

Ontario
**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF SEARS CANADA INC., 9370-2751 QUÉBEC INC.,
191020 CANADA INC., THE CUT INC., SEARS CONTACT SERVICES INC.,
INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC.,
INITIUM TRADING AND SOURCING CORP., SEARS FLOOR COVERING
CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741
CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED,
955041 ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC.,
AND 3339611 CANADA INC.

(the “**Applicants**”)

RESPONDING MOTION RECORD

(Motion Re: Employee Claims Process and Retiree Claims Process,
returnable February 22, 2018)

February 21, 2018

URSEL PHILLIPS FELLOWS HOPKINSON LLP

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Employee Representative Counsel

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(the “**Applicants**”)

AFFIDAVIT OF KATHRYN O’ROURKE
Affirmed February 21, 2018

(Employee and Retiree Claims Procedure Order)

I, Kathryn O’Rourke, of the City of Toronto, in the Province of Ontario, solemnly affirm
as follows:

1. I am an Associate at Ursel Phillips Fellows Hopkinson LLP, Employee
Representative Counsel in the above-captioned matter, and I have assisted in the negotiation of
the Employee Claims Process. As such, I have personal knowledge of the matters to which I
herein depose, or where my knowledge is based upon information and belief, I refer to the
source of that information, and believe it to be true.

2. This Affidavit is affirmed in support of a motion by the Applicants seeking an
Order (the “**Employee and Retiree Claims Procedure Order**”) substantially in the form
attached to the Motion Record (Employee Claims Process and Retiree Claims Process)
establishing the procedures for the identification and quantification of, *inter alia*, Employee

Claims against the Applicants and SearsConnect (collectively, the “**Sears Canada Entities**”) and the current and former directors and officers of the Sears Canada Entities.

3. Capitalized terms used in this Affidavit but not defined herein have the meaning given to them in the proposed Employee and Retiree Claims Procedure Order, in the July 13, 2017 Employee Representative Counsel Order, or in the Affidavit of Becky Penrice affirmed February 16, 2018 (the “**Penrice Affidavit**”).

4. On July 13, 2017, the Court made the Employee Representative Counsel Order appointing Ursel Phillips Fellows Hopkinson LLP to act as representative counsel to represent the interests of the non-unionized Active Employees and Former Employees (each as defined in the Employee Representative Counsel Order) of the Sears Canada Entities, excluding any Opt-Out Individuals (as defined in the Employee Representative Counsel Order) (the “**ERC Employees**”) for the purposes set out in the Employee Representative Counsel Order (“**Employee Representative Counsel**”). The Employee Representative Counsel Order also appointed five (5) individuals as representatives of all Employees to act in the overall best interests of the Employees, and to advise and where appropriate instruct Employee Representative Counsel (the “**Employee Representatives**”).

5. Over the period of December 2017 to February 2018 leading up to this motion for approval of the Employee and Retiree Claims Procedure Order, and in weekly or more frequent consultation with the Employee Representatives, Employee Representative Counsel has worked closely with FTI Consulting Canada Inc. (the “**Monitor**”) and its counsel and negotiated extensively with the Sears Canada Entities and their counsel through face to face meetings, teleconferences, e-mails, and the exchange of drafts of proposed language for the Employee and Retiree Claims Procedure Order.

6. Employee Representative Counsel has worked to negotiate a Termination Claims Methodology and Common Law Severance Formula that is both appropriate and fairly takes into account the various methods by which termination and severance pay and related entitlements and payments (such as compensation for lost benefits) are owed and can be calculated. The possible calculations of the ERC Employees’ Termination Claims include utilizing applicable statutory minimum entitlements, as well as enhanced entitlements pursuant to the employment policies of the Sears Canada Entities and also relevant case law.

7. Employee Representative Counsel was able to arrive at agreement with the Sears Canada Entities and the Monitor that ERC Employees would have their Termination Claims based not on one formula, but on the particular formula that yields the best result in terms of the Termination Claim from the following options:

- a. Applicable employment standards legislation;
- b. Pre-2016 Severance Policy of the Sears Canada Entities (as further described in the Penrice Affidavit);
- c. Post-2016 Severance Policy of the Sears Canada Entities (as further described in the Penrice Affidavit);
- d. Common Law Severance Formula;
- e. Enhanced individual contractual entitlements, where such are known to exist.

8. A description of the full Common Law Severance Formula is found at Schedule "A" to the Penrice Affidavit.

9. Employee Representative Counsel has worked with the Monitor and the Sears Canada Entities to establish a "negative notice" Termination Claims process which allows for the correction of personal information that the Termination Claims Methodology is based upon and a consequent updating and recalculation of any claim as a result of new information which is accepted by the Monitor.

10. In addition, Employee Representative Counsel has worked with the Monitor and the Sears Canada Entities on a separate claims process for ERC Employees which allows ERC Employees to make claims for amounts owing to them by the Sears Canada Entities which are not covered under the Termination Claims Methodology ("**Other Employee Claims**"). Through the Other Employee Claims process, ERC Employees can also make claims for amounts owing which can properly be classified as debts owed by the directors and officers of the Sears Canada Entities to the ERC Employee ("**D&O Claims**"). The D&O Claims and Other Employee Claims processes can be utilized by ERC Employees to claim amounts, for example,

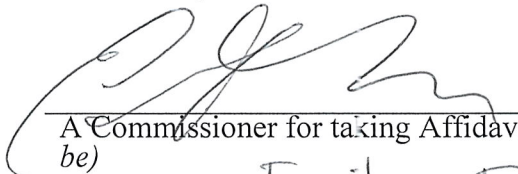
owing in respect of earned but as yet unpaid base salary/wages or for reimbursement of expenses paid out of pocket by an ERC Employee.

11. As well, throughout this process, Employee Representative Counsel has and will continue to work with the Monitor and the Sears Canada Entities to resolve outstanding employment issues of the ERC Employees, as well as issues which may arise from time to time in the implementation of the Employee Claims Process.

12. Employee Representative Counsel has consulted with the Employee Representatives on all aspects of this negotiation process and has benefited from the Employee Representatives' input, advice and information. A particular example of this has been the Employee Representatives' comments on the use of e-mail service of claims packages. Employee Representatives have confirmed that the use of e-mail to provide important employment information is a customary and usual method of communication by the Sears Canada Entities to its Employees.

13. I affirm this affidavit in support of the Applicants' motion for approval of the Employee and Retiree Claims Procedure Order and for no other or improper purpose.

AFFIRMED BEFORE ME at the City of Toronto,
this 21st day of February, 2018.


A Commissioner for taking Affidavits (or as may
be)

Emily Elder

LSO #: 70283P



Kathryn O'Rourke

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

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

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

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Proceeding commenced at TORONTO

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Employee Representative Counsel

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