

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**THE HONOURABLE  
MR. JUSTICE CULLITY**

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*THURSDAY*, THE  
*28<sup>th</sup>* DAY OF *APRIL*, 2005

**BETWEEN:**

**RONALD SUTHERLAND and JOHN SCOTT** on their own behalf and  
on behalf of the current members, retirees and other beneficiaries  
of the defined benefit component of the Dumai Pension Plan,  
CCRA Registration Number 0358572 (formerly,  
the Simpsons, Limited Supplementary Pension Plan) who were members of the Simpsons,  
Limited Supplementary Pension Plan as of January 1, 1988

Plaintiffs

- and -

**THE HUDSON'S BAY COMPANY LIMITED,  
ROYAL TRUST CORPORATION, and  
INVESTORS GROUP TRUST COMPANY LIMITED, and  
PAMELA BHIKHARI, JOHN ENGLISH,  
GERALD V. GAROSSINO, EDWARD E. SHIER,  
HELEN FRIZZELL, GALE RITCHIE and ANGELA HOSMAR**

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**ORDER**

**THIS MOTION**, made by the plaintiffs, for an order certifying this action as a class proceeding was heard at the Court House, 361 University Avenue, Toronto, Ontario on January 12 and 13, 2005

**ON READING** the affidavits of Ronald Sutherland, John Scott, Jill M. Wagman, and Robyn Matlin, and Malcolm Hamilton, Harold J. Chmara and Ian Markham, filed, and the

pleadings and proceedings herein and on hearing the submissions of counsel for the plaintiffs and the defendants,

### **Certification**

1. **THIS COURT ORDERS** that this action be certified as a class proceeding on behalf of the following Class (hereinafter referred to as the "Class" or the "Class Members"):

all members, retirees and beneficiaries of the Simpsons, Limited Supplementary Pension Plan as of the 1<sup>st</sup> of January, 1988, now known as the Dumai Pension Plan, CCRA Registration Number 0358572.

2. **THIS COURT ORDERS** that, subject to further order of the court, Ronald Sutherland and John Scott be and hereby are appointed as the representative plaintiffs on behalf of the Class.

### **Common Issues**

3. **THIS COURT ORDERS** that the following are common issues for the Class:

- (1) Are the assets (the "Assets") in respect of the defined benefit component of the Dumai Pension Plan, formerly the Simpsons, Limited Supplementary Pension Plan (the "Dumai Plan"), impressed with a trust? If so, who are the beneficiaries of the trust under the Dumai Plan?
- (2) Was the Hudson's Bay Company ("HBC") amendment to the Dumai Plan effective January 1, 1994 to permit Zellers Inc. ("Zellers") employees to participate in the Dumai Plan on a defined contribution basis a valid amendment?
- (3) Was the HBC amendment to the Dumai Plan effective February 29, 1998 to permit K-Mart Canada Co. ("K-Mart") employees to participate in the Dumai Plan on a defined contribution basis a valid amendment?
- (4) If the Assets are impressed with a trust as described in question 1 above, was HBC entitled to utilize any part of the assets to meet its funding obligations with respect to:
  - (i) Zellers employees brought into the Dumai Plan effective January 1, 1994 (the "Zellers Employees"); or

- (ii) K-Mart employees brought into the Dumai Plan effective February 28, 1998, or has HBC committed a breach of trust or breach of fiduciary duty in so doing?
- (5) Did HBC commit any breach of trust or any breach of fiduciary duty by causing a transfer of the liabilities of certain members of the Dumai Plan, together with a pro-rata share of the Assets, to other pension plans sponsored by HBC, such as the Hudson Bay Company Pension Plan and the Hudson Bay Company Executive Plan?
- (6) If the Trust Assets are impressed with a trust as described in paragraph 1 above, did the defendants Royal Trust Corporation and/or Investors Group Trust Company Limited commit a breach of trust or breach of fiduciary duty by permitting the use of any of the assets for the purpose as set out in paragraphs 4 and 5 above?
- (7) What is the appropriate remedy if breaches of trust or fiduciary duty as described above took place? Should such remedy include:
  - (i) return of assets to the trust fund described in paragraph 1; or
  - (ii) repayment of assets improperly used, with interest, directly to the Class in the form of damages resulting from the partial revocation of the Simpsons Plan trust?
- (8) If the Class is entitled to damages, how are such damages to be allocated among Class Members?
  - (i) What is the basis for calculation of any interest with respect to payments to the Class?
- (9) Is this a case for punitive damages, and if so, in what amount?
- (10) Should any injunctive relief be granted, and if so, on what terms?

**Notice**

4. **THIS COURT ORDERS** that notice be provided to the Class by:

- (a) the plaintiffs causing notices substantially in the form attached hereto as Schedule "A" to this order to be published once in English in *The Globe and Mail* and in French in *La Presse* within 30 days of the issuance of this order;
- (b) the <sup>HBC</sup>defendants causing notices substantially in the form attached hereto as Schedule "A" to be mailed to the last known address of all Class Members; *the*
- (c) the <sup>HBC</sup>defendants causing notices substantially in the form attached hereto as Schedule "A" to be mailed to the Defendant Group Members, as defined below, with their next pension statements from the Plan, to their last known address;
- (d) the plaintiffs causing a press release substantially in the form of the notice attached hereto as Schedule "A" to be issued within 15 days of the date of the issuance of the order; and
- (e) the plaintiffs causing the notice substantially in the form attached hereto as Schedule "A" to be posted on Koskie Minsky LLP's web site at [www.koskieminsky.com](http://www.koskieminsky.com) until the final resolution of this action or until further order of the court.

5. **THIS COURT ORDERS** that the cost of mailing the above notice shall be borne by the Fund of the Dumai Pension Plan *subject to any future orders of this Court for reimbursement by other parties to these proceedings.* *the*

6. **THIS COURT ORDERS** that the plaintiffs and defendants shall coordinate the notice program and agree on the incidental details of the notices provided that all notices to the Class Members, under 4(b) above, are published or mailed by June 30, 2005. Any disputes shall be summarily determined by the court.

#### **Opt Out**

7. **THIS COURT ORDERS** that a plaintiff Class Member may opt out of the proceeding by, delivering to Koskie Minsky LLP, the Opt Out Coupon contained in Schedule "A" or some other legible, written, signed request to opt out containing substantially the same information as the Opt Out Coupon on or before August 15, 2005.

8. **THIS COURT ORDERS** that Class Members may not opt out after August 15, 2005.

9. **THIS COURT ORDERS** that the plaintiffs serve on the defendants and file with the court, by no later than September 15, 2005, an affidavit exhibiting a list of plaintiff Class Members who have opted out of the class proceeding.

**Amendments to the Litigation Plan**

10. **THIS COURT ORDERS** that the Litigation Plan be amended as attached hereto as Schedule "B".

**Amendments to the Amended Amended Statement of Claim**

11. **THIS COURT ORDERS** that the Amended Amended Statement of Claim be amended as attached hereto as Schedule "C".

**Representation Order for Defendant Groups**

12. **THIS COURT ORDERS** that the persons that were added as defendants pursuant to the court order of May 13, 2004, be and hereby are appointed as representatives (the "Defendant Group Representatives") for the other individuals who are also members of their pension plans (the "Defendant Group Members"). The plans and the Defendant Group Representatives are as follows:

(a) Retirement Plan for Employees of Kmart Canada Co. – Kmart Canada (#269084):

- Pamela Bhikhari, 87 Braymore Blvd., Scarborough, Ontario M1B 2N6;

(b) Zellers Pension Plan (#345598):

- Helen Frizzej, 77 Falby Court, Apt. 707, Ajax, Ontario L1S 4G7; and
- Gale Ritchie, 20-153 Limeridge Rd. W., Hamilton, Ontario L9C 2V3; and
- Angela Hosmar, 386 Hillcroft St., Oshawa, Ontario L1G 2M2.

(c) HBC Executive Pension Plan (#0982322):

- John English, 1152 Casador Court, Burlington, Ontario L7S 3A2;

(d) HBC Pension Plan (#0291419):

- Gerald V. Garossino, 37 Lewin Crescent, Ajax, Ontario L1S 3A2; and

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the l*

- Edward E. Shier, 2478 Swinburne Ave. N., Vancouver, B.C. V7B 1L4.

**Costs**

13. **THIS COURT ORDERS** that the costs of the certification motion be addressed on further disposition by the Court.



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

MAY 06 2005

AS DOCUMENT NO.:  
À TITRE DE DOCUMENT NO.:

PER / PAR:



CERTIFIED TO BE A TRUE COPY THE ORIGINATING PROCESS ISSUED HEREIN DATED:	COPIE AUTHENTIQUE CERTIFIÉE ET CONFORME À L'ACTE IN-PRODUIT D'INSTANCE DÉLIVRÉ CI-INCLUS FAIT LE:
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SOLICITOR FOR THE AVOCAT POUR LE	PER: PAR:

## SCHEDULE "A"

### NOTICE OF CERTIFICATION OF A CLASS PROCEEDING

May ●, 2005

**TO:** All members, retirees and beneficiaries of the Simpsons, Limited Supplementary Pension Plan as of January 1, 1988, now known as the Dumai Pension Plan (the "Dumai Plan"), CCRA Registration # 0358572 (the "plaintiff class").

**AND TO:** All members, retirees and other beneficiaries as a result of the merger effective January 1, 2000 between the Dumai Plan and the Retirement Plan for Employees of K-Mart (the "K-Mart Plan defendant group").

**AND TO:** All members, retirees and other beneficiaries as a result of the merger effective January 1, 2002 between the Dumai Plan and the following pension plans:

- the Hudson's Bay Company Pension Plan (the "HBC Plan defendant group");
- the Hudson's Bay Company Executive Pension Plan (the "HBC Executive Plan defendant group"); and
- the Zellers Inc. Pension Plan (the "Zellers Plan defendant group").

**RE:** *Ronald Sutherland and John Scott v. The Hudson's Bay Company Limited, Royal Trust Corporation, Investors Group Trust Company Limited, and Pamela Bhikhari, John English, Gerald V. Garossino, Edward S. Shier, Helen Frizzell, Gale Ritchie and Angela Hosmar*

This notice is important to you. It is published by order of the Ontario Superior Court of Justice dated April 28, 2005.

#### **A. THE PLAINTIFF CLASS**

##### **i) Representatives of the Plaintiff Class and Nature of the Proceeding**

Ronald Sutherland and John Scott (the "representative plaintiffs") have commenced an action against the Hudson's Bay Company Limited ("HBC"), Royal Trust Corporation ("Royal Trust") and Investors Group Trust Company Limited ("Investors Group") on their own behalf and on behalf of the plaintiff class, being all members, retirees and beneficiaries of the Simpsons, Limited Supplementary Pension Plan as of January 1, 1988, now known as the Dumai Plan.

The action claims relief against HBC as a fiduciary and plan administrator and against Royal Trust and Investors Group as Trustees in respect of the usages of surplus assets in the Simpsons

Plan to pay for employer contributions for pensions of employees of Zellers Inc. and K-Mart Canada, as well as other possible diversions of surplus assets in the Simpsons Plan. The lawsuit seeks an accounting of those assets diverted, which are estimated by the representative plaintiffs to be approximately \$76,000,000.00 plus interest and administrative expenses charged to the fund of the Simpsons Plan. The representative plaintiffs seek punitive and exemplary damages of \$10,000.00 for each class member and various declarations and orders requiring the distribution of the funds diverted and other payments to members of the Simpsons Plan as of January 1, 1988. They also request injunctive relief preventing HBC from engaging in such activity again and requiring HBC to give a full accounting of the uses of surplus in the Simpsons Plan. Finally, the representative plaintiffs also seek their legal costs of the action.

The court has not yet determined whether the action will be successful. The defendants HBC, Investors Group and Royal Trust are resisting the action.

**ii) Legal Representation and Legal Costs of the Plaintiff Class**

The representative plaintiffs have retained Mark Zigler, Kirk M. Baert, Andrew Hatnay and Robyn Matlin of the law firm of Koskie Minsky LLP to represent them in these proceedings.

The representative plaintiffs have entered into a Retainer Agreement with Koskie Minsky LLP with respect to legal fees. Koskie Minsky LLP will only be paid their fees in the event of a successful result to the litigation, or a court approved settlement. The Retainer Agreement states that Koskie Minsky LLP is to be paid its legal fees as a percentage of amounts recovered by the plaintiffs. This Retainer Agreement is subject to the court's approval as are the amount of any legal fees payable if the action is successful.

The representative plaintiffs are, pursuant to the *Class Proceedings Act, 1992*, soliciting funds to help assist them in funding some of the disbursements of the litigation including the cost of obtaining expert actuarial evidence. They also seek to raise funds to help defray costs of the litigation other than legal fees which are subject to the contingent fee agreement outlined above. If you wish to contribute, the representative plaintiffs are seeking a contribution of \$100.00 or whatever amount you can donate to be sent to Koskie Minsky LLP, in trust. Such contributions may be sent to:

HBC Pension Class Action  
c/o Koskie Minsky LLP, In Trust  
20 Queen Street West, Suite 900, Box 52  
Toronto, ON M5H 3R3

Telephone: 1-866-778-7986

Fax: 416-977-3316

**iii) No Cost to Plaintiff Class Members**

If the action is successful, or if a court-approved settlement is negotiated, the legal fees will be payable pursuant to the Retainer Agreement described above, subject to court approval. No



member of the class, other than the representative plaintiffs will be directly responsible for legal costs of the defendant if the action is unsuccessful.

If the action is successful, the court will determine how much the plaintiff class members should receive or how they should be compensated. The court will also determine how any award of equitable damages or payment, if any, should be allocated among the members of the plaintiff class or for their benefit. If the action is not successful, the members of the plaintiff class will not be responsible for any legal costs nor will they have any other financial obligations. However, individuals who have chosen to voluntarily donate funds in support of the plaintiffs action may not receive those funds back, unless the plaintiffs' disbursements are fully recovered.

**iv) Questions for Plaintiffs' Counsel**

If you have any questions or concerns, please contact Koskie Minsky LLP at the above-noted address or via email at [hbcension@koskieminsky.com](mailto:hbcension@koskieminsky.com) or by calling 1-866-778-7986. You may also obtain copies of court documents and more information about this case on the internet at [www.koskieminsky.com](http://www.koskieminsky.com).

**B. THE DEFENDANT REPRESENTATIVES GROUPS**

**i) Representatives of the Defendant Groups and the Impact of the Proceeding on the Defendant Groups**

Each of the four defendant classes are represented by representative defendants and counsel as follows:

- Pamela Bhikhari for the K-Mart Plan defendant group (counsel: Doane Phillips Young LLP; email: [hbcension@dpylaw.com](mailto:hbcension@dpylaw.com));
- Helen Frizzell, Gale Ritchie and Angela Hosmar for the Zellers Plan defendant group (counsel: Doane Phillips Young LLP; email: [hbcension@dpylaw.com](mailto:hbcension@dpylaw.com));
- Gerald V. Garossino and Edward E. Shier for the HBC Plan defendant group (counsel: Gardiner Roberts LLP and Lang Michener LLP; email: [wrapoport@gardiner-roberts.com](mailto:wrapoport@gardiner-roberts.com) and/or [hbcension@langmichener.ca](mailto:hbcension@langmichener.ca)); and
- John English for the HBC Executive Plan defendant group (counsel: Gardiner Roberts LLP and Lang Michener LLP; email: [wrapoport@gardiner-roberts.com](mailto:wrapoport@gardiner-roberts.com) and/or [hbcexecpension@langmichener.ca](mailto:hbcexecpension@langmichener.ca)).

These persons are appointed under Rule 10 of the *Rules of Civil Procedure* by order of the Ontario Superior Court of Justice. The plaintiffs *are not seeking any relief* against the representative defendants nor the persons whom they represent. They are parties to this class action because the court found them to be "interested parties".

By order of the Ontario Superior Court of Justice, all reasonable legal fees and disbursements of the representative defendants are provisionally being paid from the assets of the appropriate

trusts under the (merged) HBC Plan from May 22, 2003 onwards. Orders for the reimbursement of these fees and disbursements by other parties to the proceedings may be made at the conclusion of the litigation.

**ii) Questions for Defendants' Group Counsel**

If you have any questions as a defendant group member, please contact the appropriate defendants' group counsel law firm, depending on which group you believe that you fall in. The email addresses are listed above. You may also refer to the websites of [www.langmichener.ca](http://www.langmichener.ca) and [www.gardiner-roberts.com](http://www.gardiner-roberts.com) with specific reference to concerns of the HBC Plan Members and the website of [www.dpylaw.com](http://www.dpylaw.com) with specific reference to concerns of the Zellers and K-Mart Plan Members.

You may obtain copies of court documents on the internet at [http://www.koskieminsky.com/client\\_links/HBC/home.aspx](http://www.koskieminsky.com/client_links/HBC/home.aspx).

**C. JUDGMENT BINDING ON THE MEMBERS OF THE PLAINTIFF CLASS AND DEFENDANT GROUPS**

Any judgment ultimately obtained in these proceedings, whether favourable or not, will bind all members of the plaintiff class who do not opt out and all other parties to the litigation.

**D. OPTING OUT FOR PLAINTIFF CLASS MEMBERS**

If you are a member of the plaintiff class, you are entitled to opt out of the proceedings by delivering a *written notice to Koskie Minsky LLP counsel by August 15, 2005*. If you do not opt out prior to this date, you will be deemed to be a member of the class and bound by any judgment or settlement made in these proceedings. If you opt out, you may not be included in any settlement.

Whether or not the action is successful, plaintiff class members who do not opt out will be bound by the judgment. This means that, after this action is completed, you cannot start your own action for the same claim. All defendant group members are bound by any judgments.

The opt out coupon can be downloaded at: [http://www.koskieminsky.com/client\\_links/HBC/home.aspx](http://www.koskieminsky.com/client_links/HBC/home.aspx) or can be requested by emailing [hbcpension@koskieminsky.com](mailto:hbcpension@koskieminsky.com) or by calling 1-866-778-7986. If you wish to opt out, please return completed opt coupons to Koskie Minsky LLP via mail or fax *no later than August 15, 2005* at:

HBC Pension Class Action  
c/o Koskie Minsky LLP  
20 Queen Street West, Suite 900, Box 52  
Toronto, ON M5H 3R3

Fax: 416-977-3316

**E. RIGHT TO PARTICIPATE**

You may be permitted to participate more actively, if you wish to do so, in the proceeding. Such participation is subject to the court's approval.

## Schedule "A1"

### ATTENTION ZELLERS AND KMART PENSION PLAN MEMBERS:

A court proceeding has been commenced against the Hudson's Bay Company ("HBC"), and others, by members of the Simpson's Pension Plan (now named the Dumai Pension Plan). Simpson's was purchased by HBC many years ago, and was gradually integrated into HBC's operations. The former Simpson's employees are claiming that, among other things, surplus funds from the Dumai Pension Plan were improperly used to pay employer contributions for Zellers and Kmart employees. The Plaintiffs' statement of claim indicates that the Plaintiffs are not seeking any relief against the Zellers and Kmart Pension Plan members, or to reduce their Pensions or remove any funds from their Pension Plans. Nevertheless, the Plaintiffs are seeking to undo the amendments made to the Dumai Pension Plan in 1994 and 1998, which brought Zellers and Kmart members into the Dumai Pension Plan. It is not clear at this stage whether or how your pension could be affected if the Plaintiffs are successful. We also note that in 2002 HBC filed a request to merge together the Dumai Pension Plan, the HBC Pension Plan, the HBC Executive Pension Plan, the Zellers Inc. Pension Plan and the Retirement Plan for Employees of K-Mart. Accordingly, you have an interest in the outcome of this proceeding.

Further particulars of the claim against HBC, and the documents filed with the court, can be found on the website of counsel for the Simpson's Pension Plan Members ([www.koskieminsky.com](http://www.koskieminsky.com)), and you may also refer to the website of Doane Phillips Young LLP - [www.dpylaw.com](http://www.dpylaw.com) - for matters specific to the Zellers and Kmart employees.

By Order of the Court, the claim by the Simpson's Pension Plan members has been allowed to proceed by way of a class proceeding, meaning that the claims of all of the Simpson's Pension Plan members will be adjudicated collectively, without the necessity of parties bringing individual actions. Determination of the substantive issues involved in the dispute will now get underway.

In order to ensure that the interests of the Zellers and Kmart Pension Plan members were considered and protected in the course of this litigation, the Court appointed representatives from each of those plans to be added as parties to the litigation. The following people were added as Defendants pursuant to that order:

- Pamela Bhikhari – Kmart Pension Plan
- Angela Hosmar – Zellers Pension Plan
- Helen Frizzell – Zellers Pension Plan
- Gale Ritchie – Zellers Pension Plan

The Court has now made a Representation Order in respect of these Defendants, meaning that their presence in the litigation is intended to be on behalf of all members of their pension plans, and that all such pension plan members will be bound by the determinations of the Court in this action.

The Court has also appointed independent legal counsel to act for these Defendants, namely Doane Phillips Young LLP. Legal fees are to be paid out of the K-Mart and Zellers Pension Plans subject to any future orders of the Court for reimbursement by, or on behalf of other parties to the proceedings. Legal Counsel report regularly to the Representative Defendants and will post updates on their web page, but they are also available to respond to inquiries of members of the Zellers and Kmart Pension Plans. If you have any questions or concerns about this litigation, please feel free to contact your legal counsel (John Kingman Phillips or Laura Young).

Doane Phillips Young LLP  
53 Jarvis St., Suite 300  
Toronto, ON, M3A 2K9  
Tel.416.366.3777  
Fax.416.366.9197  
[www.dpylaw.com](http://www.dpylaw.com)  
[hbcpension@dpylaw.com](mailto:hbcpension@dpylaw.com)

## SCHEDULE "A2"

### ATTENTION: HUDSON'S BAY COMPANY ("HBC") PENSION PLAN MEMBERS AND HBC EXECUTIVE PENSION PLAN MEMBERS (the "HBC PLAN MEMBERS"):

A court proceeding has been commenced against HBC, and others, by members of the Simpson's Pension Plan (now named the Dumai Pension Plan). Simpson's was purchased by HBC in 1979, and was gradually integrated into HBC's operations. It is former Simpsons employees who are now bringing a claim against HBC claiming that (a) surplus funds from the Dumai Pension Plan were improperly used to pay employer contributions for Zellers and Kmart employees; and (b) excessive funds were transferred from the Dumai Pension Plan to the HBC Plans when certain employees of Simpson's were transferred to the HBC Plans. In addition, in 2002, HBC filed documents with the Financial Services Commission of Ontario seeking to merge together the Dumai Pension Plan, the HBC Plans, the Zellers Inc. Pension Plan and the Retirement Plan for Employees of K-Mart. Accordingly, the claims by members of the Dumai Pension Plan may affect the HBC Members because the claims could potentially negatively affect the assets in the HBC Plans. The representative members of the HBC Plans have objected to the merging of the pension plans and are resisting the claim that improper amounts were transferred from the Dumai Pension Plan to the HBC Plans. Accordingly, the members of the HBC Plans have an interest in the outcome of the claim by the members of the Dumai Pension Plan. Further particulars of the claim against HBC can be found on the website of counsel for the Simpson's Pension Plan Members ([www.koskieminsky.com](http://www.koskieminsky.com)), and you may also refer to the websites of [www.langmichener.ca](http://www.langmichener.ca) and [www.gardiner-roberts.com](http://www.gardiner-roberts.com) with specific reference to concerns of the HBC Plan Members.

By Order of the Court, the claim by the Simpson's Pension Plan members has been allowed to proceed by way of a class proceeding, meaning that the claims of all of the Simpson's Pension Plan members will be adjudicated collectively, without the necessity of parties bringing individual actions. Determination of the substantive issues involved in the dispute will now get underway.

In order to ensure that the interests of the HBC Plan Members were considered and protected in the course of this litigation, the Court appointed representatives from each of the HBC Plans to be added as parties to the litigation. The following people were added as Defendants pursuant to that Order:

John English - HBC Executive Pension Plan  
Gerald V. Garossino - HBC Pension Plan  
and Edward E. Shier

The Court has now made a Representation Order in respect of these Defendants (the "Representative Defendants"), meaning that their presence in the litigation is intended to

be on behalf of all members of the HBC Plans, and that all such HBC Plan Members will be bound by the determinations of the Court in this action.

The Court has also appointed independent legal counsel to act for these Defendants, namely Lang Michener LLP and Gardiner Roberts LLP. Legal fees are paid to be out of the HBC Plan and the HBC Executive Pension Plan, respectively, subject to any future orders of the court for reimbursement by, or on behalf of, other parties to the proceedings. Legal counsel report regularly to the Representative Defendants and will post updates on their web page, but they are also available to respond to inquiries of members of the HBC and HBC Executive Plans. If you have any questions or concerns about this litigation, please feel free to contact your legal counsel (Peter R. Hayden or Warren S. Rapoport) as set out below.

Peter R. Hayden  
Lang Michener LLP, Toronto  
E-mail : phayden@langmichener.ca

Warren S. Rapoport  
Gardiner Roberts LLP, Toronto  
E-mail : wrapoport@gardiner-roberts.com

## **SCHEDULE "B"**

### **PLAINTIFFS' REVISED PROPOSED LITIGATION PLAN APRIL 2005**

The plan to be filed pursuant to section 5(1)(e)(ii) of the *Class Proceedings Act, 1992* is as follows:

#### **1) COMMUNICATION WITH MEMBERS OF THE PLAINTIFF CLASS**

Both prior to and since this class proceeding was commenced, the plaintiffs' law firm, Koskie Minsky LLP ("plaintiffs' counsel"), have received many communications from affected proposed plaintiff class members who wish to be included in the proposed class proceeding.

Plaintiffs' counsel and their staff have responded to and will continue to respond to each inquiry as appropriate.

Plaintiffs' counsel are maintaining a database of all members of the proposed plaintiff class who have contacted plaintiffs' counsel. With respect to each inquiry, the individual's name, address, phone number, and e-mail address are added to the database. Copies of pertinent documents will be scanned and added to the database where appropriate.

#### **a) Pre-Certification Status Reports**

In addition to responding to individual inquiries, plaintiffs' counsel have created a web page concerning this proposed class proceeding at [www.koskieminsky.com](http://www.koskieminsky.com). Information on the status of this action is posted and is updated regularly. Copies of the publicly-filed court documents and court decisions are accessible from the web page. In addition, a toll-free phone number and an e-mail contact are provided.

#### **b) Notification of Certification and the Right to Opt Out**

If this proceeding is certified, plaintiffs' counsel proposes that notice to members of the plaintiff class be provided in the following ways (the "Notice"):



(i) *Mailing*

The Notice, attached as Schedule "A", will be mailed to all plaintiff class members by the Plan administrator following certification of this proceeding.

(ii) *Newspapers*

Counsel for the defendant Hudson's Bay Company ("HBC") will arrange to have the Notice published on one occasion in English in *The Globe and Mail* and in French in *La Presse* within 30 days of the certification order; such terms and at such times and places as the court considers just.

The publication of the Notice shall be paid for by the Fund of the Dumai Pension Plan, subject to any future order of the court for reimbursement by, or on behalf of, particular parties to the proceedings.

(iii) *Press Release*

Plaintiffs' counsel will issue a press release within 15 days of the certification order being issued.

The issuance of the press release shall be paid for by the Fund of the Dumai Pension Plan, subject to any future order of the court for reimbursement by, or on behalf of, particular parties to the proceedings.

(iv) *Internet*

The Notice shall be published on the web page maintained by plaintiffs' counsel in respect of the class proceeding.

**c) Post-Certification Status Reports**

In addition to responding to individual inquiries, plaintiffs' counsel will continue to update the web page dedicated to the class proceeding. The toll-free phone number and e-mail contact provided on the web page will remain in effect until the class proceeding is finally resolved.

## **2) THE IDENTITY OF THE PLAINTIFF CLASS**

The defendant HBC is aware of the identity of the plaintiff Class Members. Upon certification, the court will be asked to order production of the names and addresses of the plaintiff Class Members. All information will be kept confidential by plaintiffs' counsel.

## **3) WITNESS INTERVIEWS AND EXPERTS**

At present, it is anticipated that plaintiffs' counsel will call the plaintiffs and perhaps certain other members of the proposed plaintiff class, referred to in the plaintiffs' certification materials, as witnesses at the trial of the common issues, if necessary.

The parties will have a better sense of the witnesses they intend to call upon completion of the production and discovery process.

Expert actuarial evidence will be required.

## **4) DISCOVERY AND DOCUMENT MANAGEMENT**

The plaintiffs and defendants should deliver affidavits of documents within 120 days of the certification order, unless ordered to do so earlier.

Plaintiffs' counsel will manage the productions with a document management system. All productions should be numbered and, if possible, scanned electronically. This will enable counsel to quickly access and organize the documents.

The plaintiffs and defendants will conduct and complete examinations for discovery within 120 days of the delivery of their affidavits of documents.

## **5) FINAL DETERMINATION OF THE COMMON ISSUES**

Plaintiff's counsel anticipate that trial, trial of an issue or stated case in relation to the common issues will take place within twelve months, subject to the direction of the court, after completion of examinations for discovery, unless determined earlier by way of a motion or motions under rules 20 and 21.

**6) DETERMINATION OF THE INDIVIDUAL ISSUES**

If the common issues are resolved in favour of the plaintiff class, the plaintiffs do not currently anticipate any significant individual issues on liability. As this litigation progresses, if it appears that there will be any significant individual issues with respect to liability, the court can deal with them using section 25 of the *Class Proceedings Act, 1992*.

**7) DAMAGES AND DISTRIBUTION OF AMOUNTS RECOVERED**

If the common issues are resolved in favour of the plaintiff class, the following matters would need to be dealt with:

- (a) reference with respect to quantum to be distributed to, or for the benefit of, the plaintiff class;
- (b) a reference with respect to allocation formula of payments among plaintiff class and method of payment to plaintiff class members; and
- (c) payment of plaintiffs' legal fees from amounts received.

**8) FUNDING**

The plaintiffs' legal fees are to be paid on a contingency basis, as provided for in *Class Proceedings Act, 1992*, and are subject to the court's approval. Some funding of the disbursements has been through plaintiff class member contributions. Koskie Minsky LLP has funded the balance of the disbursements, and will continue to do so, to prosecute this action to a final and successful conclusion. The plaintiffs plan to make an application to the Class Proceedings Fund, if the action is certified, and to solicit funds from the plaintiff class members for funding of disbursements. Such solicitation is contained in the Notice.

**9) SETTLEMENT**

The plaintiff will serve an offer to settle and, if it appears worthwhile, conduct settlement negotiations with the defendants from time to time. The plaintiffs are willing to participate in mediation or non-binding dispute resolution efforts.

**10) REVIEW OF THE PLAN**

This litigation plan will be reconsidered and may be revised under the continuing case management authority of the court as the case progresses.

## SCHEDULE "A"

### NOTICE OF CERTIFICATION OF A CLASS PROCEEDING

May ●, 2005

**TO:** All members, retirees and beneficiaries of the Simpsons, Limited Supplementary Pension Plan as of January 1, 1988, now known as the Dumai Pension Plan (the "Dumai Plan"), CCRA Registration # 0358572 (the "plaintiff class").

**AND TO:** All members, retirees and other beneficiaries as a result of the merger effective January 1, 2000 between the Dumai Plan and the Retirement Plan for Employees of K-Mart (the "K-Mart Plan defendant group").

**AND TO:** All members, retirees and other beneficiaries as a result of the merger effective January 1, 2002 between the Dumai Plan and the following pension plans:

- the Hudson's Bay Company Pension Plan (the "HBC Plan defendant group");
- the Hudson's Bay Company Executive Pension Plan (the "HBC Executive Plan defendant group"); and
- the Zellers Inc. Pension Plan (the "Zellers Plan defendant group").

**RE:** *Ronald Sutherland and John Scott v. The Hudson's Bay Company Limited, Royal Trust Corporation, Investors Group Trust Company Limited, and Pamela Bhikhari, John English, Gerald V. Garossino, Edward S. Shier, Helen Frizzell, Gale Ritchie and Angela Hosmar*

This notice is important to you. It is published by order of the Ontario Superior Court of Justice dated April 28, 2005.

#### **A. THE PLAINTIFF CLASS**

##### **i) Representatives of the Plaintiff Class and Nature of the Proceeding**

Ronald Sutherland and John Scott (the "representative plaintiffs") have commenced an action against the Hudson's Bay Company Limited ("HBC"), Royal Trust Corporation ("Royal Trust") and Investors Group Trust Company Limited ("Investors Group") on their own behalf and on behalf of the plaintiff class, being all members, retirees and beneficiaries of the Simpsons, Limited Supplementary Pension Plan as of January 1, 1988, now known as the Dumai Plan.

The action claims relief against HBC as a fiduciary and plan administrator and against Royal Trust and Investors Group as Trustees in respect of the usages of surplus assets in the Simpsons

Plan to pay for employer contributions for pensions of employees of Zellers Inc. and K-Mart Canada, as well as other possible diversions of surplus assets in the Simpsons Plan. The lawsuit seeks an accounting of those assets diverted, which are estimated by the representative plaintiffs to be approximately \$76,000,000.00 plus interest and administrative expenses charged to the fund of the Simpsons Plan. The representative plaintiffs seek punitive and exemplary damages of \$10,000.00 for each class member and various declarations and orders requiring the distribution of the funds diverted and other payments to members of the Simpsons Plan as of January 1, 1988. They also request injunctive relief preventing HBC from engaging in such activity again and requiring HBC to give a full accounting of the uses of surplus in the Simpsons Plan. Finally, the representative plaintiffs also seek their legal costs of the action.

The court has not yet determined whether the action will be successful. The defendants HBC, Investors Group and Royal Trust are resisting the action.

**ii) Legal Representation and Legal Costs of the Plaintiff Class**

The representative plaintiffs have retained Mark Zigler, Kirk M. Baert, Andrew Hatnay and Robyn Matlin of the law firm of Koskie Minsky LLP to represent them in these proceedings.

The representative plaintiffs have entered into a Retainer Agreement with Koskie Minsky LLP with respect to legal fees. Koskie Minsky LLP will only be paid their fees in the event of a successful result to the litigation, or a court approved settlement. The Retainer Agreement states that Koskie Minsky LLP is to be paid its legal fees as a percentage of amounts recovered by the plaintiffs. This Retainer Agreement is subject to the court's approval as are the amount of any legal fees payable if the action is successful.

The representative plaintiffs are, pursuant to the *Class Proceedings Act, 1992*, soliciting funds to help assist them in funding some of the disbursements of the litigation including the cost of obtaining expert actuarial evidence. They also seek to raise funds to help defray costs of the litigation other than legal fees which are subject to the contingent fee agreement outlined above. If you wish to contribute, the representative plaintiffs are seeking a contribution of \$100.00 or whatever amount you can donate to be sent to Koskie Minsky LLP, in trust. Such contributions may be sent to:

HBC Pension Class Action  
c/o Koskie Minsky LLP, In Trust  
20 Queen Street West, Suite 900, Box 52  
Toronto, ON M5H 3R3

Telephone: 1-866-778-7986  
Fax: 416-977-3316

**iii) No Cost to Plaintiff Class Members**

If the action is successful, or if a court-approved settlement is negotiated, the legal fees will be payable pursuant to the Retainer Agreement described above, subject to court approval. No

member of the class, other than the representative plaintiffs will be directly responsible for legal costs of the defendant if the action is unsuccessful.

If the action is successful, the court will determine how much the plaintiff class members should receive or how they should be compensated. The court will also determine how any award of equitable damages or payment, if any, should be allocated among the members of the plaintiff class or for their benefit. If the action is not successful, the members of the plaintiff class will not be responsible for any legal costs nor will they have any other financial obligations. However, individuals who have chosen to voluntarily donate funds in support of the plaintiffs action may not receive those funds back, unless the plaintiffs' disbursements are fully recovered.

**iv) Questions for Plaintiffs' Counsel**

If you have any questions or concerns, please contact Koskie Minsky LLP at the above-noted address or via email at [hbcension@koskieminsky.com](mailto:hbcension@koskieminsky.com) or by calling 1-866-778-7986. You may also obtain copies of court documents and more information about this case on the internet at [www.koskieminsky.com](http://www.koskieminsky.com).

**B. THE DEFENDANT REPRESENTATIVES GROUPS**

**i) Representatives of the Defendant Groups and the Impact of the Proceeding on the Defendant Groups**

Each of the four defendant classes are represented by representative defendants and counsel as follows:

- Pamela Bhikhari for the K-Mart Plan defendant group (counsel: Doane Phillips Young LLP; email: [hbcension@dpylaw.com](mailto:hbcension@dpylaw.com));
- Helen Frizzell, Gale Ritchie and Angela Hosmar for the Zellers Plan defendant group (counsel: Doane Phillips Young LLP; email: [hbcension@dpylaw.com](mailto:hbcension@dpylaw.com));
- Gerald V. Garossino and Edward E. Shier for the HBC Plan defendant group (counsel: Gardiner Roberts LLP and Lang Michener LLP; email: [wrapoport@gardiner-roberts.com](mailto:wrapoport@gardiner-roberts.com) and/or [hbcension@langmichener.ca](mailto:hbcension@langmichener.ca)); and
- John English for the HBC Executive Plan defendant group (counsel: Gardiner Roberts LLP and Lang Michener LLP; email: [wrapoport@gardiner-roberts.com](mailto:wrapoport@gardiner-roberts.com) and/or [hbcexcpension@langmichener.ca](mailto:hbcexcpension@langmichener.ca)).

These persons are appointed under Rule 10 of the *Rules of Civil Procedure* by order of the Ontario Superior Court of Justice. The plaintiffs *are not seeking any relief* against the representative defendants nor the persons whom they represent. They are parties to this class action because the court found them to be "interested parties".

By order of the Ontario Superior Court of Justice, all reasonable legal fees and disbursements of the representative defendants are provisionally being paid from the assets of the appropriate

trusts under the (merged) HBC Plan from May 22, 2003 onwards. Orders for the reimbursement of these fees and disbursements by other parties to the proceedings may be made at the conclusion of the litigation.

**ii) Questions for Defendants' Group Counsel**

If you have any questions as a defendant group member, please contact the appropriate defendants' group counsel law firm, depending on which group you believe that you fall in. The email addresses are listed above. You may also refer to the websites of [www.langmichener.ca](http://www.langmichener.ca) and [www.gardiner-roberts.com](http://www.gardiner-roberts.com) with specific reference to concerns of the HBC Plan Members and the website of [www.dpylaw.com](http://www.dpylaw.com) with specific reference to concerns of the Zellers and K-Mart Plan Members.

You may obtain copies of court documents on the internet at [http://www.koskieminsky.com/client\\_links/HBC/home.aspx](http://www.koskieminsky.com/client_links/HBC/home.aspx).

**C. JUDGMENT BINDING ON THE MEMBERS OF THE PLAINTIFF CLASS AND DEFENDANT GROUPS**

Any judgment ultimately obtained in these proceedings, whether favourable or not, will bind all members of the plaintiff class who do not opt out and all other parties to the litigation.

**D. OPTING OUT FOR PLAINTIFF CLASS MEMBERS**

If you are a member of the plaintiff class, you are entitled to opt out of the proceedings by delivering a *written notice to Koskie Minsky LLP counsel by August 15, 2005*. If you do not opt out prior to this date, you will be deemed to be a member of the class and bound by any judgment or settlement made in these proceedings. If you opt out, you may not be included in any settlement.

Whether or not the action is successful, plaintiff class members who do not opt out will be bound by the judgment. This means that, after this action is completed, you cannot start your own action for the same claim. All defendant group members are bound by any judgments.

The opt out coupon can be downloaded at: [http://www.koskieminsky.com/client\\_links/HBC/home.aspx](http://www.koskieminsky.com/client_links/HBC/home.aspx) or can be requested by emailing [hbcpension@koskieminsky.com](mailto:hbcpension@koskieminsky.com) or by calling 1-866-778-7986. If you wish to opt out, please return completed opt coupons to Koskie Minsky LLP via mail or fax *no later than August 15, 2005* at:

HBC Pension Class Action  
c/o Koskie Minsky LLP  
20 Queen Street West, Suite 900, Box 52  
Toronto, ON M5H 3R3

Fax: 416-977-3316



**E. RIGHT TO PARTICIPATE**

You may be permitted to participate more actively, if you wish to do so, in the proceeding. Such participation is subject to the court's approval.

