

Thirteenth Report of FTI Consulting Canada Inc., in its capacity as monitor (the “**Monitor**”), filed, and on hearing the submissions of respective counsel for the Applicants, the Monitor, Pension Representative Counsel (as defined below), Employee Representative Counsel (as defined below), the Pension Plan Administrator (as defined below), the Superintendent (as defined below), and such other counsel as were present, no one else appearing although duly served as appears from the Affidavits of Service of Francesca Del Rizzo and Justine Erickson sworn February 20 and 21, 2018,

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion Record herein is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

SCOPE

2. THIS COURT ORDERS that except as otherwise specifically set out herein, this Order shall apply only to Claims as defined in this Order.

DEFINITIONS AND INTERPRETATION

3. THIS COURT ORDERS that any capitalized term used and not defined herein shall have the meaning ascribed thereto in the Amended and Restated Initial Order in these proceedings dated June 22, 2017 as amended, restated, supplemented and/or modified from time to time (the “**Initial Order**”).

4. THIS COURT ORDERS that for the purposes of this Order the following terms shall have the following meanings:

- 3 -

- (a) “**Advisors**” means, collectively, any actuarial, financial, legal and other advisors and assistants;
- (b) “**Agent**” means the contractual joint venture comprised of Gordon Brothers Canada ULC, Merchant Retail Solutions ULC, Tiger Capital Group, LLC and GA Retail Canada ULC;
- (c) “**Agency Agreements**” means: (i) the Amended and Restated Agency Agreement between Sears Canada Inc. and the Agent dated July 12, 2017 and amended and restated on July 14, 2017, and (ii) the Amended and Restated Agency Agreement between Sears Canada Inc. and the Agent dated October 10, 2017;
- (d) “**Bar Date**” means the Proof of Claim Bar Date, the Request for Correction Bar Date or the Notice of Proposed Revision Bar Date, as applicable;
- (e) “**Business Day**” means a day, other than a Saturday, Sunday or statutory holiday, on which banks are generally open for business in Toronto, Ontario;
- (f) “**CCAA Proceedings**” means the CCAA proceedings commenced by the Applicants in the Court under Court File No. CV-17-11846-00CL;
- (g) “**Claim**” means any Employee Claim or Retiree Claim, including, for greater certainty, any D&O Claim, provided however that in any case “**Claim**” shall not include an Excluded Claim;
- (h) “**Claims Website**” means, collectively, the online employee claims portal and the online retiree claims portal, each to be maintained by the Monitor for the purposes of this Employee and Retiree Claims Process;

- 4 -

- (i) “**Claimant**” means any Person with an entitlement to an Employee Claim or a Retiree Claim that has been asserted by or on behalf of such Person;
- (j) “**Claims Officer**” means the individuals designated by the Court pursuant to paragraph 70 of this Order;
- (k) “**Claims Package**” means an ERC Employee Package, Non-ERC Employee Package, PRC Retiree Package, Non-PRC Retiree Package or Proof of Claim Package, as applicable, each to be sent by the Monitor in accordance with the terms of this Order;
- (l) “**Claims Procedure Order**” means the Claims Procedure Order issued by the Court on December 8, 2017, as may be amended from time to time;
- (m) “**Court**” means the Ontario Superior Court of Justice (Commercial List);
- (n) “**CPO Claim**” means any General Creditor Claim, Construction Claim or Intercompany Claim (each as defined in the Claims Procedure Order);
- (o) “**D&O Claim**” means any Sears Pension Claim, Supplemental Plan Claim, Other Employee Claim or Other Retiree Claim against a Director or Officer under this Order (including, for greater certainty, any D&O Claim in respect of termination and severance pay, damages for loss of employment-related perquisites and benefits, and/or damages for loss of OPEB Entitlements);
- (p) “**D&O Proof of Claim**” means the proof of claim form to be filed by Claimants in respect of any D&O Claim, substantially in the form attached as Schedule “S”

- 5 -

hereto, which shall include all available supporting documentation in respect of such D&O Claim;

- (q) “**D&O Proof of Claim Instruction Letter**” means the letter containing instructions for completing the D&O Proof of Claim form, substantially in the form attached as Schedule “R” hereto;
- (r) “**DB Only Retiree**” means: (i) any Retiree who has any entitlements under the defined benefit component of the Sears Pension Plan (including, for greater certainty, any active Employee with such entitlements), and (ii) any Retiree who has any entitlements under the Supplemental Plan (including, for greater certainty, any active Employee with such entitlements), but in either case, who does not have any OPEB Entitlements, based on the books and records of the Sears Canada Entities;
- (s) “**Director**” means anyone who is or was or may be deemed to be or have been, whether by statute, operation of law or otherwise, a director or *de facto* director of any of the Sears Canada Entities, in such capacity;
- (t) “**Duplicate Claim**” means a Claim that is asserted against a Sears Canada Entity or a Director or Officer that duplicates in whole or in part another Claim or CPO Claim, and includes a Claim or any portion thereof that is based on an obligation or legal right asserted in another Claim or CPO Claim;
- (u) “**Employee**” means any (i) active or inactive union or non-union employee of any one of the Sears Canada Entities on or after the Filing Date, including an employee of any one of the Sears Canada Entities who received notice of termination of

employment dated on or after the Filing Date or who resigned or otherwise ceased employment on or after the Filing Date; and (ii) former employee of any one of the Sears Canada Entities, including without limitation any former employee who was terminated for cause at any time, any former employee who received notice, on or after the Filing Date, of the cessation of his or her termination or severance payments, and any former employee who has an outstanding active action, claim or complaint as of the Filing Date;

(v) **“Employee Claim”** means each of the following:

- (i) Termination Claims;
- (ii) Warranty Claims; and
- (iii) Other Employee Claims;

including any Employee Claim arising through subrogation against any Sears Canada Entity or Director or Officer, provided however that in any case **“Employee Claim”** shall not include an Excluded Claim;

(w) **“Employee and Retiree Claims Process”** means the procedures outlined in this Order in connection with the solicitation and assertion of Employee Claims and Retiree Claims against the Sears Canada Entities and/or the Directors and Officers;

(x) **“Employee Representative Counsel”** means Ursel Phillips Fellows Hopkinson LLP;

- (y) “**Employee Representative Counsel Order**” means the Employee Representative Counsel Order issued by the Court dated July 13, 2017, as may be amended from time to time;
- (z) “**Employee Representative Counsel’s Website**” means <http://www.upfhlaw.ca/areas-of-practice/sears-canada-employees-and-former-employees/>;
- (aa) “**Employee Representatives**” means Paul Webber, Nancy Demeter, Sheena Wrigglesworth, Barb Wilser and Darrin Whitney, or such other representatives as may be duly appointed by the Court from time to time;
- (bb) “**Employee Request for Correction**” means the request form, substantially in the form attached as Schedule “J” hereto, or in an electronic form acceptable to the Monitor, to be submitted by an Employee to the Monitor requesting a correction to the Personal Information set out in the Termination Claim Statement or Monitor Corrected Claim Statement, if applicable, provided to such Employee;
- (cc) “**ERC Employee**” means any Employee represented by Employee Representative Counsel;
- (dd) “**ERC Employee Letter**” means the letter to ERC Employees, substantially in the form attached as Schedule “D” hereto, which shall, among other things, provide a link to access the Claims Website (where an Employee may submit an Employee Request for Correction and which will include a link to the Proof of Claim Package);

(ee) “**ERC Employee Package**” means a document package, which shall include: (i) the ERC Employee Letter; (ii) an individualized Termination Claim Statement, and (iii) such other materials as the Monitor, in consultation with the Sears Canada Entities and Employee Representative Counsel, may consider appropriate or desirable;

(ff) “**Excluded Claim**” means any:

(i) CPO Claim;

(ii) Claim that may be asserted by any beneficiary of the Administration Charge, the FA Charge, the KERP Priority Charge, the Directors’ Priority Charge, the KERP Subordinated Charge and the Directors’ Subordinated Charge and any other charges granted by the Court in the CCAA Proceedings, with respect to such charges;

(iii) Claim by the Agent under the Agency Agreements;

(iv) Monitor Claim; and

(v) Claim that may be asserted by any of the Sears Canada Entities against any Directors and/or Officers;

and for greater certainty, shall include any Excluded Claim arising through subrogation;

(gg) “**Filing Date**” means June 22, 2017;

- (hh) “**Grievance Claim**” means any grievance (or part of such grievance) by an Employee against any Sears Canada Entity, where that grievance (or part of such grievance) is (i) pursuant to a collective agreement with such Sears Canada Entity, (ii) for monetary compensation, and (iii) is not covered in a Termination Claim Statement or Monitor Corrected Claim Statement, if applicable, and the Termination Claims Methodology. Where part of a grievance is for monetary compensation, and part of the same grievance is for other relief, only that part of the grievance that is for monetary compensation shall be a Grievance Claim for the purposes of this Order;
- (ii) “**Indemnification Claim**” means any claim of any Employee against one or more of the Sears Canada Entities for indemnification and/or contribution arising from such Employee’s service to any Sears Canada Entity;
- (jj) “**Lifetime Discount**” means the lifetime associate discount awarded as a post-employment benefit to certain current and former employees of the Sears Canada Entities who qualified for such discount by virtue of satisfying applicable age and service eligibility criteria (and, for greater certainty, such current and former employees shall be included in the definition of “Retiree” for the purposes of this Order);
- (kk) “**Lifetime Discount Claim**” means any claim against the Sears Canada Entities with respect to a Lifetime Discount, which, for greater certainty, will be calculated for the purposes of this Employee and Retiree Claims Process in accordance with the Lifetime Discount Claims Methodology;

- (ll) “**Lifetime Discount Claims Methodology**” means the methodology and assumptions for the calculation of Lifetime Discount Claims, as described in paragraphs 56 to 60 of the Penrice Affidavit;
- (mm) “**Meeting**” means any meeting of the creditors of the Sears Canada Entities called for the purpose of considering and voting in respect of a Plan;
- (nn) “**Monitor Claim**” means a Claim (as defined in the Claims Procedure Order), including a D&O Claim (as defined in the Claims Procedure Order) and any claim pursued in accordance with section 36.1 of the CCAA, that may be asserted by the Monitor;
- (oo) “**Monitor Corrected Claim Statement**” means a revised Termination Claim Statement or Retiree Benefit Claim Statement, as applicable, to be sent by the Monitor to a Claimant if any errors are independently discovered by or made known to the Monitor in the Personal Information that affect the amount of the Termination Claim or Retiree Benefit Claim, as applicable, of such Claimant;
- (pp) “**Monitor’s Website**” means <http://cfcanada.fticonsulting.com/searscanada/>;
- (qq) “**Non-ERC Employee**” means any of the following Employees: (i) Unionized Employees; (ii) any Employee who is currently or was previously a member of senior management of any of the Sears Canada Entities and who was not eligible for representation by Employee Representative Counsel; and (iii) any Employee who was eligible for representation by Employee Representative Counsel and who opted out of such representation in accordance with the requirements contained in the Employee Representative Counsel Order;

- (rr) **“Non-ERC Employee Letter”** means the letter to Non-ERC Employees, substantially in the form attached as Schedule “E” hereto, which shall, among other things: (i) provide a link to access the Claims Website (where an Employee may submit an Employee Request for Correction and which will include a link to the Proof of Claim Package), and (ii) instruct such Non-ERC Employees to contact the Monitor to obtain a Notice of Proposed Revision;
- (ss) **“Non-ERC Employee Package”** means a document package, which shall include: (i) the Non-ERC Employee Letter; (ii) an individualized Termination Claim Statement, and (iii) such other materials as the Monitor, in consultation with the Sears Canada Entities, may consider appropriate or desirable;
- (tt) **“Non-PRC Retiree”** means any Retiree with OPEB Entitlements who is not represented by Pension Representative Counsel, including without limitation: (i) any unionized Retiree who notifies Pension Representative Counsel in writing that such Retiree wishes to opt out of representation by Pension Representative Counsel; (ii) any Retiree who is currently or was previously a member of senior management of any of the Sears Canada Entities and who was not eligible for representation by Pension Representative Counsel, and (iii) any Retiree who was eligible for representation by Pension Representative Counsel and who opted out of such representation in accordance with the requirements contained in the Pension Representative Counsel Order;
- (uu) **“Non-PRC Retiree Letter”** means the letter to Non-PRC Retirees, substantially in the form attached as Schedule “G” hereto, which shall, among other things, provide

- 12 -

a link to access the Claims Website (where a Retiree may submit a Retiree Request for Correction and which will include a link to the Proof of Claim Package);

- (vv) “**Non-PRC Retiree Package**” means a document package, which shall include: (i) the Non-PRC Retiree Letter; (ii) an individualized Retiree Benefit Claim Statement; (iii) a Retiree Request for Correction form; (iv) a Notice of Proposed Revision form, and (v) such other materials as the Monitor, in consultation with the Sears Canada Entities, may consider appropriate or desirable;
- (ww) “**Notice of Acceptance**” means a notice, substantially in the form attached as Schedule “M” hereto, or in an electronic form acceptable to the Monitor, advising a Claimant that the Monitor has accepted a change to such Claimant’s Personal Information and that such Claimant’s Termination Claim or Retiree Benefit Claim amount, as applicable, shall be revised as outlined therein (or that no changes to such Claim amount shall be made as a result of the change to such Claimant’s Personal Information);
- (xx) “**Notice of Disallowance**” means a Notice of Disallowance (Personal Information) or Notice of Disallowance (Proof of Claim), as the case may be;
- (yy) “**Notice of Disallowance (Personal Information)**” means a notice, substantially in the form attached as Schedule “N” hereto, advising a Claimant that the Monitor has disallowed all or part of the changes that have been requested by such Claimant in a Request for Correction;
- (zz) “**Notice of Disallowance (Proof of Claim)**” means a notice, substantially in the form attached as Schedule “T” hereto, advising a Claimant that the Monitor has

- 13 -

disallowed all or part of such Claimant's Claim as set out in a Proof of Claim or D&O Proof of Claim filed by or on behalf of such Claimant;

- (aaa) **"Notice of Dispute"** means a Notice of Dispute (Personal Information) or a Notice of Dispute (Proof of Claim), as the case may be;
- (bbb) **"Notice of Dispute (Personal Information)"** means a notice, substantially in the form attached as Schedule "O" hereto, delivered to the Monitor by a Claimant who has received a Notice of Disallowance (Personal Information), notifying the Monitor of his/her intention to dispute such Notice of Disallowance (Personal Information), with reasons for such dispute;
- (ccc) **"Notice of Dispute (Proof of Claim)"** means a notice, substantially in the form attached as Schedule "U" hereto, delivered to the Monitor by a Claimant who has received a Notice of Disallowance (Proof of Claim) in respect of such Claimant's Proof of Claim or D&O Proof of Claim, as applicable, notifying the Monitor of his/her intention to dispute such Notice of Disallowance (Proof of Claim), with reasons for such dispute;
- (ddd) **"Notice of Proposed Revision"** means a notice, substantially in the form attached as Schedule "L" hereto, delivered to the Monitor by a Non-ERC Employee (or, where such Non-ERC Employee is a Unionized Employee, by the Union Representative on behalf of such Unionized Employee) or Non-PRC Retiree, who has received a Termination Claim Statement, Retiree Benefit Claim Statement or Monitor Corrected Claim Statement, notifying the Monitor of such Claimant's intention to revise the methodology used to calculate the Claim contained in such Termination Claim Statement, Retiree Benefit Claim Statement or Monitor

- 14 -

Corrected Claim Statement, with a description of the proposed revisions to the calculation of such Claimant's Termination Claim or Retiree Benefit Claim, as applicable, and the reasons for such proposed revisions;

- (eee) **"Notice of Proposed Revision Bar Date"** means 5:00 p.m. on May 7, 2018;
- (fff) **"Notice to Claimants"** means the notice to Claimants, substantially in the form attached as Schedule "C" hereto, to be published by the Monitor and posted on the Monitor's Website, Employee Representative Counsel's Website, and Pension Representative Counsel's Website, each in accordance with the terms of this Order, which shall include, without limitation, a notice to all Retirees with entitlements to a Lifetime Discount or Warranty stating that Proofs of Claim are not required to be filed in connection with any such Lifetime Discount or Warranty because all Proofs of Claim with respect to such Lifetime Discounts and Warranties will be deemed to have been properly submitted by the Sears Canada Entities on behalf of each eligible Retiree, based on the books and records of the Sears Canada Entities;
- (ggg) **"Officer"** means anyone who is or was or may be deemed to be or have been, whether by statute, operation of law or otherwise, an officer or *de facto* officer of any of the Sears Canada Entities, in such capacity;
- (hhh) **"OPEB Entitlement"** means any entitlement to health and dental post-employment benefits and/or life insurance benefits, each as provided by any of the Sears Canada Entities as a post-employment benefit;
- (iii) **"Order"** means this Employee and Retiree Claims Procedure Order;

- (jjj) **“Other Employee Claim”** means: (i) any right or claim of any Employee against any of the Sears Canada Entities that is not a Termination Claim or a Warranty Claim, and (ii) any right or claim of any Employee against any Directors and/or Officers, in either case, including any right or claim in connection with any indebtedness, liability or obligation of any kind whatsoever of any such Sears Canada Entity, Director and/or Officer to such Employee, arising before, on or after the Filing Date, including without limitation any Indemnification Claims or Grievance Claims;
- (kkk) **“Other Retiree Claim”** means: (i) any right or claim of any Retiree, the Pension Plan Administrator and/or Superintendent against any of the Sears Canada Entities that is not a Sears Pension Claim, Supplemental Plan Claim, Retiree Benefit Claim, Lifetime Discount Claim or Warranty Claim, and (ii) any right or claim of any Retiree, the Pension Plan Administrator and/or Superintendent against any Directors and/or Officers that is not a Sears Pension Claim or Supplemental Plan Claim, in either case, including any right or claim in connection with any indebtedness, liability or obligation of any kind whatsoever of any such Sears Canada Entity, Director and/or Officer to such Retiree or in respect of the Sears Pension Plan or Supplemental Plan, arising before, on or after the Filing Date;
- (lll) **“Pension Plan Administrator”** means Morneau Shepell Ltd. in its capacity as administrator of the Sears Pension Plan;
- (mmm) **“Pension Plan Administrator’s Website”** means https://www.pensionwindups.morneaushepell.com/en/plan_info/SRRP/plan_info.asp;

- (nnn) “**Pension Representative Counsel**” means Koskie Minsky LLP;
- (ooo) “**Pension Representative Counsel Order**” means the Representative Counsel Order for Pensions and Post-Retirement Benefits issued by the Court dated July 13, 2017, as may be amended from time to time;
- (ppp) “**Pension Representative Counsel’s Website**” means <https://kmlaw.ca/cases/sears-canada/>;
- (qqq) “**Pensioner Representatives**” means Bill Turner, Ken Eady and Larry Moore, or such other representatives as may be duly appointed by the Court from time to time;
- (rrr) “**Person**” means any individual, firm, corporation, limited or unlimited liability company, general or limited partnership, association, trust (including a real estate investment trust), unincorporated organization, joint venture, government or any agency or instrumentality thereof or any other entity;
- (sss) “**Personal Information**” means the personal information relating to a particular Employee or Retiree based on the Sears Canada Entities’ books and records as at the date of this Order and updated from time to time, contained in a Termination Claim Statement or Retiree Benefit Claim Statement, as such Personal Information may be amended as a result of a Request for Correction accepted by the Monitor, as a result of a Monitor Corrected Claim Statement, or as a result of a determination pursuant to the dispute resolution mechanisms set out in this Order;
- (ttt) “**Plan**” means, as further defined in the Initial Order, any proposed plan of compromise or arrangement that may be filed in respect of any or all of the Sears

Canada Entities pursuant to the CCAA as the same may be amended, supplemented or restated from time to time in accordance with the terms thereof;

- (uuu) “**PRC Retiree**” means any Retiree with OPEB Entitlements who is represented by Pension Representative Counsel;
- (vvv) “**PRC Retiree Package**” means a document package, which shall include: (i) the Retiree Letter; (ii) an individualized Retiree Benefit Claim Statement; (iii) a Retiree Request for Correction form, and (iv) such other materials as the Monitor, in consultation with the Sears Canada Entities and Pension Representative Counsel, may consider appropriate or desirable;
- (www) “**Pre-Filing Period**” means the period prior to the Filing Date;
- (xxx) “**Proof of Claim**” means the proof of claim form, substantially in the form attached as Schedule “Q” hereto, to be filed by Claimants in respect of any Sears Pension Claim, Supplemental Plan Claim, Other Employee Claim or Other Retiree Claim against any of the Sears Canada Entities;
- (yyy) “**Proof of Claim Bar Date**” means 5:00 p.m. on April 9, 2018;
- (zzz) “**Proof of Claim Instruction Letter**” means the letter containing instructions for completing the Proof of Claim form, substantially in the form attached as Schedule “P” hereto;
- (aaa) “**Proof of Claim Package**” means a document package, which shall include: (i) a Proof of Claim form; (ii) a Proof of Claim Instruction Letter; (iii) a D&O Proof of Claim form; (iv) a D&O Proof of Claim Instruction Letter; and (v) such other

- 18 -

materials as the Monitor, in consultation with the Sears Canada Entities, may consider appropriate or desirable;

(bbbb) “**Request for Correction**” means an Employee Request for Correction or a Retiree Request for Correction, as applicable;

(cccc) “**Request for Correction Bar Date**” means the later of: (i) 5:00 p.m. on May 7, 2018, and (ii) where a Claimant receives a Monitor Corrected Claim Statement, the date that is thirty (30) days after the date on which such Claimant is deemed to receive such Monitor Corrected Claim Statement;

(dddd) “**Restructuring Period**” means the period on or after the Filing Date;

(eeee) “**Retiree**” means any Person with any (i) entitlements under the Sears Pension Plan; (ii) entitlements under the Supplemental Plan; (iii) primary coverage entitlements with respect to any OPEB Entitlements; (iv) entitlements to the Lifetime Discount (including, for greater certainty, current and former Employees who qualify for this discount by virtue of satisfying applicable age and service eligibility criteria); or (v) entitlements under any other pension or retirement plan of the Sears Canada Entities;

(ffff) “**Retiree Benefit Claim**” means any right or claim of any Retiree against any of the Sears Canada Entities in respect of any OPEB Entitlements as calculated in accordance with the Retiree Benefit Claims Methodology, which, for greater certainty, shall include any derivative health and dental coverage claim of any eligible spouse and/or dependant of such Retiree, and which will be set out in a Retiree Benefit Claim Statement;

(gggg) “**Retiree Benefit Claim Statement**” means an individual claim statement, substantially in the form attached as Schedule “I” hereto, to be prepared by the Sears Canada Entities, in consultation with the Monitor and with the assistance of Pension Representative Counsel, which shall include the amount of such individual Claimant’s Retiree Benefit Claim, as calculated in accordance with the Retiree Benefit Claims Methodology;

(hhhh) “**Retiree Benefit Claims Methodology**” means the methodology and assumptions for the calculation of Retiree Benefit Claims, as described in paragraphs 48 to 53 of the Penrice Affidavit and illustrated in Schedule “B” hereto;

(iiii) “**Retiree Claim**” means each of the following (which, for greater certainty, may be asserted by or on behalf of a Retiree, including by Pension Representative Counsel or the Pension Plan Administrator and/or the Superintendent, as appropriate):

- (i) Sears Pension Claims;
- (ii) Supplemental Plan Claims;
- (iii) Retiree Benefit Claims;
- (iv) Lifetime Discount Claims;
- (v) Warranty Claims; and
- (vi) Other Retiree Claims;

- 20 -

including any Retiree Claim arising through subrogation against any Sears Canada Entity or Director or Officer, provided however that in any case “**Retiree Claim**” shall not include an Excluded Claim;

(jjj) “**Retiree Letter**” means the letter to PRC Retirees and DB Only Retirees, substantially in the form attached as Schedule “F” hereto, which shall, among other things, provide a link to access the Claims Website (where a Retiree may submit a Retiree Request for Correction and which will include a link to the Proof of Claim Package);

(kkkk) “**Retiree Request for Correction**” means the request form, substantially in the form attached as Schedule “K” hereto, or in an electronic form acceptable to the Monitor, to be submitted by a Retiree to the Monitor requesting a correction to the Personal Information set out in the Retiree Benefit Claim Statement or Monitor Corrected Claim Statement, if applicable, provided to such Retiree;

(llll) “**Sears Pension Claim**” means any right or claim against the Sears Canada Entities or any Directors and/or Officers with respect to the Wind-Up Deficiency, including, for greater certainty, any claim based on statutory deemed trust obligations with respect to the Wind-Up Deficiency (and, for greater certainty, no individual Retiree with entitlements with respect to the defined benefit component of the Sears Pension Plan shall be permitted to submit a Proof of Claim or D&O Proof of Claim with respect to such entitlements or with respect to the Wind-Up Deficiency);

(mmmm) “**Sears Pension Claim Methodology**” means the methodology and assumptions for the calculation of any Sears Pension Claim, as described in paragraphs 61 to 63 of the Penrice Affidavit;

- (nnnn) “**Sears Pension Plan**” means the Sears Canada Inc. Registered Retirement Plan (Reg. #0360065), a pension plan registered under the Ontario *Pension Benefits Act*, R.S.O. 1990, c. P.8 and *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) with a defined benefit component and a defined contribution component;
- (oooo) “**Superintendent**” means the Ontario Superintendent of Financial Services as administrator of the Pension Benefits Guarantee Fund;
- (pppp) “**Supplemental Plan**” means the Sears Canada Inc. Supplementary Retirement Plan, a non-registered supplemental pension plan maintained to provide enhanced pension benefits to eligible members of the defined benefit component of the Sears Pension Plan that are not provided under the Sears Pension Plan;
- (qqqq) “**Supplemental Plan Claim**” means any right or claim against the Sears Canada Entities or any Directors and/or Officers with respect to entitlements of a Retiree under the Supplemental Plan (and, for greater certainty, no Retiree who is represented by Pension Representative Counsel shall be permitted to submit a Proof of Claim or D&O Proof of Claim with respect to such entitlements);
- (rrrr) “**Termination Claim**” means any right or claim of any Employee against any of the Sears Canada Entities in respect of the termination of such Employee’s employment, whether under contract, common law, statute or otherwise, including for termination and severance pay and for damages for loss of employment-related perquisites and benefits (including employee discounts) during his/her period of entitlement to working notice, which, for greater certainty, will be calculated for the purposes of this Employee and Retiree Claims Process in accordance with the Termination Claims Methodology and set out in a Termination Claim Statement;

- (ssss) “**Termination Claim Statement**” means an individual claim statement, substantially in the form attached as Schedule “H” hereto, or in an electronic form acceptable to the Monitor, to be prepared by the Sears Canada Entities, in consultation with the Monitor and with the assistance of Employee Representative Counsel, which shall include the amount of such individual Claimant’s Termination Claim, as calculated in accordance with the Termination Claims Methodology;
- (tttt) “**Termination Claims Methodology**” means the methodology and assumptions for the calculation of Termination Claims, as described in paragraphs 28 to 47 of the Penrice Affidavit and illustrated in Schedule “A” hereto;
- (uuuu) “**Union Representative**” means a representative of the bargaining agent representing Unionized Employees;
- (vvvv) “**Unionized Employee**” means any Employee represented by a union pursuant to a collective agreement in connection with such Employee’s employment with any of the Sears Canada Entities;
- (wwww) “**Warranty**” means a customer warranty provided by any one of the Sears Canada Entities, including any Sears Protection Agreement but excluding any manufacturer’s warranty;
- (xxxx) “**Warranty Claim**” means any claim of a Claimant in this Employee and Retiree Claims Process against the Sears Canada Entities with respect to a Warranty; and
- (yyyy) “**Wind-Up Deficiency**” means the wind-up deficit with respect to the defined benefit component of the Sears Pension Plan.

5. THIS COURT ORDERS that all references as to time herein shall mean local time in Toronto, Ontario, Canada, and any reference to an event occurring on a Business Day shall mean prior to 5:00 p.m. on such Business Day unless otherwise indicated herein, and any reference to an event occurring on a day that is not a Business Day shall mean the next following day that is a Business Day.

6. THIS COURT ORDERS that all references to the word “including” shall mean “including without limitation”, all references to the singular herein include the plural, the plural include the singular, and any gender includes all genders.

GENERAL PROVISIONS

7. THIS COURT ORDERS that any Claim denominated in a foreign currency shall be converted to Canadian dollars at the Bank of Canada exchange rate in effect at the Filing Date. For reference, the exchange rate that will be applied to Claims denominated in U.S. dollars is 1.3241 CAD/USD.

8. THIS COURT ORDERS that, notwithstanding any other provisions of this Order, the solicitation by the Monitor of Proofs of Claim and D&O Proofs of Claim, the delivery by the Monitor of Claims Packages and the Retiree Letter, and the filing by any Claimant of any Proof of Claim or D&O Proof of Claim shall not, for that reason only, grant any Person any rights, including without limitation, in respect of the nature, quantum and priority of his/her Claims or his/her standing in the CCAA Proceedings or any other proceedings, except as specifically set out in this Order (provided that this exception shall not apply in respect of paragraphs 19 to 21 of this Order or to the Sears Pension Claim Methodology).

9. THIS COURT ORDERS that the Monitor, in consultation with the Sears Canada Entities and the applicable Directors and Officers in respect of any D&O Claim, is hereby authorized to

use reasonable discretion as to the adequacy of compliance with respect to the manner in which any forms delivered hereunder are completed and executed and the time in which they are submitted, and may, where the Monitor, in consultation with the Sears Canada Entities and the applicable Directors and Officers in respect of any D&O Claim, is satisfied that a Claim has been adequately proven, waive strict compliance with the requirements of this Order, including in respect of the completion, execution and time of delivery of such forms; provided that it is recognized and understood that certain Claims will be contingent in nature and/or based on estimates and assumptions which may be subject to change, and therefore will not contain particulars of such Claims that are not yet known as at the time they are filed.

TERMINATION CLAIMS METHODOLOGY

10. THIS COURT ORDERS that the Termination Claims Methodology is hereby approved.

11. THIS COURT ORDERS that the Termination Claims of ERC Employees and Non-ERC Employees shall be calculated by the Sears Canada Entities in consultation with the Monitor and with the assistance of Employee Representative Counsel and its Advisors as well as Union Representatives, where appropriate, in accordance with the Termination Claims Methodology based on the Personal Information relating to such Employee.

12. THIS COURT ORDERS AND DECLARES that:

- (a) the Termination Claims Methodology shall be final and binding on all ERC Employees;
- (b) the Termination Claims Methodology shall be final and binding on any Non-ERC Employees who do not submit a Notice of Proposed Revision (or, in the case of a Unionized Employee, do not have a Union Representative submit a Notice of

- 25 -

Proposed Revision on such Unionized Employee's behalf) by the Notice of Proposed Revision Bar Date;

- (c) no: (i) ERC Employee, or (ii) Non-ERC Employee who did not submit a Notice of Proposed Revision (or, in the case of a Unionized Employee, did not have a Union Representative submit a Notice of Proposed Revision on such Unionized Employee's behalf) by the Notice of Proposed Revision Bar Date, shall directly or indirectly assert, advance, re-assert or re-file any Termination Claim that is not calculated in accordance with the Termination Claims Methodology; and
- (d) any Termination Claim that is directly or indirectly asserted, advanced, re-asserted or re-filed by an ERC Employee or by a Non-ERC Employee who did not submit a Notice of Proposed Revision (or, in the case of a Unionized Employee, did not have a Union Representative submit a Notice of Proposed Revision on such Unionized Employee's behalf) by the Notice of Proposed Revision Bar Date that is not calculated in accordance with the Termination Claims Methodology shall be disallowed.

RETIREE BENEFIT CLAIMS METHODOLOGY

13. THIS COURT ORDERS that the Retiree Benefit Claims Methodology is hereby approved.

14. THIS COURT ORDERS that any Retiree Benefit Claim of a Retiree shall be calculated by the Sears Canada Entities in consultation with the Monitor and with the assistance of Pension Representative Counsel and its Advisors, where appropriate, in accordance with the Retiree Benefit Claims Methodology based on the Personal Information relating to such Retiree.

15. THIS COURT ORDERS AND DECLARES that:

- (a) the Retiree Benefit Claims Methodology shall be final and binding on all PRC Retirees;
- (b) the Retiree Benefit Claims Methodology shall be final and binding on all Non-PRC Retirees who do not submit a Notice of Proposed Revision by the Notice of Proposed Revision Bar Date;
- (c) no: (i) PRC Retiree, or (ii) Non-PRC Retiree who did not file a Notice of Proposed Revision by the Notice of Proposed Revision Bar Date, shall directly or indirectly assert, advance, re-assert or re-file any Retiree Benefit Claim that is not calculated in accordance with the Retiree Benefit Claims Methodology; and
- (d) any Retiree Benefit Claim that is directly or indirectly asserted, advanced, re-asserted or re-filed by a PRC Retiree or by a Non-PRC Retiree who did not file a Notice of Proposed Revision by the Notice of Proposed Revision Bar Date that is not calculated in accordance with the Retiree Benefit Claims Methodology shall be disallowed.

LIFETIME DISCOUNT CLAIMS METHODOLOGY

16. THIS COURT ORDERS that the Lifetime Discount Claims Methodology is hereby approved.

17. THIS COURT ORDERS AND DECLARES that:

- (a) the Lifetime Discount Claims Methodology shall be final and binding on all Retirees eligible to submit a Lifetime Discount Claim;

- 27 -

- (b) the Sears Canada Entities shall be deemed to have submitted Lifetime Discount Claims calculated in accordance with the Lifetime Discount Claims Methodology on behalf of each known Retiree eligible to submit a Lifetime Discount Claim, based on the books and records of the Sears Canada Entities;
- (c) no Retiree shall directly or indirectly assert, advance, re-assert or re-file any Lifetime Discount Claim; and
- (d) any Lifetime Discount Claim that is directly or indirectly asserted, advanced, re-asserted or re-filed by any Retiree shall be disallowed.

SEARS PENSION CLAIM METHODOLOGY

18. THIS COURT ORDERS that the Sears Pension Claim Methodology is hereby approved.
19. THIS COURT ORDERS that only Pension Representative Counsel, the Pension Plan Administrator and the Superintendent may submit a Proof of Claim and/or D&O Proof of Claim with respect to any Sears Pension Claim. The Monitor shall deal with any such Proofs of Claim and/or D&O Proofs of Claim in accordance with paragraphs 65 and 69 below. For greater certainty, no individual Retiree with entitlements with respect to the defined benefit component of the Sears Pension Plan shall be permitted to submit a Proof of Claim or D&O Proof of Claim with respect to any such entitlements or with respect to the Wind-Up Deficiency.
20. THIS COURT ORDERS that any Sears Pension Claim shall be calculated pursuant to the Sears Pension Claim Methodology. For the purposes of the preparation and submission of any Proof of Claim or D&O Proof of Claim relating to a Sears Pension Claim only, the Pension Plan Administrator, Pension Representative Counsel and/or the Superintendent shall be entitled, without independent investigation, to rely on the books and records of the Sears Canada Entities

and any information provided by the Sears Canada Entities, and shall not be liable for any claims or damages resulting from any errors or omissions in the Sears Canada Entities' books, records or information.

21. THIS COURT ORDERS AND DECLARES that:

- (a) the Sears Pension Claim Methodology shall be final and binding on the Pension Plan Administrator, Pension Representative Counsel, the Superintendent and on all Retirees with entitlements under the defined benefit component of the Sears Pension Plan;
- (b) Sears Pension Claims: (i) may only be submitted by the Pension Plan Administrator, Pension Representative Counsel, and/or the Superintendent, each in accordance with the Sears Pension Claim Methodology and the requirements under this Order (which, for greater certainty, may be adjusted in accordance with the Sears Pension Claim Methodology after the Proof of Claim Bar Date), and (ii) shall not, directly or indirectly, be asserted, advanced, re-asserted or re-filed by any other Person that is not the Pension Plan Administrator, Pension Representative Counsel or the Superintendent;
- (c) any Sears Pension Claim that is directly or indirectly asserted, advanced, re-asserted or re-filed by any Person other than the Pension Plan Administrator, Pension Representative Counsel or the Superintendent, or any Sears Pension Claim that is not calculated in accordance with the Sears Pension Claim Methodology, shall be disallowed;

- 29 -

- (d) the Monitor shall provide a copy of any Sears Pension Claim received to the Pension Plan Administrator, Pension Representative Counsel and the Superintendent, as appropriate;
- (e) each of the Pension Plan Administrator, Pension Representative Counsel and the Superintendent shall be given written notice by the Monitor of any determination by the Monitor, including as to quantum and/or priority, of any Sears Pension Claim submitted in accordance with this Order; and
- (f) the Pension Plan Administrator, Pension Representative Counsel and the Superintendent shall be given written notice by the Monitor of, and are entitled to participate in (i) any hearing before a Claims Officer concerning a Sears Pension Claim, and (ii) any hearing before the Court concerning a Sears Pension Claim, and any appeals therefrom.

SUPPLEMENTAL PLAN CLAIMS

22. THIS COURT ORDERS that Pension Representative Counsel shall, on behalf of all Retirees with entitlements under the Supplemental Plan, submit a Proof of Claim and/or D&O Proof of Claim with respect to any Supplemental Plan Claims of such Retirees. No Retiree represented by Pension Representative Counsel shall be permitted to submit a Proof of Claim or D&O Proof of Claim with respect to any Supplemental Plan Claim of such Retiree. For greater certainty, any Retiree not represented by Pension Representative Counsel who has entitlements under the Supplemental Plan may submit a separate Proof of Claim or D&O Proof of Claim with respect to such entitlements, and the Monitor shall deal with any such Proofs of Claim and/or D&O Proofs of Claim in accordance with paragraph 69 below.

- 30 -

23. THIS COURT ORDERS that any Supplemental Plan Claim submitted by Pension Representative Counsel shall be calculated by Pension Representative Counsel and its Advisors. Pension Representative Counsel and its Advisors shall be entitled, without independent investigation, to rely on the books and records of the Sears Canada Entities and any information provided by the Sears Canada Entities, and shall not be liable for any claims or damages resulting from any errors or omissions in the Sears Canada Entities' books, records or information.

24. THIS COURT ORDERS AND DECLARES that:

- (a) any Supplemental Plan Claims submitted by Pension Representative Counsel shall be final and binding on all Retirees represented by Pension Representative Counsel who have entitlements under the Supplemental Plan;
- (b) any Supplemental Plan Claims submitted by Pension Representative Counsel shall be final and binding on all Retirees not represented by Pension Representative Counsel who do not submit any other Proof of Claim or D&O Proof of Claim in respect of their entitlements under the Supplemental Plan before the Proof of Claim Bar Date;
- (c) no Retiree represented by Pension Representative Counsel shall directly or indirectly assert, advance, re-assert or re-file any Supplemental Plan Claim; and
- (d) any Supplemental Plan Claim that is directly or indirectly asserted, advanced, re-asserted or re-filed by any Retiree represented by Pension Representative Counsel shall be disallowed.

MONITOR'S ROLE

25. THIS COURT ORDERS that, in addition to its prescribed rights, duties, responsibilities and obligations under the CCAA, the Initial Order and any other orders of the Court in the CCAA Proceedings, the Monitor is hereby directed and empowered to implement the Employee and Retiree Claims Process set out herein and to take such other actions and fulfill such other roles as are authorized by this Order or incidental thereto.

26. THIS COURT ORDERS that the Monitor (a) shall have all of the protections given to it by the CCAA, the Initial Order, any other orders of the Court in the CCAA Proceedings, and this Order, or as an officer of the Court, including the stay of proceedings in its favour; (b) shall incur no liability or obligation as a result of the carrying out of the provisions of this Order, including in respect of its exercise of discretion as to the completion, execution or time of delivery of any documents to be delivered hereunder, other than in respect of its gross negligence or wilful misconduct; (c) shall be entitled, without independent investigation, to rely on the books and records of the Sears Canada Entities and any information provided by the Sears Canada Entities; and (d) shall not be liable for any claims or damages resulting from any errors or omissions in the Sears Canada Entities' books, records or information.

27. THIS COURT ORDERS that the Sears Canada Entities and their current officers, directors, employees, agents and representatives shall fully cooperate with the Monitor in the exercise of its powers and discharge of its duties and obligations under this Order.

EMPLOYEE REPRESENTATIVE COUNSEL'S ROLE

28. THIS COURT ORDERS that, unless otherwise directed by the Court, Employee Representative Counsel may, on behalf of any ERC Employee: (a) engage in discussions with the Monitor and the Sears Canada Entities with respect to Personal Information; (b) assist in filing an

- 32 -

Employee Request for Correction, Proof of Claim, D&O Proof of Claim, or Notice of Dispute on behalf of an Employee where requested to do so by the Employee; (c) file a Proof of Claim or a D&O Proof of Claim on behalf an Employee; (d) participate in the adjudication, resolution or settlement of any Termination Claim; and (e) assist an ERC Employee with an Other Employee Claim that, in the judgment of Employee Representative Counsel, is a *bona fide* claim that has not been dealt with through the Termination Claims Methodology; provided however that nothing in this paragraph 28 shall relieve an ERC Employee of his or her responsibility to review the Claims Package provided to him or her (including the Termination Claim Statement), to review the Personal Information upon which the Claim will be calculated, and to submit an Employee Request for Correction, a Proof of Claim, a D&O Proof of Claim, or a Notice of Dispute where such Employee wishes to do so and is entitled to do so in accordance with the procedures and within the time limits set out in this Order.

29. THIS COURT ORDERS that Employee Representative Counsel, the Employee Representatives and any Advisors retained by Employee Representative Counsel: (a) shall have no personal liability or obligations as a result of the performance of their duties in carrying out the provisions of this Order, save and except for liability arising out of gross negligence or wilful misconduct; (b) shall be entitled, without independent investigation, to rely on the books and records of the Sears Canada Entities and any information provided by the Sears Canada Entities; and (c) shall not be liable for any claims or damages resulting from any errors or omissions in the Sears Canada Entities' books, records or information.

30. THIS COURT ORDERS that, subject to existing confidentiality agreements, the Employee Representative Counsel Order and applicable law: (a) the Sears Canada Entities and the Monitor shall cooperate with Employee Representative Counsel in the exercise of its powers and discharge

of its duties and obligations under this Order, and (b) Employee Representative Counsel shall cooperate with the Monitor and the Sears Canada Entities in the exercise of their respective powers and discharge of their respective duties and obligations under this Order.

PENSION REPRESENTATIVE COUNSEL'S ROLE

31. THIS COURT ORDERS that all unionized Retirees shall be represented by Pension Representative Counsel pursuant to the Pension Representative Counsel Order *nunc pro tunc*, unless any such unionized Retiree specifically notifies Pension Representative Counsel in writing that such Retiree wishes to opt-out of representation by the Pensioner Representatives and Pension Representative Counsel.

32. THIS COURT ORDERS that, unless otherwise directed by the Court, Pension Representative Counsel may, on behalf of any Retiree represented by Pension Representative Counsel: (a) engage in discussions with the Monitor and the Sears Canada Entities with respect to Personal Information; (b) assist in filing a Retiree Request for Correction, Proof of Claim, D&O Proof of Claim, or Notice of Dispute on behalf of a Retiree where requested to do so by the Retiree; (c) file a Proof of Claim or D&O Proof of Claim on behalf of a Retiree; (d) participate in the adjudication, resolution or settlement of any Retiree Benefit Claim; and (e) assist a Retiree with an Other Retiree Claim that, in the judgment of Pension Representative Counsel, is a *bona fide* claim that has not been dealt with through the Retiree Benefit Claims Methodology, the Lifetime Discount Claims Methodology, the Sears Pension Claim Methodology or otherwise; provided however that nothing in this paragraph 31 shall relieve a Retiree of his or her responsibility to review the Claims Package provided to him or her (including the Retiree Benefit Claim Statement), to review the Personal Information upon which the Claim will be calculated, and to submit a Retiree Request for Correction, a Proof of Claim, a D&O Proof of Claim, or a Notice of Dispute

where such Retiree wishes to do so and is entitled to do so in accordance with the procedures and within the time limits set out in this Order.

33. THIS COURT ORDERS that Pension Representative Counsel, the Pensioner Representatives and any Advisors retained by Pension Representative Counsel: (a) shall have no personal liability or obligations as a result of the performance of their duties in carrying out the provisions of this Order, save and except for liability arising out of gross negligence or wilful misconduct; (b) shall be entitled, without independent investigation, to rely on the books and records of the Sears Canada Entities and any information provided by the Sears Canada Entities; and (c) shall not be liable for any claims or damages resulting from any errors or omissions in the Sears Canada Entities' books, records or information.

34. THIS COURT ORDERS that, subject to existing confidentiality agreements, the Pension Representative Counsel Order and applicable law: (a) the Sears Canada Entities and the Monitor shall cooperate with Pension Representative Counsel, the Pension Plan Administrator and the Superintendent in the exercise of their respective powers and discharge of their respective duties and obligations under this Order, and (b) Pension Representative Counsel, the Pension Plan Administrator and the Superintendent shall cooperate with the Monitor and the Sears Canada Entities in the exercise of their respective powers and discharge of their respective duties and obligations under this Order.

NOTICE OF EMPLOYEE AND RETIREE CLAIMS PROCESS

35. THIS COURT ORDERS that the Monitor shall cause the Notice to Claimants to be published at least three (3) times, beginning the week of February 26, 2018, in The Globe and Mail (National Edition) and the electronic edition of La Presse, and in such other publications and with such frequency as is determined by the Monitor in consultation with the Sears Canada Entities.

36. THIS COURT ORDERS that the Monitor shall cause the Notice to Claimants and blank copies of the Claims Packages (excluding any blank Termination Claim Statement or Retiree Benefit Claim Statement) to be posted to the Monitor's Website by no later than 5:00 p.m. on February 27, 2018.

37. THIS COURT ORDERS that the Applicants shall cause the Notice to Claimants to be posted to the my.sears.ca portal, as soon as practicable but no later than 5:00 p.m. on February 27, 2018.

38. THIS COURT ORDERS that Employee Representative Counsel shall cause the Notice to Claimants and a blank copy of the ERC Employee Package (excluding any blank Termination Claim Statement) to be posted to Employee Representative Counsel's Website, as soon as practicable but no later than 5:00 p.m. on February 27, 2018.

39. THIS COURT ORDERS that Pension Representative Counsel shall cause the Notice to Claimants and a blank copy of the PRC Retiree Package (excluding any blank Retiree Benefit Claim Statement) to be posted to Pension Representative Counsel's Website, as soon as practicable but no later than 5:00 p.m. on February 27, 2018.

40. THIS COURT ORDERS that as soon as practicable, but no later than 5:00 p.m. on March 5, 2018, the Monitor shall cause: (a) an ERC Employee Package to be sent to each known ERC Employee; (b) a Non-ERC Employee Package to be sent to each known Non-ERC Employee; (c) a PRC Retiree Package to be sent to each known PRC Retiree; (d) a Non-PRC Retiree Package to be sent to each known Non-PRC Retiree; and (e) a Retiree Letter to be sent to each known DB Only Retiree, each at the last known physical or electronic address recorded in the books and records of the Sears Canada Entities and in accordance with the terms of this Order.

41. THIS COURT ORDERS that as soon as practicable, but no later than 5:00 p.m. on March 5, 2018, the Monitor shall cause a Proof of Claim Package to be sent to each Claimant who the Sears Canada Entities have advised the Monitor may have an outstanding active action, claim or complaint as of the Filing Date but who was not sent a package or a letter in accordance with paragraph 40 above, at the last known physical or electronic address recorded in the books and records of the Sears Canada Entities.

42. THIS COURT ORDERS that to the extent any Claimant requests documents or information relating to the Employee and Retiree Claims Process prior to the Proof of Claim Bar Date, the Monitor shall forthwith send such Claimant a Proof of Claim Package, and shall direct such Claimant to the documents posted on the Monitor's Website or otherwise respond to the request for documents or information as the Monitor (in consultation with the Sears Canada Entities and, where the Monitor deems appropriate, Employee Representative Counsel, Pension Representative Counsel, the Pension Plan Administrator and/or the Superintendent) may consider appropriate in the circumstances. If the Sears Canada Entities or the Monitor become aware of any further Claims after the mailings contemplated in paragraph 40 and 41 herein, the Monitor shall forthwith send such potential Claimant a Proof of Claim Package or other Claims Package, as the Monitor (in consultation with the Sears Canada Entities and, where the Monitor deems appropriate, Employee Representative Counsel, Pension Representative Counsel, the Pension Plan Administrator and/or the Superintendent) deems appropriate, or may direct such potential Claimant to the documents posted on the Monitor's Website.

43. THIS COURT ORDERS that the Employee and Retiree Claims Process and the forms of Notice to Claimants, Proof of Claim Instruction Letter, D&O Proof of Claim Instruction Letter, Proof of Claim, D&O Proof of Claim, Termination Claim Statement, Retiree Benefit Claim

Statement, Employee Request for Correction, Retiree Request for Correction, Notice of Acceptance, Notice of Disallowance (Personal Information), Notice of Disallowance (Proof of Claim), Notice of Dispute (Personal Information), Notice of Dispute (Proof of Claim), Notice of Proposed Revision, ERC Employee Letter, Non-ERC Employee Letter, Retiree Letter and Non-PRC Retiree Letter are hereby approved, subject to any minor non-substantive changes to the forms as the Monitor and the Sears Canada Entities (in consultation with Employee Representative Counsel and Pension Representative Counsel, as appropriate) may consider necessary or desirable to be made from time to time.

44. THIS COURT ORDERS that the sending of the Claims Packages and the Retiree Letter to the applicable Persons and the publication of the Notice to Claimants, in accordance with this Order, shall constitute good and sufficient service and delivery of notice of this Order and the Bar Dates on all Persons who may be entitled to receive notice and who may wish to assert a Claim, and no other notice or service need be given or made and no other document or material need be sent to or served upon any Person in respect of this Order.

FILING OF REQUESTS FOR CORRECTION

45. THIS COURT ORDERS that if the Monitor independently discovers or is made aware of any errors in the Personal Information that would affect the amount of a Termination Claim or Retiree Benefit Claim of a Claimant, the Monitor has the discretion to correct those errors. If any such errors are discovered and corrections are made by the Monitor, the Monitor shall send a Monitor Corrected Claim Statement together with the applicable Request for Correction to such Claimant, who will have the right to submit such Request for Correction by the Request for Correction Bar Date or such other date as may be agreed to by the Monitor in writing.

- 38 -

46. THIS COURT ORDERS that if: (i) an Employee disputes the Personal Information contained in his/her Termination Claim Statement or Monitor Corrected Claim Statement, as applicable, or (ii) a Retiree disputes the Personal Information contained in his/her Retiree Benefit Claim Statement or Monitor Corrected Claim Statement, as applicable, such Employee or Retiree, as applicable, shall deliver to the Monitor the applicable Request for Correction. All Requests for Correction must be received by the Monitor by no later than the Request for Correction Bar Date.

47. THIS COURT ORDERS that: (a) if an Employee's Request for Correction is not received by the Monitor on or before the Request for Correction Bar Date or such Employee's Request for Correction is received and accepted by the Monitor through a Notice of Acceptance, the Personal Information contained in his/her Termination Claim Statement, Monitor Corrected Claim Statement or Notice of Acceptance, as applicable, shall be deemed to be correct and confirmed in all respects, shall be final and binding on such Employee, and such Employee shall be barred from making any Termination Claim inconsistent with such Personal Information; and (b) if a Retiree's Request for Correction is not received by the Monitor on or before the Request for Correction Bar Date or such Retiree's Request for Correction is received and accepted by the Monitor through a Notice of Acceptance, the Personal Information contained in his/her Retiree Benefit Claim Statement, Monitor Corrected Claim Statement or Notice of Acceptance, as applicable, shall be deemed to be correct and confirmed in all respects, shall be final and binding on such Retiree, and such Retiree shall be barred from making any Retiree Benefit Claim inconsistent with such Personal Information.

FILING OF NOTICES OF PROPOSED REVISION

48. THIS COURT ORDERS that a Notice of Proposed Revision with respect to a Unionized Employee's Termination Claim may only be submitted by a Union Representative on behalf of

such Unionized Employee (and, for greater certainty, no Unionized Employee shall be permitted to submit a Notice of Proposed Revision on his/her own behalf). For greater certainty, any Non-PRC Retiree shall be permitted to submit a Notice of Proposed Revision on his/her own behalf, regardless of whether such Non-PRC Retiree is or was represented by a union at any time in relation to such Non-PRC Retiree's employment with any of the Sears Canada Entities.

49. THIS COURT ORDERS that only Non-ERC Employees (or, where such Non-ERC Employee is a Unionized Employee, the Union Representative on behalf of such Unionized Employee) and Non-PRC Retirees shall be permitted to file a Notice of Proposed Revision with respect to the determination of their Termination Claim or Retiree Benefit Claim, as applicable.

50. THIS COURT ORDERS that: (a) if a Non-ERC Employee (or a Union Representative on behalf of a Unionized Employee) disputes the application of the Termination Claims Methodology to determine such Non-ERC Employee's Termination Claim; or (b) if a Non-PRC Retiree disputes the application of the Retiree Benefit Claims Methodology to determine such Non-PRC Retiree's Retiree Benefit Claim, such Claimant (or in the case of a Unionized Employee, the Union Representative on behalf of such Unionized Employee) shall deliver to the Monitor a Notice of Proposed Revision containing a proposed alternative methodology to be used to determine his/her Termination Claim or Retiree Benefit Claim, as applicable. All Notices of Proposed Revision must be received by the Monitor by no later than the Notice of Proposed Revision Bar Date.

51. THIS COURT ORDERS that if a Notice of Proposed Revision is not submitted by an eligible Claimant and received by the Monitor on or before the Notice of Proposed Revision Bar Date: (a) the Termination Claims Methodology or the Retiree Benefit Claims Methodology, as applicable, shall be deemed to be confirmed in all respects by such Claimant and shall be final and binding on such Claimant, such that the only remaining element of such Claimant's Termination

Claim or Retiree Benefit Claim that may be subject to revision shall be the Personal Information to be applied to such methodology (to the extent that any Request for Correction has been submitted in accordance with paragraphs 45 and 47 above), and (b) the Claimant shall be barred from making any further Termination Claim or Retiree Benefit Claim.

FILING OF PROOFS OF CLAIM

52. THIS COURT ORDERS that any Claimant (or any Union Representative or other Person on behalf of any Claimant, including without limitation the Pension Plan Administrator, Pension Representative Counsel or the Superintendent with respect to any Sears Pension Claim or Other Retiree Claim, Employee Representative Counsel with respect to any Other Employee Claim, or Pension Representative Counsel with respect to any Supplemental Plan Claim) that intends to assert a Sears Pension Claim, Supplemental Plan Claim, Other Employee Claim or Other Retiree Claim, including any D&O Claim relating to any of the foregoing, shall file a Proof of Claim or D&O Proof of Claim, as applicable, with the Monitor on or before the Proof of Claim Bar Date. Any Claimant (or other Person on behalf of such Claimant) who submits a Proof of Claim or D&O Proof of Claim must specify whether such Claim relates to the Pre-Filing Period or to the Restructuring Period. For the avoidance of doubt, a Proof of Claim or D&O Proof of Claim, as applicable, must be filed by every such Claimant (or other Person on behalf of such Claimant) in respect of every such Claim or D&O Claim, regardless of whether or not a legal proceeding in respect of such Claim or D&O Claim has been previously commenced.

53. THIS COURT ORDERS that any Claimant (or other Person on behalf of such Claimant) who is eligible to assert a Sears Pension Claim, Supplemental Plan Claim, Other Employee Claim or Other Retiree Claim, including any D&O Claim relating to any of the foregoing, and who does not file a Proof of Claim or D&O Proof of Claim, as applicable, so that such Proof of Claim or

D&O Proof of Claim is received by the Monitor on or before the Proof of Claim Bar Date, or such later date as the Monitor (in consultation with the Sears Canada Entities, the applicable Directors and Officers in respect of any D&O Claim and, where the Monitor deems appropriate, Employee Representative Counsel, Pension Representative Counsel, the Pension Plan Administrator and/or the Superintendent) may agree in writing or the Court may otherwise direct:

- (a) be and is hereby forever barred, estopped and enjoined from asserting or enforcing any such Claim or D&O Claim and all such Claims or D&O Claims shall be forever extinguished;
- (b) will not be permitted to vote at any Meeting on account of such Claim(s) or D&O Claim(s);
- (c) will not be entitled to receive further notice with respect to the Employee and Retiree Claims Process or these proceedings unless the Monitor and/or the Sears Canada Entities become aware that such Claimant has any other Claim; and
- (d) will not be permitted to participate in any distribution under any Plan on account of such Claim(s) or D&O Claim(s).

54. THIS COURT ORDERS that the provisions of paragraphs 52 and 53 herein shall not apply to any Lifetime Discount Claims or to any Warranty Claims. Proofs of Claim with respect to any Lifetime Discount Claim and any Warranty Claim shall each be deemed to have been properly submitted in accordance with the applicable requirements of this Order by the Sears Canada Entities on behalf of each eligible Claimant, based on the books and records of the Sears Canada Entities. For greater certainty, no Claimant shall be entitled to any additional Claim against the Sears Canada Entities with respect to any Lifetime Discount or Warranty.

ADJUDICATION OF TERMINATION CLAIMS OR RETIREE BENEFIT CLAIMS***Requests for Correction***

55. THIS COURT ORDERS that the Monitor shall provide, upon request: (i) summaries of Termination Claims of Unionized Employees or copies of Non-ERC Employee Packages sent to Unionized Employees to the applicable Union Representative; and (ii) copies of any Requests for Correction received by it to the appropriate Representative Counsel or Union Representative.

56. THIS COURT ORDERS that the Monitor, in consultation with the Sears Canada Entities, shall review each Request for Correction submitted in accordance with this Order and received on or before the Request for Correction Bar Date, and shall, no later than July 31, 2018 and with a copy to the appropriate Representative Counsel for such Claimant, if applicable:

- (a) accept all of the corrections requested, in which case the Monitor shall cause to be sent to such Claimant a Notice of Acceptance, which will include the value of the Claimant's Termination Claim or Retiree Benefit Claim, as applicable, after applying the revised Personal Information to the Termination Claims Methodology or the Retiree Benefit Claims Methodology, as appropriate; or
- (b) disallow the corrections requested (in whole or in part), in which case the Monitor shall cause to be sent to such Claimant a Notice of Disallowance (Personal Information).

57. THIS COURT ORDERS that any Claimant who intends to dispute a Notice of Disallowance (Personal Information) hereof shall:

- (a) deliver a completed Notice of Dispute (Personal Information), along with the reasons for the dispute, to the Monitor by no later than thirty (30) days after the

date on which the Claimant is deemed to receive the Notice of Disallowance (Personal Information), or such other date as may be agreed to by the Monitor in writing; and

- (b) in the event that a dispute raised in a Notice of Dispute (Personal Information) is not settled within a time period or in a manner satisfactory to the Monitor, in consultation with the Sears Canada Entities, the Monitor shall refer the dispute raised in the Notice of Dispute (Personal Information) to a Claims Officer or the Court for adjudication at its election.

58. THIS COURT ORDERS that where a Claimant who receives a Notice of Disallowance (Personal Information) does not submit a completed Notice of Dispute (Personal Information) by the time set out in paragraph 57(a), such Claimant's Personal Information shall be deemed to be as set out in the Notice of Disallowance (Personal Information), and such Claimant shall have no further right to dispute same and shall be barred from making any Claim inconsistent with such Personal Information.

Notices of Proposed Revision

59. THIS COURT ORDERS that the Monitor, in consultation with the Sears Canada Entities, shall review each Notice of Proposed Revision submitted in accordance with this Order and received on or before the Notice of Proposed Revision Bar Date, and shall accept, revise or reject the methodology proposed in such Notice of Proposed Revision.

60. THIS COURT ORDERS that, where a Union Representative has submitted a Notice of Proposed Revision on behalf of a Unionized Employee, only the Union Representative shall be entitled to negotiate the methodology proposed in such Notice of Proposed Revision with the Monitor on behalf of such Unionized Employee.

61. THIS COURT ORDERS that, in the event that an alternative methodology proposed in a Notice of Proposed Revision is not agreed to by the Monitor or is not successfully negotiated with the Claimant (or the Union Representative on behalf of a Unionized Employee) within a time period or in a manner satisfactory to the Monitor, in consultation with the Sears Canada Entities, the Monitor shall refer the dispute to a Claims Officer or the Court for adjudication at its election. For greater certainty, any party may file additional evidence, documentation, reports or information on any hearing to determine the methodology to be applied to calculate an applicable Claimant's Termination Claim or Retiree Benefit Claim, as applicable, and no party shall object to the filing of such additional evidence on the basis that such evidence, documentation, report or information was not included in the initial Termination Claim Statement or Retiree Benefit Claim Statement, Notice of Proposed Revision or Request for Correction, if submitted.

ADJUDICATION OF PROOFS OF CLAIM AND D&O PROOFS OF CLAIM

62. THIS COURT ORDERS that the Monitor, in consultation with the Sears Canada Entities, shall review each Proof of Claim submitted in accordance with this Order and received on or before the Proof of Claim Bar Date, and shall accept, revise or reject each Claim set forth in each such Proof of Claim.

63. THIS COURT ORDERS that the Monitor shall promptly deliver a copy of any D&O Proofs of Claim, Notices of Disallowance (Proof of Claim) with respect to any D&O Claim, and Notices of Dispute (Proof of Claim) with respect to any D&O Claim, to the applicable Directors and Officers named therein.

64. THIS COURT ORDERS that the Monitor, in consultation with the Sears Canada Entities and the applicable Directors and Officers named in any D&O Proof of Claim, and any counsel for such Directors and Officers, shall review each D&O Proof of Claim submitted in accordance with

this Order and received on or before the Proof of Claim Bar Date. The Monitor shall accept, revise or reject each Claim set forth in each such D&O Proof of Claim, provided that the Monitor shall not accept or revise any portion of a D&O Claim absent consent of the applicable Directors and Officers or further Order of the Court.

65. THIS COURT ORDERS that the Monitor shall notify the Claimant who has delivered such Proof of Claim or D&O Proof of Claim, as applicable, that such Claim has been revised or rejected and the reasons therefor, by sending a Notice of Disallowance (Proof of Claim) by no later than July 31, 2018 or such later date as ordered by the Court on application by the Monitor. However, this July 31, 2018 deadline shall not apply to any Proof of Claim or D&O Proof of Claim filed in respect of any Sears Pension Claim.

66. THIS COURT ORDERS that any Claimant who intends to dispute a Notice of Disallowance (Proof of Claim) in respect of any Proof of Claim or D&O Proof of Claim, as applicable, hereof shall:

- (a) deliver a completed Notice of Dispute (Proof of Claim), along with the reasons for the dispute, to the Monitor by no later than thirty (30) days after the date on which the Claimant is deemed to receive the Notice of Disallowance (Proof of Claim), or such other date as may be agreed to by the Monitor (in consultation with the Sears Canada Entities and any applicable Directors and Officers in respect of any D&O Claim) in writing; and
- (b) in the event that a dispute raised in a Notice of Dispute (Proof of Claim) is not settled within a time period or in a manner satisfactory to the Monitor (in consultation with the Sears Canada Entities and the applicable Directors and Officers in respect of any D&O Claim), the Monitor shall refer the dispute raised

in the Notice of Dispute (Proof of Claim) to a Claims Officer or the Court for adjudication at its election. Any Claimant who wishes to challenge the method of adjudication elected by the Monitor may apply to the Court to determine the appropriate method of adjudication. For greater certainty, any party may file additional evidence, documentation, reports or information on any hearing to resolve the issues raised in a Notice of Dispute (Proof of Claim) and no party will object to the filing of such additional evidence on the basis that such evidence, documentation, report or information was not included in the initial Proof of Claim, D&O Proof of Claim or Notice of Disallowance (Proof of Claim).

67. THIS COURT ORDERS that where a Claimant who receives a Notice of Disallowance (Proof of Claim) does not submit a completed Notice of Dispute (Proof of Claim) by the time set out in paragraph 66(a), such Claimant's Claim or D&O Claim shall be deemed to be as set out in the Notice of Disallowance (Proof of Claim) and such Claimant shall have no further right to dispute same.

68. THIS COURT ORDERS that the Monitor, in consultation with the Sears Canada Entities and the applicable Directors and Officers in respect of any D&O Claim, may refer any Claim to a Claims Officer or the Court for adjudication at its election by sending written notice to the applicable parties at any time. Any Claimant who wishes to challenge the method of adjudication elected by the Monitor may apply to the Court to determine the appropriate method of adjudication.

69. THIS COURT ORDERS that the Monitor and the Sears Canada Entities shall attempt to identify all Duplicate Claims and shall attempt to resolve such Duplicate Claims with the Person or Persons who submitted such Duplicate Claims. The Monitor and the Sears Canada Entities may at any time seek direction from the Court with respect to the process and procedures for resolving

Duplicate Claims, on notice to the Person or Persons who have submitted such Duplicate Claims (and to the applicable Directors and Officers in respect of any Duplicate Claim that is a D&O Claim).

CLAIMS OFFICER

70. THIS COURT ORDERS that the Hon. Mr. James Farley, Q.C. and the Hon. Mr. Dennis O'Connor, Q.C., and such other Persons as may be appointed by the Court from time to time on application of the Monitor or the Sears Canada Entities (in consultation with Employee Representative Counsel, Pension Representative Counsel, the Pension Plan Administrator and/or the Superintendent, as applicable), be and are hereby appointed as Claims Officers for the Employee and Retiree Claims Process.

71. THIS COURT ORDERS that a Claims Officer shall determine the validity and amount of disputed Claims, the accuracy of any disputed Personal Information, and the methodology to be applied to any disputed Termination Claim or Retiree Benefit Claim, in accordance with this Order and to the extent necessary may determine whether any Claim or part thereof constitutes an Excluded Claim and shall provide written reasons. A Claims Officer shall determine all procedural matters which may arise in respect of his or her determination of these matters, including the manner in which any evidence may be adduced. A Claims Officer shall have the discretion to determine by whom and to what extent the costs of any hearing before a Claims Officer shall be paid.

72. THIS COURT ORDERS that the Monitor, the Claimant (or any Person on behalf of a Claimant, including any Union Representative, Employee Representative Counsel, Pension Representative Counsel, the Pension Plan Administrator or the Superintendent), the Sears Canada Entities and the applicable Directors and Officers in respect of any D&O Claim may, within ten

(10) days of such party receiving notice of a Claims Officer's determination of the value of a Claimant's Claim, the accuracy of a Claimant's Personal Information, or the methodology to be applied to a Claimant's Termination Claim or Retiree Benefit Claim, appeal such determination or any other matter determined by the Claims Officer in accordance with paragraph 70 or otherwise to the Court by filing a notice of appeal, and the appeal shall be initially returnable for scheduling purposes within ten (10) days of filing such notice of appeal.

73. THIS COURT ORDERS that, if no party appeals the determination of value of a Claim, of accuracy of a Claimant's Personal Information or of the methodology to be applied to a Claimant's Termination Claim or Retiree Benefit Claim, by a Claims Officer in accordance with the requirements set out in paragraph 72 above, the decision of the Claims Officer in determining the value of the Claim, the accuracy of the Personal Information or the methodology to be applied to a Claimant's Termination Claim or Retiree Benefit Claim shall be final and binding upon the Sears Canada Entities, the Monitor, the applicable Directors and Officers in respect of a D&O Claim and the Claimant, and there shall be no further right of appeal, review or recourse to the Court from the Claims Officer's final determination.

NOTICE OF TRANSFEREES

74. THIS COURT ORDERS that, from the date of this Order until seven (7) days prior to the date fixed by the Court for any distribution in the CCAA Proceedings or any other proceeding, including a bankruptcy, leave is hereby granted to permit a Claimant to provide to the Monitor notice of assignment or transfer of a Claim to any third party, and that no assignment or transfer of a partial Claim shall be permitted.

75. THIS COURT ORDERS that, subject to the terms of any subsequent Order of this Court, if, after the Filing Date, the holder of a Claim transfers or assigns the whole of such Claim to

another Person, neither the Monitor nor the Sears Canada Entities shall be obligated to give notice to or otherwise deal with the transferee or assignee of such Claim in respect thereof unless and until actual notice of transfer or assignment, together with satisfactory evidence of such transfer or assignment, shall have been received and acknowledged by the Monitor in writing and thereafter such transferee or assignee shall, for the purposes hereof, constitute the “Claimant” in respect of the whole of such Claim. Any such transferee or assignee of a Claim shall be bound by any notices given or steps taken in respect of such Claim in accordance with this Order prior to receipt and acknowledgement by the Monitor of satisfactory evidence of such transfer or assignment. A transferee or assignee of a Claim takes the Claim subject to any rights of set-off to which the Sears Canada Entities and/or the applicable Directors and Officers may be entitled with respect to such Claim. For greater certainty, a transferee or assignee of a Claim is not entitled to set-off, apply, merge, consolidate or combine any Claim assigned or transferred to it against or on account or in reduction of any amounts owing by such Person to the Sears Canada Entities or the applicable Directors and Officers.

SERVICE, NOTICE AND DELIVERY

76. THIS COURT ORDERS that, notwithstanding anything to the contrary in this Order but subject to paragraph 77 below, the Monitor may send, serve and deliver or cause to be sent, served and delivered, to a Claimant or other interested Person, any notice, communication or other document required by this Order (a) by forwarding a copy thereof by prepaid ordinary mail, registered mail, courier, personal delivery, facsimile transmission or email to such Claimant or other interested Person at the physical or electronic address, as applicable, last shown on the books and records of the Sears Canada Entities or, where applicable, as set out in such Claimant’s Proof of Claim, D&O Proof of Claim or Request for Correction; or (b) if such Claimant has successfully

- 50 -

logged-in to the Claims Website, by uploading or updating such notice, communication or other document to or on the Claims Website, and sending an email notification to such Claimant.

77. THIS COURT ORDERS that the Monitor may, to satisfy its obligations under paragraph 40 of this Order to ERC Employees and Non-ERC Employees with email addresses listed on the books and records of the Sears Canada Entities, serve and deliver or cause to be served and delivered to each such ERC Employee and Non-ERC Employee an email notice of this Employee and Retiree Claims Process, which shall include a link to the Claims Website and certain information that will allow each such ERC Employee and Non-ERC Employee to log-in the Claims Website to access his/her ERC Employee Package or Non-ERC Employee Package, as applicable; provided however, that in the event that any such ERC Employee or Non-ERC Employee does not successfully log-in to the Claims Website within 14 days of receipt of such email notice (according to the access records to be maintained by the Monitor), the Monitor shall serve and deliver or cause to be served and delivered the applicable ERC Employee Package or Non-ERC Employee Package by prepaid ordinary mail or courier to the physical address of such ERC Employee or Non-ERC Employee as last shown on the books and records of the Sears Canada Entities.

78. THIS COURT ORDERS that, notwithstanding anything to the contrary in this Order, a Claimant may send, serve and deliver or cause to be sent, served and delivered, to the Monitor, any notice, communication or other document required by this Order (a) by forwarding a copy thereof in writing and substantially in the form, if any, provided for in this Order, by prepaid ordinary mail, registered mail, courier, personal delivery, facsimile transmission or email, addressed to:

FTI Consulting Canada Inc., Sears Canada Monitor
TD Waterhouse Tower
79 Wellington Street West
Suite 2010, P.O. Box 101
Toronto, ON M5K 1G8

Attention: Sears Canada Employee and Retiree Claims Process
Email in respect of Employee Claims: SearsEmployeeClaimSite@fticonsulting.com
Email in respect of Retiree Claims: SearsRetireeClaimSite@fticonsulting.com
Fax: 416-649-8101

or (b) if such Claimant has successfully logged-in to the Claims Website, by submitting such notice, communication or other document in accordance with the instructions provided on the Claims Website. Any notice, communication or other document delivered by a Claimant shall be deemed received upon actual receipt by the Monitor thereof during normal business hours on a Business Day, or if delivered outside of normal business hours, the next Business Day.

79. THIS COURT ORDERS that such service and delivery of any documents in connection with this Employee and Retiree Claims Process shall be deemed to have been received: (a) if sent by ordinary mail, on the third Business Day after mailing to an address within Ontario, the fifth Business Day after mailing to an address within Canada (other than within Ontario), and the tenth Business Day after mailing to an address internationally; (b) if sent by courier or personal delivery, on the next Business Day following dispatch; or (c) if delivered by facsimile transmission, email or submission on the Claims Website, by 5:00 p.m. on a Business Day, on such Business Day and if delivered after 5:00 p.m. or other than on a Business Day, on the following Business Day.

80. THIS COURT ORDERS that if, during any period during which notices or other communications are being given pursuant to this Order, a postal strike or postal work stoppage of general application should occur, such notices or other communications sent by ordinary or registered mail and then not received shall not, absent further Order of this Court, be effective and notices and other communications given hereunder during the course of any such postal strike or

work stoppage of general application shall only be effective if given by courier, personal delivery, facsimile transmission or email in accordance with this Order.

MISCELLANEOUS

81. THIS COURT ORDERS that at any time, the Monitor or the Sears Canada Entities may request additional information from a Claimant with respect to Personal Information, a proposed methodology contained in a Notice of Proposed Revision, a Sears Pension Claim, a Supplemental Plan Claim, or any Other Employee Claim or Other Retiree Claim made by such Claimant, and, where such Claimant has filed a Proof of Claim or D&O Proof of Claim, the Monitor may request that such Claimant file a revised Proof of Claim or D&O Proof of Claim.

82. THIS COURT ORDERS that the Sears Canada Entities, the Monitor, Employee Representative Counsel, Pension Representative Counsel and the Pension Plan Administrator may from time to time apply to this Court to extend the time for any action which the Sears Canada Entities, the Monitor, Employee Representative Counsel, Pension Representative Counsel or the Pension Plan Administrator is required to take if such extension is reasonably required to carry out its duties and obligations pursuant to this Order and for advice and directions concerning the discharge of its powers and duties under this Order or the interpretation or application of this Order.

83. THIS COURT ORDERS that nothing in this Order shall prejudice the rights and remedies of any Directors or Officers or other Persons under the Directors' Priority Charge, the Directors' Subordinated Charge or any applicable insurance policy or prevent or bar any Person from seeking recourse against or payment from the Sears Canada Entities' insurance or any Director's or Officer's liability insurance policy or policies that exist to protect or indemnify the Directors or Officers or other Persons, whether such recourse or payment is sought directly by the Person asserting a Claim from the insurer or derivatively through the Director or Officer or any Sears

- 53 -

Canada Entity; provided, however, that nothing in this Order shall create any rights in favour of such Person under any policies of insurance nor shall anything in this Order limit, remove, modify or alter any defence to such Claim available to the insurer pursuant to the provisions of any insurance policy or at law; and further provided that any Claim or portion thereof for which the Person receives payment directly from, or confirmation that he or she is covered by, the Sears Canada Entities' insurance or any Director's or Officer's liability insurance or other liability insurance policy or policies that exist to protect or indemnify the Directors or Officers or other Persons shall not be recoverable as against a Sears Canada Entity or Director or Officer as applicable.

84. THIS COURT ORDERS that this Order shall have full force and effect in all provinces and territories in Canada.

85. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative bodies, having jurisdiction in Canada or in the United States of America, to give effect to this Order and to assist the Sears Canada Entities, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Sears Canada Entities and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Sears Canada Entities and the Monitor and their respective agents in carrying out the terms of this Order.


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

FEB 22 2018

PER / PAR: 

This is **Exhibit "I"** referred to in the Affidavit of William Richard Harker, sworn before me at Westwood, New Jersey, United States of America, on August 10, 2018.



(A Notary Public in and for the State of New Jersey)

JEREMY FORTUNATO
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires 4/27/2022

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

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

THE HONOURABLE

)

THURSDAY, THE 26TH

MR. JUSTICE HAINEY

)

DAY OF APRIL, 2018



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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF SEARS CANADA INC., 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.

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

AMENDED LITIGATION INVESTIGATOR ORDER

THIS MOTION, made by Representative Counsel to the court-appointed Representatives of employees and retirees with respect to pension and post-retirement benefits of the Applicants (“**Retiree Representative Counsel**”) pursuant to the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, (the “**CCAA**”) for an order appointing a Litigation Investigator to identify and report on certain rights and claims of the Applicants and SearsConnect (collectively, the “**Sears Canada Entities**”) and/or any creditors of the Sears Canada Entities, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavit of William Turner sworn on February 12, 2018 including the exhibits thereto, the Affidavit of William Turner sworn on August 11, 2017, including the exhibits thereto, the Affidavit of William Turner sworn on February 14, 2018 including the exhibits thereto, the Affidavit of Jules Monteyne sworn on February 14, 2018 including the exhibits thereto, the Affidavit of Leanne M. Williams sworn on February 14, 2018 including the exhibits annexed thereto, the Monitor's Fourteenth Report to the Court dated March 1, 2018, and on hearing the submissions of Retiree Representative Counsel, Representative Counsel for the employees of the Sears Canada Entities ("**Employee Representative Counsel**"), counsel for the Applicants, counsel for the Monitor, and such other counsel for various creditors and stakeholders as were present, no one else appearing although duly served as appears from the Affidavit of Service of Veronica de Leoz, sworn February 12, 2018:

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record herein is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that Lax O'Sullivan Lisus Gottlieb LLP is hereby appointed as Litigation Investigator (the "**Litigation Investigator**") in these CCAA proceedings for the benefit of the estates of the Sears Canada Entities and its creditors. The Litigation Investigator shall be an officer of this Court, and is appointed for the purpose of investigating, considering, and reporting to the Creditors' Committee (defined below), regarding any rights or claims, whether legal, equitable, statutory or otherwise, that the Sears Canada Entities and/or any creditors of any of the Sears Canada Entities may have as against any parties, including but not limited to current and former directors, officers, shareholders and advisors of any of the Sears Canada Entities (the "**Mandate**"). For greater certainty, the Litigation Investigator may

investigate any and all claims regardless of whether such claims have been included by creditors' proofs of claims filed pursuant to the Claims Procedure Order and E&R Claims Procedure Order (defined below), however, the Litigation Investigator shall have no role in determining, advising on, opposing, supporting, or articulating any claim of any creditor or stakeholder in the Claims Process, as defined in the Order of this Court dated December 8, 2017 as amended by Order dated February 22, 2018 or as further amended by Order of the Court (as amended, the "**Claims Procedure Order**") or any Claim as defined in the Employee and Retiree Claims Procedure Order dated February 22, 2018 (the "**E&R Claims Procedure Order**") and shall have no role in the distribution or allocation of estate funds.

Litigation Investigator Reporting

3. **THIS COURT ORDERS** that the Litigation Investigator's Mandate shall include reporting to the Creditors' Committee with such details as the Litigation Investigator considers advisable (all such reporting being collectively defined herein as the "**Report**"), taking into account any concerns of privilege and confidentiality. All Reports by the Litigation Investigator and all communications among the Creditors' Committee members and the Litigation Investigator shall be subject to common interest privilege. A Report by the Litigation Investigator will include recommendations regarding a proposed litigation plan that includes, but is not limited to:

- (a) those potential rights or claims of the Sears Canada Entities or any creditors of the Sears Canada Entities that should be pursued (if any); and
- (b) describing how and by whom such rights or claims (if any) can best be pursued or continued, including, but not limited to:

- (i) the coordination of the prosecution of such rights or claims with similar or related facts, rights or other claims that may be asserted by different parties;
- (ii) if necessary or desirable, a proposed governance structure for the Creditors' Committee created pursuant to this Order (or as same may be amended, expanded or reconstituted in future, in accordance with the terms of this Order) for the purpose of providing input to the Litigation Investigator in the prosecution of such rights, claims or causes of action; and
- (iii) consideration as to the various options available for funding the prosecution of such rights, claims or causes of action.

A confidential briefing ("**Investigator Briefing**") regarding all Reports prepared by the Litigation Investigator shall be given to the Monitor; provided that such Investigator Briefing shall be kept confidential by the Monitor and shall remain subject to privilege.

4. **THIS COURT ORDERS** that following delivery of a Report to the Creditors' Committee in accordance with its Mandate, the Litigation Investigator shall not take any further steps without a further Order of the Court. For greater certainty, nothing herein shall prevent the Litigation Investigator from seeking an Order of the Court authorizing it to pursue any claims identified pursuant to the Mandate.

The Committee

5. **THIS COURT ORDERS** that the Litigation Investigator shall fulfil his Mandate in consultation with a creditors' committee (the "**Creditors' Committee**") comprised of no more than eight (8) members (inclusive of two members on behalf of landlords) at any one time appointed by, or on behalf of the following creditor groups of the Sears Canada Entities: (i) Retiree Representative Counsel; (ii) Employee Representative Counsel; (iii) landlords; (iv) Hometown Dealers Class Action plaintiff counsel; (v) Morneau Shepell Ltd. in its capacity as Administrator for the Sears Canada Inc. Registered Retirement Plan; (vi) the Ontario Superintendent of Financial Services as Administrator of the Pension Benefits Guarantee Fund; and (vii) such other unsecured creditors of the Sears Canada Entities not represented in (i) through (vi) above as the majority of the Creditors' Committee may agree be included, in consultation with the Monitor, or as may be directed by the Court. The Creditors' Committee and the Litigation Investigator shall cooperate with the Monitor, and the Monitor shall cooperate with the Litigation Investigator and the Creditors' Committee in connection with the Mandate. The Creditors' Committee shall consult with and provide input to the Litigation Investigator with respect to the Mandate.

6. **THIS COURT ORDERS** that each member of the Creditors' Committee (including any alternates or replacements from the same stakeholder group as may be appointed by an existing member) may be a creditor itself or counsel/advisor representing that stakeholder interest, but in either case each member shall execute a Confidentiality Agreement in a form acceptable to the Litigation Investigator, the Sears Canada Entities and the Monitor prior to being entitled to participate in any discussions or meetings of the Creditors' Committee, receive any information from the Monitor, the Litigation Investigator or any other member of the Creditors' Committee,

or to receive the Report. The Litigation Investigator will meet with the Creditors' Committee at least monthly, or such other times as may be agreed by the Litigation Investigator and the Creditors' Committee. Meetings will only be conducted in person, to ensure the confidentiality of all discussions.

7. **THIS COURT ORDERS** that the Monitor shall provide to the Litigation Investigator (and, upon execution of appropriate Confidentiality Agreements, for delivery by the Litigation Investigator to the Creditors' Committee) a confidential briefing regarding the "Transactions of Interest" as identified in the Monitor's 11th Report to the Court (the "**Monitor Briefing**"). To the extent that the Litigation Investigator requests documents or information from the Sears Canada Entities and such requests are consistent with the Mandate (the "**Additional Company Information**"), then, subject to satisfactory resolution of issues of privilege and confidentiality (including any terms regarding sharing of information with the Creditors' Committee), the Sears Canada Entities shall cooperate with the Monitor to provide the Additional Company Information to the Litigation Investigator. The Monitor's delivery of the Monitor Briefing pursuant to the terms of this Order shall be subject to common interest privilege and strict confidentiality, and the Monitor is protected for so doing pursuant to section 142 of the *Courts of Justice Act* (Ontario). The Sears Canada Entities' delivery of the Additional Company Information pursuant to the terms of this Order shall be subject to strict confidentiality, and the Sears Canada Entities and their directors and officers are protected for so doing pursuant to section 142 of the *Courts of Justice Act* (Ontario). In the event of any concerns being raised regarding the delivery by the Monitor of any particular aspect of the Monitor Briefing that cannot be resolved without breaching the underlying basis for the concern, such concerns shall be resolved following a review by an independent party appointed by the Monitor and the

Litigation Investigator (or, absent agreement on the identity of such party, by the Court). Notwithstanding the foregoing, any document provided by the Sears Canada Entities as part of the Additional Company Information may be submitted by a party in receipt of such document to the court under seal for the purposes of resolving any dispute over whether such document should be produced in litigation.

8. **THIS COURT ORDERS** that the Monitor or the Sears Canada Entities, as the case may be, shall maintain copies and a record of all documents: (i) received by the Monitor from the Sears Canada Entities and provided to the Litigation Investigator in accordance with this Order; or (ii) provided by the Sears Canada Entities to the Litigation Investigator in accordance with this Order.

9. **THIS COURT ORDERS** that prior to any production of documents by the Monitor or the Sears Canada Entities to the Litigation Investigator to facilitate the fulfillment of the Mandate, the Monitor or Sears Canada Entities, as the case may be, shall take reasonable steps to review such documents to identify any:

- (a) documents that contain any communication that is between a lawyer and the ESL parties and/or Sears Holdings Corporation;
- (b) documents containing any communication by or to the ESL parties and/or Sears Holdings Corporation and/or any current or former directors or officers of the Sears Canada Entities (a "**Current or Former D&O**") created on or after November 26, 2013 and related to the 1291079 Ontario Ltd and Sears Canada Inc. et. al. class action of November 6, 2015 (Ontario Superior Court of Justice) File No. 4114/15); and

- (c) documents containing communications between a law firm and a Current or Former D&O for which privilege could reasonably be asserted, or documents that reflect legal advice or litigation work product prepared for the benefit of a Current or Former D&O, whether alone or as part of a joint retainer.

Hereafter, items a), b), and c) shall be referred to collectively as the “**Potentially Shared Privileged Documents**”). No waiver of any privilege shall have occurred by the inadvertent delivery of documents to the Litigation Investigator should a Potentially Shared Privileged Document not be identified or if any other document subject to privilege (including solicitor-client privilege, litigation privilege, and common interest privilege) is produced or disclosed to the Litigation Investigator.

10. **THIS COURT ORDERS** that in the event that the Monitor and/or Sears Canada Entities intend to produce any Potentially Shared Privileged Documents to the Litigation Investigator in facilitation of the fulfillment of the Mandate, the Monitor or the Sears Canada Entities, as the case may be, shall provide a list of such documents on reasonable notice, which shall be no less than seven days, to the ESL parties, Sears Holdings Corporation and/or the Current or Former D&Os to the extent that such parties may be able to assert privilege over the documents, so that any issue regarding privilege may be resolved by the parties or determined by this Court.

11. **THIS COURT ORDERS** that the Litigation Investigator shall create and maintain a detailed list (including creation date, sender, recipient and subject) of those document(s) received from the Sears Canada Entities (either directly or through the Monitor) that it provides to the Creditors' Committee or their counsel or agents.

12. **THIS COURT ORDERS** that, for greater certainty, any right, claim or cause of action identified by the Litigation Investigator as capable of being advanced and that is advanced with approval of the Court, whether by the Litigation Investigator or otherwise, may be removed from the claims process established under the Claims Procedure Order or the E&R Claims Procedure Order.

13. **THIS COURT ORDERS** that the Claims Procedure Order is hereby amended as follows:

- (i) subparagraph (vii) in the definition of “Excluded Claim” is hereby amended to read as follows: “Claim that may be asserted by any of the Sears Canada Entities or that are advanced by the Litigation Investigator or any creditors, in each case, as may be permitted or directed by further Order of the Court, against the Sears Canada Entities or any Directors and/or Officers, which for greater certainty shall include any Claim that may be identified, reviewed or investigated as part of the Litigation Investigator’s Mandate (as defined in an Order of the Court dated March 2, 2018)”.

14. **THIS COURT ORDERS** that the E&R Claims Procedure Order is hereby amended as follows:

- (i) the definition of “Excluded Claim” is hereby amended to add a new subparagraph (vi) that shall read as follows: “Claim that is advanced by the Litigation Investigator or any creditors, in each case, as may be permitted or directed by further Order of the Court, against the Sears Canada Entities or any Directors and/or Officers, which for greater certainty shall include any Claim that may be identified, reviewed or

investigated as part of the Litigation Investigator's Mandate (as defined in an Order of the Court dated March 2, 2018)".

Litigation Investigator Costs

15. **THIS COURT ORDERS** that the Litigation Investigator shall be paid from the funds of the Applicants its reasonable fees and disbursements, including the fees of any counsel retained by the Litigation Investigator in respect of the Mandate, the amount of which is not to exceed a budget approved by the Creditors' Committee in consultation with the Monitor prior to the Litigation Investigator commencing work in respect of fulfilling its Mandate in accordance with this Order. The Litigation Investigator and any counsel it retains shall be paid forthwith upon rendering fully-redacted versions of their accounts to the Applicants and the Monitor. Un-redacted versions of accounts rendered by the Litigation Investigator shall be made available to the Creditors' Committee and, upon request of the Court and subject to a sealing order to protect privilege and confidentiality, to the Court. In the event of any disagreement with respect to a proposed budget, any requested increased to such budget, or any accounts rendered by the Litigation Investigator, such disagreement may be remitted to this Court for determination.

16. **THIS COURT ORDERS** that the Litigation Investigator shall be entitled to the benefit of the Administrative Charge, as defined in the Initial Order issued by the Court dated June 22, 2017 as amended, for the Litigation Investigator's costs, as security for its professional fees, taxes, and disbursements reasonably incurred.

17. **THIS COURT ORDERS** that the Litigation Investigator is hereby authorized to take all appropriate steps and do all appropriate acts necessary or desirable to carry out its Mandate in accordance with the terms of this Order.

18. **THIS COURT ORDERS** that the Litigation Investigator shall be at liberty, and is hereby authorized, at any time, to apply to this Court for advice and directions in respect of its Mandate or any variation or expansion of the powers and duties of the Litigation Investigator, which shall be brought on at least seven (7) business days' notice to the Service List in these CCAA proceedings, unless time for service is otherwise abridged.

19. **THIS COURT ORDERS** that the Litigation Investigator shall have no personal liability as a result of the performance of its duties in carrying out the provisions of this Order, save and except for liability arising out of gross negligence or wilful misconduct. The Creditors' Committee members shall have no liability as a result of their participation on the Creditors' Committee or in providing input to the Litigation Investigator, save and except for liability arising out of gross negligence or wilful misconduct.

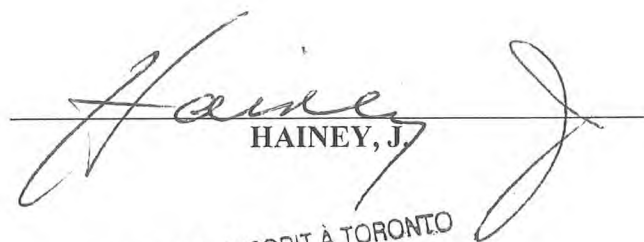
20. **THIS COURT ORDERS** that no action or proceeding may be commenced against the Litigation Investigator or any Creditors' Committee member in respect of the performance of its or their duties under this Order without leave of this Court on seven (7) business days' notice to the Litigation Investigator and the Creditors' Committee.

21. **THIS COURT ORDERS** that notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**") in respect of any of the Applicants and any bankruptcy order issued pursuant to such applications; or
- (c) any assignment in bankruptcy made in respect of any of the Applicants;


the provisions of this Order shall be binding on any Investigator in bankruptcy or receiver that may be appointed in respect of any of the Applicants and any payments of fees and disbursements made to the Litigation Investigator in accordance with this Order shall not be void or voidable by creditors of any of the Applicants, nor shall any such payments constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or any reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

22. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative bodies having jurisdiction in Canada or in the United States of America, to give effect to this Order and to assist the Litigation Investigator 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 Litigation Investigator as may be necessary or desirable to give effect to this Order, or to assist the Litigation Investigator in carrying out the terms of this Order.


HAINEY, J.

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

APR 26 2018

PER / PAR: 

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.

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

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

Proceeding commenced at Toronto

AMENDED LITIGATION INVESTIGATOR ORDER

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

This is **Exhibit "J"** referred to in the Affidavit of William Richard Harker, sworn before me at Westwood, New Jersey, United States of America, on August 10, 2018.



(A Notary Public in and for the State of New Jersey)

JEREMY FORTUNATO
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires 4/27/2022



From: [Birch, John](#)
To: tyuen@skarzynski.com
Cc: [Levine, Natalie](#); [Buttery, Mary I.A.](#)
Subject: Claim by former directors and officers of Sears Canada Inc. under XL Catlin D&O policies issued to Sears Canada Inc. and Sears Holdings Corporation [IWOV-LEGAL.FID2704142]
Date: Thursday, April 05, 2018 11:10:12 AM
Attachments: [Notice of Potential claims \(Sears Holdings D&O\) March 14, 2018.PDF](#)
[Notice of Potential Claims FINAL March 8, 2018.PDF](#)
[Attachments to Sears Directors Claim Report.zip](#)
[Wind up order re Sears - March 29, 2018.PDF](#)

Tammy,

Thanks for your call yesterday. I confirm that you are counsel to XL Catlin in its capacity as D&O insurer of both Sears Holdings Corporation ("SHC") and Sears Canada Inc. ("SCI").

As discussed, please find attached the following items:

- (a) Another copy of the claims notices (without attachments) sent in respect of both the SCI and SHC policies. These claims notices are dated, respectively, March 8, 2018 and March 14, 2018.
- (b) A ZIP file containing all of the correspondence and other claims notices that are referred to in the documents mentioned in para. (a) herein.

Since the ZIP file is very large, please send me a reply email indicating that you received everything.

Any indemnification that SCI provided to our clients would generally be meaningless because SCI became insolvent and went into *Companies' Creditors Arrangement Act* proceedings last summer. As a protective measure, our firm filed proofs of claim against SCI in those proceedings in respect of the indemnification obligation but little, if anything, is likely to be recovered. As such, in respect of the SCI policy, XL Catlin will need to fund defence costs from day 1 because SCI will not provide funding.

In respect of SHC, we have asked SHC to advise whether it agreed to indemnify any of the Sears Canada directors that we represent. Once we have an answer to this, it will determine the extent to which the SHC policy will need to respond to fund defence costs from day 1. I think that, at best, only a small number of our clients would have been indemnified by SHC for sitting on the SCI board. But we will need to check this for sure and let you know.

It is likely that both policies will respond to the claims in issue. The SCI policy carries an exclusion for claims based on events occurring before October 15, 2014. The SHC policy does not contain such an exclusion. As discussed yesterday, SCI was a "Subsidiary" of SHC up to October 16, 2014. This means that coverage for events occurring up to that date would be covered by the SHC policy. By extension, coverage for events occurring from and after October 16, 2014 would be covered by the SCI policy.

Our clients were not aware of the claims against them until the time that we made these claims reports last month. However, in respect at least some of the claims, it is possible that SCI or SHC were aware of the claims earlier on and thus it is possible that SCI or SHC already gave notice to XL Catlin and the other insurers at an earlier point. If so, earlier D&O policies may also cover at least some of these claims.

Although any actual litigation against the directors and officers is presently stayed by the CCAA proceedings, this stay will likely not last too much longer. Further, as the materials that we have provided indicate, a Litigation Investigator has been appointed to investigate what claims may be asserted both by SCI and its creditors against third parties such as SHC, shareholders of SCI, and former officers and directors of SCI. The Litigation Investigator's work is likely to lead to a recommendation that proceedings be brought against our clients.

Yesterday, we also received notice that an order has been made to wind up the SCI pension plan. A copy of the wind-up order is attached. This wind-up is likely to lead to claims against our clients.

At the time that we initially reported the claims, we asked the insurers (including XL Catlin) to get in touch with us as soon as possible to ensure that they provided funding for defence costs. Since we heard nothing from XL until yesterday, our firm has been doing work in the interim (only to the extent necessary) to protect the interests of our clients on an interim basis.

It is important that XL (and the other insurers, to the extent necessary) agree to pay defence costs, including costs incurred to date, which amount to about CAD\$80,000 excluding tax. To the extent that you need any information from us in order to approve payment of defence costs, please let us know and we will deal with it.

It would likely make sense to arrange a meeting between our firm and all of the insurers that wish to attend, so that we can talk through how this matter is likely to proceed and to ensure that all parties are comfortable with the process moving forward. The location of the meeting will depend on where the insurer representatives are located and who is likely to attend.

As I mentioned to you, I will be over in the UK from this afternoon until next Tuesday evening. However, feel free to contact me on my cell phone while I am away at (416) 844-4998 or by email.



John Birch


Direct: +1 416 860 5225 • Fax: +1 416 640 3057 • jbirch@casselsbrock.com

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

www.casselsbrock.com

Services provided through a Professional Corporation

This is **Exhibit "K"** referred to in the Affidavit of William Richard Harker, sworn before me at Westwood, New Jersey, United States of America, on August 10, 2018.



(A Notary Public in and for the State of New Jersey)

JEREMY FORTUNATO
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires 4/27/2022



From: [Birch, John](#)
To: [tyuen@skarzynski.com](#); [pcurley@kbriaw.com](#); [william.clarke@beazley.com](#); [Gregory.goetz@agcs.allianz.com](#); [rachel_simon@swissre.com](#); [Nara.Azar@cna.com](#); [spaek@lvclaims.com](#); [chris.moore@hiscox.com](#); [tony.kriesel@hiscox.com](#); [marina.llata@axiscapital.com](#); [m.reeveslottimore@argolimited.com](#); [Michael.Ehiozeediae@aig.com](#); [mcarney@oldrepublicpro.com](#); [sweisz@btzlaw.ca](#)
Cc: [Levine, Natalie](#); [Buttery, Mary I.A.](#); [Heath, Angéle](#)
Subject: Update to Director & Officer Insurers of Sears Holdings Corporation
Date: Tuesday, May 01, 2018 12:25:39 PM
Attachments: [image001.gif](#)

Introduction

Our firm is counsel to the following former officers and directors of Sears Canada Inc.: **Klaudio Leshnjani**, William (Bill) C. Crowley, William (Bill) R. Harker, James R.G. McBurney, **Ephraim J. (EJ) Bird**, **Calvin McDonald**, **Danita Stevenson**, **Ronald Boire**, Timothy Earl Flemming, **Deidra Cheeks Merriwether**, **Donald C Ross**, and **Douglas Campbell** (collectively, the “Directors”).

On March 19, 2018, we provided notice in writing of actual or potential claims that have been and/or may be asserted against the Directors arising out of their role as former officers and directors of Sears Canada Inc.

Based on enquiries that we have made since that time, we believe that each of you is the specified point of contact at each of the relevant insurance companies with respect to this matter.

Update on Recent Events

First, the initial claims notice that we sent to each insurer referred to supporting documents/notices (the “**Supporting Documents**”) that provided further particulars of the 13 different categories of claim referred to in Appendix “A” to the notice. Since the Supporting Documents were too voluminous to send by regular email, we invited all of the insurers to contact us to make arrangements to obtain the Supporting Documents from us. Several insurers contacted us and we have sent them Supporting Documents already. As

indicated later in this message, we will send you the Supporting Documents to all insurers through a separate email later today using the TitanFile utility.

Second, after the time that the claims notice was delivered to you, our firm received from the Monitor of Sears Canada Inc. copies of numerous claims received by the Monitor as part of the Directors & Officers Claims Process that forms part of the *Companies' Creditors Arrangement Act* ("CCAA") proceedings of Sears Canada Inc. (the "CCAA Claims"). Some of the CCAA Claims relate to construction lien claims where liability is asserted against directors and officers under provincial legislation. Please note that many of these claims lack significant details, do not specify which directors or officers they are being made against, and/or may name additional directors or officers other than those whom our firm represents. (For example, our firm does not represent any of the current officers or directors of Sears Canada Inc. but it appears that many of such directors are the subject of CCAA Claims.) We understand that additional "Litigation Claims" have been filed in the claims process, but the Monitor has not yet provided copies of these claims to the applicable directors and officers. The order governing the claims process currently provides that the Monitor, in consultation with the directors and officers named in the proofs of claim, must respond to the claims by July 31, 2018, or such later date as may be ordered by the Court. As noted below, we will be sending you copies of the CCAA Claims through a separate email later today using the TitanFile utility.

Third, the Litigation Investigator order dated March 2, 2018 was amended on April 26, 2018. The amendments include certain amendments to the terms setting out the process by which the Litigation Investigator can obtain documents from Sears Canada Inc. We were concerned that any such documents that might be provided would be subject to privilege, especially since litigation against Sears Canada Inc. and certain of its directors was already ongoing before the CCAA proceedings began. As such, we were able to negotiate provisions to the order requiring a review of documents for privilege before they were turned over, establishing a protocol to have privilege determined, and providing that any accidental delivery of privileged documents to the Litigation Investigator does not waive privilege. The Amended Litigation Investigator order will be sent to you today through the TitanFile utility.

Fourth, we wanted to let you know that a mediation has been set up in the CCAA proceedings of Sears Canada Inc. on June 13 and 14, 2018. The main purpose of the mediation is to try to settle allocation issues relating to funds in the Sears Canada Inc. estate. Since our clients and the other officers and directors of Sears Canada Inc. have substantial indemnification claims against that company, we believe that we should participate in the mediation in order to prevent any settlement from being reached in our absence that could affect the rights of the Directors.

Finally, as indicated in our earlier claims notices and in subsequent correspondence with external counsel for XL Catlin, it is vital that arrangements be made to pay the legal fees of our firm in connection with responding to the numerous claims and threatened claims of which we have received notice and which have been reported to insurers.

Documents to be Sent

We will also soon be providing you with the Supporting Documents, CCAA Claims and the Amended Litigation Investigator order. Given the large size of these files, we will be forwarding them to you separately using TitanFile later this afternoon.

You will receive a separate email message from Ang  le Heath of our firm that comes from

the TitanFile site. That email will contain a link that will take you to the TitanFile site from where you can download the Supporting Documents, CCAA Claims and the Amended Litigation Investigator order. Please keep an eye out for this subsequent email and, if necessary, check your spam folder.

After you click the link in the email and are taken to the TitanFile website, click on the "Files" tab which will reveal three separate folders of documents that can be accessed and downloaded.

If you have any trouble receiving the documents through TitanFile, please contact Angèle Heath of our firm at (416) 869-5390 or aheath@casselsbrock.com

Conclusion

If any of you has any questions regarding this matter, let me know.

**John Birch**

Direct: +1 416 860 5225 • Fax: +1 416 640 3057 • jbirch@casselsbrock.com

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

www.casselsbrock.com

Services provided through a Professional Corporation

This is Exhibit "L" referred to in the Affidavit of William Richard Harker, sworn before me at Westwood, New Jersey, United States of America, on August 10, 2018.



(A Notary Public in and for the State of New Jersey)

JEREMY FORTUNATO
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires 4/27/2022



From: [Yuen, Tammy](#)
To: [Birch, John](#)
Cc: Paul.Stein@gowlingwlg.com; [McBrady, Kenneth M.](#); [Belinda, Belinda \(Belinda.Bain@gowlingwlg.com\)](mailto:Belinda.Bain@gowlingwlg.com)
Subject: Sears Canada
Date: Friday, May 04, 2018 10:55:30 AM
Attachments: [image003.png](#)

John,

Further to our call earlier this week, XL Catlin will issue its coverage letters today. As we have not yet had time to complete our review of the voluminous materials you forwarded on May 1st, the letters do not address those materials.

Though you had requested a call before we issue the letters, we think it more prudent to have a call after you have had a chance to review the positions set forth in our letters. I am copying XLC's Canadian counsel, Paul Stein of the Gowling firm, on this email.

We suggest a call next week. Please let us know what times work for you. In the meantime, XLC is proceeding under a full reservation of rights and presumes that your clients are proceeding under a similar reservation of their rights.

Regards,

Tammy

Tammy Yuen

Principal
Skarzynski Black LLC

D 212.820.7757 | **P** 212.820.7700 | **F** 212.820.7740
tyuen@skarzynski.com | [vCard](#) | [View Bio](#)




One Battery Park Plaza, 32nd Floor
New York, NY 10004
skarzynski.com

The information contained in this message may be privileged and/or confidential and is intended only for the use of the individual recipient identified above. If the reader of this message is not the intended recipient, you are hereby notified that any use, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone, fax or e-mail and delete this message. Thank you.

Disclaimer Required by IRS Rules of Practice: Any discussion of tax matters contained herein is not intended or written to be used and cannot be used for the purpose of avoiding any penalties that may be imposed under Federal tax laws.

This is Exhibit "M" referred to in the Affidavit of William Richard Harker, sworn before me at Westwood, New Jersey, United States of America, on August 10, 2018.



(A Notary Public in and for the State of New Jersey)

JEREMY FORTUNATO
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires 4/27/2022





May 4, 2018

Via Email: jbirch@casselsbrock.com

John Birch
Cassels Brock
Suite 2100, Scotia Plaza
40 King Street West
Toronto, ON
MSH 3C2 Canada

Paul J. Stein, Q.C.
Partner
Direct +1 403 298 1084
Direct Fax +1 403 695 3484
Assistant +1 403 298 1882
paul.stein@gowlingwlg.com
File No.: A158299

Dear Mr. Birch:

Re: Insured: Sears Canada Inc.
Insurer: XL Specialty Insurance Company
Policy No.: ELU146443-16 (Primary A-Side)
Policy Period: October 15, 2016 to October 15, 2017

Gowling WLG (Canada) LLP has been retained as legal counsel to XL Specialty Insurance Company ("XLC") in connection with its investigation and analysis of coverage under the above-noted A-Side Management Liability Policy (the "A-Side Policy") issued to Sears Canada Inc. ("Sears Canada").

This letter acknowledges receipt of your letters dated March 8, 2018 and March 14, 2018, providing notice of the following matters (collectively, the "Noticed Matters") on behalf of (i) Klaudio Leshnjani; (ii) William C. Crowley; (iii) William R. Harker; (iv) James R.G. McBurney; (v) Ephraim J. Bird; (vi) Calvin McDonald; (vii) Danita Stevenson; (viii) Ronald Boire; (ix) Timothy Earl Flemming; (x) Sam Jeffrey Stollenwerck; (xi) Deidra Cheeks Merriwether; (xii) Donald C. Ross; and (xiii) Douglas Campbell (collectively, the "Former Directors");

- 1291079 Ontario Limited (letter dated February 9, 2018);
- Representative Counsel for Pensions and Post-Retirement Benefits (letter dated February 9, 2018);
- Morneau Shepell Ltd. (letter dated February 8, 2018)
- RioCan Real Estate Investment Trust (letter dated February 9, 2018)
- Bentall Kennedy (Canada) LP/QuadReal Property Group, Primaris Management Inc., First Capital Asset Management ULC, Westcliff Management Ltd. (four letters dated February 23, 2018)
- Cadillac Fairview Corporation Limited (four letters dated February 9, 2018)
- ESL Partners L.P., RBS Partners, L.P., ESL Investments, Inc. and Edward S. Lampert (letter dated July 10, 2017)
- ROSSCLAIR Contractors Inc. (letter dated July 26, 2017)

Gowling WLG (Canada) LLP
Suite 1600, 421 7th Avenue SW
Calgary AB T2P 4K9 Canada

T +1 403 298 1000
F +1 403 263 9193
gowlingwlg.com

Gowling WLG (Canada) LLP is a member of Gowling WLG, an international law firm which consists of independent and autonomous entities providing services around the world. Our structure is explained in more detail at: gowlingwlg.com/legal.



- Environmental Claimants (various Sears Canada letters regarding environmental issues at 40 Alliance Blvd., Barrie, ON; 500 Wilfred Hamel Blvd., Quebec City, QC; and North Hill Centre, Calgary, AB)
- Karine Tremblay (Quebec class action)
- Crombie REIT, Morguard Investments Limited, Cushman Wakefield Asset Services, Ivanhoe Cambridge and Cominar REIT (four letters dated February 9, 2018)
- Oxford Properties Group and OPGI Management Limited Partnership (four letters dated February 9, 2018)
- Employee Representative Counsel (four letters dated February 9, 2018)

We are writing to you based on our understanding that you are the appropriate representative of the Former Directors for purpose of communications concerning potential coverage under the A-Side Policy. In the event that our understanding is not correct, please promptly advise us and forward a copy of this letter to the appropriate party(ies).

XLC requires further information to determine if the Former Directors are entitled to coverage under the A-Side Policy, whether for defence or indemnity, and XLC must conduct an investigation in this respect. The ongoing investigation by XLC shall in no way be construed as a waiver in any form by XLC of its rights under the A-Side Policy. Further, the actions of XLC in respect of these investigations are not to be construed as confirming any right to a defence nor to any form of indemnification under the A-Side Policy.

The Noticed Matters generally relate to: (i) unpaid wages and benefits to former Sears Canada employees and other employee-related liabilities; (ii) potential pension claims by former Sears Canada employees; (iii) alleged breach of fiduciary duties to various stakeholders concerning the Company's inability to remain solvent; (iv) potential "oppression" claims from stakeholders alleging the Company disregarded their respective interests; and (v) environmental contamination.

XLC issued to Sears Canada a Limit of Liability for covered Claims first made against an Insured during the Policy Period of October 15, 2016 to October 15, 2017. The A-Side Policy should be reviewed together with this letter as this letter does not modify the terms of the A-Side Policy.

As you know, Section I. Insuring Agreement of the A-Side Policy provides:

The Insurer will pay on behalf of the Insured Persons Loss resulting from a Claim first made against the Insured Persons during the Policy Period or, if applicable, the Optional Extension Period, for a Wrongful Act, except to the extent that such Loss is paid by any other Insurance Program or as indemnification or advancement from any source. In the event that Loss is not paid by such other insurance or as indemnification or advancement, this Policy will respond on behalf of the Insured Persons as if it were primary, subject to all of its terms, conditions (including, but not limited to, CONDITION (B)) and limitations and without prejudice to the Insurer's excess position.

Section II(I) defines Insured Person to mean:



- (1) any past, present, or future director or officer, general counsel, or member of the Board of Managers of the Company and any person serving in a functionally equivalent role for the Parent Company or any Subsidiary operating or incorporated outside the United States;

Section II(C) defines Claim to mean:

- (1) a written demand for monetary or non-monetary relief;
- (2) any civil or criminal judicial proceeding in a court of law or equity, arbitration or other alternative dispute resolution; or
- (3) a formal civil, criminal, administrative, or regulatory proceeding or formal investigation.

Section II(Q) defines "Wrongful Act" to include:

- (1) any actual or alleged act, error, or omission, misstatement, misleading statement, neglect, or breach of duty by any Insured Person, as defined in DEFINITION (I)(1), while acting in his or her capacity as a director, officer, general counsel, or member of the Board of Managers of the Company or a functionally equivalent role for the Parent Company or any Subsidiary operating or incorporated outside the United States;
- (2) any matter asserted against an Insured Person solely by reason of his or her status as a director, officer, general counsel, or member of the Board of Managers of the Company;

Endorsement No. 4 provides:

**ENDORSEMENT NO. 4: PENDING AND/OR PRIOR LITIGATION
EXCLUSION**

In consideration of the premium charged, no coverage will be available under this Policy for Claims based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any fact, circumstance, situation, transaction, event or Wrongful Act, underlying or alleged in any prior and/or pending litigation or administrative or regulatory proceeding or arbitration which was brought prior to October 15, 2014.

Endorsement No. 21 provides:

ENDORSEMENT NO. 21: PRIOR ACTS EXCLUSION

In consideration of the premium charged, no coverage shall be available under this Policy for any Loss in connection with any Claim made against an Insured



Person alleging any Wrongful Act occurring prior to October 15, 2014 or after the end of the Policy Period. This Policy only provides coverage for Wrongful Acts occurring on or after October 15, 2014 and prior to the end of the Policy Period and otherwise covered by the terms, conditions and limitations of this Policy. Loss arising out of the same or related Wrongful Act shall be deemed to arise from the first such same or related Wrongful Act.

It appears as though only two of the noticed matters currently constitute Claims. Specifically, your letters dated March 8, 2018 and March 14, 2018 provide notice of (i) a class action in Québec arising out of alleged misrepresentations in the sale of extended warranty plans (the "Tremblay Action"); and (ii) a "Statement of Claim" alleging "oppressive conduct" under the Canada Business Corporations Act (the "129 Ontario Action").

It is, however, our understanding that none of the Former Directors are currently named as defendants in the Tremblay Action, and as such the Tremblay Action is not currently a Claim against any of the Former Directors and the A-Side Policy is not implicated. If you disagree with this position, we ask that you please provide a copy of an English translation of the operative complaint, and XLC will reconsider its analysis. In the meantime, XLC will proceed under a full reservation of rights as to potential coverage for the Tremblay Action including, but not limited to whether the Former Directors are Insured Persons under the A-Side Policy.

With respect to the 129 Ontario Action, that action names as defendants (i) Sears Canada; (ii) Sears Canada Corporation; (iii) ESL Investments; (iv) William Crowley; (v) William Harker; (vi) Donald Campbell Ross; (vii) Ephraim Bird; (viii) Deborah Rosati; (ix) R. Raja Khanna; (x) James McBurney; and (xi) Douglas Campbell, and alleges that by issuing a \$509 million dividend to shareholders on December 6, 2013, Sears Canada stripped the Company of its prime assets for the primary benefit of Sears Canada and ESL Investments at the expense of the plaintiff Class.

XLC acknowledges that the 129 Ontario Action is a Claim pursuant to Section II(C) of the A-Side Policy. Because the A-Side Policy only provides coverage for Insured Persons, and Sears Canada, Sears Canada Corporation and ESL Investments are not Insured Persons, the A-Side Policy only potentially provides coverage for the defendants identified in (iv) through (xi) in the foregoing paragraph.

None of the remaining Noticed Matters presently appear to constitute Claims under the A-Side Policy because those matters do not appear to fall within the definition of Claim as quoted above. Instead, the letters indicate that purported claimants either (i) intend to file a claim, or (ii) are investigating potential claims. In addition, we understand that all lawsuits are stayed under the CCAA Proceedings. Thus, on behalf of XLC, we acknowledge the Noticed Matters, other than Tremblay Action and the 129 Ontario Action, as Notice of Circumstances pursuant to Section IV(D) of the A-Side Policy.

XLC invites you to please provide any information that you believe is relevant to its coverage analysis. In the meantime, XLC is continuing to proceed under a full reservation of rights under the A-Side Policy, in law and equity, including with respect to any other defenses to coverage not discussed herein or in any prior correspondence including, but not limited to, notice, whether the amounts sought constitute Loss, whether indemnification is available from any other source, date of Claim, the application of the pending and/prior litigation exclusion and the application of the prior acts exclusion.



Should you have any questions after review of this letter, please feel free to contact me.

Yours truly,

Gowling WLG (Canada) Ltd.

A handwritten signature in black ink, appearing to read "P. Stein".

Paul J. Stein

cc: Rebecca Pidlak (XLC) (Via Email: rebecca.pidlak@xlcatlin.com)
Kenneth McBrady (Via Email: kmcbrady@skarzynski) and Tammy Yuen (Via Email: tyuen@skarzynski) (Skarzynski Black)
Kelly Lang (HUB International) (Via Email: Kelly.Lang@hubinternational.com)

Skarzynski Black LLC
 One Battery Park Plaza, 32nd Floor
 New York, New York 10004
 P 212.820.7700 | F 212.820.7740
 skarzynski.com

Tammy Yuen, Esq.
 Direct No.: (212) 820-7757
tyuen@skarzynski.com

May 4, 2018

VIA PDF EMAIL

John Birch
 Cassels Brock
 Suite 2100, Scotia Plaza
 40 King Street West
 Toronto, ON M5H 3C2
 Canada
jbirch@casselsbrock.com

Re: *Various Matters Involving Sears Canada*
 Insured: Sears Holdings Corporation
 Insurer: XL Specialty Insurance Company
 Policy No.: ELU149912-17 (Primary A-Side)
 Policy Period: May 15, 2017 to May 15, 2018
 XLC Ref. No.: 0004070548
 SB File No.: 21995

Dear Mr. Birch:

This firm has been retained as legal counsel to XL Specialty Insurance Company ("XLC") in connection with its investigation and analysis of coverage under the captioned A-Side Management Liability Policy (the "A-Side Policy") issued to Sears Holdings Corporation ("Sears Holdings"). This letter incorporates all prior correspondence on behalf of XLC.

This letter acknowledges receipt of your letters dated March 8, 2018 and March 14, 2018, providing notice of the following matters (collectively, the "Noticed Matters") on behalf of (i) Klaudio Leshnjani; (ii) William C. Crowley; (iii) William R. Harker; (iv) James R.G. McBurney; (v) Ephraim J. Bird; (vi) Calvin McDonald; (vii) Danita Stevenson; (viii) Ronald Boire; (ix) Timothy Earl Flemming; (x) Sam Jeffrey Stollenwerck; (xi) Deidra Cheeks Merriwether; (xii) Donald C. Ross; and (xiii) Douglas Campbell (collectively, the "Former Directors"):

John Birch
May 4, 2018
Page 2

- 1291079 Ontario Limited (letter dated February 9, 2018);
- Representative Counsel for Pensions and Post-Retirement Benefits (letter dated February 9, 2018);
- Morneau Shepell Ltd. (letter dated February 8, 2018)
- RioCan Real Estate Investment Trust (letter dated February 9, 2018)
- Bentall Kennedy (Canada) LP/QuadReal Property Group, Primaris Management Inc., First Capital Asset Management ULC, Westcliff Management Ltd. (four letters dated February 23, 2018)
- Cadillac Fairview Corporation Limited (four letters dated February 9, 2018)
- ESL Partners L.P., RBS Partners, L.P., ESL Investments, Inc. and Edward S. Lampert (letter dated July 10, 2017)
- ROSSCLAIR Contractors Inc. (letter dated July 26, 2017)
- Environmental Claimants (various Sears Canada letters regarding environmental issues at 40 Alliance Blvd., Barrie, ON; 500 Wilfred Hamel Blvd., Quebec City, QC; and North Hill Centre, Calgary, AB)
- Karine Tremblay (Quebec class action)
- Crombie REIT, Morguard Investments Limited, Cushman Wakefield Asset Services, Ivanhoe Cambridge and Cominar REIT (four letters dated February 9, 2018)
- Oxford Properties Group and OPGI Management Limited Partnership (four letters dated February 9, 2018)
- Employee Representative Counsel (four letters dated February 9, 2018)

We are writing to you based on our understanding that you are the appropriate representative of the former directors for purpose of communications concerning potential coverage under the A-Side Policy. In the event that our understanding is not correct, please promptly advise us and forward a copy of this letter to the appropriate party(ies).

The Noticed Matters generally relate to: (i) unpaid wages and benefits to former Sears Canada employees and other employee-related liabilities; (ii) potential pension claims by former Sears Canada employees; (iii) alleged breach of fiduciary duties to various stakeholders concerning the Company's inability to remain solvent; (iv)

John Birch
May 4, 2018
Page 3

potential “oppression” claims from stakeholders alleging the Company disregarded their respective interests; and (v) environmental contamination.

XLC issued to Sears Holdings a Limit of Liability for covered Claims first made against an Insured during the Policy Period of May 15, 2017 to May 15, 2018. The A-Side Policy should be reviewed together with this letter as this letter does not modify the terms of the A-Side Policy.

As you know, Section I. Insuring Agreement of the A-Side Policy provides:

The Insurer will pay on behalf of the Insured Persons Loss resulting from a Claim first made against the Insured Persons during the Policy Period or, if applicable, the Optional Extension Period, for a Wrongful Act, except to the extent that such Loss is paid by any other Insurance Program or as indemnification or advancement from any source. In the event that Loss is not paid by such other insurance or as indemnification or advancement, this Policy will respond on behalf of the Insured Persons as if it were primary, subject to all of its terms, conditions (including, but not limited to, CONDITION (B)) and limitations and without prejudice to the Insurer's excess position.

Section II(I) defines Insured Person to mean:

- (1) any past, present, or future director or officer, general counsel, or member of the Board of Managers of the Company and any person serving in a functionally equivalent role for the Parent Company or any Subsidiary operating or incorporated outside the United States; . .

Section II(C) defines Claim to mean:

- (1) a written demand for monetary or non-monetary relief;
- (2) any civil or criminal judicial proceeding in a court of law or equity, arbitration or other alternative dispute resolution; or

- (3) a formal civil, criminal, administrative, or regulatory proceeding or formal investigation

Section II(Q) defines "Wrongful Act" to include:

- (1) any actual or alleged act, error, or omission, misstatement, misleading statement, neglect, or breach of duty by any Insured Person, as defined in DEFINITION (I)(1), while acting in his or her capacity as a director, officer, general counsel, or member of the Board of Managers of the Company or a functionally equivalent role for the Parent Company or any Subsidiary operating or incorporated outside the United States;
- (2) any matter asserted against an Insured Person solely by reason of his or her status as a director, officer, general counsel, or member of the Board of Managers of the Company; . . .

It appears as though only two of the noticed matters currently constitute Claims. Specifically, your letters dated March 8, 2018 and March 14, 2018 provide notice of (i) a class action in Québec arising out of alleged misrepresentations in the sale of extended warranty plans (the "Tremblay Action"); and (ii) a "Statement of Claim" alleging "oppressive conduct" under the Canada Business Corporations Act (the "129 Ontario Action").

It, however, is our understanding none of the Former Directors are currently named as defendants in the Tremblay Action such that the Tremblay Action is not current a Claim against any of the Former Directors and the A-Side Policy is not implicated. If you disagree with this position, we ask that you please provide a copy of an English translation of the operative complaint, and XLC will reconsider its analysis. In the meantime, XLC will proceed under a full reservation of rights as to potential coverage for the Tremblay Action including, but not limited to whether the Former Directors are Insured Persons under the A-Side Policy.

With respect to the 129 Ontario Action, that action names as defendants (i) Sears Canada; (ii) Sears Holdings Corporation; (iii) ESL Investments; (iv) William Crowley; (v) William Harker; (vi) Donald Campbell Ross; (vii) Ephraim Bird; (viii) Deborah Rosati; (ix) R. Raja Khanna; (x) James McBurney; and (xi) Douglas Campbell, and alleges that by issuing a \$509 million dividend to shareholders on December 6, 2013,

John Birch
May 4, 2018
Page 5

Sears Canada stripped the Company of its prime assets for the primary benefit of Sears Holdings and ESL Investments at the expense of the plaintiff Class.

XLC acknowledges that the 129 Ontario Action is a Claim pursuant to Section II(C). Because the A-Side Policy only provides coverage for Insured Person, and Sears Canada, Sears Holdings Corporation and ESL Investments are not Insured Persons, the A-Side Policy only potentially provides coverage for the defendants identified in (iv) through (xi) in the foregoing paragraph (collectively, the "Individual Defendants").

The 129 Ontario Action identifies the Individual Defendants as former and/or current directors and officers of Sears Canada and includes allegations that despite significant financial losses, the Individual Defendants declared an extraordinary cash dividend to be paid by Sears Canada for the benefit of Sears Holdings and ESL Investments at the expense of the plaintiffs. Thus, the Individual Defendants are alleged to have acted in their capacity with Sears Canada.

Sears Canada is not included in the definitions of, and does not otherwise qualify as, a "Company," "Parent Company" and/or "Subsidiary" pursuant to Sections II(D), II(N), and II(P), as amended by Endorsement No. 41, of the A-Side Policy. Accordingly, because the 129 Ontario Action alleges that the Individual Defendants acted solely in their capacity with Sears Canada and the definitions of Insured Persons and Wrongful Acts do not include coverage for actions taken by the Individual Defendants in their capacity with Sears Canada, the A-Side Policy does not provide coverage for the 129 Ontario Action.

None of the remaining Noticed Matters presently appear to constitute Claims under the A-Side Policy because those matters do not appear to fall within the definition of Claim as quoted above. Instead, the letters indicate that purported claimants either (i) intend to file a claim, or (ii) are investigating potential claims. In addition, we understand that all lawsuits are stayed under the CCAA Proceedings. Thus, on behalf of XLC, we acknowledge the Noticed Matters, other than Tremblay Action and the 129 Ontario Action, as Notice of Circumstances pursuant to Section IV(D), as amended by Endorsement Nos. 17 and 35.

XLC invites you to please provide any information that you believe is relevant to its coverage analysis. In the meantime, XLC is continuing to proceed under a full reservation of rights under the A-Side Policy, law and equity, including with respect to any other defenses to coverage not discussed herein or in any prior correspondence including, but not limited to, notice, whether the amounts sought constitute Loss, whether indemnification is available from any other source and date of Claim.

John Birch
May 4, 2018
Page 6

Should you have any questions after review of this letter, please feel free to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Tammy Yuen', with a long, sweeping horizontal line extending to the right.

Tammy Yuen

cc: Rebecca Pidlak (XLC)
Kenneth McBrady (Skarzynski Black)

This is Exhibit "N" referred to in the Affidavit of William Richard Harker, sworn before me at Westwood, New Jersey, United States of America, on August 10, 2018.



(A Notary Public in and for the State of New Jersey)

JEREMY FORTUNATO
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires 4/27/2022



From: [Birch, John](#)
To: [Paul.Stein@gowlingwlg.com](#); [tyuen@skarzynski.com](#); [kmcbrady@skarzynski.com](#); [sweisz@btzlaw.ca](#); [laurence.gevryfortier@aig.com](#); [david.gill@everestcanada.com](#); [warren.cooney@axiscapital.com](#); [rohit.trivedi@axiscapital.com](#)
Cc: [Buttery, Mary I.A.](#); [Levine, Natalie](#); [Heath, Ang  le](#); [Ashmeade, Taschina](#)
Subject: Update to Director & Officer Insurers of Sears Canada Inc. regarding additional claims received on May 3, 2018
Date: Monday, May 07, 2018 8:42:27 AM
Attachments: [image001.gif](#)
[Sears - D&O Claims - Letter from Norton Rose dated May 3, 2018.PDF](#)

Introduction

Our firm is counsel to the following former officers and directors of Sears Canada Inc.: Klaudio Leshnjani, William (Bill) C. Crowley, William (Bill) R. Harker, James R.G. McBurney, Ephraim J. (EJ) Bird, Calvin McDonald, Danita Stevenson, Ronald Boire, Timothy Earl Flemming, Deidra Cheeks Merriwether, Donald C Ross, and Douglas Campbell (collectively, the "Directors").

On March 8, 2018, we provided notice in writing of actual or potential claims that have been and/or may be asserted against the Directors arising out of their role as former officers and directors of Sears Canada Inc. On May 1, 2018, we sent an update to all insurers and also provided voluminous information about information that we received from the Monitor of Sears Canada regarding claims asserted against directors and officers of Sears Canada as part of the CCAA proceedings of that entity.

Additional Claims Received on May 3, 2018

On May 3, 2018, the Monitor of Sears Canada sent to us a letter advising that it had received additional claims against the directors and officers of Sears Canada Inc. A copy of this letter is attached. This letter also includes a detailed chart summarizing claims filed against directors and officers in the CCAA proceedings under the categories of Real Property Related Claims, Class Action Related Claims, and Employee and Retiree Related Claims. This chart also identifies which directors and officers are the subject of each claim.

Under cover of this May 3 letter, the Monitor also provided us (for the first time) with numerous additional documents relating to claims that have been filed against the directors and officers (the "**Additional Claim Documents**"). These documents are in addition to the documents that we previously received from the Monitor and provided to you on May 1, 2018.

The information received from the Monitor represents the remaining of the claims that have been filed with the Monitor as of April 25, 2018. To the extent that the Monitor receives additional claims and provides them to us, we will in turn provide them to the insurers.

Documents to be Sent

Because the Additional Claim Documents are voluminous, they are not attached to this email. Instead, we will send them to you separately through TitanFile, the same utility used to provide documents to you on May 1, 2018.

Later today, you will receive a separate email message from Ang  le Heath of our firm that comes from the TitanFile site. That email will contain a link that will take you to the TitanFile site from where you can download the Additional Claim Documents. Please keep an eye out for this subsequent email and, if necessary, check your spam folder.

After you click the link in the email and are taken to the TitanFile website, click on the "Files" tab which will reveal the documents that can be accessed and downloaded.

If you have any trouble receiving the documents through TitanFile, please contact Ang  le Heath of our firm at (416) 869-5390 or aheath@casselsbrock.com

Conclusion

If any of you has any questions regarding this matter, let me know.

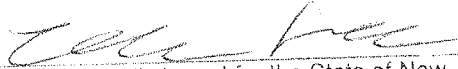
**John Birch**

Direct: +1 416 860 5225 • Fax: +1 416 640 3057 • jbirch@casselsbrock.com
2100 Scotia Plaza, 40 King Street West, Toronto, Ontario, M5H 3C2

www.casselsbrock.com

Services provided through a Professional Corporation

This is Exhibit "O" referred to in the Affidavit of William Richard Harker, sworn before me at Westwood, New Jersey, United States of America, on August 10, 2018.



(A Notary Public in and for the State of New Jersey)

JEREMY FORTUNATO
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires 4/27/2022

From: [Birch, John](#)
To: tyuen@skarzynski.com; Paul.Stein@gowlingwlg.com
Cc: [Levine, Natalie](#); [Buttery, Mary I.A.](#)
Subject: Follow-up consideration of coverage under D&O policies relating to Sears Holdings Corporation and Sears Canada Inc. [IWOV-LEGAL.FID2704142]
Date: Monday, May 28, 2018 10:05:01 AM

Dear Counsel,

I am writing to you in your respective capacities as counsel to XL Insurance relating to the Sears Holdings Corporation (“SHC”) and Sears Canada Inc. (“SCI”) D&O policies (collectively, the “Policies”).

This email follows the letters dated May 4, 2018 sent to me in respect of the Policies. Please note that our firm is not coverage counsel for our clients. We are, instead, defence counsel dealing with the actual claims and threatened claims asserted against our clients.

On May 4, immediately before you both sent me the May 4, 2018 letters, Ms. Yuen called me to advise that the coverage position being taken DID NOT take into account the supplementary claims information that we provided to XL and the other insurers subsequent to March 2018. We have provided further claims information on May 1 and 7, 2018, including detailed information (and copies of claims) relating to the claims that have been filed against our clients in the CCAA proceedings of SCI. Although our clients disagree with the coverage position set out in your May 8 letters (and they reserve all of their rights regarding seeking relief on the coverage issue), it is all the more evident from the additional information provided on May 1 and 7, 2018 that numerous “Claims” within the meaning of the Policies have indeed been asserted and need to be defended. Those are active “Claims” that are being handled in the CCAA proceedings and to which our clients will need to respond. In fact, the Monitor of SCI has been in touch with our firm to advise that it intends to seek our clients’ response to the claims filed in the CCAA proceedings.

We therefore ask that you immediately review the additional claims information that has been provided to XL and the other insurers after March 2018 and confirm that XL will provide reimbursement of defence costs.


If coverage is not provided, our clients will have coverage counsel seek the appropriate relief.



John Birch

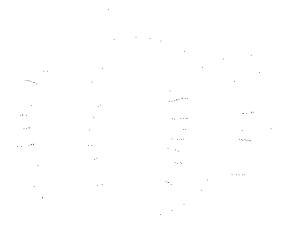
Direct: +1 416 860 5225 • Fax: +1 416 640 3057 • jbirch@casselsbrock.com
2100 Scotia Plaza, 40 King Street West, Toronto, Ontario, M5H 3C2
www.casselsbrock.com
Services provided through a Professional Corporation

This is Exhibit "P" referred to in the Affidavit of William Richard Harker, sworn before me at Westwood, New Jersey, United States of America, on August 10, 2018.



(A Notary Public in and for the State of New Jersey)

JEREMY FORTUNATO
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires 4/27/2022





June 18, 2018

Via Email: jbirch@casselsbrock.com

John Birch
Cassels Brock
Suite 2100, Scotia Plaza
40 King Street West
Toronto, ON
MSH 3C2 Canada

Paul J. Stein, Q.C.
Partner
Direct +1 403 298 1084
Direct Fax +1 403 695 3484
Assistant +1 403 298 1882
paul.stein@gowlingwg.com
File No.: A158299

Dear Mr. Birch:

Re: Insured: Sears Canada Inc.
Insurer: XL Specialty Insurance Company
Policy No.: ELU146443-16 (Primary A-Side)
Policy Period: October 15, 2016 to February 12, 2018

As you know, Gowling WLG (Canada) LLP has been retained as legal counsel to XL Specialty Insurance Company ("XLC") in connection with its investigation and analysis of coverage under the above-noted A-Side Management Liability Policy (the "A-Side Policy") issued to Sears Canada Inc. ("Sears Canada"). We wrote to you on May 4, 2018, providing XLC's initial coverage position in connection with Noticed Matters as set out in your letters of March 8, 2018 and March 14, 2018.

This letter acknowledges your email of May 28, 2018, requesting that XLC also provide its initial coverage position in respect of additional noticed matters, as reflected in further documentation provided by your office on May 1 and 7, 2018 (the "Further Documentation"). We note that there is overlap between the Noticed Matters addressed in our May 4, 2018 correspondence, and the matters to which the Further Documentation relates. Additional Noticed Matters (being matters to which the Further Documentation relates, but which were not addressed as Noticed Matters in our May 4, 2018 correspondence) generally relate to (i) construction liens; (ii) alleged bad faith in accelerated construction schedules; (iii) potential claims to be identified by Litigation Investigator; and (iv) indemnity claims.

XLC requires further information to determine if your clients are entitled to coverage under the A-Side Policy, whether for defence or indemnity, and XLC must conduct an investigation in this respect. The ongoing investigation by XLC shall in no way be construed as a waiver in any form by XLC of its rights under the A-Side Policy. Further, the actions of XLC in respect of these investigations are not to be construed as confirming any right to a defence nor to any form of indemnification under the A-Side Policy.

XLC issued to Sears Canada a Limit of Liability for covered Claims first made against an Insured during the Policy Period of October 15, 2016 to October 15, 2017. The A-Side Policy is in run-off, and the policy period was extended to run from October 15, 2017 to February 12, 2020.

Gowling WLG (Canada) LLP
Suite 1600, 421 7th Avenue SW
Calgary AB T2P 4K9 Canada

T +1 403 298 1000
F +1 403 263 9193
gowlingwg.com

Gowling WLG (Canada) LLP is a member of Gowling WLG, an international law firm which consists of independent and autonomous entities providing services around the world. Our structure is explained in more detail at gowlingwg.com/legal.



The A-Side Policy should be reviewed together with this letter as this letter does not modify the terms of the A-Side Policy.

As you know, Section I. Insuring Agreement of the A-Side Policy provides:

The Insurer will pay on behalf of the Insured Persons Loss resulting from a Claim first made against the Insured Persons during the Policy Period or, if applicable, the Optional Extension Period, for a Wrongful Act, except to the extent that such Loss is paid by any other Insurance Program or as indemnification or advancement from any source. In the event that Loss is not paid by such other insurance or as indemnification or advancement, this Policy will respond on behalf of the Insured Persons as if it were primary, subject to all of its terms, conditions (including, but not limited to, CONDITION (B)) and limitations and without prejudice to the Insurer's excess position.

Section II(I) defines Insured Person to mean:

- (1) any past, present, or future director or officer, general counsel, or member of the Board of Managers of the Company and any person serving in a functionally equivalent role for the Parent Company or any Subsidiary operating or incorporated outside the United States;

Section II(C) defines Claim to mean:

- (1) a written demand for monetary or non-monetary relief;
- (2) any civil or criminal judicial proceeding in a court of law or equity, arbitration or other alternative dispute resolution; or
- (3) a formal civil, criminal, administrative, or regulatory proceeding or formal investigation.

Section II(Q) defines "Wrongful Act" to include:

- (1) any actual or alleged act, error, or omission, misstatement, misleading statement, neglect, or breach of duty by any Insured Person, as defined in DEFINITION (I)(1), while acting in his or her capacity as a director, officer, general counsel, or member of the Board of Managers of the Company or a functionally equivalent role for the Parent Company or any Subsidiary operating or incorporated outside the United States;
- (2) any matter asserted against an Insured Person solely by reason of his or her status as a director, officer, general counsel, or member of the Board of Managers of the Company;



Section IV. (D) provides as follows:

- (1) As a condition precedent to any right to payment under this policy with respect to any Claim, the Insured Persons or the Company shall give written notice to the Insurer of any Claim as soon as practicable after it is first made.
- (2) If, during the Policy Period, the Insured Persons first becomes aware of a specific Wrongful Act and if, during the Policy Period, the Insured Persons or the Company:
 - (a) provide the Insurer with written notice of the specific Wrongful Act, the consequences which have resulted or may result therefrom (including but not limited to actual or potential damages), the identities of the potential claimants, and the circumstances by which the Insured Persons first became aware of such Wrongful Act; and
 - (b) request coverage under this Policy for any subsequently resulting Claim for such Wrongful Act;

then any Claim subsequently made arising out of such Wrongful Act will be treated as if it had been first made during the Policy Period.

Endorsement No. 4 provides:

ENDORSEMENT NO. 4: PENDING AND/OR PRIOR LITIGATION EXCLUSION

In consideration of the premium charged, no coverage will be available under this Policy for Claims based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any fact, circumstance, situation, transaction, event or Wrongful Act, underlying or alleged in any prior and/or pending litigation or administrative or regulatory proceeding or arbitration which was brought prior to October 15, 2014.

Endorsement No. 21 provides:

ENDORSEMENT NO. 21: PRIOR ACTS EXCLUSION

In consideration of the premium charged, no coverage shall be available under this Policy for any Loss in connection with any Claim made against an Insured Person alleging any Wrongful Act occurring prior to October 15, 2014 or after the end of the Policy Period. This Policy only provides coverage for Wrongful Acts occurring on or after October 15, 2014 and prior to the end of the Policy Period and otherwise covered by the terms, conditions and limitations of this Policy. Loss arising out of the same or related Wrongful Act shall be deemed to arise from the first such same or related Wrongful Act.



Endorsement Nos. 35 and 38 provide (in part):

ENDORSEMENT NO. 35: SEARS CANADA INC. CONVERT TO RUN-OFF
ENDORSEMENT

...

- (4) No coverage will be available under this Policy for Claims based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any Wrongful Act committed or allegedly committed on or after the Conversion Date.

...

- (6) As of the Conversion Date, Section IV Condition (D)(2) of the Policy is deleted in its entirety.

Endorsement No. 37 provides (in part):

ENDORSEMENT NO. 37: AMENDED POLICY PERIOD ENDORSEMENT

...

- (1) Item 2 of the Declarations is amended to read as follows:

Item 2. Policy Period: From October 15, 2016
To: February 12, 2018
At 12:01 AM Standard Time at your Mailing Address
Shown Above.

None of the Additional Noticed Matters presently appear to constitute a Claim under the A-Side Policy because those matters do not appear to fall within the definition of Claim as set out above.

As set out above, the A-Side Policy is in run off, and as of February 12, 2018, Section IV Condition (D)(2) of the Policy is deleted in its entirety. As a result, for any of the Additional Noticed Matters in connection with which notice was first provided to XLC after February 12, 2018, XLC cannot accept such Additional Noticed Matters as notice of a Claim or Wrongful Act under the A-Side Policy.

XLC invites you to please provide any information that you believe is relevant to its coverage analysis. In the meantime, XLC is continuing to proceed under a full reservation of rights under the A-Side Policy, in law and equity, including with respect to any other defenses to coverage not discussed herein or in any prior correspondence including, but not limited to, notice, whether the amounts sought constitute Loss, whether indemnification is available from any other source, date of Claim, the application of the pending and/prior litigation exclusion and the application of the prior acts exclusion.



Should you have any questions after review of this letter, please feel free to contact me.
Best regards,

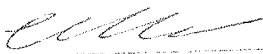
Gowling WLG (Canada) Ltd.

A handwritten signature in black ink, appearing to read "P. Stein".

Paul J. Stein

cc: Rebecca Pidlak (XLC) (Via Email: rebecca.pidlak@xlcattlin.com)
Kenneth McBrady (Via Email: kmcbrady@skarzynski.com) and Tammy Yuen (Via Email:
tyuen@skarzynski.com) (Skarzynski Black)

This is **Exhibit "Q"** referred to in the Affidavit of William Richard Harker, sworn before me at Vestwood, New Jersey, United States of America, on August 10, 2018.


(A Notary Public in and for the State of New Jersey)

JEREMY FORTUNATO
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires 4/27/2022

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.) TUESDAY, THE 24TH
)
JUSTICE HAINEY) DAY OF JULY, 2018
)



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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF SEARS CANADA INC., 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.

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

ORDER
(Stay Extension)

THIS MOTION, made by the Applicants pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA"), for an order (i) extending the Stay Period (defined below) until and including December 18, 2018; (ii) extending the Application Period set out in the Employee Hardship Fund Term Sheet to December 18, 2018; and (iii) extending the deadline for the Monitor to issue Notices of Revision or Disallowance in respect of D&O Claims and indemnity claims filed by the Directors and Officers pursuant to the Claims Procedure Order dated December 8, 2017 and the Employee and Retiree Claims Procedure Order dated February 22, 2018 (collectively, the "Claims Orders") to October 1, 2018, and certain other relief, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of the Applicants, the Affidavit of Philip Mohtadi affirmed July 17, 2018 (the “**Mohtadi Affidavit**”), the Twenty First Report of the Monitor, and on hearing the submissions of respective counsel for the Applicants and SearsConnect (collectively, the “**Sears Canada Entities**”), the Monitor, and such other counsel as were present, no one else appearing although duly served as appears from the Affidavit of Service of Lia Bruschetta sworn July 19, 2018, filed:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record herein is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof. Capitalized terms used herein and not otherwise defined have the meanings given to them in the Claims Orders.

EXTENSION OF THE STAY PERIOD

2. **THIS COURT ORDERS** that the Stay Period (as defined in paragraph 14 of the Amended and Restated Initial Order dated June 22, 2017) is hereby extended from July 31, 2018, until and including December 18, 2018. Further, the Application Period set out in the Employee Hardship Fund Term Sheet, approved by the Court on August 18, 2017, shall also be extended until and including December 18, 2018.

EXTENSION OF DEADLINE TO ISSUE NOTICES OF REVISION OR DISALLOWANCE

3. **THIS COURT ORDERS** that the deadline for the Monitor to issue Notices of Revision or Disallowance in respect of D&O Claims and claims filed by the Directors and Officers pursuant to the Claims Orders based upon claimed indemnity obligations of the Applicants to such Directors and Officers, shall be extended until and including October 1, 2018.

GENERAL

4. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

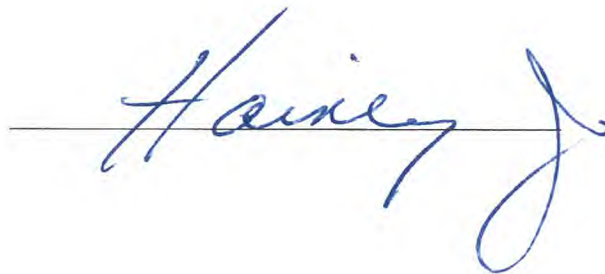

- 3 -

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

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

JUL 24 2018

PER / PAR:



IN THE MATTER OF the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS CANADA INC., 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.

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

Applicants

Ontario
**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**
Proceeding commenced at Toronto

**ORDER
(Stay Extension)**

OSLER, HOSKIN & HARCOURT, LLP
P.O. Box 50, 1 First Canadian Place
Toronto, ON M5X 1B8

Marc Wasserman LSO# 44066M
Tel: 416.862.4908

Jeremy Dacks LSO# 41851R
Tel: 416.862.4923

Michael De Lellis LSO# 48038U
Tel: 416.862.5997

Karin Sachar LSO# 59944E
Tel: 416.862.5949
Fax: 416.862.6666

Lawyers for the Applicants

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

AFFIDAVIT OF WILLIAM RICHARD HARKER

Cassels Brock & Blackwell LLP
2100 Scotia Plaza
40 King Street West
Toronto, ON M5H 3C2

John N. Birch LSO#: 38968U
Tel: 416.860.5225
Fax: 416.640.3057
jbirch@casselsbrock.com

Mary I.A. Buttery LSO#: 34599R
Telephone: 604-691-6118
Facsimile: 604-691-6120
mbuttery@casselsbrock.com

Natalie E. Levine LSO#: 64980K
Tel: 416.860.6568
Fax: 416.640.3207
nlevine@casselsbrock.com

*Lawyers for Certain Former Directors and Officers of
Sears Canada*

TAB 3

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

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

THE HONOURABLE)	●DAY, THE ●
)	
JUSTICE HAINEY)	DAY OF●, 2018

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
SEARS CANADA INC., 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.**

the Applicants

INTERIM FUNDING ORDER

THIS MOTION, made by certain former directors and officers of the Applicants represented by Cassels Brock & Blackwell LLP, namely Ronald D. Boire, William R. Harker, William C. Crowley, Deidra Merriwether, E.J. Bird, Douglas Campbell, Klaudio Leshnjani, James McBurney, Calvin McDonald, and Donald Ross (each a "**Former Director**" and, collectively, the "**Former Directors**") pursuant to the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, (the "**CCAA**") for an order for interim funding, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavit of William Richard Harker sworn on August 10, 2018 including the exhibits thereto, and on hearing the submissions of counsel for the Former

Directors, counsel for Sears Holdings Corporation, counsel for the Applicants, counsel for the Monitor, and such other counsel for various creditors and stakeholders as were present:

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record be and is hereby abridged and validated and that the motion is properly returnable today and further that service thereof upon any interested party other than those served is hereby dispensed with.
2. **THIS COURT ORDERS** that Sears Holdings Corporation (“**SHC**”) shall, on an interim basis, pay the Former Directors’ legal fees (and reimburse any amounts already incurred, including legal fees of Timothy Flemming and Danita Stevenson during the time that they were represented by Cassels Brock & Blackwell LLP) associated with these CCAA proceedings of Sears Canada Inc., including legal fees associated with defending against and responding to claims asserted in or arising out of these proceedings, and legal fees associated with any proceeding brought within the United States for the purpose of pursuing coverage for the Former Directors under the directors’ and officers’ insurance policies issued to SHC (collectively, “**Funded Amounts**”).
3. **THIS COURT ORDERS** that SHC shall be allowed to recover from each Former Director any Funded Amounts previously paid by SHC to such Former Director, but only to the extent that such Funded Amounts are later reimbursed by XL, or any other insurance company providing directors’ and officers’ insurance, to such Former Director.

4. **THIS COURT ORDERS** that, for greater certainty, nothing herein shall (i) affect, impair or negate the insurance coverage (if any) in favour of the Former Directors under directors' and officers' insurance policies issued to SHC or Sears Canada Inc. or (ii) constitute a determination of whether SHC has breached a letter agreement between SHC and Sears Canada Inc. dated October 1, 2014.

5. **THIS COURT ORDERS** that SHC shall pay the Former Directors' costs of this motion, fixed at \$_____, within 30 days.

HAINY, J.

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

INTERIM FUNDING ORDER

Cassels Brock & Blackwell LLP
2100 Scotia Plaza
40 King Street West
Toronto, ON M5H 3C2

John N. Birch LSO#: 38968U
Tel: 416.860.5225
Fax: 416.640.3057
jbirch@casselsbrock.com

Mary I.A. Buttery LSO#: 34599R
Tel:: 604.691.6118
Fax: 604.691.6120
mbuttery@casselsbrock.com

Natalie E. Levine LSO#: 64980K
Tel: 416.860.6568
Fax: 416.640.3207
nlevine@casselsbrock.com

*Lawyers for Certain Former Directors and Officers of
Sears Canada*

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS CANADA INC., 9370-2751 QUEBEC 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

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

PROCEEDING COMMENCED AT TORONTO

MOTION RECORD

Cassels Brock & Blackwell LLP
2100 Scotia Plaza
40 King Street West
Toronto, ON M5H 3C2

John N. Birch (LSO#: 38968U)
Tel: 416.860.5225
Fax: 416.640.3057
jbirch@casselsbrock.com

Mary I.A. Buttery (LSO#: 34599R)
Telephone: 604-691-6118
Facsimile: 604-691-6120
mbuttery@casselsbrock.com

Natalie E. Levine (LSO#: 64980K)
Tel: 416.860.6568
Fax: 416.640.3207
nlevine@casselsbrock.com

*Lawyers for Certain Former Directors and Officers
of Sears Canada*