

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

**IN THE MATTER OF THE BANKRUPTCY OF DANIER LEATHER INC.**

**MOTION RECORD**

**(Motion for appointment of Representative Counsel to terminated employees,  
returnable May 18, 2016)**

May 12, 2016

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**TAB 1**



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

**IN THE MATTER OF THE BANKRUPTCY OF DANIER LEATHER INC.**

**NOTICE OF MOTION**  
(returnable May 18, 2016)

Koskie Minsky LLP will make a motion to a judge presiding over the Commercial List at 330 University Avenue, Toronto, Ontario on May 18, 2016 at 10:00 a.m. or as soon thereafter as the motion can be heard.

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

**THE MOTION IS FOR:**

1. **AN ORDER**, if necessary that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and that further service thereof is hereby dispensed with.
  
2. **AN ORDER** appointing Koskie Minsky LLP as Representative Counsel to represent the former employees (the "**Employees**") of Danier Leather Inc. ("**Danier**") who were terminated on or before the bankruptcy of Danier (the "**Bankruptcy**") on March 21, 2016, in respect of all issues affecting the Employees in the proceedings under the *Bankruptcy and Insolvency Act* R.S.C. 1985, c. B-3 ("**BIA**") or in any other proceeding which may be brought before this Court and relating to any Claim (as defined herein) for the determination of any right, entitlement or

benefit of any Employee arising out of the insolvency of Danier, and with the power and authority to act on behalf of the Employees in any subsequent related proceedings (collectively, the "**Insolvency Proceedings**").

3. **A DECLARATION** that a Claim includes any claim which has now arisen or may arise under:

(a) law or equity; or

(b) federal or provincial legislation, or regulations thereunder, including but not limited to, claims under employment standards legislation or any other provincial or federal legislation, or regulation applicable to employees or otherwise (collectively "**Labour Laws**").

4. **AN ORDER** that Representative Counsel may determine, advance or compromise any Claim made by an individual Employee, or group or class of Employees, against Danier or its estate, as the case may be, which Claim now exists or may hereafter arise out of the employment, former employment or termination of employment of the Employees under law or equity or under Labour Laws, subject to the approval of this Court.

5. **AN ORDER** that the Representative Counsel shall have access to and the right to examine all relevant records and data kept by Danier in respect of its capacity as an employer of the Employees under law or equity or under the Labour Laws, whether they are kept on paper, electronic or any other form.

6. **AN ORDER** that pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act* S.C. 2000, c. 5, the Trustee is authorized and permitted to disclose personal information of identifiable individuals who are believed to be Employees to Representative Counsel. Representative Counsel shall maintain and protect the privacy of such information and shall limit the use of such information to its role as Representative Counsel.

7. **AN ORDER** that Koskie Minsky LLP within 5 days of the date of this Order, shall send written notice ("**Written Notice**") to all of the Employees based on the addresses and contact information provided by the Trustee, by email or regular mail, explaining the terms of its appointment and engagement, explaining the process for opting out of representation by Koskie Minsky LLP, and inviting interested Employees to sit on a representative committee (the "**Committee**") to provide instructions to Koskie Minsky LLP as required. The Written Notice shall also be posted by the Trustee on the website of KSV Kofman Inc., created for this proceeding.

8. **AN ORDER** that Representative Counsel is authorized to take all steps and to do all necessary or desirable acts in carrying out the terms of the Order, including dealing with any regulatory body and any other government or ministry, department or agency, and to take all such steps as are necessary or incidental thereto.

9. **AN ORDER** that Koskie Minsky LLP is authorized to establish the Committee, in consultation with the Trustee, which, upon establishment, will provide instructions to Koskie Minsky LLP as needed.

10. **AN ORDER** that notice of the granting of this Order, substantially in the form attached to the Order hereto as **Schedule "A"** (the "**Notice**") shall be:

- (a) published by Representative Counsel on its firm's website within 2 calendar days of the date of this Order;
- (b) included in the Written Notice described in section [7] above; and
- (c) posted by the Trustee to the website created by the Trustee for this proceeding.

11. **A DECLARATION** that any individual Employee who does not wish to be represented by Koskie Minsky LLP in the Insolvency Proceedings shall, within 30 days of the granting of this Order, notify the Trustee and Koskie Minsky LLP in writing that he or she is opting out of representation by Koskie Minsky LLP and shall thereafter not be bound by the actions of Koskie Minsky LLP or the Committee and is free to represent himself or herself or be represented by any counsel that he or she may retain exclusively at his or her own expense in the Insolvency Proceedings (an "**Opt-Out Individual**").

12. **AN ORDER** that from and after May 3, 2016, Representative Counsel's expenses, professional fees and necessary disbursements incurred in representing the Employees (collectively, the "**Costs**") shall be paid by the Trustee on the rendering of accounts by Representative Counsel, subject to the approval of this Court and to the Trustee's right, if the Costs exceed \$75,000 (exclusive of taxes and disbursements) to cease paying the Costs and/or to bring a motion to Court to amend the terms of this Order pertaining to the payment of Costs.

13. **A DECLARATION** that Koskie Minsky LLP and the Committee and its members shall have no liability as a result of their appointment or the fulfilment of their duties in carrying out the provisions of this Order, save and except for any claims based on gross negligence or wilful misconduct on their part.

14. **A DECLARATION** that Koskie Minsky LLP and the Committee shall be at liberty and are authorized at any time to apply to this Court for advice and directions in the discharge or variation of their powers and duties.

**THE GROUNDS FOR THE MOTION ARE:**

15. On March 21, 2016, Danier made an assignment in bankruptcy. A receivership is currently being run alongside the Bankruptcy, with the KSV Kofman Inc. also serving as receiver.

16. Danier's merchandise was predominantly marketed under the "Danier" brand and as at the date of Bankruptcy, was sold at 76 leased locations across Canada. As a result of the Bankruptcy, all of Danier's employees were terminated on the date of bankruptcy. Pursuant to the terms of the receivership order issued on March 21, 2016, the Receiver engaged approximately 900 of Danier's former employees on a temporary and day-to-day basis to assist with the wind-down of Danier's business. Danier's workforce is not unionized and it does not maintain a pension plan.

17. On March 1, 2016, Danier entered into an agency agreement with a contractual joint venture (the "Agent") to liquidate the inventory, furniture, fixtures and equipment in 76 of its store locations ("Sale"). The Agent completed the Sale on May 9, 2016.

18. Danier owes amounts to employees in respect of their notice of termination or severance entitlements under employment standards legislation and contracts of employment. The Employees may also have claims for other employment-related matters and other unsecured claims against Danier.

19. The appointment of Representative Counsel to the Employees is appropriate in this matter.

20. Rules 10 and 12.07 of the *Rules of Civil Procedure*.

21. Section 131(1) of the *Courts of Justice Act* (Ontario).

22. Sections 183(1) and 197(1) of the *BIA*.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be read in support of this motion:

23. The Affidavit of Andrew J. Hatnay, sworn May 12, 2016.

24. Such further and other material as counsel may advise and this Honourable Court permit.

May 12, 2016

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

Proceeding commenced at **TORONTO**

**NOTICE OF MOTION**

(returnable May 18, 2016)

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**TAB 2**

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

**IN THE MATTER OF THE BANKRUPTCY OF DANIER LEATHER INC.**

**AFFIDAVIT OF ANDREW J. HATNAY  
(sworn May 12, 2016)**

I, **ANDREW J. HATNAY** of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am a partner with the law firm Koskie Minsky LLP (“**KM**”) the proposed Representative Counsel to the terminated employees of Danier Leather Inc. (“**Danier**”). Where the facts set out in this Affidavit are based on information provided to me by others, I have set out the source of the information and verily believe it to be true.

**BACKGROUND**

2. Danier operated a chain of retail stores across Canada specializing in leather goods. On February 4, 2016, Danier filed a Notice of Intention to Make a Proposal pursuant to Section 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (“**BIA**”). The firm of KSV Kofman Inc. (“**KSV**”) was appointed proposal trustee in the NOI proceedings.

3. The bankruptcy proposal was not successful. On March 21, 2016, Danier made an assignment in bankruptcy (the "**Bankruptcy**") and KSV was appointed the Trustee in Bankruptcy.

4. As a result of the bankruptcy of Danier, all of the employees (the "**Employees**") were terminated without being paid termination pay, severance pay, and other amounts owing to them by Danier.

5. On March 21, 2016, KSV was also appointed as receiver of Danier. The receivership is proceeding concurrently with the bankruptcy (collectively with the Bankruptcy, the "**Insolvency Proceedings**").

6. On April 11, 2016, the trustee held the first meeting of Creditors. My colleague, James Harnum of our firm attended this meeting. At the meeting, five inspectors were appointed by vote of the creditors in attendance, two of whom are terminated employees of Danier.

7. A joint venture was entered into between Danier and Merchant Retail Solutions ULC and Gordon Brothers Canada ULC to liquidate the inventory at the majority of Danier's locations. I am informed by James Harnum that the liquidation of the Danier stores was completed on or about May 9<sup>th</sup>, 2016.

8. KSV as Receiver engaged approximately 900 of the terminated Employees on a temporary and day-to-day basis to assist with the liquidation sales and the wind-down of Danier's business.

9. It is my understanding that the liquidation sales generated sufficient proceeds to pay a significant portion of the claims of unsecured creditors.



10. Both prior to and after the date of the Bankruptcy, I was approached by a number of terminated Employees who were very concerned about the termination of their employment and the amounts owing to them and wanted to ensure that their rights and interests were protected and advanced in the Insolvency Proceedings. James Harnum and I held a number of meetings and telephone discussions with such terminated employees.

11. We communicated the Employees' concerns to the Trustee, and following numerous discussions, it was determined by myself and James Harnum, the employees who consulted us and the Trustee, that this is an appropriate case for the appointment of Representative Counsel to the Employees.

12. I am informed James Harnum of our firm that on May 3, 2016, the inspectors of the Danier Estate passed a resolution supporting the appointment of Koskie Minsky LLP as Representative Counsel to the Employees.

#### **KM'S MANDATE AS REPRESENTATIVE COUNSEL**

13. If the court appoints our firm as Representative Counsel to the Employees, our firm's mandate would include the following:

- a) Assisting employees with filing proofs of claim which is expected to be in the form of an Omnibus Proof of Claim, for amounts owing to them by Danier;
- b) Coordinating with the Trustee to develop a consistent calculation methodology for calculating the employees' claims;
- c) Analyzing and responding to any motions or other proceedings brought by the Trustee or other creditors to ensure that the employees have appropriate representation;

- d) Contributing to overall costs savings and a streamlining of the Insolvency Proceedings by being a single point of contact for the Employees, and as such provide consistent representation for a variety of employee entitlements and claims in the Insolvency Proceeding.
- e) Communicating with all of the employees throughout the proceeding by:
  - i). Establishing a website for Employees to provide up-to-date information regarding the Insolvency Proceedings, provide responses to commonly asked questions and access to relevant documents, and posting communications, and other Court-filed documents;
  - ii). Establishing a toll-free telephone number and email address dedicated to the Danier Employees for employees to direct questions to KM; and
  - iii). If necessary, providing a webinar with a slide presentation to provide information to the Employees regarding the Insolvency Proceedings, the role of Representative Counsel, and other developments and matters relevant to the Danier Employees.

14. If the court appoints our firm as Representative Counsel, we will also send written notice to all of the Employees, by email or regular mail, explaining the terms of our appointment, and also explaining the process for opting out of representation by KM should an employee wish to do so, and inviting interested Employees to sit on the Committee (as defined below). In order to allow KM to fulfill the mandate above, we intend to form a representative committee of Employees (the "**Committee**") to provide instructions to KM on a go-forward basis.

## KM'S EXPERIENCE AS REPRESENTATIVE COUNSEL

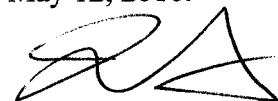
15. Our firm has extensive experience representing employees and retirees in insolvency proceedings across Canada. For example, we have been appointed as Representative Counsel in many significant insolvency cases, as well as many smaller insolvency proceedings across Canada, including U.S. Steel Canada Inc., Nortel Networks Inc., Target Canada Inc., Dylex, Wabush Mines, and Hollinger Canadian Publishing Co.

16. As part of our representation of large groups of employees and retirees, we have a bilingual Communications Department to respond promptly to all routine inquiries which keeps all clients informed as to the current status of the file and responding to routine employee inquiries. Our firm's Communications Department is made up of five full time law clerks and a manager.

17. Our firm's Communications Department has extensive experience in communicating with large numbers of individuals. This has often required communication with claimants who number in the thousands and in some cases the tens of thousands. The Communications Department tracks all inquiries it receives in a database and will maintain individual files for each Employee who contacts our firm with an inquiry.

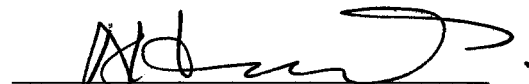
18. I swear this Affidavit in good faith and in support of this motion to appoint KM as Representative Counsel to the Danier Employees and for no improper purpose.

SWORN BEFORE ME at the City of  
Toronto, in the province of Ontario, on  
May 12, 2016.



Commissioner for Taking Affidavits, etc.

James Haman  
LSUC 60459F



ANDREW J. HATNAY

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

Proceeding commenced at **TORONTO**

**AFFIDAVIT OF ANDREW J. HATNAY**

(sworn May 12, 2016)

**KOSKIE MINSKY LLP**

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

**Andrew J. Hatnay** (LSUC# 31885W)

(T) 416-595-2083

(F) 416-204-2872

(E) [ahatnay@kmlaw.ca](mailto:ahatnay@kmlaw.ca)

**James Harnum** (LSUC# 60459F)

(T) 416-542-6285

(F) 416-204-2819

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Proposed Representative Counsel to  
the terminated employees of Danier Leather Inc.

**TAB 3**

Court File No. 31-2084381  
Estate No. 31-2084381

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

THE HONOURABLE ) WEDNESDAY, THE 18<sup>TH</sup>  
)  
) DAY OF MAY, 2016

**IN THE MATTER OF THE BANKRUPTCY OF DANIER LEATHER INC.**

**ORDER**

**THIS MOTION**, made by Koskie Minsky LLP ("**Proposed Representative Counsel**") was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the affidavit of Andrew J. Hatnay sworn May 12, 2016, and the Second Report of KSV Kofman Inc., in its capacity as trustee of Danier Leather Inc. (the "**Trustee**"), and on hearing the submissions of Proposed Representative Counsel, counsel for the Trustee, and such other parties as were present,

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

2. **THIS COURT ORDERS** the appointment of Koskie Minsky LLP as Representative Counsel to represent the former employees (the "**Employees**") of Danier Leather Inc. ("**Danier**") who were terminated on or before the bankruptcy of Danier (the "**Bankruptcy**") on March 21, 2016, in respect of all issues affecting the Employees in the proceedings under

the *Bankruptcy and Insolvency Act* R.S.C. 1985, c. B-3 ("**BIA**") or in any other proceeding which may be brought before this Court and relating to any Claim (as defined herein) for the determination of any right, entitlement or benefit of any Employee arising out of the insolvency of Danier, and with the power and authority to act on behalf of the Employees in any subsequent related proceedings (collectively, the "**Insolvency Proceedings**").

3. **THIS COURT DECLARES** that a Claim includes any claim which has now arisen or may arise under:

- (a) law or equity; or
- (b) federal or provincial legislation, or regulations thereunder, including but not limited to, claims under employment standards legislation or any other provincial or federal legislation, or regulation applicable to employees or otherwise (collectively "**Labour Laws**").

4. **THIS COURT ORDERS** that Representative Counsel may determine, advance or compromise any Claim made by an individual Employee, or group or class of Employees, against Danier or its estate, as the case may be, which Claim now exists or may hereafter arise out of the employment, former employment or termination of employment of the Employees under law or equity or under Labour Laws, subject to the approval of this Court.

5. **THIS COURT ORDERS** that the Representative Counsel shall have access to and the right to examine all relevant records and data kept by Danier in respect of its capacity as an employer of the Employees under law or equity or under the Labour Laws, whether they are kept on paper, electronic or any other form.

6. **THIS COURT ORDERS THAT** pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act* S.C. 2000, c. 5, the Trustee is authorized and permitted to disclose personal information of identifiable individuals who are believed to be Employees to Representative Counsel. Representative Counsel shall maintain and protect the privacy of such information and shall limit the use of such information to its role as Representative Counsel.

7. **THIS COURT ORDERS** that Koskie Minsky LLP within 5 days of the date of this Order, shall send written notice ("**Written Notice**") to all of the Employees based on the addresses and contact information provided by the Trustee, by email or regular mail, explaining the terms of its appointment and engagement, explaining the process for opting out of representation by Koskie Minsky LLP, and inviting interested Employees to sit on a representative committee (the "**Committee**") to provide instructions to Koskie Minsky LLP as required. The Written Notice shall also be posted by the Trustee on the website of KSV Kofman Inc., created for this proceeding.

8. **THIS COURT ORDERS** that Representative Counsel is authorized to take all steps and to do all necessary or desirable acts in carrying out the terms of the Order, including dealing with any regulatory body and any other government or ministry, department or agency, and to take all such steps as are necessary or incidental thereto.

9. **THIS COURT ORDERS** that Koskie Minsky LLP is authorized to establish the Committee, in consultation with the Trustee, which, upon establishment, will provide instructions to Koskie Minsky LLP as needed.



10. **THIS COURT ORDERS** that notice of the granting of this Order, substantially in the form attached to the Order hereto as **Schedule "A"** (the "**Notice**") shall be:

- (a) published by Representative Counsel on its firm's website within 2 calendar days of the date of this Order;
- (b) included in the Written Notice described in section [7] above; and
- (c) posted by the Trustee to the website created by the Trustee for this proceeding.

11. **THIS COURT ORDERS** that any individual Employee who does not wish to be represented by Koskie Minsky LLP in the Insolvency Proceedings shall, within 30 days of the granting of this Order, notify the Trustee and Koskie Minsky LLP in writing that he or she is opting out of representation by Koskie Minsky LLP and shall thereafter not be bound by the actions of Koskie Minsky LLP or the Committee and is free to represent himself or herself or be represented by any counsel that he or she may retain exclusively at his or her own expense in the Insolvency Proceedings (an "**Opt-Out Individual**").

12. **THIS COURT ORDERS** that from and after May 3, 2016, Representative Counsel's expenses, professional fees and necessary disbursements incurred in representing the Employees (collectively, the "**Costs**") shall be paid by the Trustee on the rendering of accounts by Representative Counsel, subject to the approval of this Court and to the Trustee's right, if the Costs exceed \$75,000 (exclusive of taxes and disbursements) to cease paying the Costs and/or to bring a motion to Court to amend the terms of this Order pertaining to the payment of Costs.

13. **THIS COURT ORDERS** that Koskie Minsky LLP and the Committee and its members shall have no liability as a result of their appointment or the fulfilment of their duties in carrying out the provisions of this Order, save and except for any claims based on gross negligence or wilful misconduct on their part.

14. **THIS COURT ORDERS** that Koskie Minsky LLP and the Committee shall be at liberty and are authorized at any time to apply to this Court for advice and directions in the discharge or variation of their powers and duties

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Court File No. 31-2084381  
Estate No. 31-2084381

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

**IN THE MATTER OF THE BANKRUPTCY OF DANIER LEATHER INC.**

**NOTICE TO ALL DANIER LEATHER INC. EMPLOYEES**

On March 21, 2016, Danier Leather Inc. ("**Danier**") made a voluntary assignment into bankruptcy. KSV Kofman Inc. (the "**Trustee**") is the Trustee in Bankruptcy.

**TAKE NOTICE THAT**, pursuant to Order of the Court dated May 18, 2016:

Koskie Minsky LLP ("**Representative Counsel**") was appointed as representative counsel of all Danier Employees in the bankruptcy proceeding (the "**Proceeding**").

**Contact Information for Representative Counsel:**

**Website:** kmlaw.ca/DanierRepCounsel

**Email:** DanierRepCounsel@kmlaw.ca

**Toll-free Hotline:** 1-844-819-8528

**IF YOU DO NOT WISH TO BE REPRESENTED in the Proceeding by Representative Counsel, you must, before June 9, 2016, provide notice in writing (by letter or email) to both Koskie Minsky LLP and KSV Kofman Inc., indicating that you wish to opt-out of such representation:**

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

DanierRepCounsel@kmlaw.ca

KSV Kofman Inc.  
150 King Street West  
Suite 2308  
Toronto, ON M5H 1J9

drapers@ksvadvisory.com

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

Proceeding commenced at **TORONTO**

**ORDER**  
(returnable May 18, 2016)

**KOSKIE MINSKY LLP**  
20 Queen Street West  
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**Andrew J. Hatnay** (LSUC# 31885W)  
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Proposed Representative Counsel to the  
terminated employees of Danier Leather Inc.

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

Proceeding commenced at TORONTO

**MOTION RECORD**

**(Motion for appointment of Representative Counsel  
to terminated employees, returnable May 18, 2016)**

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

**Andrew J. Hatnay (LSUC# 31885W)**  
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Proposed Representative Counsel to the  
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