and reducing our overall cost of goods through a number of initiatives. On Slide 31 we show that cost of goods annual spend is \$23.6B. We have invested in our pricing capabilities, both in people and technology, which will enable us to be more targeted and real-time, responding to our members' needs and the competitive environment. We are also focused on shifting our promotional design to be less dependent on promotional markdowns and replacing them with Shop Your Way points, where it makes sense.

There will always be a level of promotional markdowns as part of our go to market promotional design, but our intent is to replace a portion of our existing promotional markdowns with Shop Your Way points. Also, we are focused on optimizing our supply chain to right-size our network, and leveraging our real estate portfolio by partnering with other retailers to lease out valuable but unproductive space.

Strategic sourcing is one specific area I would like to call out where we have made some progress since our last call. In the first half of the year, we have executed a number of strategic sourcing initiatives that we expect will improve profitability for the company in the future by \$80 million on an annualized basis. We will continue to utilize the strategic sourcing framework to continue to identify and go after additional savings across both merchandise and non-merchandise sourcing.

Through these actions, you can see that with revenue held constant, each 1% reduction in our cost of goods, which would include the impact of sub-lease income, would generate an incremental \$230 million of annual EBITDA.

On Slide 32, selling and administrative expense is also an area of focus. As we have discussed in the past, we have reduced our fixed expense structure by about \$800 million annually over the past three years, though this is a mix of costs included in both cost of goods sold and selling and administrative expense. Through the first half of the year, we have reduced our fixed expenses by \$30M, and we believe there is still significantly more opportunity.

Our areas of focus are re-engineering processes, leveraging technology and shifting our marketing mix. In the first half of the year, we shifted more of our marketing dollars from fixed marketing assets to more variable-based, targeted digital assets, reducing our marketing expenses by \$42 million while maintaining similar levels of marketing productivity. I would point out that the impact of these initiatives can be substantial. With revenue held constant, each 2% reduction in selling and administrative expenses translates into \$150 million of incremental EBITDA.

On Slide 33 we aim to clearly show both the challenge and the opportunity represented by Apparel. Our revenue per square foot in our apparel business is about one third of the industry average. Each \$10 improvement in our sales productivity per square foot represents \$100 million in incremental annual EBITDA.

To that end, we are aggressively transforming our apparel business with a focus on refreshed brands and product assortments and are reducing lead times to better meet our members' needs. We are excited about our brand introductions, including the launch of Impact by Jillian Michaels, a performance activewear collection for women, which further strengthens our fitness offerings.

We recognize the need to continue to innovate in our fabrics and unique styles and designs. We plan to launch new technology in fabrics and design in our Everlast women and men's lines. We have also been working to improve our ability to react faster to member needs and changing trends. We will reduce risk by making smaller and more seasonal buys, and reducing lead times to better meet our members' needs. We successfully reduced lead times by over 30% in more than 25 brands, and reduced SKUs by about 30%. These shorter lead times and focused assortments will permit greater flexibility, speed and accuracy going forward.

Turning to Slide 34, we depict our connected solutions business initiative. Connected Solutions are focused on providing our members with products that can be monitored and managed from their smart device anywhere in the world, helping our members better manage their lives.

We've brought together one of the most authoritative assortments of smart, connected home and personal automation products from both well-known national brands, as well as innovative start-ups across diverse categories such as, home automation products such as thermostats, smart locks, lighting, switches and sensors, mobile phones and tablets, as well as service plans from AT&T and Verizon, smart watches, fitness products, such as treadmills, fitness

bands and heart rate monitors, connected garage door openers, including Craftsman Assurelink and connected baby monitors.

Slide 35 shows our phased approach to growing the Connected Solutions platform. Our approach will continue to evolve as we just recently recruited a new leader to drive this business.

On Slide 36, I want to touch briefly on working capital, which has and will continue to be an important area of focus. As we have discussed before, we have reduced our net domestic inventory levels by over \$1 billion over the past three years. We believe there's still substantial opportunity to further improve our inventory productivity.

We are focused on a number of initiatives centered on, one, reducing the levels of slow moving and unproductive inventory, two, buying and flowing our merchandise differently given our Shop Your Way program and Integrated Retail platform, and three, buying smaller quantities of merchandise and turning it more frequently.

As you can see on the slide, if we can turn our inventory one more time per year, we can reduce our net working capital requirements by about \$400 million, enhancing liquidity and freeing up capital that could be used to further invest in our transformation.

On Slide 37, we provide a summary of the initiatives laid out on the previous slides. As you can see, if we successfully execute on these opportunities, they have the potential to generate incremental annual EBITDA of between \$1 billion and \$2.4 billion under the assumptions as indicated. We believe we have a substantial opportunity to compete successfully in the changing retail landscape by proactively transforming our business to meet the new realities of the industry.

As I have said in the past, transformations of this size and scale are not easy, and we may continue to experience challenges in our financial performance over the next several quarters. However, we have made progress across a wide spectrum of initiatives, such as leveraging our Shop Your Way and Integrated Retail platforms, reducing our legacy pension obligation, managing our expenses, de-risking our balance sheet, and enhancing our financial flexibility to position ourselves to meet all of our financial obligations.

We believe these initiatives, when coupled with executing on the profitability framework I just described, will position us to play offense and enable us to continue to seek opportunities to grow and invest in our business.

We are committed to driving profitability, and we expect to focus on our strengths, including our best members, best stores and best categories. As the CEO and the largest individual shareholder of Sears Holdings, I am personally committed to driving our transformation, improving the profit performance of the company and creating shareholder value. Our team is committed and is actively engaged in the daily work to make this transformation work.

Operator

Ladies and gentlemen, thank you for participating in today's conference. This concludes today's program. You may now disconnect. Everyone, have a great day.

Question-and-Answer Session

[No Q&A session for this event]

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Operator

Good day, ladies and gentlemen, and welcome to the Sears Holdings Corp. Q2 2014 Earnings Conference Call. At this time, all participants are in a listen-only mode. (Operator Instructions) As a reminder, this conference call is being recorded.

I now like to introduce your host for today's conference, Rob Schriesheim, Executive Vice President and Chief Financial Officer for Sears Holdings. You may begin.

Robert A. Schriesheim

Thank you, operator. Ladies and gentlemen, welcome to the Sears Holdings earnings call. I am Rob Schriesheim, Executive Vice President and Chief Financial Officer. Please note that this morning we released our second quarter earnings results which are now available on our website.

Joining me today is Eddie Lampert, our Chairman and Chief Executive Officer. For our call today, you may access the accompanying slide presentation, which is available on the Investors section of our website under Events & Presentations.

Before we begin, on Slide 2, I'd like to remind you that today's discussion will contain forward-looking statements related to future events and expectations. These statements are based on current expectations and the current economic environment or are based on potential opportunities and actual results may differ materially from those expressed or implied in the forward-looking statements.

You can find factors that could cause the Company's actual results to differ materially listed in today's press release, in the presentation for today's call that is posted at the Investor Information section of searsholdings.com, and in our most recent SEC filings.

In addition, on Slide 3, our discussion will include certain non-GAAP financial measures. Reconciliations to the most directly comparable GAAP financial measures can be found in the presentation and today's earnings release. Any reference in our discussion today to EBITDA means adjusted EBITDA, as defined in the earnings release and presentation. Finally, we assume no obligation to update the information presented on this call, except as required by law.

I would now like to turn to Slide 4, and turn the call over to Eddie Lampert.

Edward S. Lampert

Thanks, Rob. I also would like to thank all of you for joining us today.

Beginning on Slide 4, I will provide an update on the progress we are making in our transformation, review key highlights from the second quarter and briefly review some of the actions we are taking to simplify and focus our Company while creating long-term value for our shareholders. Rob will then review our financial results for the quarter and update you on our asset redeployment efforts in more detail.

Following Rob's remarks, I'll provide an update on the framework for profit that I introduced on our last earnings call, outlining our efforts to restore Sears Holdings to profitability. This framework is not meant to give guidance as to our future results or to predict that we will be successful in executing every aspect of this framework, but rather to highlight some of the different levers we're utilizing that could restore profitability.

As the CEO and the largest individual shareholder of Sears Holdings, I am personally committed to driving our transformation, improving our profit performance and ensuring our financial flexibility, all while creating shareholder value.

Slide 6 illustrates our transformation to move from a traditional retail operating model to a member-centric operating model. While retailers continue to be impacted by the same external factors, we are moving aggressively to address what we can control. We have a number of different levers at our disposal that will enable us to return a company of our size and scope to profitability and deliver value to our many stakeholders.



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

Mitch Frazer
 mfrazer@torys.com
 P. 416.865.8220

July 21, 2014

VIA EMAIL

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

Attention: Andrew Hatnay

Dear Mr. Hatnay:

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

We are writing in response to your letter dated June 26, 2014 regarding the matter involving the above-noted parties.

Health and Welfare Trust

You have asked for copies of the documents relating to the Health and Welfare Trust which pays health benefits to Sears Canada Inc. (the “SC”) retirees. Our client is still considering this request.

Pension Advisory Committee

Our client has also considered your request with the respect to the formation of a pension advisory committee pursuant to section 24 of the *Pension Benefits Act* (Ontario) (the “PBA”). While our client is not opposed to the formation of an advisory committee as provided for under section 24 of the PBA, it suggests that it would be most appropriate to do so after the corresponding regulations are implemented so that the advisory committee can be established in a proper and organized manner in accordance with the regulations.

Dividend and Shareholder Payments

SC's fiduciary obligations to the Plan under the PBA are strictly its duties as the Plan's administrator. The obligation to fund a pension plan is that of the employer under the Plan, not the plan administrator. As such, SC does not have a fiduciary duty to plan members to fund the Plan. Instead, SC has a statutory obligation to fund the Plan in accordance with the requirements of the PBA and the Plan terms. SC has funded, and continues to fund, the Plan in accordance with the last filed actuarial report required under the PBA. There has been no breach of fiduciary duties as you assert.

Regards,



Mitch Frazer

MF/se

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

August 26, 2014

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

Via Email

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

Attention: Mitch Frazer

Dear Mr. Frazer:

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

We acknowledge receipt of your letter dated July 21, 2014.

Health and Welfare Trust

Your response to our client’s repeated requests for copies of the Health and Welfare Trust documents is unacceptable. Your client has had this request under consideration for several months. The purpose of the trust is to pay health benefits to retirees. You have confirmed that the trust will run out of funds in less than a year and that Sears Canada is not contributing any funds to the trust. In so doing, Sears Canada has placed the security of the retirees’ health benefits at serious risk. Please provide copies of the Health and Welfare Trust documents immediately.

Dividend Payments to Shareholders

It appears that Sears Canada misunderstands its role as pension plan administrator of the SRRP. Sears Canada is both the *employer* and the *plan administrator* of the SRRP. Sears Canada is always the plan administrator and as such owes a fiduciary duty to the plan members under the PBA and the common law to act in their best interest. It cannot artificially separate its role as employer from its role as plan administrator to suit its own self-interested purposes, for example, by paying dividends to its majority shareholder, Sears Holdings Corporation (to whom Sears Canada does not owe a fiduciary duty), instead of using its funds to make contributions to the

underfunded pension plan so that the plan is fully funded. As the Supreme Court of Canada made clear in *Indalex*¹:

[65] Section 22(4) of the PBA explicitly provides that a plan administrator must not permit its own interest to conflict with its duties in respect of the pension fund. Thus, where an employer's own interests do not converge with those of the plan's members, it must ask itself whether there is a potential conflict and, if so, what can be done to resolve the conflict. Where interests do conflict, I do not find the two hats metaphor helpful. *The solution is not to determine whether a given decision can be classified as being related to either the management of the corporation or the administration of the pension plan.* The employer may well take a sound management decision, and yet do something that harms the interests of the plan's members. *An employer acting as a plan administrator is not permitted to disregard its fiduciary obligations to plan members and favour the competing interests of the corporation on the basis that it is wearing a "corporate hat".* [emphasis added]

Furthermore, Sears Canada's obligations to fund the SRRP are not limited to the minimum funding standards of the PBA. Sears Canada cannot rely on the PBA's minimum standards to escape its fiduciary duty to plan members and avoid contributing the appropriate amounts to the pension plan so that it pays the amount of pension benefits that the employees earned as deferred wages and Sears Canada agreed to pay.

Surely, the best interests of the plan members must include that the full amount of pension benefits that they earned as deferred wages is secure. The fiduciary duty on Sears therefore requires Sears to appropriately fund the SRRP so that it will pay full pension benefits. The PBA's minimum standards apply alongside the fiduciary duty on Sears Canada; they do not displace Sears Canada's fiduciary duty.

As we have stated previously, the payment of any dividends to shareholders while the SRRP remains underfunded is a breach of Sears Canada's fiduciary duty to the plan members and is oppressive under Canadian oppression laws. SCRG continues to oppose the payment of past and any future payment of dividends to shareholders.

Taking Temporary Solvency Funding Relief is inappropriate

We have been provided with a copy of a letter sent by Sears Canada to all members of the SRRP dated August 7, 2014 stating that Sears Canada is again taking advantage of Temporary Solvency Funding Relief measures to defer paying new special payments required to fund the SRRP. By taking advantage of solvency relief funding measures, Sears Canada is contributing significantly less to the SRRP.

¹ *Sun Indalex Finance, LLC v. United Steelworkers*, 2013 SCC 6

SCRG objects to Sears Canada taking solvency funding relief at this time. The latest quarterly report of Sears Canada indicates that its retail business continues to lose money. Sears Holdings Corp. (Sears Canada's parent company and the 51% owner of Sears Canada) also continues to lose money. Despite steadily losing money over the past several years, Sears Canada has paid over \$1.4 billion to shareholders since 2010, the bulk of which were paid to Sears Holdings. It is entirely inappropriate for Sears to take advantage of funding relief measures at this time. Instead, the fiduciary duty on Sears Canada requires it to pay more, not less, to the pension plan so that the plan will pay full benefits to retirees. Indeed, Sears Canada essentially acknowledges in its memorandum that it is acting *against* the interests of the pension plan and its members: "*the security of your pension benefits may be affected* as it means that in the short term, less money is going into the Pension Plan to fund the solvency deficiency".

Instead of taking advantage of solvency funding relief, Sears Canada should pay all necessary contributions to fully fund the pension plan as soon as possible.

Discussions with potential purchasers of Sears Canada

There have been reports that Sears Holdings is in discussions with parties for a sale of Sears Canada to "monetize" Sears Holdings' ownership interest in Sears Canada and then transfer those funds to Sears Holdings in the United States. It is obvious that Sears Holdings and Sears Canada management do not have any intention to turnaround Sears Canada's failing retail business and instead only seek to extract cash from Sears Canada while paying as little as possible to the underfunded pension plan. This strategy is confirmed in the following excerpts from the recent Earnings Call with Sears Holdings management of August 21, 2014:

We [Sears Holdings] have a 51% equity stake in Sears Canada with a current market value of about \$765 million as of August 19.

...

If we are successful in monetizing our 51% stake in Sears Canada at current market values, this result in cash proceeds of about \$765 million. This would afford us the option to apply these proceeds to our domestic [U.S.] revolver, which would have the impact of reducing the domestic revolver and adjusted net debt balances, should we decide to do so.

...

On May 14th, we announced that we intended to hire an investment banking firm to explore strategic alternatives for our 51% equity stake in Sears Canada, including a potential sale of our 51% interest or [sic] of Sears Canada as a whole. We subsequently engaged BofA Merrill Lynch to assist us in connection with these efforts.

Sears Canada's board of directors has advised as that they intend to support Sears Holdings in this process to achieve value for all shareholders.

SCRG requests that it be involved in the discussions relating to the sale of Sears Canada. A sale will have a direct impact on the future of the underfunded SRRP and the security of the members' pension benefits, and exposes the pension plan members to losses to their pension benefits, particularly if the underfunded SRRP is wound up.

Please keep us apprised of all transaction developments so that SCRG can participate in those discussions. SCRG would be agreeable to executing the appropriate confidentiality agreement with respect to such discussions.

We look forward to hearing from you.

Yours truly,

KOSKIE MINSKY LLP



Andrew J. Hatnay
AJH/vdl

cc SCRG
Philip Howell, CEO and Superintendent of Financial Services of Ontario
Deborah McPhail, Senior Counsel, FSCO
Penny McIlraith, Pension Officer, FSCO
Mark Zigler, James Harnum, *Koskie Minsky LLP*

November 6, 2014

Via Email

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

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

Dear Mr. Frazer:

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

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

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

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

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

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

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

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

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

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

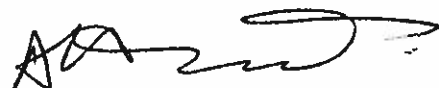
Accordingly, we believe it is incumbent on Sears Canada to consider winding up the SRRP now, paying all amounts that are owing to the plan on the wind up, and purchasing annuities that will provide the continued payment of full pension benefits to the retired plan members. A wind up is also important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

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

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

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

Yours truly,
KOSKIE MINSKY LLP



Andrew J. Hatnay
AJH/vdl

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

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



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

Mitch Frazer
mfrazer@torys.com
P. 416.865.8220

November 21, 2014

VIA E-MAIL

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

Attention: Andrew J. Hatnay

Dear Mr. Hatnay:

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

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

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

Regards,

A handwritten signature in black ink, appearing to read "Mitch Frazer".

Mitch Frazer

MF/cd

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

Chairman's Letter

February 26, 2015

To our Shareholders, Associates and Members,

The year 2014 was one of massive transformation. One after another, major American institutions sought to fundamentally change the way they interact with their customers, in most cases trying to catch up to new ways that people choose to access products and services. In most instances, these changes were puzzling to people who don't spend a lot of time focusing on what change looks like up close.

For Sears and Kmart, after years of work at becoming a fully integrated retailer that meets the needs of our members wherever, whenever and however they want to shop, we didn't slow down - we sped up. We're anticipating and adapting to the way members and customers shop, not by guessing what the next big thing might be, but by working to better understand the members we serve through data that allows us to know not only what but also why they buy and then creating experiences around that.

This isn't new for Sears. An article in the October 2014 issue of *Harvard Business Review*, "[Sears Has Come Back from the Brink Before](#)," detailed how Sears found its mail-order catalog business falling into crisis in the 1920s as America changed from a predominantly rural country and everything from cars to national radio advertising left Sears rudderless. Then Sears started using census data to anticipate where potential customers were moving; few if any others did this. Using this information, the first Sears store opened in Chicago in 1925. By the time suburbs started being built after World War II, Sears had become the icon for big retail and an anchor tenant in malls that were developed around the country.

Time and again, people have proclaimed our company all but dead. As I [wrote in a blog post late last year](#), in 1988 our hometown business journal wrote a devastating 14,297-word eulogy for Sears. Virtually all of the companies that Sears was allegedly trailing back then are now gone and forgotten. Many others have merged or simply closed.

These old stories got it partially right. Had we not embarked on a course change; had we not, especially in recent years, started to creatively disrupt ourselves; Sears and Kmart would probably be no more than a treasured American memory.

Without the aggressive steps we have already taken to transform Sears Holdings from the predominantly brick-and-mortar retailer it once was to a best-in-class multi-channel integrated shopping experience for our members, we would be stuck on the same path that has claimed retailers like Circuit City, Borders, Radio Shack and others.

Instead, we're innovating and moving forward. Readers of past [letters](#) and my other [blog posts](#) know all about our efforts to transform not just turn around our business. The financial results certainly are not where we want them to be yet but we did see our performance trend improve in the third and fourth quarters of 2014. The percentage of our sales coming from Shop Your Way

members is high and staying strong. Most importantly, in 2014 we gave ourselves the resources to dig deeper and fuel our ongoing transformation.

2014 IN REVIEW

We ended 2014 on an upbeat note. Our fourth quarter results improved materially from last year, continuing the pattern that we saw in the third quarter and reversing the negative trends from the first half of the year. We are primarily focused on profitability instead of revenues, market share and other metrics which relate to but don't necessarily drive profit. This means we will be making material changes in some of the underlying business models that have been challenged for many years, such as Consumer Electronics, where we have experienced significant losses since 2010. We intend to continue to operate in most of these businesses, but with a very different approach to serving our members than in the past. This change in approach may dampen our sales as we make the transition but it should also reduce the risk of material profit declines.

We believe that our focus on profitability will contribute to a meaningful improvement in performance in 2015 and beyond, and we are seeing early signs of this progress as part of our most recent quarterly results. In the fourth quarter of fiscal 2014 we had domestic Adjusted EBITDA of \$125 million, which represents an improvement of \$217 million versus the fourth quarter of 2013. This improvement was largely driven by an increase of \$71 million in comparable gross margin dollars combined with expense reductions of \$239 million.

We will continue to take actions to increase our financial flexibility to meet all of our obligations while funding our transformation. To this end, in fiscal 2014 we raised approximately \$2.3 billion from a variety of asset sale and financing activities, including the spinoff of Lands' End, the sale of a significant portion of our stake in Sears Canada and the issuance of Notes and Warrants in November.

A closer look at some of the revenue figures illustrates why we think it's more important to focus on profitability. Revenue for the fourth quarter was down approximately \$2.5 billion year-over-year but only a percentage of that was tied to declines in comp store performance (\$313 million). **Most of the decline in revenue, about \$2.1 billion, comes from assets we sold, spun off or closed. In October, we successfully completed a rights offering that means Sears Canada's revenue (and operating expenses) will no longer appear on Sears Holdings' financial statements. In April, we successfully completed the spin-off of our Lands' End business to shareholders. Throughout the year we closed underperforming stores, many of which had been operating at significant losses for far too long.**

My team and I wrote more about these moves [here](#), [here](#) and [here](#), and many of you reading this letter now own shares of Sears Canada and Lands' End that were distributed through these actions. Making use of these assets in different ways than we have in the past was, we think, the right way to allow us to focus on and invest in Sears Holdings' transformation.

Sears Holdings borrowed \$400 million in September to provide additional liquidity through the holidays. This loan was secured by only 25 of our approximately 1,700 properties. Much was made about the fact that it was a secured loan (we explained why [here](#)) but this enabled Sears Holdings to borrow money at far cheaper rates than it otherwise could have. **In fact, it allowed Sears Holdings additional time to generate longer-term liquidity by monetizing its Sears Canada stake and to put in place a longer-term debt offering (the Notes and Warrants), proactively highlighting to our vendors that we were addressing their concerns about liquidity through the holidays.**

EXPLORATION OF A REIT

We are continuing our efforts to develop Sears Holdings as a membership company, without the significant asset intensity of its traditional retail business. To this end, we announced in November that we have been exploring the formation of a Real Estate Investment Trust (REIT) to purchase some of our properties and to manage them as a pure real estate company. While not yet final, we are proceeding towards its formation and separation which is projected to occur in the first half of this year. We are currently targeting between 200 and 300 Sears stores to be sold to the REIT with expected proceeds to Sears Holdings in excess of \$2 billion.

We anticipate that the REIT will continue and accelerate many of the activities that we have been pursuing over the past several years. Specifically, we have been working to partner with other retailers and mall owners to enable us to reduce the operating footprint of our stores to smaller but still significant spaces, while leasing part of the store to retailers who will bring increased foot traffic and relevance to our locations.

A completion of a REIT transaction has the potential to significantly transform our capital structure toward one that is more flexible, long-term oriented and less dependent on inventory and receivables. We would hope to maintain a long-term presence in each location while allowing Sears Holdings to still have the flexibility to make strategic business decisions should those locations prove unprofitable for Sears Holdings in the future. We believe that many locations can be repurposed with or without Sears Holdings as an anchor, which would give the REIT the potential for value creation as well as downside protection if Sears Holdings were unable to continue to operate certain stores profitably.

OTHER WAYS WE'RE USING OUR STORES DIFFERENTLY

We have [highlighted](#) specific examples of how we are reconfiguring our stores so that observers will better understand our plans. In fact, we have received positive feedback from investors, local communities, members and our own associates as we upgrade our sites with partners such as Whole Foods, Nordstrom Rack, DICK's Sporting Goods, Forever 21 and Primark. Each of these retailers has its own attributes and requirements, and we have demonstrated flexibility and creativity in working with each of them to forge deals that work for both of us. They form the foundation for similar deals in the future and are part of how Sears Holdings is driving the innovation and modernization of the U.S. mall industry.

OUR CONTINUAL INNOVATION

As longtime readers of these letters know, Sears Holdings has been a trailblazer for testing out new ideas to both respond to and influence changes in the way customers are shopping in light of new digital, mobile and social technologies. We continued to roll out more industry-leading innovations in 2014.

Shop Your Way. The Shop Your Way program is unlocking value from our most engaged members - those at the center of our transformation who make the most frequent trips to our stores and web sites. Shop Your Way helps them save time and money and rewards them for their loyalty. While there remains much work to be done, there are encouraging signs that indicate that we are increasing the value of our most loyal segment of members. Our best members, those who visit our stores at least four times every 12 months, are increasing their business with us in terms of both sales and margin dollars.

Mobile Integration. The investments and proactive actions that we started making a decade ago to build our Integrated Retail programs have allowed us to stay ahead of the curve and better serve our members. The industry as a whole has seen tremendous growth in the use of mobile in the shopping environment and we have strived to meet this demand for our members. In 2014 alone, we saw large increases in the usage of our mobile platforms, which makes our further development of these programs so imperative.

Ship-to-Store & Buy Online/Pickup in Store Expansion. Some 14 years ago, we were one of the first few retailers to offer buy online, pickup in store, a capability that continues to be one of our members' favorites and accounts for a significant portion of our online sales. This year, we expanded our ship-to-store programs to include returns as well as in-vehicle pick-ups, returns and exchanges. Members love having packages delivered right to their cars in five minutes or less. We also expanded the buy online, pick-up in store to allow pick-up across both our Sears and Kmart formats, so now our members can order from Sears.com and pick up at a Kmart location or vice versa, which gives our members more convenient pick up options.

Digital Kiosks, Signs and Check Outs. Our improvements aren't just being seen online, they are also in stores across the country as we continue to make technological investments to provide more choices and convenience to our members. With our in-store kiosks, members have access to over 120 million items, so if they can't find what they're looking for in the store they can have it shipped to their home for free. We have replaced paper signs with over 100,000 digital signs across 300 Sears stores. These signs provide our members with additional product information, videos, consumer information and reviews, putting the information they need literally right at their fingertips. In over 500 Sears stores, when shoppers are ready to make a purchase, our associates can either complete the checkout on their mobile device or if the member isn't ready to purchase, they can send them a digital recap of their store visit.

OUR PEOPLE

Our associates continue to be a big strength at Sears Holdings. Whether it is the user experience designers and engineers inventing new ways for members to interact with us across our

integrated platforms or an in-store associate who greets a customer and helps them find what they need, our associates are working every day to delight our members.

You don't have to take my word for it. Our teams' innovative strategies for moving Sears and Kmart forward are being recognized across a multitude of media.

For instance, Sears has one of the highest Digital IQs of any department store (ranked in the L2 Digital IQ Index: Department Store Study) due to our constantly expanding site featuring product videos, sizing details, refined search options and even a geo-location enabled store finder that provides details like whether or not a certain location has in-store pickup. This report also found that Sears was ranked as one of the most searched-for brands, even ahead of upmarket competitors like Nordstrom. Thanks to our team, Sears was also a Silver winner in the Channel Innovation Awards for achieving cross-channel success in today's challenging retail environment.

ALL OF THIS IS HAPPENING IN A CONTEXT OF OTHER INDUSTRIES IN TRANSITION

As I noted at the beginning of this letter, fundamental transformations aren't just affecting the retail sector. As 2015 began, we saw industries from media to banking to professional sports struggling to engage audiences in deeply different ways than in the past.

For more than a decade, we've read story after story about the explosive growth of bank branches pushing out small businesses that can't compete with premium rents. Now, the rising tide is suddenly falling fast. U.S. banks shuttered a record number of branches last year. Net closings totaled almost 1,600 nationwide in 2014, following almost as many in 2013. Just this week, one of the nation's major banks announced plans to close hundreds more branches in the next two years, some five percent of their total locations.

It's easy to say the industry should have seen the changes coming. However, it was the banks themselves that created the online and mobile options Americans increasingly prefer for everything from paying rent to splitting a restaurant bill to depositing checks - in the rare cases they still get paper checks.

Still, the "Super Bowl" for second-guessing was clearly, undeniably, this year's actual Super Bowl. Millions of words and billions of pixels were electrified about how plays were called, but even that didn't drown out the second-guessing about how people saw the plays. The Super Bowl livestream, four years after its 2012 debut, is still painfully slow - showing completions and interceptions well after the conventional broadcast.

TV sports in general succeed where other kinds of broadcasts no longer do. Because people want to see the action as it happens, viewers don't record the broadcast and fast-forward through ads. Traditional brick-and-mortar retail would be in great shape if every day were December 24. Broadcast television would be stronger than ever if every day were Super Bowl Sunday. But it isn't.

NBC and the Super Bowl's producers know that nothing lasts forever and eventually the way people watch live sports will be upended by technology. They've made the right choice to plan for that day now and maybe even learn some things from high-volume and high-profile mistakes that they can use on the other 364 days of the year. They're playing offense, not defense and I admire them for that.

What are the alternatives? You can't be nostalgic; you have to plan for a future that most people may not even fully see yet. Leaders in other industries are diving deep into the same kind of mission change in light of digital disruption that we at Sears Holdings have been working on for years. The key for all of them, as for us, is to be able to see beyond what's always been.

CONCLUSION

Transforming from a series of brick-and-mortar locations that sell products into an integrated retailer that builds relationships with our members and delivers seamless experiences hasn't been easy.

We've logged some successes and experienced setbacks. We've come far and are seeing signs of progress, but have a long way to go. Meanwhile, the actions we've taken to transform our balance sheet have helped us fund the transformation of our business model.

Sentimentality or inaction are not options anymore. Our only option is to become better equipped to support, anticipate and exceed our members' needs.

As noted in my letter last year, our communications approach has evolved this year with our [SHC Speaks](#) corporate blog and my own [personal blog](#) allowing us to explain our thinking and our actions in an unfiltered manner. We have also expanded our quarterly reporting in an attempt to clarify some of the complexity around our financial results and to better explain our performance. We remain focused on the long-term transformation of Sears Holdings but we recognize that some observers of the company have been confused by or have misunderstood certain aspects of our financial results and our actions. This has led to incomplete or misleading reports, which have had damaging consequences from time to time with our various constituencies. We have received numerous compliments for the extent of our disclosure and the helpfulness that our blog posts have given to those who are impacted by our operations.

Along with this letter, please take a few moments to review the [slide presentation](#) and listen to the [prepared remarks](#) we've posted at searsholdings.com for the fourth quarter and full year 2014 results.

Finally, I again want to thank our associates who work every day to create products, services and experiences that our members love, and our shareholders who have continued to support our transformation.

Respectfully,

Edward S. Lampert

SHC Speaks

Setting the Record Straight: “Just The Facts”

September 19, 2014 by [Rob Schriesheim](#)

In my last blog post on [Owner Driven Transformations](#), I noted that successful transformations require three critical elements: (1) financial staying power to fund the necessary investments, (2) leadership committed to seeing things through challenging circumstances and (3) long term investors who are willing to place their capital at risk. The \$400 million of funding we received this week clearly demonstrates all three elements, but has been seriously mischaracterized in the media and elsewhere. I want to take this opportunity to put our financial position into its proper context. I hope this post clarifies some key points and provides the facts that were lost in the recent headlines.

First, we were able to secure a loan on terms that were fair and reasonable to Sears Holdings. These terms include a significantly lower interest rate than other loans in the retail sector and required much less in the way of collateral obligations (i.e. the amount of real estate backing the loan). No two companies are exactly alike, but we can look at the news articles and regulatory filings of other debt issuers in the retail sector to understand that the terms of our loan were favorable to Sears Holdings.

1. Just last week, another large retailer issued \$400 million of unsecured debt at an interest rate of 8.125 percent for five years to refinance debt coming due over the next several years at a higher rate than the existing debt.
2. In 2013, as another example, this same large retailer executed a large real estate financing, secured by substantially all of its real estate portfolio. The five year \$2.25 billion real estate loan has an interest rate of 6 percent with an upfront fee of 50 base points in the form of a fee paid to the lenders at closing plus other undisclosed fees (e.g., for committed financing paid to the arrangers of the loan at closing). Again, this loan was collateralized by substantially all of their real estate with an appraised value in excess of \$3 billion, as well as liens on substantially all of the personal property of the company, in each case according to materials filed with the SEC.

We believe the terms of this financing compare favorably to other deals and are fair and reasonable to us. Our \$400 million loan has an interest rate of 5 percent and an upfront fee of 175 base points, is secured by only 25 of our stores (or 2 percent of our stores) and is expected to be paid off at the end of the year or, at our option, by February 2015.

Second, the 25 stores that collateralize this loan represent *only 2 percent* of our total store base. The commentary in the media suggests that this was a way for ESL (an entity controlled by our largest shareholder and CEO, Edward S. Lampert) to buy the real estate cheaply – or that it removes the real estate as potential collateral that may be useful to us in other ways. In fact, at the end of this year (or two months after if extended at our option to the end of February) the loan will be repaid and the underlying collateral will be released – meaning that the 25 stores are

still owned by SHC and we would have the flexibility to monetize them again. In addition, while the articles mention it is 25 out of about 1900 stores, they do not take the next step to extrapolate what the value could be for the entire real estate portfolio – and I have noted in the past that the book value (or accounting value) of our real estate portfolio is about \$5 billion, noting that I would not engage in the speculation on the fair market value of the real estate portfolio. Again, contrast this to the collateral for the other large retailer real estate secured loan which is tied up for many years and represents substantially its entire real estate asset portfolio.

Third, we entered into the loan now to provide SHC with a stable source of funds during the holiday season as we buy inventory and continue to honor all of our financial commitments to our vendors, our pension plan and our debt holders. Many people have speculated as to why we did not fund this with commercial paper. Commercial paper, by its terms, is generally very short-term in nature (typically 30 days in time or less with renewals/extensions at the lender's discretion). By contrast, at the company's discretion, this loan will be in place for up to 5.5 months and should give comfort to all of our suppliers – and to those institutions that support our suppliers – that they will be paid. As a result, this form of funding is more predictable and reliable for our partners and provides us a reasonable rate. It also helped us meet our stated objective of raising \$1 billion of liquidity this year as we had already raised approximately \$665 million through the \$500 million dividend from Lands' End and approximately \$165 million from real estate monetizations through the second quarter of this year. We have a number of other actions and alternatives underway, as we always do at any point in time given our substantial asset base and we are committed to creating long-term value for our shareholders while generating the appropriate liquidity to fund our transformation and meet all of our obligations.

There has also been consistent misrepresentation of our financial performance. While we acknowledge our performance has been poor, the use of the term “cash burn” misrepresents what is a combination of operating losses and funding of pension obligations, which we consider to be a form of debt repayments. For example, when another large retailer issued \$400 million of debt last week, it did not borrow money because it had a \$400 million “cash burn.” It did so to repay outstanding obligations. **Similarly, when we fund our pension plan with payments of over \$400 million this year, we are not funding “cash burn operating expenses.” Instead, it is a financing transaction in which we are honoring a legacy obligation. If we use debt to fund our pension, we substitute one form of debt for another. If we use proceeds from asset sales, we reduce outstanding obligations by the amount of funding. It is also worth noting, as Eddie points out regularly, that many other giants in the retail industry have no similar legacy pension obligations. We will have contributed over \$2.9 billion to our pension from 2006 to 2014 as we indicated in our second quarter earnings materials that we posted on our [website](#). We also showed in the same presentation that the outstanding balance on our revolver would have been \$339 million at the end of Q2 2014 (as compared to the actual \$1.4 billion outstanding) absent the last 10 quarters of pension contributions (which totaled about \$1.06 billion). In any event, we have taken actions that have generated significant cash for the company, allowing us to meet all of our commitments as they have come due.**

As we have stated, we are working to put in place a longer term, more flexible capital structure that should address lingering concerns about our liquidity and provide time and resources to

continue our transformation. Further, as we continue our transformation leveraging Shop Your Way® and Integrated Retail we believe that we have options that will allow us to highlight our significant real estate value and crystallize how we intend to transition away from an asset intensive, historically “store-only” based retailer to an asset light, integrated membership-focused company. We are investing in our future while at the same time honoring all of our financial obligations, and creating value by rightsizing and redeploying our assets.

Finally, as I said in my prior post, I believe we are very fortunate to have a large and supportive shareholder who has demonstrated his commitment to our transformation in numerous ways over a long period of time, including this favorably priced loan. It not only gives us additional financial flexibility over the holiday season and proactively demonstrates to vendors and other constituents our steadfast commitment to meet our obligations but also allows us to continue the difficult but necessary work of dramatically repositioning our company for a very different future.

****Note – In response to inquiries, Sears Holdings confirms that the financing transaction announced on Form 8K on Sept. 15, 2014, was approved in accordance with its related party transactions procedures, including approval by independent directors who were advised by independent counsel, Weil, Gotshal & Manges. Sears Holdings has a Code of Conduct for its directors and officers, which provides that any direct or indirect monetary arrangement for goods or services between a director and the company must be approved by the Board of Directors.**

Sears vendors demand special terms to keep supplying goods

As losses at retailer mount, suppliers fear they'll be left in the lurch

CBC News Posted: Mar 19, 2015 11:11 AM ET Last Updated: Mar 19, 2015 11:11 AM ET

Sears Holdings vendors are losing confidence in the retailer after a string of losses. (Associated Press)

Sears Holding Corp's vendors in the U.S. have demanded speedier payment from the retailer as they fear for its long-term health amid a string of losses.

According to MarketWatch, some vendors have made a deal with Sears to get payment within 15 days in return for a price discount of three to five per cent on merchandise. The retailer typically pays suppliers within two months.

The U.S.-based Sears had an annual loss of \$1.7 billion in 2014, up from \$1.4 billion in 2013.

Sears Canada's annual report released earlier this week reveals it is in no better shape. It lost \$339 million in 2014, narrowed from \$446 million the previous year.

Same-store sales, a key metric in the retail industry, declined by 8.3 per cent in Canada last year.

The faster payments tie up more of Sears's cash and complicate its efforts to turn around its business by carving out a niche as a value retailer in suburban and rural markets.

In Canada, the retailer has struck a deal to sell three properties to real estate development firm Concord Pacific for \$140-million, then lease the locations back under long-term deals. The stores at Metrotown in Burnaby, B.C., Cottonwood Mall in Chilliwack, B.C. and North Hill Shopping Centre in Calgary, are to remain open.

Analysts say the retail deals are a way for Sears Canada to get more cash in the face of its steep losses. The U.S. retailer sold most of the stake in the Canadian unit to company chair Eddie Lampert in a bid to raise cash.

But some Sears Canada landlords would like to push out the retailer, whose rents are often below market, in favour of more promising tenant.

Sears Lampert has moved quickly to ensure he can milk value from the retailer, selling off some real estate assets and moving other U.S. properties in a real estate investment trust.

If Sears has a Target-style shutdown, that could lead hundreds of vendors with unpaid bills and little of value to draw on.

SCRG Members Attending March 24, 2015 Meeting with FSCO

Member Pension and Benefit Committee – John Butcher

John is a Chartered Professional Accountant (CPA). He worked for Sears Canada for 31 years before retiring in December 2004. He began his career as a trainee in the Kitchener Fairview Mall store. He held various positions as Auditor, Store Controller (Moncton), Tax Controller and Corporate Controller. At the time of his retirement, he was Executive Vice-President and Chief Financial Officer

Since retirement John and his wife Diane have continued to live in Toronto. His interests include hiking, travelling, photography, charitable and community activities, and reading.

Vice-President - Ken Eady

Ken retired from Sears Canada in 2003 after a 30 year career. He held positions in Ottawa, Eastern Region and Headquarters. Twenty Five years of Ken's career were in Human Resources. He held a variety of management positions and at the time of his retirement he was National Manager of Human Resources for Sales and Service.

Since retirement Ken and his wife Carole have lived north of Toronto. He is volunteer Board Chair of the Housing Resource Centre of South Georgian Bay and Orillia, a member of the Committee of Adjustment and Consent for the Municipality of Wasaga Beach and volunteer director on several other boards.

Director - Larry Moore

Over the span of 34 years with Sears Canada Inc. Larry held a number of positions including Store Manager, Regional Personnel Superintendent, General Manager Quebec Stores and Senior Vice-President, the position he held upon retirement in 2005.

Following retirement from Sears, Larry has worked as consultant and contractor to association and governmental agencies within the travel, service and major appliance industry on matters of product safety, energy efficiency and environmental sustainability.

Past President - Bill Turner

Bill retired from Sears in 2002 after 36 years with the Company. He began his career as a Trainee in the Ottawa Carlingwood store and after a short stay was moved to Headquarters in Toronto where he spent the balance of his career in merchandising. He held various management positions and retired as President, Merchandising, Marketing and Logistics.

Bill has held volunteer positions such as President, Boy's and Girl's Clubs of Canada, and founding Chair of the Ryerson Advisory Board in the School of Retailing.

Tab H

This is Exhibit "H" referred to in the Affidavit of Sandy Lockhart
affirmed October 29, 2019.



Commissioner for Taking Affidavits (or as may be)



SCRGI
SEARS CANADA INC.
REGISTERED RETIREMENT PLAN AND RETIREE BENEFITS

January 20, 2014

Hon Jeff Leal, MPP
Peterborough
Ministry of Rural Affairs
11th Floor
77 Grenville Street
Toronto, Ontario M7A 1B3

Jeff Leal:

Re: Sears Canada Inc. Registered Retirement Plan and Retiree Benefits.

We represent SCRGI, a retiree association which speaks for the current and future retirees of Sears Canada. Our members are very concerned that our pension plan is significantly underfunded, but Sears has chosen to sell off its assets and send the proceeds to its shareholders as dividends, the largest part of which are being paid to the majority shareholders in the United States instead of topping up the plan. The primary recipient and largest shareholder is Ed Lampert, the US-based hedge fund manager, he has been the controlling shareholder of Sears Canada since 2004.

Sears Canada's business is shrinking, and bankruptcy, sale or breakup seems possible. Its sales have shrunk by 31% since 2005; it is selling off many of its valuable assets such as the credit, home services, and travel businesses, store leases and shopping centers; and over 7 years, capital expenditures have been only \$500M while depreciation totaled \$930M.

There is good reason for the Ontario government to be concerned with this situation. If the current trend continues and Sears becomes insolvent, over 20,000 Ontario residents could be impacted. The 6,000 retirees will make a claim against the Ontario Pension Benefit Guarantee Fund and over 15,000 Sears Ontario employees are at risk of losing their employment, a portion of their pensions, severance, notice and any benefits they are eligible to receive. We believe it is in the interest of all the residents of Ontario to avoid the need for a claim by Sears retirees on the Ontario Pension Benefits Guarantee Fund.

In 2011 Sears took advantage of the Ontario Government's temporary funding relief and did not make an important \$30.0 million payment to the Sears Plan. That took place following the transfer out of \$27.0 million from the defined benefit component of the plan in 2008 and 2009. These actions appear to us to be purposeful neglect and show a lack of concern for the financial health of the Sears Pension Plan.

We believe Sears has a fiduciary responsibility to ensure that the pension plan and the post-retirement benefits plans are fully funded now, while assets remain. Since 2005, Sears Canada has realized proceeds of \$3.5 billion from the sale of assets, with an additional \$315 million received in January 10, 2014. All of the \$3.5 billion in proceeds has been distributed to shareholders as dividends. Sears has stated that it will consider an additional dividend once it receives the additional \$315 million in January 2014. On January 9, 2014 as part of their 4th quarter results Sears Holding noted the following; "we also are continuing to work with the board and management of Sears Canada with a goal of increasing the value of our 51% interest and realizing significant cash proceeds to support our transformation and to create value for our shareholders". We see this as meaning Sears Canada will continue to sell assets and send the majority of the proceeds of the sale to the US in dividends.

We have discussed this concern with officials of FSCO. They were attentive and offered to monitor the situation, but told us they were restricted in their actions by the Pension Benefits Act of Ontario. Representatives of the Canadian Federation of Pensioners met with officials of the Ontario Finance Department. They offered to monitor

the situation in conjunction with officials of FSCO, but told CFP that they too were restricted in their actions by the PBA of Ontario.

We have met with Sears management, written to the President of Sears, and our legal representative wrote to the Board of Directors of Sears Canada and the Board of Directors of Sears Holding Corporation, the controlling shareholder. Sears response failed to recognize our concerns and Sears refused to provide current information about our pensions and benefits.

We are asking for your help to prevent Sears from abandoning the Sears Registered Pension Plan and the 6,000 Ontario residents who would be impacted by Sears failing to live up to its responsibilities. We are worried that the retirees of Sears Canada could find themselves in the same situation as Nortel retirees.

We believe that the Ontario Government has a responsibility to the people of Ontario to protect retirees in this situation. We are asking to meet with officials in the Premier's office and that the Ontario Government insist Sears provide SCRG with the pension plan actuarial report that it now completes annually. We have asked for this report on a number of occasions, but Sears has continuously refused. We need you to contact the Premier's office and let her know that you support preventing this impending crisis. That you believe that a meeting should be granted to Sears Retirees and that every possible step should be taken to prevent Sears Retirees being left in the same place as Nortel Retirees.

Thank you for your time and consideration. If you have any questions do not hesitate to contact Ken Eady at the contact information below.

Yours truly

Nina MacLavery
President, SCRG

Redacted - Personal Information

Ken Eady
Vice President, SCRG

Redacted - Personal Information

Tab I

This is Exhibit "I" referred to in the Affidavit of Sandy Lockhart
affirmed October 29, 2019.

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

Commissioner for Taking Affidavits (or as may be)

KOSKIE MINSKY

OF ATTORNEYS

September 12, 2016

Via Email

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

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

Attention: Gino Marandola, Director, Pension Plans Branch (Interim)

Dear Mr. Marandola:

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

We are writing further to our discussions and the discussions you have had with our client, Ken Eady of SCRG.

As you know, our clients are gravely concerned that Sears Canada's retail business is failing and that the company is insolvent. We have provided you in the past with numerous media reports and memoranda prepared by our clients setting out the deteriorating financial situation at Sears Canada which continues to this day. Last week, Sears Canada released its quarterly results for the second quarter ending July 31, 2016 reporting that total retail revenues have fallen by a further 15.6%. That loss is on top of the \$1 billion in operating losses that Sears has reported over the past five years.

The evidence is overwhelming that Sears Canada will not survive as a retailer. We believe that it is only a matter of time before it seeks protection from its creditors in an insolvency proceeding.

The Sears Canada Plan remains underfunded, and as we have articulated to your office on many occasions and as you are aware, in the event the plan is wound up in its underfunded state in an insolvency proceeding, there is a high likelihood that pension benefit losses will be imposed on elderly retirees.

In the circumstances, and considering the duty of a pension plan administrator to act in the best interest of pension plan members, our clients requested several months ago that the Sears Canada Plan be wound up. As your office is aware, we have communicated this request to Sears. Sears is opposed to winding up the plan because of the crystallization of wind up liability that Sears Canada wishes to avoid paying. A wind up of the plan is also expected to generate a significant PBGF payment obligation. Nevertheless, in the context of Sears Canada's financial situation, our

clients position is that the wind up of the plan is both highly appropriate and legally necessary for the protection of the plan members' earned pension benefits, which are their deferred wages.

You will recall that we attended a meeting at your office with Sears Canada representatives on September 11, 2015, which is now over a year ago. At that time we put forward the wind up demand. We are aware that your office has engaged in discussions with Sears Canada flowing from the wind up demand. Our clients have been prepared to engage Sears to see if a satisfactory arrangement can be achieved which would involve the company making additional contribution(s) to the pension plan at this time. However, our clients are now very concerned that the discussions with Sears Canada over the past several months have not produced any tangible or credible proposal by Sears Canada. Instead, Sears Canada's conduct has been to take inappropriately long periods of time to respond, cancel or reschedule meetings, and only respond after numerous follow ups. This in our view reveals a deliberate plan to stall and delay dealing with the pension plan and the wind up demand. A recent example of another delay is the meeting that had been scheduled between your office and Sears Canada for September 7, 2016, which Sears abruptly rescheduled to September 28, 2016.

There are numerous other instances of delay and obfuscation by Sears Canada in the course of our dealings with the company over the past 24 months. We do not believe that Sears Canada is dealing with us, nor FSCO, in good faith and is instead orchestrating a series of delays in order to avoid dealing with the underfunded pension plan, its insolvency, and evade a wind up order.

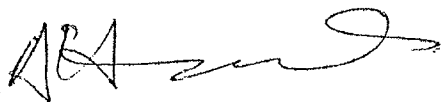
Accordingly, we request that the Superintendent proceed with the issuance of a Notice of Proposal to Wind Up the Sears Canada Plan under section 69 of the PBA. We have discussed the various categories in that section that we say apply, and we believe there is no debate with respect to the applicability of section 69(1)(g), which we understand FSCO is also considering for other pension plans situations.

We appreciate the efforts of your office over the past months. However, as set out herein, we do not believe that Sears Canada is dealing in good faith. Accordingly, our clients wish to press forward with the wind up of the Sears Canada Plan as soon as possible.

We look forward to hearing from you.

Yours truly,

KOSKIE MINSKY LLP

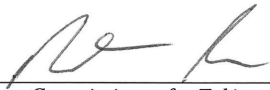


Andrew J. Hatnay
AJH:vdl

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

Tab J

This is Exhibit "J" referred to in the Affidavit of Sandy Lockhart
affirmed October 29, 2019.



Commissioner for Taking Affidavits (or as may be)

**KOSKIE
MINSKY**

JUSTICE MATTERS

October 20, 2016

Andrew J. Hatnay
Direct Dial: 416-595-2083
Direct Fax: 416-204-2872
ahatnay@kmlaw.ca**Via Email**Financial Services Commission of Ontario
5160 Yonge Street, P.O. Box 85
Toronto, ON M2N 6L9**Attention: Gino Marandola, Director, Pension Plans Branch (Interim)**

Dear Mr. Marandola:

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

We are writing further to our letter of September 12, 2016 and your subsequent discussions with our client, Ken Eady of SCRG.

Our clients are increasingly concerned about Sears Canada's delays and lack of good faith in addressing the underfunded Sears Canada Plan as their retail business continues to deteriorate. They are particularly concerned about Sears Canada's failure to deliver a proposal for additional funding for the Sears Canada Plan that they undertook to provide several months ago.

Our clients request a meeting with FSCO prior to any further meetings or discussions with Sears Canada so that they can obtain an understanding of the status of the discussions about the proposal that was promised by Sears and any other relevant information that impacts the provision and security of their earned pension benefits. To be clear, our clients need to be closely involved and part of any future discussions or negotiations between FSCO and Sears Canada.

Our clients maintain their request to FSCO that the Sears Canada Plan should be ordered to be wound up by the Superintendent at this time. The wind up is growing more urgent given the steady deterioration of Sears Canada's retail business and its worsening financial situation, which we have explained in prior correspondence. The strong potential for pension losses that is facing the members of Sears Canada Plan is compounded by Sears Canada's lack of good faith in its dealings with our clients.

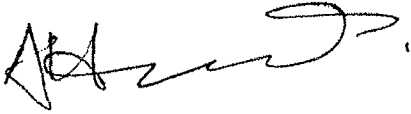
Page 2

Please let us know if you are able to meet in the week of October 31, 2016 at your earliest convenience.

Thank you for your attention to this matter.

Yours truly,

KOSKIE MINSKY LLP

A handwritten signature in black ink, appearing to read "Andrew J. Hatnay". The signature is stylized with a large, sweeping initial "A" and a long, horizontal flourish.

Andrew J. Hatnay
AJH/vd;

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

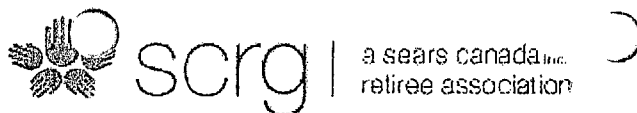
KM-2400154v1

Tab K

This is Exhibit "K" referred to in the Affidavit of Sandy Lockhart
affirmed October 29, 2019.

A handwritten signature in black ink, appearing to be the initials 'RL' followed by a stylized flourish.

Commissioner for Taking Affidavits (or as may be)



July 7, 2014

Kathleen Wynne, Premier of Ontario
 Legislative Building
 Queens Park
 Toronto, Ontario
 M7A 1A1

Dear Premier Wynne:

Re: Sears Canada Inc. Registered Retirement Plan and Retiree Benefits.

Congratulations on your recent majority win in the Ontario election. This will provide Ontario with four years of stable and consistent government. I am writing to you today as a follow up to my letter from January of this year. As you may recall, Sears Canada retirees are concerned about the future of the Company and its apparent plan to reduce its presence in Canada. Funds have been flowing to the American owners that should have been invested in our underfunded pension and benefit plans. As we stated in our January letter, we believe it is in the interest of all the residents of Ontario that your government take action to prevent a possible claim by Sears retirees on the Ontario Pension Benefit Guarantee Fund.

SCRG continues to communicate with Sears in writing, in meetings and through our legal counsel. Given your strong mandate from the people of Ontario and your identification of pensions as an important public issue, we felt it was important to update you on our efforts. I have attached a memo prepared by Sears that captures SCRG's questions and the Company's responses at our June 20th 2014 meeting, and our most recent correspondence with Sears concerning that memo.

We continue to need the help of your government to prevent Sears from abandoning the Sears Registered Pension Plan and the 6,000 Ontario residents who would be impacted should Sears fail to live up to its responsibilities.

Thank you for your consideration of this matter.

Yours truly

Ken Eady
 Vice President and Chairperson of the Pension, Benefit Committee of SCRG.

Redacted - Personal Information

cc: SCRG Board of Directors
 Andrew Hatany, Koskie Minsky LLP
 Mitch Frazer, Torys LLP

Encl.:

SCRG - Andrew Hatany, Koskie Minsky LLP letter to Sears - Mitch Frazer Torys LLP
 Sears Memo of SCRG - Sears June 20th 2014 Meeting.

Tab L

This is Exhibit "L" referred to in the Affidavit of Sandy Lockhart
affirmed October 29, 2019.

A handwritten signature in black ink, appearing to be 'R. L. K.', written above a horizontal line.

Commissioner for Taking Affidavits (or as may be)

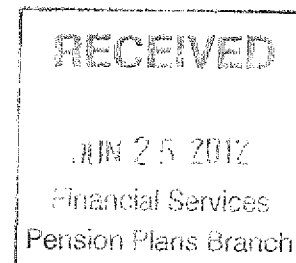
Thursday, June 21, 2012

Inquiry re: Pension Plan # 0360065 ; Sears Canada Inc. Registered Retirement Plan

Attn: FSCO: Attn: Sharon Polischuk,

Pension Plans Branch
Financial Services Commission of Ontario
5160 Yonge Street
Box 85, 4th Floor
Toronto ON M2N 6L9

Telephone: (416) 226-7776
Toll-free: 1-800-668-0128
Fax: (416) 226-7777
E-mail: contactcentre@fSCO.gov.on.ca



As a pensioner receiving a pension from Sears Canada Inc RRP #0360065 I have a question about the Pension Benefits Act (PBA) with regard to the regulation referring to wind up. I.e.:

Trust property

57. (1) Where an employer receives money from an employee under an arrangement that the employer will pay the money into a pension fund as the employee's contribution under the pension plan, the employer shall be deemed to hold the money in trust for the employee until the employer pays the money into the pension fund. R.S.O. 1990, c. P.8, s. 57 (1).

Money withheld

(2) For the purposes of subsection (1), money withheld by an employer, whether by payroll deduction or otherwise, from money payable to an employee shall be deemed to be money received by the employer from the employee. R.S.O. 1990, c. P.8, s. 57 (2).

Accrued contributions

(3) An employer who is required to pay contributions to a pension fund shall be deemed to hold in trust for the beneficiaries of the pension plan an amount of money equal to the employer contributions due and not paid into the pension fund. R.S.O. 1990, c. P.8, s. 57 (3).

Wind up

(4) Where a pension plan is wound up in whole or in part, an employer who is required to pay contributions to the pension fund shall be deemed to hold in trust for the beneficiaries of the pension plan an amount of money equal to employer contributions accrued to the date of the wind up but not yet due under the plan or regulations. R.S.O. 1990, c. P.8, s. 57 (4).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (4) is amended by striking out "in whole or in part". See: 2010, c. 9, ss. 40, 80 (2).

Lien and charge

(5) The administrator of the pension plan has a lien and charge on the assets of the employer in an amount equal to the amounts deemed to be held in trust under subsections (1), (3) and (4). R.S.O. 1990, c. P.8, s. 57 (5).

Application of subss. (1, 3, 4)

(6) Subsections (1), (3) and (4) apply whether or not the money has been kept separate and apart from other money or property of the employer. R.S.O. 1990, c. P.8, s. 57 (6).

Money to be paid to insurance company

(7) Subsections (1) to (6) apply with necessary modifications in respect of money to be paid to an insurance company that guarantees pension benefits under a pension plan. R.S.O. 1990, c. P.8, s. 57 (7).

I have become concerned, due to recent events, how FSCO ensures Sears Canada's ability to meet its obligation to fund the Defined Benefit component of Pension Plan # 0360065 SRRP; In a letter mailed November 7, 2011 to: Eligible Members and Eligible Former Members of the Defined Benefit component of Sears Canada Inc. Registered Retirement Plan from Curt Newman, Associate VP Total Rewards a paragraph was included that read as follows:

"Although Sears Canada has no intention of terminating the Pension Plan, if the Plan were terminated on December 31, 2010, Sears would be required to contribute the amount needed to fund the plan obligations, otherwise the member and beneficiary benefits would be reduced to a level based on the Pension Plan's transfer ratio. The Transfer Ratio measures the portion of the plans liabilities on a plan termination basis which are funded with current plan assets. As of December 31, 2010, the transfer ratio of the Pension Plan was 80%."

Since that letter was issued November 7, 2011 a number of events have occurred at Sears Canada. At the end of January 2012 the company underwent a substantial restructuring, later in total reduced staff by 470 individuals and closed large stores in three Canadian cities — Vancouver, Calgary and Ottawa. May 17th they announced that Sears Holdings would be selling a considerable stake in Sears Canada. Sears Holdings board of directors approved a procedure to undergo a partial spin off that would see it's ownership of Sears Canada fall by 95% to 51%by transferring 41.5 million shares to its stock holders. Sears Holdings indicated that it could then sell all or part of its remaining stake. According to the New York Post, the parent company of both Sears Holdings and Sears Canada, run by Edward Lampert's ESL Investments, June 6th, 2012 moved its headquarters from Greenwich Connecticut to Miami, South Beach Florida. Clients calling ESL's former offices in Greenwich now reach the Rand Group — an unaffiliated third-party entity. Investors with ESL Investments can now take advantage of the fact the five-year lock-up period for ESL investments expires this month which allows them to exit ESL. William Crowley, president and COO of ESL, has resigned from the high-profile investment fund after more than 13 years with Edward Lampert. However, Crowley is expected to remain as chairman of Sears Canada

Sears Holdings 2011 annual report and 1st quarter report filed with EDGAR the Parent ESL Investments, Sears Holdings and Sears Canada are now clearly separated regarding debt obligations. However, much of Sears Canada's cash balance has been distributed via dividend to Sears Holdings share holders and consequently, the Parent ESL Investments share holders reducing Sears Canada's on hand cash reserves. It is my concern that this could place Sears Canada in a position where they have debt obligations, like the Pension Plan, that could have been met previously on wind up of the pension plan that under current reduced cash circumstances might not be met.

Can the company continue to distribute the cash reserves of Sears Canada as dividends to the Stock Holders of Sears Holdings if it puts in jeopardy the ability of the Canadian subsidiary to meet its Ontario Pension funding obligations? Can they in fact continue to distribute the cash assets to Stock Holders and then as with the scenario outlined in their letter on Pension Plan termination, pay only 80% of the plans liabilities? What prevents the Investment Committee for the Pension Plan from using the assets of the plan for investments that benefit Sears Holdings share holders i.e. Black Rock, but may not be an arms length choice made in the best interests of the Plan members? How does FSCO ensure that the assets of the Canadian subsidiary remain sufficient to cover the Pension obligation and are not depleted until that obligation can no longer be met? This appears to be a loop hole that could allow foreign investors and their foreign parent companies to delay pension funding payment obligations for their Canadian subsidiaries while reducing cash assets in their Canadian subsidiaries until the Canadian subsidiaries are left with a Pension Debt obligation that they no longer have the cash assets to pay.

Your assistance in clarifying wind up protection for Pensioner Stakeholders under the PBA would be appreciated. Should it become necessary, I authorize FSCO to contact the Pension Plan Administrator and forward to them any copies of correspondence that was provided to FSCO.

Thank you

Redacted - Personal Information

to Authorize
to forward
correspondence to
Administrator

Tab M

This is Exhibit "M" referred to in the Affidavit of Sandy Lockhart
affirmed October 29, 2019.

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

Commissioner for Taking Affidavits (or as may be)

360065

pm

RECEIVED
DEC 27 2013
Financial Services
Pension Plans Branch

Contact Centre
December-27-13 1:43 PM
Pension Inquiries
FW: Sears Canada's (Eddie Lampert) severe underfunding of the Sears pension plan and trust fund

Subject:

Good afternoon,

The following is forwarded for Pension Division review/ response please – thank you,
Jennifer

From: [Redacted - Personal Information] [mailto:\[Redacted - Personal Information\]](mailto:[Redacted - Personal Information])
Sent: December 20, 2013 1:57 PM
To: Contact Centre
Subject: Sears Canada's (Eddie Lampert) severe underfunding of the Sears pension plan and trust fund

To All Concerned,

My name is [Redacted - Personal Information] and I am a Sears Canada retiree who had over 23 years of "retirement" came [Redacted - Personal Information] showed that I could start at 0800. By 0845 that same day I received a severance and part of that severance was put into the RRSP in October of 2006 and my wife and I had a bill. At the time of my "retirement" was 59 years old. My pension was not good (\$652.00/month clear), I had to bridge back to retirement (which was not my fault in any way). From the initial start of the "bridging" back into retirement, bridging never changed. The "bridging was still at \$652/month policies, my \$652/month remained almost the same. I have been with the CPP and OAS. I must also live with the uncertainty of the security of my pension plan and the pills each day.

Penny McBreith
PENSION OFFICER
at (416) 224-7822

with Sears Canada. My pension (and garden) as normal so I am unemployed. I did receive a severance put into a RRSP. I cashed in that RRSP and I ended up with a large tax bill. I ended up with a large tax bill that my Sears pension was not enough to cover the penalty for early withdrawal (until I got my OAS. I had to wait 6 months later) the amount of the penalty (because of Sears Canada's actions) is only real plus changes in the value of all of this and the fact that I have to take anti-depressant

Since the purchase of Sears Canada by Eddie Lampert, who owns 90% of Sears Canada shares has been systematically selling off parts of Sears Canada and pocketing the money for himself. This is widely known in the financial world. There has been relatively little monies put back into Sears Canada and the remaining stores show it. As I am a member of SCRG (Sears Canada Retirees Group) I have been receiving monthly letters of information like all other members. Our board SCRG, has kept us fully informed as to what has been happening to and within Sears Canada and it is NOT looking good. As a direct result of Mr. Lampert actions, many well informed financial persons have predicted that Sears Canada will no longer exist in Canada in less than 5 years. The reasons for this prediction are that Mr. Lampert will continue to sell off everything that he can and pocket as much of the monies that he can and then he will wait and the file for bankruptcy. We will then have another "Nortel" situation. Unlike civil servants at the 3 levels of government whose pensions are backed by the taxpayers, those in the private sector are not! SCRG has been in touch on a regular basis with people in the Provincial government for some time now. Premier Wynne and her government are well aware of SCRG's concerns. Prior to her, the former Premier was not fully aware of the issues as well as the leader of the provincial opposition. They both have written replies to SCRG

and these letters are there for all of the SCRG members to read. SCRG is fully aware of provincial legislation which v
protect private sector pensions and yet this legislation seems to be going nowhere. What are you waiting for?
Apparently, Mr. Lampert has been given a further reprieve from his obligations regarding the funding for our pension
and the trust fund. Are you people not aware of all of this? What are you doing or should I say not doing? Are you
waiting for him to declare bankruptcy which I believe would be too late! With all of the monies that Mr. Lampert is
pocketing, he should be MADE to replace the shortfall (made by him) with interest in both the pension and the trust
fund ASAP and be forced to continue regular contributions to both. Also, he should no longer be given any further
pension and trust fund financial relief!

I am respectfully demanding that you do your jobs which is to PROTECT us. Again and respectfully the sooner the
better.

Yours respectfully in hope

Redacted - Personal Information

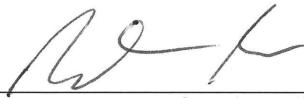
p.s. Have a Merry Christmas and a Happy New Year

If you have received this message in error, please notify me immediately and delete this e-mail and any attachments without copying, distributing or disclosing
their contents.

Si vous avez reçu ce message par erreur, veuillez nous en aviser immédiatement et détruire ce courriel ainsi que toute pièce jointe en vous abstenant d'en faire
une copie, d'en divulguer ou d'en diffuser le contenu.

Tab N

This is Exhibit "N" referred to in the Affidavit of Sandy Lockhart
affirmed October 29, 2019.



Commissioner for Taking Affidavits (or as may be)

261
PM

Tom DeCina

From: Contact Centre
Sent: January-14-14 1:02 PM
To: Pension Inquiries
Subject: FW: Pension reform

RECEIVED
JAN 14 2014
Financial Services
Pension Plans Branch

Good afternoon,

The following is forwarded for PD review/response – thank you,

Jennifer

From: Redacted - Personal Information
Sent: January 14, 2014 12:14 PM
To: david.mcquinty@parl.gc.ca; info@hc-sc.gc.ca; Contact Centre; premier@ontario.ca; jflaherty@fin.gc.ca
Subject: Pension reform

Dear People,

You have all been advised and given pertinent information regarding the extremely tenuous future of Sears Canada and as a direct result the Sears Pension Plan as well as the Trust Fund both of which are now extremely underfunded by a combined total of at least \$550 million (cdn). As time goes by, the necessity of you taking immediate action to bring in legislation that would protect our pension plan has now become an extremely important issue with Sears retirees (over 10 thousand people) and Sears Canada employees (over 25,000 people). In our case in particular, the shareholders have been giving themselves incredible dividends despite the fact that Sears Canada has been suffering large losses in the last few years. Also, major assets of Sears Canada have been sold off and those monies have also gone to the American owner of Sears Canada, M. Lampert and Sears Holdings who is also a MAJOR shareholder and to Sears Holdings which is Mr. Lampert's company.

If Sears Canada does declare bankruptcy, the loss of taxation monies would be significant to both the Provincial and Federal governments. Also, to add a further drain on the taxpayer, huge amounts of monies for those who would be unemployed and many because of their ages would need social assistance as well would have to be given out. Also, there would be a ripple effect with all the suppliers and other businesses that worked with Sears Canada. A further impact would be and this point is of particular importance to the politicians both federal and provincial, they are all facing an election in the very near future. I am sure that in face of the issues with Sears Canada, the retirees, employees and those other people outside of Sears Canada who worked with and for Sears Canada, would have long memories come election time. Please do not take this as a threat of any kind, but this would be a natural outcome of people who would be seriously hurt financially and the almost refusal of all the politicians who had many opportunities bring in timely legislation and to PROTECT the PEOPLE and did nothing!

We have another "Nortel" situation here and we all know what happened to the employees, retirees and those on disability from Nortel. Basically NOTHING! They were all thrown under the bus while billions of dollars were handed out to shareholders etc. Retirees were lucky if they got even 1/2 of their pensions. My pension from Sears Canada is \$652.00/month clear. The combined total of all three is \$1660.00/ month clear. In the last [redacted] since my forced retirement, my Sears pension has remained almost unchanged! The only small increases have been with CPP and OAS. So, if I was lucky enough to get even 1/2 of my Sears pension that loss would represent a 20% decrease in my already small income. That's 1/5 of my income gone!

Will the Federal and Provincial governments replace my loss? Maybe, but not likely. Maybe all those politicians could give us all a part of THEIR extraordinary pensions and benefits which they have managed to give to themselves at the taxpayer's expense of course. Your pensions and benefits are safe and protected because they are taxpayer backed. OURS and MINE are not!

If at times I became sarcastic, that is the frustrations that weighs on me and the financial uncertainty that faces me at Redacted - Personal Information and those of my fellow retirees and employees. Please look at the attachments. These are letters from SCRG who represent Sears Canada employees. They will certainly provide you the dire situational financial issues that we face.

I remain hopefully yours

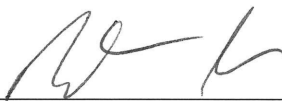
Redacted - Personal Information

If you have received this message in error, please notify me immediately and delete this e-mail and any attachments without copying, distributing or disclosing their contents.

Si vous avez reçu ce message par erreur, veuillez nous en aviser immédiatement et détruire ce courriel ainsi que toute pièce jointe en vous abstenant d'en faire une copie, d'en divulguer ou d'en diffuser le contenu.

Tab 0

This is Exhibit "O" referred to in the Affidavit of Sandy Lockhart
affirmed October 29, 2019.

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

Commissioner for Taking Affidavits (or as may be)

David Breault

From: Pension Inquiries
Sent: July 21, 2014 4:53 PM
To: [Redacted - Personal Information]
Subject: Sears Canada Inc. Registered Retirement Plan, Registration Number 360065

Dear [Redacted - Personal Information]

Thank you for your email of July 7, 2014, regarding the above pension plan.

As mentioned in our email of July 7, 2014, the business matters of Sears Canada Inc. are outside the jurisdiction of the pension legislation and the Financial Services Commission of Ontario (FSCO). We cannot comment on such matters.

Please also note that based on the recently filed valuation report for the above pension plan, the funded ratio of the plan has increased to 90% as of December 31, 2013.

Should you have any questions or concerns about the Sears pension plan, you may contact me as set out below. When contacting us, please quote the registration number shown in the subject line of this email.

Yours truly,

Pension McIlraith
 Pension Officer
 Pension Plans Branch
 Financial Services Commission of Ontario
 5160 Yonge Street
 Box 85
 Toronto ON M2N 6L9

Phone: 416-226-7822
 Toll-free: 1-800-668-0128, extension 7822
 Fax: 416-226-7777
 Email: pensioninquiries@fSCO.gov.on.ca

From: [Redacted - Personal Information] [mailto:[Redacted - Personal Information]]
Sent: July-07-14 6:40 PM
To: Pension Inquiries; premier@ontario.ca
Subject: RE: Sears Canada Inc. Registered Retirement Plan, Registration Number 360065

Dear Penny McIlraith,

Thank you for your reply. I do appreciate it.

If I understand what you are saying is correct, it is legal for an owner(foreign or domestic) to financially dismember a profitable and well known company, pocket all the proceeds from the dismemberment while at the same time reinvesting virtually nothing back into the company and allowing his/her company to founder as well as allowing the members' pensions and health trust fund to enter a state of being severely underfunded. If this is the

case, of what good is the FSCO regarding the protection of private pensions. Very little! I do realize that you can only do what the legislation allows you to do, but for me and the other retirees facing losing a substantial part of their already meager pensions, it is financially disastrous for us. In my case if Sears were to default, I would lose 40% of my monthly income leaving me only the CPP and the OAS as income.

With our newly re-elected premier who has a majority in the house, she wants to establish an Ontario Pension Plan. That is all very well and good, but, start with protecting the pre-existing private plans first. The members of these plans unlike the plans that all the civil servants at the three levels of government enjoy, are being left completely unprotected by greedy owners whose only purpose is to line their pockets at the expense of their retirees and the jobs of their employees. Eventually, it is the taxpayer who will pay the bill in some form or another for the retirees who no longer have a pension and for the employees who no longer have a job.

If I sound very disappointed and bitter, well I am! I guess that bills 120 and 236 will be left to rust because after all, it is not the pensions of the members of the house which is at risk-right.

Sorry Penny, I know that it is not your fault.

Redacted - Personal Information

From: Pension Inquiries [<mailto:PensionInquiries@fSCO.gov.on.ca>]
Sent: July 7, 2014 3:43 PM
To: Redacted - Personal Information
Subject: Sears Canada Inc. Registered Retirement Plan, Registration Number 360065

Dear Redacted - Personal Information

Thank you for your emails dated May 15 and 28, 2014, regarding the above pension plan.

The Financial Services Commission of Ontario (FSCO) administers the pension legislation applicable to this pension plan. We are closely monitoring the funded status of the pension plan and its compliance with the applicable pension legislation. We have no evidence to suggest that Sears Canada Inc. has failed to comply with the requirements of the pension legislation.

Sears' dividend payments to shareholders and any non-pension plan-related benefits for employees are outside the jurisdiction of the pension legislation and FSCO, and we cannot comment upon such matters.

Should you have any questions or concerns about the Sears' plan, you may contact me as set out below. When contacting us, please quote the registration number shown in the subject line of this email.

Yours truly,

Penny McIlraith
 Pension Officer
 Pension Plans Branch
 Financial Services Commission of Ontario
 5160 Yonge Street
 Box 85
 Toronto ON M2N 6L9

Phone: 416-226-7822
Toll-free: 1-800-668-0128, extension 7822
Fax: 416-226-7777
Email: pensioninquiries@fscs.gov.on.ca

Tab P

This is Exhibit "P" referred to in the Affidavit of Sandy Lockhart
affirmed October 29, 2019.

A handwritten signature in black ink, appearing to be "R. J. H.", written above a horizontal line.

Commissioner for Taking Affidavits (or as may be)

Cc: Sriskandarajah, Tina (MOF)
Subject: FW: Regulation of Sears' underfunded Pension Plan

Please see a follow up enquiry below and advise.
 Thanks

From: Alagaratnam, Akosua (MOF)
Sent: December 8, 2014 9:24 AM
To: Masnikosa, Aida (MOF)
Subject: FW: Regulation of Sears' underfunded Pension Plan

They want a follow up to previous correspondence.

Hoping you could help.

Best,

Akosua

From: Phillippe Murphy-Rheaume [<mailto:pmurphy-rheaume@liberal.ola.org>]
Sent: December 8, 2014 9:07 AM
To: Alagaratnam, Akosua (MOF)
Subject: FW: Regulation of Sears' underfunded Pension Plan

Hi Akosua,

[Redacted - Personal Information] had contacted MPP Arthur Potts previously about Sears Canada funding its pension obligations. I have attached the response that the Ministry of Finance had provided to his initial email (included, at the bottom of the attached email). [Redacted - Personal Information] now has follow-up questions to which we are hoping the ministry could assist in responding.

If you have any questions, please don't hesitate to contact me.

Thanks,
 Phillippe

Phillipe Murphy-Rhéaume
 Executive Assistant | Arthur Potts, MPP (Beaches–East York)
 Parliamentary Assistant to the Minister of Agriculture, Food and Rural Affairs
 T: 416.326.3057 | C: 416-525-8289

On Fri, Dec 5, 2014 at 11:51 AM, [Redacted - Personal Information] wrote:

Dear Arthur,

Thank you for the update your office provided on behalf of the Ministry of Finance in response to my concern regarding Sears Canada's underfunded Pension Plan and their continuing strategy of selling off assets and moving most of the resulting funds to the controlling owner, Edward Lampert.

While what the Finance Ministry says may be true in that Sears has so far acted within the laws and regulations that are required of them in Ontario, what oversight and regulations are in place to ensure that they continue to do so? It is likely that they will comply in this way until they choose the right moment to declare insolvency at which time they will no longer be liable for funding the pension plan and will leave it in an underfunded position, shortchanging the pensioners and putting the province of Ontario on the hook for payments to those who qualify.

I ask if it is the intent of our government to fund the shortfalls created purposely by a U.S. corporation who has been, and is currently, stripping away as much value from the Canadian company as is possible, and laying off ten's of thousands of Canadian employees?

It is also true that they are stripping away the value in the company in a planned and systematic manner, which will end badly for the Sears pensioners as the company will be pushed into insolvency or bankruptcy as a result of the strategy of Sears Canada management directed by their American owners. They are knowingly putting the pensioners at risk and refuse to wind up the pension plan despite the urging of the Sears Canada Retiree's Group. (SCRG).

That group has made detailed and convincing presentations both federally and provincially in order to warn our governments and the FSCO about the path we are on, and to ask those entities to step in to stop what will end with considerable hardship for fixed income pensioners and a victory over Canadians citizens by ruthless American businessmen.

After reviewing the presentations that the SCRG have made to the regulators and politicians, it is clear that the best course of action to be taken is for the Ontario regulator to order Sears Canada to wind-up the pension plan in advance of insolvency, as by doing so you would protect Ontarians as this action would force the company to make full payment to eliminate the underfunding that currently threatens the future of thousands of Canadian ex-employees of Sears and more who are currently employed there.

Any failure to act on this urgent issue will result in significant hardship for the members of the Pension Plan, increased expense against the Province's budget, and a recognition that despite early and repeated warnings our government was unable to protect us from Sears Canada's seemingly legal but callous and unethical approach to their obligations.

Please do not allow them to get away with this. They have excellent lawyers and actuaries at their employ and fully intend to use whatever means are available to them to dodge their funding responsibilities.

Only by forcing Sears Canada to wind up the pension plan in advance of insolvency will you have protected the interests of Ontarians and set an example to other companies that may be contemplating following Sears Canada's unethical lead.

Please let me know what can be done by our government.

Thank you

Redacted - Personal Information

I have included the following as background to this issue:

From the Ministry of Finance:

Please be assured that Sears' compliance with the provisions of the *Pension Benefits Act* (PBA) and other applicable pension legislation is carefully monitored by the Financial Services Commission of Ontario (FSCO) and there is no evidence suggesting that Sears is not compliant.

Persuant to the PBA, Sears is permitted to use funding relief options as are all sponsors of defined benefit pension plans. These options were designed to help plan sponsors manage pension funding challenges that resulted from recent declines in long-term interest rates and low investment returns. Sponsors who select to use funding relief remain obligated to fully fund their pension plans on a solvency basis, regardless of the funding flexibility given to sponsors.

FSCO cannot direct Sears to stop doing what it is lawfully entitled to do, such as paying dividends to its shareholders.

Should Sears fail to comply with the requirements of the PBA or applicable legislation, it could lead to an order from FSCO that Sears comply with the PBA and possible prosecution by the Ministry of the Attorney General.

The Superintendent of FSCO has the authority under the PBA to order a pension plan to wind up under certain circumstances, including in the event that Sears discontinued most of its operations in Ontario or substantially all of the Sears plan members cease to be employed by Sears. A full wind up of the plan would require that all benefits owed to all plan members be settled, the plan be terminated, and any funding deficit of the plan be funded by Sears by means of five equal annual payments.

FSCO is responsible for interpreting and enforcing the PBA, including determining whether sufficient information/evidence exists for the Superintendent to wind-up the Sears Plan.

Redacted - Personal Information

--
Arthur Potts
416.471-7355

If you have received this message in error, please notify me immediately and delete this e-mail and any attachments without copying, distributing or disclosing their contents.

Si vous avez reçu ce message par erreur, veuillez nous en aviser immédiatement et détruire ce courriel ainsi que toute pièce jointe en vous abstenant d'en faire une copie, d'en divulguer ou d'en diffuser le contenu.

Tab Q

This is Exhibit "Q" referred to in the Affidavit of Sandy Lockhart
affirmed October 29, 2019.

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

Commissioner for Taking Affidavits (or as may be)

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF SEARS CANADA INC., 9370-2751 QUÉBEC INC.,
191020 CANADA INC., THE CUT INC., SEARS CONTACT SERVICES
INC., INITIUM LOGISTICS SERVICES INC. INITIUM COMMERCE LABS
INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR
COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO
INC., 6988741 CANADA INC., 10011711 CANADA INC., 1592580
ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC.,
168886 CANADA INC., AND 3339611 CANADA INC.

Applicants

AFFIDAVIT OF BRIAN MILLS

I, Brian Mills, of the City of Mississauga, in the Province of Ontario, MAKE OATH
AND SAY:

1. I am the Chief Executive Officer and Superintendent of Financial Services (the
“**Superintendent**”) at the Financial Services Commission of Ontario (“**FSCO**”). As
such, I have knowledge of the matters contained in this affidavit. Where I do not have
direct knowledge of a matter, I indicate the source of my information and believe it to be
true.

2. I submit this affidavit in support of the motion by FSCO and Morneau Shepell Ltd.
 (“**Morneau Shepell**” or the “**Plan Administrator**”) for, among other things, declarations
that, subject to the allocation and application of various charges imposed in the course

of these proceedings, (i) Sears Canada Inc. ("**Sears Canada**") is deemed to hold all assets and proceeds therefrom (the "**SCI Proceeds**") up to the amount due by Sears Canada in respect of the wind-up of the Sears Canada Inc. Registered Retirement Plan (the "**Wind-Up Deficiency**" and the "**Sears Pension Plan**", respectively) in trust for the beneficiaries of the Sears Pension Plan; (ii) 9370-2751 Québec Inc. (formerly Corbeil Électrique Inc.) ("**Corbeil**") and 191020 Canada Inc. (formerly SLH Transport Inc.) and 168886 Canada Inc. (collectively, "**SLH**" and together with Sears Canada and Corbeil, the "Employers"), are jointly and severally liable for the Wind-Up Deficiency and Corbeil and SLH are deemed to hold all assets and proceeds therefrom (the "**Corbeil/SLH Proceeds**", and together with the SCI Proceeds, the "**Proceeds**") up to the amount of the Wind-Up Deficiency in trust for the beneficiaries of the Pension Plan; (iii) Morneau Shepell has a lien and charge over the Proceeds as security for the amounts due to the Pension Plan by the Employers; (iv) the Superintendent has a lien and charge over the Proceeds as security for any funds that are paid out of Ontario's Pension Benefit Guarantee Fund (the "**PBGF**"); and, (v) such claims in respect of the Wind-Up Deficiency have priority to the claims of all other creditors of the Employers, and that the Proceeds up to the amounts to the Sears Pension Plan by the Employers are not distributable to such other creditors.

A. My Role

3. I was appointed to the office of Superintendent pursuant to the *Public Service of Ontario Act, 2006*. As Superintendent, I am also the Chief Executive Officer of FSCO, pursuant to the *Financial Services Commission of Ontario Act, 1997* (the "**FSCO Act**").

4. FSCO is an arm's length agency of the Ministry of Finance in Ontario. It is a regulatory and adjudicative body constituted under the *FSCO Act*. FSCO's statutory mandate is to provide regulatory services that protect the public interest and enhance public confidence in the regulated sectors, to make recommendations to the Minister on the regulated sectors, and to provide resources for the Financial Services Tribunal. Persons who establish or administer a pension plan within the meaning of the *Pension Benefits Act*, R.S.O. 1990, c. P.8 (the "**PBA**"), and employers or other persons on their behalf who are required to contribute to such pension plans, are included in the definition of "regulated sector" under the *FSCO Act*.

5. In my capacity as Superintendent, I am responsible for supervising, in Ontario, the sectors regulated under the *FSCO Act*, including the pension sector, and for administering and enforcing the *PBA*. There are approximately 4,000 defined benefit pension plans registered in Ontario, covering over 3.5 million beneficiaries whom FSCO protects through its regulation of the pension sector. Excluding the large public sector plans, the total wind-up deficit of Ontario-registered pension plans would be close to \$60 billion if these plans were wound up.

6. As Superintendent, I am also responsible for the administration of the PBGF under the *PBA*. The PBGF guarantees certain pension benefits to members of eligible pension plans in Ontario. Historically, the PBGF guaranteed payments to eligible plan beneficiaries of up to \$1,000 per month. In the spring of 2018, the maximum guarantee amount was increased to \$1,500 per month for any plan that winds up with an effective date of wind-up on or after May 19, 2017. Ontario members of the Sears Pension Plan will now benefit from this new \$1,500 guarantee.

7. The PBGF is funded by an assessment on employers that sponsor eligible pension plans in Ontario. Although the Ontario government has, on rare occasions, extended loans or grants to the PBGF in order to permit it to satisfy claims made against the fund, I do not understand the government to be under any legal obligation to do so. Alternatives to government financing include, among other things, increasing the assessments paid by employers that sponsor eligible pension plans and winding-up the PBGF.

8. My role as regulator of the pension sector and administrator of the PBGF is particularly important today with the aging population. In the coming years, more and more Canadians will retire. The lack of full pensions upon retirement, after years of savings and planning, raises significant issues of fairness and social justice. In addition, the availability of these pensions serves an important economic objective: it reduces pensioners' dependence on taxpayer-funded benefits which enables a healthier and more self-sufficient retirement.

B. Defined Benefit Pension Plans and the General Scheme of the PBA

9. Defined benefit plans such as the Sears Pension Plan are a commitment by an employer to fund a plan, typically administered by the employer, so as to permit the plan to pay a defined amount in monthly pension benefits to former employees in retirement, for the duration of their life and the life of other eligible beneficiaries. As a practical matter, these pension benefits are generally understood by many to be deferred wages, and constitute a critical part of an employee's compensation.

10. In light of the social and economic importance of the employer's pension commitment, as described above, together with the long-term nature of the pension obligation, and the fiduciary obligations associated with the administration of the pension fund, defined benefit pension plans are subject to a carefully calibrated regulatory scheme.

11. Among other things, the *PBA* and its associated regulations create funding obligations in respect of defined benefit pension plans, and impose various forms of security in respect of such funding. In this way, the *PBA* and its associated regulations regularize and establish objective minimum standards for the funding of pension plans to which the *PBA* applies. This relieves employers and employees and/or their representatives from the obligation to separately negotiate these matters, whether as part of the pension plan, any applicable collective agreement, or otherwise.

12. Normally, there are two types of mandatory payments which are made to a pension plan under the *PBA*: "current service payments" (sometimes referred as "normal cost payments"), and "special payments".

13. Current service payments represent the present value of the projected retirement benefits earned by plan participants in the current period. These amounts must be contributed in the current period. The current service obligation is calculated by actuaries based on a variety of assumptions, including with respect to investment returns, levels of earnings, retirement rates, mortality rates, and the like, which are impacted by a variety of financial, economic, demographic, and other factors.

14. Special payments are payments required to account for any shortfalls that may arise from time to time in the funding of the pension plan. The calculation of the funding obligation to a pension plan is based on a variety of assumptions. However, actual plan experience is often different than assumed: investment returns may be different than what was assumed; the age at which plan beneficiaries retire may be different than what was expected; and retirees may live longer or shorter lives. As such, at any given point in time, a plan could have a funding shortfall (if experience is worse than expected).

15. In order to protect pension entitlements in light of the fluidity of funding requirements, the *PBA* requires that the funding of the pension plans be assessed at least every three years. These assessments, which are filed with FSCO, are sometimes referred to as “triennial valuations”. They consider the funded status of the pension plan on both a “going-concern” and “solvency” basis:

- (a) The “going-concern” valuation assumes that the pension plan will be ongoing. A plan is fully funded on a going-concern basis if its assets are greater than the present value of benefits accrued to date, assuming the pension benefits will be paid, as they are due, over the ongoing life of the pension plan.
- (b) The solvency valuation is intended to guard against the risk of wind-up of the plan by comparing the value of its assets to the present value of benefits accrued to date, assuming the pension plan winds up and must

permanently settle all of its liabilities immediately. If the liabilities are greater than the assets, the plan has a solvency deficit.

16. Where the plan has either a going concern deficit or a solvency deficit, the employer is typically required to make “special payments” to eliminate the deficits over time.

17. Since the 1990s, the sponsor of an Ontario-registered defined benefit pension plan with a solvency deficit has generally been required to make special payments to eliminate that deficit. Until approximately 2009, plan sponsors had five years to do so. However, starting in or about 2009, certain temporary solvency funding relief measures were implemented in the *PBA* which eased the solvency funding requirements for sponsors of private sector defined benefit pension plans. For example, with the consent of members and former members, the sponsor could elect to extend the five year solvency deficit funding period to ten years. The obligation to make solvency deficit payments has recently been further relaxed. Recent amendments to the *PBA* and its regulations, effective May 1, 2018, now provide that special payments in respect of a solvency deficit need only be made where the plan is less than 85% funded on a solvency basis. These changes are an example of the balancing that occurs, in the statutory scheme, of the risk to plan beneficiaries of an under-funded plan against the importance of maintaining employers’ ability to invest in the business and remain competitive.

18. The balancing takes into account, among other things, the cyclical nature of investment returns and the financial stress that special payments impose on the plan

sponsor's business. It also takes into account the various protections afforded to pension claims by the *PBA*.

19. In particular, the *PBA* balances the risk of having periods, from time to time, of less-than-full funding through a number of priority provisions; provisions that have the effect of ensuring that pension claims, during periods of solvency deficit, are paid in priority to other claims against the employer. The *PBA*'s priority provisions include:

- (a) the deemed trust provided by s-ss. 57(3) and 57(4) in respect of contributions that are due and unpaid, and any wind-up deficiency, respectively;
- (b) a lien and charge provided by s-s. 57(5) in respect of the obligations described above;
- (c) a lien and charge provided by s-s. 86(1) in respect of amounts paid by the PBGF; and,
- (d) an exemption from execution provided by s-s. 66(1).

20. Subsection 30(7) of the *Personal Property Security Act* also provides that a deemed trust under s. 57 of the *PBA* takes priority over a security interest in an account or inventory.

21. Markets appear to recognize the pension priority provisions. For example, market participants have informed FSCO staff that it is the practice of operating lenders to monitor the debtor to ensure that amounts due to a pension plan are paid on a timely

basis, and to margin their loans for potential wind-up deficiencies, particularly following the Supreme Court of Canada's decision in *Indalex*.

C. The Sears Pension Plan

22. The Sears Pension Plan is a defined-benefit pension plan registered under the *PBA*, and has members across Canada.

23. Pursuant to the 1968 Memoranda of Reciprocal Agreements (attached as Exhibit "B" to Hamish Dunlop's affidavit affirmed August 24, 2018 (the "**Dunlop Affidavit**")) and the 2016 Agreement Respecting Multi-Jurisdictional Pension Plans (attached as Exhibit "A" to the Dunlop Affidavit) (collectively, the "**Reciprocal Agreements**") the Superintendent has the principal regulatory jurisdiction for the Sears Pension Plan for all plan members, including those residing in other parts of Canada. Specifically, because the plurality of Sears Pension Plan members were employed in Ontario, the other provincial regulators have delegated their regulatory authority to me.

24. Until the recent appointment of Morneau Shepell as replacement administrator, the Sears Pension Plan was administered by Sears Canada for the benefit of all participating employers and plan beneficiaries.

25. Beginning in 2007, the Sears Pension Plan reported a wind-up deficit in its triennial valuations:

Report Date	Wind-up Deficit Reported
December 31, 2007	\$36 million
December 31, 2010	\$307 million
December 31, 2013	\$133 million
December 31, 2015	\$267 million

26. On July 1, 2008, Sears Canada amended the Sears Pension Plan to freeze all defined benefit accruals under the plan. As a result, Sears Pension Plan members retained defined benefit pensions earned up until July 1, 2008, but ceased accruing any additional defined benefit service from then on. Also on July 1, 2008, Sears Canada added a defined contribution component to the Sears Pension Plan.

27. Beginning in 2013, an *ad hoc* group of Sears Canada retirees (the “**Sears Store, Catalogue and Retiree Group**” or “**SCRG**”) raised concerns with FSCO about the viability of the Sears Pension Plan. In or about 2014, the SCRG began requesting of Sears Canada and the Superintendent that they wind-up the Sears Pension Plan.

28. FSCO carefully considered the requests by the SCRG, and closely monitored the state of the Sears Pension Plan. However, in my assessment, the conditions that would have provided the Superintendent with discretion to order a wind-up did not exist prior to Sears Canada's CCAA filing. Under the PBA, the Superintendent's discretionary authority to order the wind-up of a single employer pension plan exists only in very

specific circumstances. If these circumstances do not exist, only the employer who sponsors the plan has the authority to wind it up.

29. Specifically, under s-s. 69(1) of the *PBA*, I can only order that a single employer pension plan be wound up where (i) the employer stops or suspends its contributions to the pension fund; (ii) the employer fails to make required contributions to the pension fund; (iii) the employer is bankrupt; (iv) all or substantially all of the members of the pension plan have ceased to be employed by the employer; (v) all or substantially all of the employer's business or the assets of the employer's business are sold, and the entity which acquires the business or assets does not provide a pension plan for the former employees of the employer; or (vi) the PBGF's liability is likely to be substantially increased if the pension plan is not wound up.

30. If and only if one of these statutory grounds is met, do I have the discretion to order the wind-up of a single employer pension plan, like the Sears Pension Plan. To do so, I issue a Notice of Intended Decision. At that time, the employer, plan beneficiaries, and any other affected parties have the right to object to the proposed wind-up order through a hearing at the Financial Services Tribunal over whether it was appropriate to order the wind-up of the plan (e.g., whether one of the *PBA* conditions had in fact been met). The decisions of the FST can then be the subject of an application for judicial review, from which further appeals can be taken. All in all, the process can be time-consuming.

31. Legally and practically, the *PBA* imposes principle responsibility and discretion to wind-up a pension plan on the plan sponsor. In doing so, however, the *PBA* balances

the risk of bad decision making (or, worse, bad conduct) by the plan sponsor in various ways, including, among other things, by operation of the priority provisions described above.

32. Sears Canada and the members of its board were required to exercise their discretion prudently and responsibly, and in a manner that was not unfairly prejudicial to the Sears Pension Plan and its beneficiaries, having regard to their fiduciary obligations and all of the information in respect of Sears Canada's business that was reasonably available to them. Whether they fulfilled that obligation is a matter that remains to be determined, but I would not expect the Sears Pension Plan members or participants in the PBGF to lose the benefit of protections afforded by the *PBA* due to the discretionary decisions made by Sears Canada.

33. Notwithstanding the request by the SCRG, Sears Canada did not exercise its discretion to wind-up the Sears Pension Plan. On June 22, 2017, Sears Canada and a number of its affiliates applied for and were granted protection under the *CCAA*. Shortly thereafter, the Court approved a sale and investor solicitation process (the "**SISP**"). Under the SISP, Sears Canada and the Bank of Montreal marketed various going-concern solutions. Through most of September 2017, there was at least one bid group led by Brandon Stranzl, former chief executive officer and board member of Sears Canada, which was seeking to buy Sears Canada as a going concern and to maintain the Sears Pension Plan. Throughout this process, Sears Canada was making special payments to the Sears Pension Plan of about \$3.7 million per month and was compliant with the funding requirements under the *PBA*.

34. Ultimately, the SISP did not result in the approval of any going-concern transactions. On or about September 30, 2017, Sears Canada ceased making its required special payments to the Sears Pension Plan. Shortly after Sears Canada suspended its special payment contributions, on October 13, 2017, the Court approved a second liquidation, this time for substantially all of Sears Canada's remaining property. We accepted that a going-concern outcome was not possible. As a result, Sears Canada would inevitably cease its operations and terminate its remaining employees.

35. I now had the authority to order the wind-up under the *PBA*, because Sears Canada had suspended its contributions, and at this point, the only reasonable course of action was to order the wind-up of the Sears Pension Plan. I appointed Morneau Shepell as the new administrator of the Sears Pension Plan a few days after the second liquidation order. Among other things, Morneau Shepell was tasked with administering the winding up of the plan.

36. On November 10, 2017, I issued a notice of my intention to order the wind-up of the Sears Pension Plan effective October 1, 2017, with such wind-up including all plan members whose employment was terminated on or after June 13, 2017 (the "**NOID**"). A copy of the NOID is attached to the Dunlop Affidavit as Exhibit "H".

37. The NOID was transmitted to the entire Service List for these CCAA proceedings. All creditors received notice of the applicable dates, and had the opportunity to object to the wind-up. One creditor constituency, led by 1291079 Ontario Limited (the "**Class Action Creditors**"), did object to the NOID by filing a Request for

Hearing on December 7, 2017. Eventually, the Class Action Creditors withdrew their request for a hearing at the FST. My order winding up the Sears Pension Plan is now final, and attached to the Dunlop Affidavit as Exhibit "I".

38. The Sears Pension Plan is eligible for the application of the PBGF, and on July 31, 2018, I issued a Notice of Intended Decision to declare that the PBGF applies to the Sears Pension Plan. Morneau Shepell has estimated that the Sears Pension Plan is underfunded by approximately \$260.2 million.

39. The PBGF will ensure that the Ontario beneficiaries of the Sears Pension Plan receive the guaranteed benefits pursuant to the *PBA*. As a result, on April 9, 2018, FSCO staff estimated that the PBGF will allocate approximately \$125 million to the Sears Pension Plan.

40. Accordingly, I have filed a claim for this amount on behalf of the PBGF, in accordance with the claims procedures established by the Monitor and approved by the Court on February 22, 2018. In my proof of claim, I have asserted priority pursuant to the Superintendent's lien and charge under the *PBA*, as well as pursuant to my subrogated rights in respect of the pension administrator's lien and charge and the *PBA* deemed trust. I have been advised by Ken Rosenberg, who is counsel to the Superintendent, and I verily believe, that the Monitor has not issued any notices of disallowance or revision with respect to the PBGF claim.

41. I have also been informed by the financial advisor retained by my counsel, Allan Nackan of A. Farber and Partners Inc., and I verily believe, that no other remaining creditors have claimed a security interest in the Sears Canada estates. The liens

created by the *PBA* appear to be the only security interests over all the funds remaining in the estate, subject only to various charges created in these proceedings and the *PBA* deemed trust.

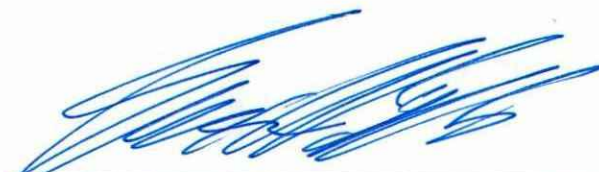
42. In my experience, the priority provisions in the *PBA* are an important part of the carefully calibrated scheme for the protection of pension interests in Ontario. The *PBA* priority provisions safeguard pension entitlements without requirements which would unduly hamper the employer's ability to operate a competitive business. An outcome that would deny the benefit of the *PBA* priority provisions would deprive beneficiaries of their pension entitlements and would appear to me to create a windfall for other creditors, particularly in the context in this case, which does not engage the interests of any secured creditors. More importantly, however, for my purposes as the regulator of pensions in Ontario, such an outcome would establish that the protections that I understand to exist for the benefit of pension plan beneficiaries are wholly ineffective, and would merit a reconsideration of the existing *PBA* policy and legislative scheme.

SWORN BEFORE ME at the City of
Toronto, in the Province of Ontario on
August 24th, 2018



Commissioner for Taking Affidavits

Elizabeth Rathbone
LSO #: 70331U



BRIAN MILLS

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS CANADA INC., 9370-2751 QUÉBEC INC., 191020 CANADA INC., THE CUT INC., SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611 CANADA INC.

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT
TORONTO

AFFIDAVIT OF BRIAN MILLS

PALIARE ROLAND ROSENBERG ROTHSTEIN LLP
155 Wellington Street West, 35th Floor
Toronto, ON M5V 3H1

Kenneth T. Rosenberg (LSO #21102H)
Tel: (416) 646-4304

Email: ken.rosenberg@paliareroland.com

Lily Harmer (LSO #31880T)

Tel: (416) 646-4326

Email: lily.harmer@paliareroland.com

Massimo (Max) Starnino (LSO #41048G)

Tel: (416) 646-7431/

Email: max.starnino@paliareroland.com

Elizabeth Rathbone (LSO #70331U)

Tel: 416-646-7488

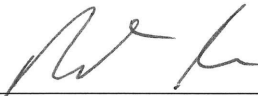
Email: elizabeth.rathbone@paliareroland.com

Fax: (416) 646-4301

Lawyers for Superintendent of Financial Services as
Administrator of the Pension Benefits Guarantee Fund

Tab R

This is Exhibit "R" referred to in the Affidavit of Sandy Lockhart
affirmed October 29, 2019.



Commissioner for Taking Affidavits (or as may be)

David Breault

From: Pension Inquiries
Sent: July 07, 2014 3:43 PM
To: [Redacted - Personal Information]
Subject: Sears Canada Inc. Registered Retirement Plan, Registration Number 360065

Dear [Redacted - Personal Information]

Thank you for your emails dated May 15 and 28, 2014, regarding the above pension plan.

The Financial Services Commission of Ontario (FSCO) administers the pension legislation applicable to this pension plan. We are closely monitoring the funded status of the pension plan and its compliance with the applicable pension legislation. We have no evidence to suggest that Sears Canada Inc. has failed to comply with the requirements of the pension legislation.

Sears' dividend payments to shareholders and any non-pension plan-related benefits for employees are outside the jurisdiction of the pension legislation and FSCO, and we cannot comment upon such matters.

Should you have any questions or concerns about the Sears' plan, you may contact me as set out below. When contacting us, please quote the registration number shown in the subject line of this email.

Yours truly,

Penny McIlraith
Pension Officer
Pension Plans Branch
Financial Services Commission of Ontario
5160 Yonge Street
Box 85
Toronto ON M2N 6L9

Phone: 416-226-7822
Toll-free: 1-800-668-0128, extension 7822
Fax: 416-226-7777
Email: pensioninquiries@fSCO.gov.on.ca

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

**AFFIDAVIT OF SANDY LOCKHART
(MOTION RE EXAMINATION OF WITNESSES –
RULE 31.03(8))**

POLLEY FAITH LLP

The Victory Building
80 Richmond Street West, Suite 1300
Toronto, ON M5H 2A4

Andrew Faith (47795H)

afaith@polleyfaith.com

Jeffrey Haylock (61241F)

jhaylock@polleyfaith.com

Emma Carver (68034E)

ecarver@polleyfaith.com

Tel: 416.365.1600

Fax: 416.365.1601

Lawyers for the defendants ESL Investments Inc., ESL
Partners, LP, SPE I Partners, LP, SPE Master I, LP, ESL
Institutional Partners, LP and Edward S. Lampert

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

**MOTION RECORD OF THE ESL PARTIES
(MOTION RE EXAMINATION OF WITNESSES - RULE 31.03(8)
RETURNABLE NOVEMBER 15, 2019**

POLLEY FAITH LLP

The Victory Building
80 Richmond Street West, Suite 1300
Toronto, ON M5H 2A4

Andrew Faith (47795H)

afaith@polleyfaith.com

Jeffrey Haylock (61241F)

jhaylock@polleyfaith.com

Emma Carver (68034E)

ecarver@polleyfaith.com

Tel: 416.365.1600

Fax: 416.365.1601

Lawyers for the defendants

ESL Investments Inc., ESL Partners, LP, SPE I Partners, LP,
SPE Master I, LP, ESL Institutional Partners, LP and Edward
S. Lampert