



**Second Report to Court of  
KSV Kofman Inc. as  
Trustee in Bankruptcy of  
Danier Leather Inc.**

May 12, 2016

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ESTATE FILE NO.: 31-2084381

COURT FILE NO.: 31-2084381

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

IN THE MATTER OF THE BANKRUPTCY OF DANIER LEATHER INC.

SECOND REPORT OF KSV KOFMAN INC. AS TRUSTEE IN BANKRUPTCY OF  
DANIER LEATHER INC.

MAY 12, 2016

## 1.0 Introduction

1. On February 4, 2016, Danier Leather Inc. (the “Company”) filed a Notice of Intention to Make a Proposal (“NOI”) pursuant to Section 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, and KSV Kofman Inc. (“KSV”) was appointed proposal trustee in the Company’s NOI proceedings (the “Proposal Trustee”).
2. In accordance with an order of the Ontario Superior Court of Justice (Commercial List) (“Court”) made on February 8, 2016, the Company, with the assistance of its financial advisor, Consensus Advisory Services LLC and Consensus Securities LLC, and the Proposal Trustee, carried out a sale and investor solicitation process (“SISP”).
3. As a result of the SISP, the Company entered into an agency agreement with a contractual joint venture comprised of Merchant Retail Solutions, ULC and Gordon Brothers Canada ULC (jointly, the “Agent”) to liquidate the inventory, furniture, fixtures and equipment in 76 of its store locations (the “Sale”). The Agent completed the Sale on May 9, 2016.
4. On March 21, 2016, the Company made an assignment in bankruptcy and KSV was appointed as trustee in bankruptcy of the Company’s bankrupt estate (“Trustee”).
5. Pursuant to an Order of the Court made on March 21, 2016, KSV became receiver (the “Receiver”) of the Company’s property, assets and undertaking pursuant to section 101 of the *Courts of Justice Act*, R.S.O. 190, c. C.43, as amended (“Receivership Order”).
6. This report is filed by KSV in its capacity as Trustee.

## **1.1 Purposes of this Report**

1. The purposes of this report ("Report") are to:
  - a) provide background information about the Company;
  - b) discuss a motion by Koskie Minsky LLP ("Koskie") in respect of its proposed appointment as representative counsel to the former employees of the Company ("Representative Counsel"); and
  - c) recommend that the Court issue an Order, among other things:
    - i. appointing Koskie as Representative Counsel;
    - ii. directing Koskie to send a notice to each former employee regarding its role as Representative Counsel ("Notice"), and providing for other mechanisms to notify former employees about the appointment of representative counsel, the process for opting out of representation by Koskie, and inviting interested former employees to sit on a representative committee;
    - iii. authorizing the Trustee to provide Koskie with certain personal information required to calculate and file employee claims;
    - iv. authorizing Koskie to determine, advance or compromise any claim made by an individual former employee, or group or class of former employees; and
    - v. Directing the Trustee to pay the expenses, professional fees and necessary disbursements of Representative Counsel, subject to approval of the Court and the Trustee's right, if Representative Counsel's expenses, fees and disbursements exceed \$75,000, to cease paying such amounts and/or to return to Court to amend the terms of the Order pertaining to the payment of such amounts.

## **1.2 Currency**

1. All currency references in this Report are to Canadian dollars.

## **1.3 Restrictions**

1. In preparing this Report, the Trustee has relied upon the Company's books and records and discussions with its representatives and advisors. The Trustee has not performed an audit or other verification of such information.

## 2.0 Background

1. The Company was founded in 1972. The Company was Canada's largest retailer of leather apparel and accessories. The Company's subordinated voting shares were listed on the Toronto Stock Exchange ("TSX") and, until February 4, 2016, traded under the symbol "DL". On February 4, 2016, the Investment Industry Regulatory Organization of Canada issued a cease trade order in respect of the shares. On March 17, 2016, the Company's shares were delisted from the TSX.
2. The Company leases its Toronto based head office (the "St. Clair Facility"). The St. Clair Facility also served as the Company's manufacturing, warehouse and distribution center. The Company also leases a separate distribution facility in Toronto, which will be disclaimed in due course after a liquidation is completed for the furniture and equipment at those premises.
3. The Company's merchandise was predominantly marketed under the "Danier" brand name and as at the date of bankruptcy was being sold at 76 leased stores across Canada. As at the date of this Report, all stores have been vacated and all leases have been disclaimed, except for a small number which have been or are in the process of potentially being assigned to new tenants.
4. As at the date of bankruptcy, the Company employed approximately 1,000 employees. As a result of the bankruptcy, all of the Company's employees were automatically terminated. Pursuant to the terms of the Receivership Order, the Receiver hired the majority of the Company's former employees on a temporary and day-to-day basis to assist with the Sale and the wind-down of the Company's business. The Company's workforce is not unionized and the Company does not maintain a pension plan. As at the date of this Report, approximately 20 employees continue to be retained by the Receiver.
5. Additional information about the Company's insolvency proceedings is available on the Trustee's website at: <http://www.ksvadvisory.com/insolvency-cases-2/danier-leather-inc/>.

## 3.0 Representative Counsel

1. Since the date of bankruptcy, the Trustee has received numerous and frequent inquiries from employees regarding the amounts that may be owing to them and the methodology to file proofs of claim for such amounts.
2. There are certain considerations regarding the calculation of employee claims including:
  - The employees are located across Canada and have different statutory rights based on the province in which they are located, including mass termination rights for certain employees;
  - The majority of the employees are sales associates with varying pay structures, including commission and bonuses;

- English is a second language for a number of the employees; and
  - There are a number of long standing employees who did not enter into employment contracts with the Company at their time of hire.
3. In order to economically and efficiently deal with the employee claims, the Trustee recommended to the Inspectors that it be authorized to support the appointment of Koskie as representative counsel. The terms of Koskie's mandate were set out in a letter from Koskie dated April 20, 2016, which was unanimously approved by all Inspectors who attended the Third Inspectors Meeting convened on May 3, 2016<sup>1</sup>. The Inspector resolution, which includes a copy of this letter, is attached as Appendix "A".
  4. Pursuant to the letter and other communications from Koskie, Koskie's mandate includes:
    - Establishing a dedicated telephone line and email address to respond to employee inquiries on a timely basis;
    - Establishing a website with information regarding the bankruptcy proceedings, access to relevant documents and guidance on frequently asked questions;
    - If necessary, developing a webcast to provide information on Koskie's role as Representative Counsel and other matters relevant to the employees;
    - Assisting employees with questions about their employment-related rights in relation to the Company's bankruptcy;
    - Assisting employees to determine the amounts owed to them;
    - Analyzing and responding as necessary to any motions or other proceedings in respect of the Company's bankruptcy; and
    - Establishing a representative committee of employees to instruct Koskie.
  5. Koskie's mandate provides for an initial fee cap of \$75,000, plus applicable taxes and disbursements ("Fee Structure"), to be paid from the estate, with any additional fees being subject to the Trustee's approval and the Trustee's right to cease paying Koskie's fees and/or to return to Court to amend the terms of the Order pertaining to the payment of such amounts. The Trustee has reviewed the hourly rates of the lawyers and staff at Koskie who will be involved in this mandate. The Trustee notes that the hourly rates are reasonable and less than the fees it and its counsel would charge to perform the same services.
  6. Koskie is now seeking Court authorization of its appointment as Representative Counsel.

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<sup>1</sup> One inspector was absent.

7. The Trustee supports the appointment of Koskie as Representative Counsel for the following reasons:
  - Koskie specializes in representing employees in insolvency proceedings. Determining employee claims may require legal and financial resources. Koskie has expertise to efficiently coordinate such assistance;
  - The arrangement will assist to streamline the claims process which will reduce the fees and costs of the Trustee and its legal counsel and facilitate a more expeditious distribution to all creditors as the Trustee and its counsel will spend less time reviewing the claims and will only be dealing with one law firm (versus several if several employees are individually represented);
  - The Trustee is of the view that the Fee Structure is appropriate and that Koskie's hourly rates are lower than its own and those of its counsel;
  - Koskie will be a single point of contact for employees, which will allow for consistent information to be provided to all employees; and
  - The Trustee may be required to have certain employee claims determined by the Court, in which case it will be preferable to have the claims determined in one hearing as opposed to multiple hearings in the event that several employees retain separate counsel.
8. It is not feasible for Koskie to enter into an engagement letter with each employee. Accordingly, Koskie is seeking Court approval to provide written notice to the employees regarding its role as Representative Counsel. Employees will also have the option to not be represented by Koskie, which will be explained in the Notice. The Notice will also invite interested employees to sit on a representative committee that is to instruct Koskie, as required. Koskie will only represent the employees who have not "opted out".

### **3.1 Personal Information**

1. Koskie will require personal information in order to prepare claims for the employees it is representing, including but not limited to names, wages, last known address and social insurance numbers ("Personal Information").
2. The Trustee recommends that it be authorized to provide Personal Information to Koskie for the purpose of filing employee claims.

### **3.2 Omnibus Proof of Claim**

1. Koskie advised that it may file an Omnibus Proof of Claim on behalf of all employees, in order to reduce the cost of having the Trustee deal with hundreds of employee claims.

2. The Trustee is of the view that dealing with one claim through Koskie is more cost effective than having the Trustee deal with hundreds of claims.
3. It is contemplated that all distributions to employees will be made directly by the Trustee.

#### **4.0 Conclusion and Recommendation**

1. Based on the foregoing, the Trustee respectfully recommends that this Honourable Court make an order granting the relief detailed in Section 1.1(1)(c) of this Report.

\* \* \*

All of which is respectfully submitted,

A handwritten signature in cursive script that reads "KSV Kofman Inc".

**KSV KOFMAN INC.  
IN ITS CAPACITY AS TRUSTEE IN BANKRUPTCY OF  
DANIER LEATHER INC.  
AND NOT IN ITS PERSONAL CAPACITY**



## **Appendix “A”**

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

**Estate File No.: 31-2084381**

**RESOLUTION #1 PASSED AT THE THIRD MEETING OF INSPECTORS  
HELD TUESDAY, MAY 3, 2016**

**RESOLVED THAT:**

KSV Kofman Inc. as trustee in bankruptcy of Danier Leather Inc. ("Danier") is hereby authorized to fund the costs of Koskie Minsky LLP ("KM") as representative counsel to the employees of Danier on the basis set out in the attached letter from KM.

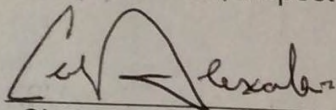
ENACTED THE 3<sup>rd</sup> DAY OF MAY, 2016

\_\_\_\_\_  
Olga Koel, Inspector

\_\_\_\_\_  
Rodney Goldberg, Inspector

\_\_\_\_\_  
Steve Waldron, Inspector

\_\_\_\_\_  
Howard Levitt, Inspector

  
\_\_\_\_\_  
Clark Alexander, Inspector

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

**Estate File No.: 31-2084381**

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ENACTED THE 3<sup>rd</sup> DAY OF MAY, 2016

  
\_\_\_\_\_  
Olga Koel, Inspector

  
\_\_\_\_\_  
Steve Waldron, Inspector

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Rodney Goldberg, Inspector

\_\_\_\_\_  
Howard Levitt, Inspector

\_\_\_\_\_  
Clark Alexander, Inspector

IN THE MATTER OF THE BANKRUPTCY OF  
DANIER LEATHER INC.

Estate File No.: 31-2084381


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ENACTED THE 3<sup>rd</sup> DAY OF MAY, 2016

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Olga Koel, Inspector

  
\_\_\_\_\_  
Rodney Goldberg, Inspector

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Steve Waldron, Inspector

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Howard Levitt, Inspector

\_\_\_\_\_  
Clark Alexander, Inspector

# KOSKIE MINSKY

JUSTICE MATTERS

April 20, 2016

**James Harnum**  
Direct Dial: 416-542-6285  
Direct Fax: 416-204-2819  
jhamum@kmlaw.ca

**Via E-Mail**

KSV Kofman Inc., in its capacity as trustee in bankruptcy of Danier Leather Inc.  
150 King St. West, Suite 2308  
Toronto, ON M5H 1J9  
Attention: Bobby Kofman

Dear Mr. Kofman:

- Re: In the Matter of Danier Leather Inc. (in bankruptcy)**  
**Court File No. 31-2084381**
- Re: Fee Letter for Representative Counsel to Employees of Danier Leather Inc.**  
**("Danier")**

We are writing further to our recent discussions regarding Koskie Minsky LLP serving as Representative Counsel to the former employees of Danier ("Employees").

We have advised that in our view it will be necessary at some point to move for a court order to formalize our status as Representative Counsel, however, we understand that the first step is that the trustee wishes to put a resolution before the inspectors to have the estate support our appointment. We will work with the trustee to determine when a court order will be sought, and its terms.

In serving as Representative Counsel to the employees, our mandate will be the following:

1. Our primary initial role in this file will be to assist the Employees with questions about their employment-related rights and obligations in relation to the bankruptcy of Danier. Our firms' bilingual communications department will set up a dedicated telephone line, website and email address which will respond to all Employee inquiries on a timely basis.
2. We will also assist Employees in filing their proofs of claim. We will work with you to determine the most efficient method to do so, which may include filing one Omnibus Proof of Claim for all Employees which would set out each Employee's claim on a uniform and consistent basis and using a consistent methodology. We expect to consult with the trustee

with respect to claims and aim to arrive at an agreed upon calculation methodology to avoid disallowances and appeals therefrom.

3. We will analyze and respond as necessary to any motions or other proceedings brought by the trustee or other creditors, to ensure that the Employees have appropriate representation in such motions to protect their rights and interests.

We believe the above approach will generate efficiencies and overall costs savings to the estate, and thus help maximize the amount available for distribution to all creditors, including the Employees. We will at all times and in all respects endeavour to provide our services to the Employees on a cost-efficient basis.

We will be provided an initial fee cap of \$75,000, plus taxes and disbursements, which will be paid from the estate on a timely basis. We will issue invoices to the trustee for our reasonable and documented fees and disbursements on a monthly basis. Should our fees exceed \$75,000, the trustee will consider a request to increase the initial fee cap on a reasonable basis.

If this letter correctly reflects your understanding of our role as Representative Counsel and the trustee's payment obligation in respect thereof, please so indicate by executing the enclosed copy of this letter in the space provided below and return it to the undersigned.

We understand that the terms of this arrangement are subject to Inspector approval.

Yours truly,

**KOSKIE MINSKY LLP**



James Harnum

JH:ss

cc. Andrew J. Hatnay, *Koskie Minsky LLP*

Understood and Agreed

this \_\_\_\_\_ day of \_\_\_\_\_, 2016

**KSV Kofman Inc.**, solely in its capacity as trustee in bankruptcy of Danier Leather Inc., and not in its personal or any other capacity

By: \_\_\_\_\_

Name:

Title:

**ESTATE FILE NO.: 31-2084381  
COURT FILE NO.: 31-2084381**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Commercial List)**

Proceeding commenced at Toronto

**SECOND REPORT OF THE TRUSTEE  
MAY 12, 2016**

**BENNETT JONES LLP**  
3400 One First Canadian Place  
Toronto, ON M5X 1A4

**Sean Zweig (LSUC #573071)**  
Tel: (416) 777-6254  
Fax: (416) 863-1716

Counsel to the Trustee, KSV Kofman Inc.