

KOSKIE MINSKY

JUSTICE MATTERS

October 26, 2017

Via E-mail

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ATTENTION: Paul Bishop and Greg Watson

AND TO: The Service List

Dear Sirs/Mesdames:

Re: Sears Canada Inc. - CCAA proceedings
The Sears Canada Inc. Registered Retirement Plan, Registration Number 0360065
("Sears Canada Plan")
Our File No. 17/1312

We are Representative Counsel to the non-union active and retired employees of Sears Canada who have earned pension entitlements to be paid to them from the Sears Canada Plan.

It is now confirmed that the company is liquidating and not restructuring. The Ontario Superintendent of Financial Services has appointed the firm of Morneau Shepell to take over as administrator of the Sears Canada Plan. The wind up of the Sears Canada Plan is inevitable.

As set out in the company's materials filed in the CCAA proceedings, the Sears Canada Plan is underfunded by approximately \$270 million on its wind up. If the Plan is wound up in its current underfunded state, it will result in reductions to the monthly pension benefits of retirees. Such reductions will cause financial hardship for many Sears retirees across Canada, who as you know, have already lost their earned health and life insurance benefits.

In order to avoid reductions to monthly pension benefits, and although no claims process has yet commenced in the CCAA proceedings, we are writing to advise that under sections 57(3) and (4) of the Ontario *Pension Benefits Act*, R.S.O. 1990, c. P.-8 ("PBA"), section 30(7) of the Ontario *Personal Property Security Act*, R.S.O. 1990, c. P.10 ("PPSA") and as confirmed by the

Supreme Court of Canada in *Indalex*, our clients are the beneficiaries of statutory deemed trusts for the amounts owing by Sears Canada to the Sears Canada Plan, including unpaid special payments and the wind up deficit. As such, they are entitled to first priority recovery for those amounts ahead of the claims of all other creditors immediately after the CCAA- court ordered changes.

Please consider this letter as a claim by the pension plan beneficiaries against Sears Canada for the amount of the unpaid special payments and wind up deficit, and all other amounts owing to the plan by Sears Canada. Please make interim distributions for the benefit of the Sears Canada Plan as funds become available, allowing for the appropriate reserves for the CCAA-court ordered charges.

If you or any other party intends to object to the priority position of the pension plan beneficiaries, please let us know and we will schedule an appointment before the CCAA Judge for a motion for the appropriate determinations.

Yours truly,

KOSKIE MINSKY LLP



Andrew J. Hatnay
AJH:hh/encl

- c. Client Committee
Gus Tertigas, *Ernst & Young Inc.*
Orestes Pasparakis, Alan Merskey, Evan Cobb, *Norton Rose LLP*
Mark Zigler, *Koskie Minsky LLP*