

APPENDIX 2-7

Arvia Willfulness Merged on 5_12 PA DC

Designation	Source	Tx Duration	Elapsed	Remains	Media File	Barcode
6:14 -6:19	Arvia, Thomas 2015-11-19	00:00:11	00:00:00	00:06:11	Arvia_T-111715-1of5	M8.1
	6:14 Q. Good morning, Mr. Arvia.					
	6:15 A. Good morning.					
	6:16 Q. Would you please state and spell your full					
	6:17 name for the record?					
	6:18 A. Sure. First name is Thomas, T-h-o-m-a-s,					
	6:19 last name Arvia, A-r-v, as in Victor, i-a.					
8:21 -8:23	Arvia, Thomas 2015-11-19	00:00:06	00:00:11	00:06:00	Arvia_T-111715-1of5	M8.2
	8:21 Q. What's your current position?					
	8:22 A. I'm a division vice president for product					
	8:23 management for Craftsman.					
184:20 -184:24	Arvia, Thomas 2015-11-19	00:00:17	00:00:17	00:05:54	Arvia_T-111715-4of5	M8.3
	184:20 Q. Is there an agreement between Sears and Apex					
	184:21 whereby Apex has agreed to indemnify Sears in					
	184:22 connection with this lawsuit?					
	184:23 A. That is covered under our universal terms					
	184:24 and conditions, so per that, yes.					
185:6 -185:12	Arvia, Thomas 2015-11-19	00:00:37	00:00:34	00:05:37	Arvia_T-111715-4of5	M8.4
Link > P455.1	185:6 Q. I'm introducing Arvia Exhibit 21. The Bates					
	185:7 number for this document starts at SEARS_4922. Just					
	185:8 let me know when you have that on your screen.					
	185:9 A. Okay, it's on my screen.					
	185:10 Q. Is this the document to which you were					
Link > P455.1.1	185:11 referring entitled Universal Terms and Conditions?					
	185:12 A. This is.					
186:20 -186:23	Arvia, Thomas 2015-11-19	00:00:19	00:01:11	00:05:00	Arvia_T-111715-4of5	M8.5
	186:20 Q. The next page of this document, page ten,					
Link > P455.10	186:21 which is at SEARS_4931, it says: Rider to Universal					
Link > P455.10.1	186:22 Terms and Conditions.					
	186:23 A. Yes.					
188:8 -188:20	Arvia, Thomas 2015-11-19	00:01:05	00:01:30	00:04:41	Arvia_T-111715-4of5	M8.6
	188:8 Is Apex indemnifying Sears for the cost of					
	188:9 Sears' legal defense for this lawsuit? And if -- I'm					
	188:10 sorry, I meant to do this. I'm going to direct your					
Link > P455.13	188:11 attention to the rider on page 4934, which is page					
Link > P455.13.1	188:12 four of the rider, Section 11, Defense of Claims and					
	188:13 Indemnity.					
	188:14 A. So I'm sorry, what page again?					
	188:15 Q. Bates is 4934, page 13 of the PDF, if you					
	188:16 see that coming up, 13 of 41.					

188:17 A. Okay.
 188:18 Q. Is Section 11 of this exhibit the
 188:19 contractual agreement between Apex and Sears whereby
 188:20 Apex is indemnifying Sears?

188:24 -189:1	Arvia, Thomas 2015-11-19	00:00:07	00:02:35	00:03:36	Arvia_T-111715-4of5	M8.7
	188:24 A. My understanding is Section 11 is that part 189:1 of the agreement, yes.					
189:3 -189:4	Arvia, Thomas 2015-11-19	00:00:06	00:02:42	00:03:29	Arvia_T-111715-4of5	M8.8
	189:3 Q. Is Apex indemnifying Sears for the costs of 189:4 Sears' legal defense of this lawsuit?					
189:7 -189:19	Arvia, Thomas 2015-11-19	00:00:49	00:02:48	00:03:23	Arvia_T-111715-4of5	M8.9
Link > P455.13.2	189:7 A. So again, I would ask for in-house counsel 189:8 if I was -- if had such access to that, but my 189:9 interpretation is it states, "Seller shall at its own 189:10 cost and expense defend," and so that is indicating 189:11 that the seller would bear the expense. 189:12 Q. And the seller here is Apex? 189:13 A. That is correct. 189:14 Q. Do Sears and Apex have any other agreement 189:15 or terms that have been set forth in writing with 189:16 respect to how Apex is indemnifying Sears other than 189:17 the UTC indemnification terms? 189:18 A. No, we do not. Nothing -- I haven't 189:19 reviewed anything to that effect.					
191:22 -192:6	Arvia, Thomas 2015-11-19	00:00:38	00:03:37	00:02:34	Arvia_T-111715-4of5	M8.10
	191:22 Q. And so is it your understanding that Apex is 191:23 indemnifying Sears for -- in the event of any 191:24 judgment that a court or jury issues against Sears 192:1 that Apex will pay that judgment? 192:2 A. Yes, that is my understanding. 192:3 Q. And is that the case for all of the claims 192:4 in the lawsuit? Meaning does that include the patent 192:5 infringement claim? 192:6 A. Yes, that's my understanding.					
192:22 -193:1	Arvia, Thomas 2015-11-19	00:00:29	00:04:15	00:01:56	Arvia_T-111715-4of5	M8.11
	192:22 Q. Does the Apex indemnification of Sears cover 192:23 any potential damages against Sears for willful 192:24 patent infringement? 193:1 A. Based on the UTC, our understanding is yes.					
200:8 -200:13	Arvia, Thomas 2015-11-19	00:00:22	00:04:44	00:01:27	Arvia_T-111715-4of5	M8.14
Link > Hide	200:8 Q. Based on your preparation for today's 200:9 deposition, is it fair to say that Sears' goal was to 200:10 make a knockoff of the Bionic Wrench right down to					

200:11 the try-me packaging?
 200:12 A. I would say that was not the goal.
 200:13 Q. What was the goal?

200:16 -200:22 Arvia, Thomas 2015-11-19 00:00:25 00:05:06 00:01:05 Arvia_T-111715-4of5 M8.15

200:16 A. My interpretation of what was reviewed is
 200:17 that the intent was to create an item that would be
 200:18 an incremental item to the assortment that had
 200:19 different additive features to it.
 200:20 BY MR. SKIERMONT:
 200:21 Q. What were the different additive features to
 200:22 which you refer?

201:3 -201:8 Arvia, Thomas 2015-11-19 00:00:23 00:05:31 00:00:40 Arvia_T-111715-4of5 M8.16

201:3 A. The two most notable different features were
 201:4 a locking mechanism to allow -- to allow you to lock
 201:5 the tool on a fastener, and the other one was a dual
 201:6 material handle.
 201:7 BY MR. SKIERMONT:
 201:8 Q. Do you recall anything else?

201:10 -201:13 Arvia, Thomas 2015-11-19 00:00:18 00:05:53 00:00:18 Arvia_T-111715-4of5 M8.17

201:10 BY THE WITNESS:
 201:11 A. I recall on the Max Axess, there's also an
 201:12 indicator of size, a gauge with an indicator of the
 201:13 size.

Play Time for this Script: **00:06:11**

Total time for all Scripts in this report: 00:06:11