



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

November 1, 2016

Contents

	Page
1.0 Introduction.....	1
1.1 Purposes of this Report.....	2
1.2 Currency	2
1.3 Restrictions	2
2.0 Background	3
3.0 Representative Counsel.....	3
4.0 Process for Developing the Employee Claim Methodology	4
5.0 The Employee Claim Methodology	5
5.1 Group 1: Common Law	5
5.2 Group 2: Minimum Entitlements under ESL.....	5
5.3 Group 3: Exceeds Minimum Entitlements under ESL	6
5.4 Payment in Lieu of Benefits.....	6
5.5 Employee Discount	6
6.0 Preliminary Estimate of Employee Claim	6
7.0 Information Statement Process.....	7
8.0 Trustee’s Recommendation	8
9.0 Conclusion and Recommendation	8

Appendices

Appendix	Tab
May 18 th Order.....	A



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.

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

NOVEMBER 1, 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 (“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 regarding the Company and these proceedings;
 - b) summarize the financial position of the Company;
 - c) discuss the methodology agreed by the Trustee and Koskie Minsky LLP, in its role as Court-appointed Representative Counsel (“Representative Counsel”) to the former employees of the Company (the “Employees” and each an “Employee”) to be used to calculate the claims of the Employees as a result of the termination of their employment (the “Employee Claim Methodology”);
 - d) discuss the process to be used by Representative Counsel to confirm personal information required to calculate Employee claims (the “Information Process”); and
 - e) recommend that the Court issue an order, *inter alia*:
 - i. approving the Employee Claim Methodology; and
 - ii. approving the Information Process.

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 unaudited financial information of the Company, the books and records of the Company, and discussions with representatives of the Company, including its former employees, and Representative Counsel. The Trustee has not performed an audit or other verification of such information. The Trustee expresses no opinion or other assurance with respect to the financial information presented in this Report. Any party wishing to place reliance on the Company’s financial information is strongly encouraged to perform its own diligence and any reliance placed by any party on the information herein shall not be considered sufficient for any purpose whatsoever.

2.0 Background

1. The Company was founded in 1972. The Company was one of Canada's largest retailers of leather apparel and accessories at the commencement of its insolvency process. 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's merchandise was predominantly marketed under the "Danier" brand name and as at the date of the NOI was being sold at 84 leased stores across Canada. The Company's business was discontinued in or around May 8, 2016. All of the Company's real property leases have been disclaimed or assigned.
3. As at the date of bankruptcy, the Company employed approximately 900 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 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 was not unionized and the Company did not maintain a pension plan. As of the date of this Report, a few employees continue to work with the Receiver on a periodic and term and task basis to assist with the completion of sundry matters.

3.0 Representative Counsel

1. On May 18, 2016, the Court made an order (the "Representative Counsel Order") appointing Representative Counsel. A copy of the Representative Counsel Order is attached as Appendix "A". Representative Counsel represents all Employees, other than Jeffrey Wortsman, the Company's former Chief Executive Officer, and a small number of employees with *de minimis* claims, who opted out of representation in accordance with the Representative Counsel Order.
2. Pursuant to the Representative Counsel Order, Representative Counsel was authorized to determine, advance or compromise any claim made by Employees against the Company, subject to approval of the Court.
3. As part of its mandate and in accordance with the Representative Counsel Order, Representative Counsel formed a committee of three Employees (the "Committee") to provide instructions to Representative Counsel. The Trustee understands that Representative Counsel consulted extensively with the Committee with respect to the Employee Claim Methodology, and that the Committee supports its approval by the Court.
4. The Trustee further understands that on or around October 28, 2016, Representative Counsel sent correspondence to each of the Employees providing, among other things, a detailed summary of the Employee Claim Methodology and of the Trustee's intention to seek approval of the Employee Claim Methodology at a hearing on November 8, 2016.

4.0 Process for Developing the Employee Claim Methodology

1. The Trustee and Representative Counsel determined that it would be in the best interests of the Employees and the estate if they could develop an Employee Claim Methodology, which would be used by Representative Counsel to submit an omnibus claim on behalf of the Employees.
2. The Company's human resource department provided the Trustee and Representatives Counsel with a schedule including information regarding each employee (the "Employee Information") required to calculate their claim, including:
 - name, address and birth date;
 - years of service;
 - compensation (including average weekly earnings and vacation entitlement); and
 - information to determine statutory termination pay, statutory severance pay, contractual severance and common law entitlements (as may be applicable).
3. In addition to the Employee Information, the Trustee and Representative Counsel reviewed, among other things:
 - the Company's termination and severance pay policies;
 - sample employment agreements and offer letters;
 - the Company's benefit plans;
 - the Company's merchandise discount and clothing allowance program; and
 - methodologies used in other insolvency proceedings.
4. Representative Counsel and the Trustee ultimately agreed that for claims purposes, the Employees should be divided into three categories:
 - a) Group 1 - Employees who do not have employment agreements or offer letters with a contractual termination provision. Employees in this group are entitled to reasonable notice at common law. Most of these Employees are longer service who started before 2000. There are 96 employees in this group;
 - b) Group 2 - Employees who signed employment agreements or offer letters which limited their entitlement on termination of employment to that provided in the relevant employment standards legislation ("ESL") in their province. There are 792 employees in this group; and
 - c) Group 3 - Employees who signed employment agreements or offer letters that contained a contractual termination provision, which provides them with a right to compensation that exceeds the statutory minimums under applicable ESL. There are 11 employees in this group.

5.0 The Employee Claim Methodology

1. Following extensive negotiations over several months, the Trustee and Representative Counsel agreed on the following methodologies in order to calculate the Employees' omnibus claim.

5.1 Group 1: Common Law

1. The methodology for common law is intended to estimate the amount of time it will take an Employee to find a comparable job at a new employer. The methodology takes into account factors such as the Employee's age, length of service, character of employment and availability of alternate employment.
2. Representative Counsel and the Trustee reviewed, among other things, the treatment of employee claims in the Nortel Networks ("Nortel") and Shaw Canada L.P. ("Shaw") cases and the character of employment of the Employees vs. former employees of Shaw and Nortel.
3. In Nortel, a factor of 3.3 weeks per year of service was used for all employees entitled to common law claims. In the Company's case, given the character of employment of the Employees, the low-hourly wage of some employees made it more likely that they would be able to further mitigate their claims. Accordingly, the following methodology was adapted:
 - a) a claim of 2.7 weeks per year of service if employee earns \$14.50/hour or less; and
 - b) a claim of 3.3 weeks per year of service if employee earns \$14.51/hour or more.
4. The rationale for the above is that Employees who earn a wage of \$14.50/hour or less (i.e., close to the applicable statutory minimum wage) should have an easier time mitigating their alleged damages by finding alternate employment that pays a comparable amount.

5.2 Group 2: Minimum Entitlements under ESL

1. The Trustee and Representative Counsel agreed that in most cases the Employees' claims were limited to statutory minimums under applicable ESL.
2. Several longer tenure employees had received more than one employment letter and/or promotion letter which created a risk that these employees may be owed reasonable notice at common law based on the fact that the contractual termination provision in the original offer letter was not valid or that the promotion letter did not incorporate a new and valid termination provision. Accordingly, the Trustee and Representative Counsel agreed to provide Employees with ten (10) or more years of service with a claim for the greater of: (i) their minimum amount under applicable ESL; and (ii) 2 weeks per year of service.
3. Employees in the regional municipality of York, the City of Toronto, the City of Montreal and the Province of British Columbia may also qualify for an additional payment under mass termination provisions in their applicable ESL.

5.3 Group 3: Exceeds Minimum Entitlements under ESL

1. The Trustee and Representative Counsel agreed that Employees in this group would have their claims valued based on the specific wording in their employment agreement.

5.4 Payment in Lieu of Benefits

1. In order to compensate each Employee who was eligible for benefits for such Employee's loss of benefits, Representative Counsel and the Trustee agreed to a claim of 3% of the benefits of the eligible Employee's total severance and/or termination claim, provided that such employee was entitled to benefit coverage during their notice period. The 3% amount is marginally higher than the Company's historical benefit cost. The premium takes into account that the replacement cost to an individual would be higher given that employees do not have the power to negotiate a low group rate.

5.5 Employee Discount

1. The Company had various forms of employee discount and clothing allowance programs. To compensate the Employees for the loss of their discount, the Trustee and Representative Counsel agreed to an additional claim of \$50 per Employee. The Company's program was focused on store employees who were required to purchase Company clothing to be worn while working.

6.0 Preliminary Estimate of Employee Claim

1. A preliminary estimate of the Employee claim based on the Employee Information reflecting the above considerations is provided in the table below.

(unaudited; \$)	Amount
Group 1: Common law	5,063,073
Group 2: Minimum entitlements under ESL	3,316,051
Group 3: Exceeds minimum entitlements under ESL	744,710
Subtotal ¹	<u>9,123,834</u>

2. Pursuant to the Employee Claims Methodology, all Employee claims against the Company will be released and extinguished upon the distribution being made to the Employees.

¹ Excludes approximately \$1.250 million to the employees who opted out of representation by Representative Counsel.

7.0 Information Statement Process

1. The information used for the Employee Claims Methodology was sourced from the Company's books and records. In order to confirm the information, the Representative Counsel developed the Information Process in consultation with the Trustee.
2. The following is an overview of the Information Process:
 - a) within seven days of the Court approving the Employee Claims Methodology and the Information Process (the "Employee Order"), Representative Counsel will send to all Employees at the address last shown on the Company's records or as otherwise known by Representative Counsel, the following documents:
 - the Employee Order;
 - a summary of the Employee Claim Methodology prepared by Representative Counsel in the form attached as Schedule "A" to the Employee Order;
 - a personal information verification form (a "Form") completed by Representative Counsel based on the records of the Company in the form attached as Schedule "B" to the Employee Order; and
 - such other materials as Representative Counsel, in consultation with the Trustee, may consider appropriate.
 - b) If an Employee wishes to dispute any of the information on the Form, the employee must complete and return the Form to Representative Counsel and the Trustee on or before 5 p.m. Eastern time on December 7, 2016 (the "Dispute Deadline");
 - c) any Employee who does not complete and submit a Form such that it is received by Representative Counsel and the Trustee by the Dispute Deadline will be deemed to have accepted the information contained on such Form;
 - d) any Form received by Representative Counsel and the Trustee on or before the Dispute Deadline will be reviewed and considered by Representative Counsel. Any Form may be accepted by Representative Counsel with the consent of the Trustee; and
 - e) in the event that Representative Counsel is unable to resolve issues in any Forms with either the relevant Employee or the Trustee, either Representative Counsel or the Trustee may apply to this Court for advice and directions with respect to such issues.

8.0 Trustee's Recommendation

1. The Trustee recommends that the Court approve the Employee Claims Methodology and the Information Statement Process for the following reasons:
 - a) the Employee Claims Methodology is a result of extensive negotiations between the Trustee and Representative Counsel. Representative Counsel and the Committee support the Employee Claims Methodology. In the Trustee's view, the methodology is a fair, reasonable and efficient approach to calculate the Employees' claims;
 - b) the Employee Claims Methodology treats Employees consistently based on their employment terms and characteristics;
 - c) the Employee Claims Methodology will result in an omnibus proof of claim being submitted on behalf of the Employees. This will avoid professional fees involved with the Trustee reviewing individual claims and assessing individual entitlements based on mitigation results; and
 - d) Employees will have the opportunity to correct the information to be relied upon to calculate their claim. In the Trustee's view, the Dispute Deadline is reasonable as it provides Employees sufficient time to review their Employee Information and submit a Dispute Form.

9.0 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)(e) of this Report.

* * *

All of which is respectfully submitted,



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

Appendix “A”

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE

Justice Conway

) WEDNESDAY, THE 18TH
)
) 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:

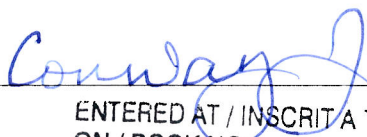
- (a) published by Representative Counsel on its firm's website within 2 calendar days of the date of this Order;
- (b) included in the Written Notice described in section [7] above; and
- (c) posted by the Trustee to the website created by the Trustee for this proceeding.

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 hereunder, including with respect to the payment of Costs.



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

MAY 18 2016

PER / PAR:



Schedule "A"

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
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

James Harnum (LSUC# 60459F)
(T) 416-542-6285
(F) 416-204-2819
(E) jharnum@kmlaw.ca

Employee Representative Counsel to
Danier Leather Inc. Employees

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

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

Proceeding commenced at Toronto

**FOURTH REPORT OF THE TRUSTEE
NOVEMBER 1, 2016**

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

Sean Zweig (LSUC #57307I)
Tel: (416) 777-6254
Fax: (416) 863-1716

Counsel to the Trustee, KSV Kofman Inc.