

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

IN THE MATTER OF THE *COMPANIES' CREDITORS  
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS CANADA INC., 9370-2751 QUEBEC INC., 191020 CANADA INC., THE CUT INC., SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA INC. 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611 CANADA INC.

(each, an “**Applicant**”, and collectively, the “**Applicants**”)

**MOTION RECORD OF THE MOVING LANDLORDS  
(Returnable September 20, 2018)**

September 6, 2018	<p><b>BLANEY McMURTRY LLP</b> 1500 - 2 Queen Street East Toronto, ON M5C 3G5</p> <p><b>David T. Ullmann</b> (LSO #42357I) Tel: (416) 596-4289 Fax: (416) 594-2437 Email: dullmann@blaney.com</p> <p><b>John C. Wolf</b> (LSO #30165B) Tel: (416) 593-2994 Fax: (416) 596-2044 Email: jwolf@blaney.com</p> <p style="text-align: right;"><i>Lawyers for the Moving Landlords</i></p>
<b>TO:</b>	<b>SERVICE LIST</b>

# INDEX

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C.  
1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
SEARS CANADA INC., 9370-2751  
QUEBEC INC., 191020 CANADA INC., THE CUT INC.,  
SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM  
COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., SEARS  
FLOOR  
COVERING CENTRES INC., 173470 CANADA INC. 2497089 ONTARIO INC.,  
6988741 CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED,  
955041 ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC., AND  
3339611 CANADA INC.

(each, an “**Applicant**”, and collectively, the “**Applicants**”)

**INDEX**

<b>Tab</b>	<b>Document</b>
<b>1</b>	Notice of Motion, dated September 6, 2018
<b>2</b>	Affidavit of Jessica Wuthmann, sworn August 31, 2018
<b>A</b>	Claims Procedure Order of Justice Hainey
<b>B</b>	Correspondence between Monitor and various counsel for the landlords, dated May 17, 2018
<b>C</b>	Correspondence from Mr. Ullmann to Mr. Pasparakis, dated July 5, 2018
<b>D</b>	Correspondence from Ms. Miller, dated July 5, 2018
<b>E</b>	Correspondence from Mr. Ullmann, dated July 23, 2018
<b>F</b>	Correspondence from Mr. Ullmann, dated July 31, 2018

# TAB 1

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

IN THE MATTER OF THE *COMPANIES' CREDITORS  
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF SEARS CANADA INC., 9370-2751  
QUEBEC INC., 191020 CANADA INC., THE CUT INC.,  
SEARS CONTACT SERVICES INC., INITIUM LOGISTICS  
SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM  
TRADING AND SOURCING CORP., SEARS FLOOR  
COVERING CENTRES INC., 173470 CANADA INC. 2497089  
ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA INC.,  
1592580 ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531  
CANADA INC., 168886 CANADA INC., AND 3339611 CANADA  
INC.

(each, an “**Applicant**”, and collectively, the “**Applicants**”)

**NOTICE OF MOTION**

**Bentall Kennedy (Canada) LP, QuadReal Property Group, Primaris Management Inc.,  
Westcliff Management Ltd., Tanurb (Festival Marketplace) Inc., and Cogir Real Estate** (collectively  
the “**Moving Landlords**”) will make a motion to the Court on September 20, 2018, at 10:00 a.m., or as  
soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

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

**THE MOTION IS FOR:**

- (a) an Order varying the Claims Procedure Order of the Honourable Justice Hainey, dated December 8, 2017, by suspending the deadlines for the litigation of the disputed claims of the Moving Landlords until such time as the Deemed Trust motion (as discussed below) is resolved or subject to a final order;

- (b) security for costs in favour of the Moving Landlords to secure the costs to be incurred in the claims process dispute, in priority to all other charges on the estate of Sears and *pari passu* with the Administration Charge granted in these proceedings to the Monitor;
- (c) costs of this motion, including costs incurred, if any, related to the case conference scheduled by the Monitor without consent before the Claims Officer, to be paid personally by the Monitor or its counsel; and
- (d) such further and other relief as this Honourable Court may permit.

**THE GROUNDS FOR THE MOTION ARE AS FOLLOWS:**

- (a) The Applicants filed for CCAA protection on June 22, 2017;
- (b) Initially, the Applicants proceeded with their CCAA process in an attempt to restructure and continue their business;
- (c) In the Fall of 2017, the Applicants advised that they had moved from attempting to restructure their business and instead would liquidate their assets. In the course of the liquidation, the Applicants attempted to sell effectively all of their assets including, where available, its leases to various premises;
- (d) However, the Applicants were unable to sell the certain of its leases. As a result, the Applicants disclaimed a multitude of leases and operating agreements;
- (e) Among the leases disclaimed were leases and/or operating agreements in respect of the premises' leased by the Moving Landlords, including,
  - (i) Cataraqui Town Centre Inc. in regards to Cataraqui Town Centre;
  - (ii) McAllister Place Holdings Inc. in regards to McAllister;
  - (iii) Medicine Hat Mall Ltd. in regards to Medicine Hat Mall;
  - (iv) Kildonan Place Limited in regards to Kildonan Place Mall;
  - (v) Park Place Mall Holdings Inc. in regards to Park Place Mall;
  - (vi) Regent Mall Holdings Inc. in regards to Regent Mall;

- (vii) Stone Road Mall Holdings Inc. in regards to Stone Road Mall;
- (viii) BCIMC Realty Corp. in regards to Bower Place Shopping Centre;
- (ix) BCIMC Realty Corp. in regards to Capilano Mall;
- (x) BCIMC Realty Corp. in regards to Willowbrook Shopping Centre;
- (xi) BCIMC Realty Corp. in regards to Meridian Place, Winnipeg;
- (xii) Eastgate Square L.P., managed by Bentall Kennedy (Canada) L.P., in regards to Eastgate Shopping Mall;
- (xiii) ITF Hillside Central LP and Hillside Centre LP, managed by Bentall Kennedy (Canada) L.P., in regards to Hillside Centre;
- (xiv) BIM North Hill Inc. and Westpen North Hill LP, managed by Bentall Kennedy (Canada) L.P., in regards to North Hill Shopping Centre;
- (xv) Sun Life Assurance Company of Canada, managed by Bentall Kennedy (Canada) L.P., in regards to the Village at Vaughan Mills;
- (xvi) PenRetail III Ltd., managed by Bentall Kennedy (Canada) L.P., in regards to Westmount Shopping Centre;
- (xvii) Tanurb Festival Marketplace Inc. in regards to Festival Marketplace;
- (xviii) Cogir (Montez) in regards to Corner Brook;
- (xix) Montez (Sorel) Inc. in respect to a shopping centre known as “Promenade Sorel” and managed by Societe de Gestion Cogir s.e.n.c;
- (xx) I.G. Investment Management, Ltd. as trustee for Investors Real Property Fund; and Westcliff Realities (Levis) Inc.;
- (xxi) Westcliff Development Ltd. in regards to a shopping mall in Granby, Quebec;
- (xxii) Place Vertu Nominee Inc./Fiduciaire Place Vertu Inc. in regards to Place Vertu;

- (xxiii) Les Immeubles Carrefour Richelieu Ltee in regards to a shopping centre in Drummondville;
- (xxiv) Les Immeubles Carrefour Richelieu Ltee in regards to a shopping centre in St. Jean, Quebec;
- (xxv) Les Immeubles Carrefour Richelieu Ltee in regards to a shopping centre in St. Jerome; and
- (xxvi) Les Immeubles Carrefour Richelieu Ltee in regards to Carrefour Angrignon (the “**Moving Landlords**”).

### **Claims Procedure**

- (f) In the course of the CCAA proceedings, a Claims Procedure Order was sought by Sears to identify claims.
- (g) The Order circulated by Sears in advance of the motion was amended to include the following provision,

57. THIS COURT ORDERS that any General Creditor Claimant who intends to dispute a Notice of Revision of Disallowance hereof shall:

- b. in the event that a dispute raised in a Notice of Dispute of Revision or Disallowance is not settled within a time period or in a manner satisfactory to the Monitor, in consultation with the Sears Canada Entities and the applicable Directors and Officers in respect of any D&O Claim, the Monitor shall refer the dispute raised in the Notice of Dispute of Revision or Disallowance to a Claims Officer or the Court for adjudication at its election. **For greater certainty, any party may file additional evidence, documentation, reports or information on any hearing to resolve the issues raised in a Notice of Dispute of Revision or Disallowance and no party will object to the filing of such additional evidence on the basis that such evidence, documentation, report or information was not**

**included in the initial Proof of Claim, D&O Proof of Claim or Notice of Revision or Disallowance.** [emphasis added]

- (h) Justice Hainey granted the Order, with the inclusion of the amended section 57(b), on December 8, 2018 (the “**Claims Procedure Order**”);
- (i) In accordance with the Claims Procedure Order, the Moving Landlords filed 27 claims on or before the deadline for filing Proof of Claims, which was April 4, 2018;
- (j) Thereafter, the Monitor provided disallowances with respect to all of the Moving Landlords’ filed Proof of Claims.
- (k) On multiple occasions, the Moving Landlords and other landlords advised the Monitor that it was inappropriate to proceed with any further substantive portion of the claims bar procedure until the Deemed Trust Claim, as defined in below, was resolved or subject to a final order;
- (l) Counsel for the Moving Landlords wrote to this Court and attended at the case conference on July 24, 2018. At the case conference, the Moving Landlords advised the Court of their intention to bring a motion to modify the Claims Procedure Order by extending the deadlines in the claims procedure order requiring the settlement of the Moving Landlords’ claims;
- (m) The Monitor, through its counsel, advised the Court at the July 24<sup>th</sup> case conference that it was refusing to grant further extensions of the claims process in order to use leverage to force the Moving Landlords to agree to the settlement agreed to by other landlords.
- (n) This refusal by the Monitor to exercise their discretion to further extend the claims process for this collateral purpose is an abuse of power by the Court Officer;
- (o) The Monitor consented to the scheduling of this motion, returnable on September 20th, on July 27<sup>th</sup>;
- (p) Notwithstanding the fact that this motion was pending, the Monitor insisted that the Moving Landlords still file Notices of Dispute of Revision or Disallowance Regarding a Claim (“**Notices of Dispute**”) on July 31, 2018;

- (q) The Monitor took the position that any failure to file Notices of Dispute would be held with prejudice against the Moving Landlords;
- (r) Accordingly, on July 31, 2018, the Moving Landlords filed Notices of Dispute in respect of all of their claims;
- (s) In submitting the Notices of Disputes, the Moving Landlords expressly stated that they filed their Notices of Dispute without prejudice to their right to argue their position in this motion (that no notices should have been filed) and to provide further detailed support for their claims as required if the claims should proceed;
- (t) No evidence has been provided by Sears to support the dispute of the claims made by the Moving Landlords;
- (u) Notwithstanding that this Motion was pending, the Monitor unilaterally scheduled a case conference before His Honour Justice Farley, returnable September 7th, 2018, in order to attempt to proceed with its agenda. The Moving Landlords have not consented to attending the case conference;

#### **Deemed Trust Claim**

- (v) At the case conference on July 24, 2018, the scheduling of a motion was discussed with respect to the resolution of the Sears pensioners' deemed trust claim under the Pension Benefits Act and certain related claims (the "**Deemed Trust Claim**");
- (w) Sears holds proceeds from the sale of its business which may have to be applied to satisfy the Deemed Trust Claims, or which may be available to satisfy the creditors of the estate, or there may be some middle result possible.
- (x) Under the theory of law advanced by the beneficiaries to the Deemed Trust Claim, all of the available proceeds from the Applicants' restructuring will be payable to the Deemed Trust Claim;
- (y) The Moving Landlords, among others, have advised the Monitor at various times that no further material expense should be incurred with respect to disputed claims in this estate until such time as the extent of the entitlement for the Deemed Trust Claim has been heard and a final order has been granted;

- (z) Proceeding with the litigation will only serve to further deplete the estate over what could be a moot issue. The parties are more likely to be able to reach a resolution once the Deemed Trust Claim is resolved;

**No Disruption to the Sears Matter Generally**

- (aa) The Monitor advised the Court on July 24th, that several other landlords have reached an agreement on their claims with the Monitor, based on a formula which is beneficial to those landlords and prejudicial to the Moving Landlords;
- (bb) The Monitor has advised that it does not require the resolution of the Moving Landlord claims in order to proceed with its negotiations with the other stakeholders towards a global resolution of issues in the Sears case generally;
- (cc) There is no pending plan of arrangement or any expectation that any dividend will be paid to any creditors at any time in the foreseeable future.
- (dd) There is no requirement that the Moving Landlords' claims be dealt with on an accelerated basis;
- (ee) There is no reason to suspect the Notices of Dispute could be resolved prior to the determination of the Deemed Trust motion, which is scheduled to be heard less than 45 days after this motion is to be heard;
- (ff) One of the disputed components of the Moving Landlords Claim is a claim that claims against Moving Landlords by tenants under co-tenancy provisions in their leases is a claim for which Sears is responsible to the Moving Landlords.
- (gg) This issue is one which is properly to be determined by this Court.
- (hh) The co-tenancy issue, or part of it, is to be considered by this Court on a motion brought by certain tenants on October 16, 2018.

### **Prejudice to the Moving Landlords**

- (ii) The Moving Landlords' claims involve subjective but legitimate and complex claims related to issues ranging from environmental to repair maintenance to the calculation of rental arrears, property taxes and/or third-party claims such as co-tenancy claims;
- (jj) In effect, each of the disallowances received by the Moving Defendants' constitutes a free-standing multi-million dollar lawsuit in which the parties cannot reach an agreement;
- (kk) The complexity of the Moving Landlords' claims should not in any way limit their right to have those claims fairly determined on a full record and the Moving Landlords object to the Monitor taking a position to the contrary;
- (ll) In order to avoid any prejudice or unfairness, the Moving Landlords require all regular procedural and evidentiary rules to be applied in order to deal with their significant claims;
- (mm) The Claims Process should not procedurally favour the Monitor's position over claims of creditors;
- (nn) The fees of the Monitor and Sears are to be paid from the dwindling estate proceeds whereas the costs of the Moving Landlords have to be paid by the Landlords;
- (oo) The costs payable to the Moving Landlords should be secured by those same charges in priority to all other claims to the estate. In addition, the costs of the Monitor should not be paid until their reasonableness and appropriateness can be assessed upon knowing the outcome of the claims disputes, which is the same basis upon which the Moving Landlords have to proceed;
- (pp) The costs of this motion should be borne personally by the Monitor, as the Motion was unnecessary and caused by the Monitor's conduct and therefore should not be paid by the estate;
- (qq) It was within the Monitor's discretion under the Claims Procedure Order to resolve the matter at issue on this Motion and extend the deadlines in question without requiring this motion;

- (rr) The Monitor had previously granted such extensions but now refuses to do so
- (ss) Rules 37.14(4) and 57 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194;
- (tt) Subsection 11.52(1)(c) and 11.52(2) of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36; and
- (uu) For such further and other grounds as counsel may advise and this Honourable Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

- (a) Affidavit of Jessica Wuthmann, sworn August 31, 2018;
- (b) Claims Procedure Order of the Honourable Justice Hainey dated December 8, 2017; and
- (c) such further and other evidence as counsel may advise and this Honourable Court permit.

September 6, 2018	<p><b>BLANEY McMURTRY LLP</b></p> <p>1500 - 2 Queen Street East Toronto, ON M5C 3G5</p> <p><b>David T. Ullmann</b> (LSO #42357I) Tel: (416) 596-4289 Fax: (416) 594-2437</p> <p><b>John C. Wolf</b> (LSO #30165B) Tel: (416) 593-2994 Fax: (416) 596-2044</p> <p>Lawyers for the Moving Landlords</p>
<b>TO:</b>	<b>SERVICE LIST</b>

**TAB 2**

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

IN THE MATTER OF THE *COMPANIES' CREDITORS  
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF SEARS CANADA INC., 9370-2751  
QUEBEC INC., 191020 CANADA INC., THE CUT INC.,  
SEARS CONTACT SERVICES INC., INITIUM LOGISTICS  
SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM  
TRADING AND SOURCING CORP., SEARS FLOOR  
COVERING CENTRES INC., 173470 CANADA INC. 2497089  
ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA  
INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD.,  
4201531 CANADA INC., 168886 CANADA INC., AND 3339611  
CANADA INC.

(each, an "**Applicant**", and collectively, the "**Applicants**")

**AFFIDAVIT OF JESSICA WUTHMANN**

**I JESSICA WUTHMANN**, of the City of Toronto, in the Province of Ontario, **MAKE  
OATH AND SAY:**

1. I am a lawyer at the law firm of Blaney McMurtry LLP, lawyers for Bentall Kennedy (Canada) LP, QuadReal Property Group, Primaris Management Inc., First Capital Asset Management ULC, Westcliff Management Ltd., Tanurb (Festival Marketplace) Inc., and Cogir Real Estate (collectively the "**Moving Landlords**"), and as such have knowledge of the matters to which I hereinafter depose.
2. Where the contents of this affidavit are based on information and belief, I have indicated the source of my information and belief and do believe the information to be true.
3. To the extent that any information set out in this affidavit is based on my review of documents, I believe that the information in such documents is true to the best of my knowledge and information.

## Background

4. In the within proceeding (the "**Sears' CCAA Proceeding**"), the Honourable Mr. Justice Hainey granted an Order establishing a procedure to determine the preliminary claim amounts against the Applicants ("**Claims Procedure Order**"). Attached hereto and marked as **Exhibit "A"** to this affidavit is a copy of the Claims Procedure Order.

5. The Claims Procedure Order provides for a clause that limits the requirement for parties to submit a complete record of their claim with until there is a hearing to settle a disputed claim:

57. THIS COURT ORDERS that any General Creditor Claimant who intends to dispute a Notice of Revision of Disallowance hereof shall:

b. in the event that a dispute raised in a Notice of Dispute of Revision or Disallowance is not settled within a time period or in a manner satisfactory to the Monitor, in consultation with the Sears Canada Entities and the applicable Directors and Officers in respect of any D&O Claim, the Monitor shall refer the dispute raised in the Notice of Dispute of Revision or Disallowance to a Claims Officer or the Court for adjudication at its election. **For greater certainty, any party may file additional evidence, documentation, reports or information on any hearing to resolve the issues raised in a Notice of Dispute of Revision or Disallowance and no party will object to the filing of such additional evidence on the basis that such evidence, documentation, report or information was not included in the initial Proof of Claim, D&O Proof of Claim or Notice of Revision or Disallowance.** [emphasis added]

6. In accordance with the Claims Procedure Order, the Moving Landlords filed Proof of Claims on or before the deadline for filing Proof of Claims, which was April 4, 2018.

7. Thereafter, every Proof of Claim submitted by the Moving Landlords received Notices of Disallowance from the Monitor.

### Filing of Notices of Dispute

8. On May 17, 2018, Mr. Ullmann received an email from Ms. Virginie Gauthier ("**Ms. Gauthier**") – on behalf of the Monitor - indicating that the Monitor was extending the deadline for landlords to file Notices of Disputes until July 3, 2018, or such later date as may be agreed to by the Monitor following the Mediation. Attached hereto and marked as **Exhibit "B"** to this affidavit is a copy of the email correspondence between the Monitor and various counsel for the landlords.
9. On May 29, 2018, at the request of counsel for another landlord, the Monitor agreed via email to extend the deadline to file Notices of Dispute to July 14, 2018. This email can be seen in the email thread attached as Exhibit "B" to this affidavit.
10. On July 5, 2018, Mr. Ullmann wrote to Mr. Orestes Pasparakis ("**Mr. Pasparakis**"), counsel to the Monitor ("**July 5 Letter**"). On review of the July 5 Letter, Mr. Ullmann provides the Moving Landlords' arguments for why the Monitor should consent to extend the tolling. In the alternative, Mr. Ullmann informed the Monitor that the Moving Landlords would bring a motion to determine the issue. Attached hereto and marked as **Exhibit "C"** to this affidavit is a copy of the July 5 Letter.
11. On July 5, 2018, Ms. D.J. Miller ("**Ms. Miller**"), counsel for two other landlords, emailed the Monitor. Upon review of this letter, Ms. Miller indicated that her clients support the request made by Mr. Ullmann in his July 5 Letter to extend the deadline to file Notices of Dispute and in particular advises that no costs should be incurred until the Deemed Trust issue is resolved. Attached hereto and marked as **Exhibit "D"** to this affidavit is a copy of Ms. Miller's letter dated July 5, 2018.
12. On July 6, 2018, Ms. Gauthier indicated via email that the Monitor agreed to extend the deadline to receive the landlords' Notices of Dispute until July 31, 2018. This email can be seen in the email thread attached as Exhibit "B" to this affidavit.
13. I am advised by Mr. Ullmann that Ms. Miller's clients subsequently reached a settlement (along with several other landlords) with the Monitor under which her clients' claims are to be determined by a formula, thereby removing the necessity for Notices of Dispute to be filed or tested.

14. The Moving Landlords determined they would not participate in that resolution.
15. On or about July 23, 2018, Mr. Ullmann sent a letter to the Honourable Mr. Justice Hainey advising he would be appearing before His Honour on July 24, 2018 to seek to schedule the within motion. Attached hereto and marked as **Exhibit "E"** to this affidavit is a copy of the letter from Mr. Ullmann to the Honourable Mr. Justice Hainey dated July 23, 2018.
16. I am advised by Mr. Ullmann that he attended Court on July 24, 2018 in relation to this matter and was advised by the Court to schedule this motion with the Monitor.
17. At that hearing, counsel for the Monitor acknowledged to the Court that it was not providing a more flexible schedule to deal with the Moving Landlords' claims in order to apply leverage to get the Moving Landlords to agree to the landlord formula being negotiated with other landlords in the Sears' CCAA Proceeding.
18. I am also advised by Mr. Ullmann that he participated in a telephone conversation in relation to this matter on July 27, 2018 with four counsel to the Monitor.
19. Mr. Ullmann advised me, and I do verily believe, that during this phone conversation the Monitor advised that it had provided the form of settlement reached with the other landlords to the other major stakeholders in the Sears matter and that negotiations were proceeding with those parties, without there being any caveat that those negotiations were dependent or delayed pending the resolution of the Moving Landlords' claims.
20. Mr. Ullmann wrote a letter to the Monitor attaching the Moving Landlords' Notices of Dispute on July 31, 2018 stating that the Notices of Dispute were filed without prejudice to the Moving Landlords' position in the within motion. Attached hereto and marked as **Exhibit "F"** to this affidavit is a copy of the covering letter from Mr. Ullmann to the Monitor.

#### **Preservation of Creditors and the Monitor's Funds**

21. At the case conference on July 24, 2018, the scheduling of a motion was discussed with respect to the resolution of the Sears pensioners' deemed trust claim under the *Pension Benefits Act* and certain related claims (the "**Deemed Trust Claims**").

22. The issue with the Deemed Trust Claims is well known in the Sears restructuring and by this Court and has been discussed in detail in various Monitor reports, affidavits by Sears and in materials filed with this Court by the beneficiaries to the Deemed Trust Claims.
23. As it affects this motion, those materials report that Sears holds proceeds from the sale of its business which may have to be applied to satisfy the Deemed Trust Claims, or which may be available to satisfy the other creditors of the estate, or there may be some middle result possible.
24. Under the theory of law advanced by the beneficiaries to the Deemed Trust Claims, all of the available proceeds from the Applicants' restructuring will be payable to the Deemed Trust Claims (as the quantum realized is less than the trust claimed and the priority it allegedly holds).
25. The Deemed Trust Claims are scheduled to be heard in late October.
26. The Monitor is the beneficiary of an unlimited court ordered charge (the "**Administration Charge**") in accordance with the Initial Order in the Sears' CCAA Proceedings. The Administration Charge provides the Monitor certainty that all of its fees incurred in the dispute with the Moving Landlords will be paid, subject to the review of those fees by this court, in priority to all other creditors (other than other creditors of the Administration Charge who share *pari passu*).
27. The Moving Party has no such security for the payment of its costs accrued in pursuing claims against an insolvent entity who may ultimately have no funds with which to pay such fees.
28. The fees incurred by the Monitor will deplete the funds available to pay creditors generally, as will the costs awarded to the Moving Party, if successful.
29. In the event the resolution of the Deemed Trust Claims result in there being no or essentially no funds payable to the unsecured creditors of Sears, the quantum of the Moving Landlords Claim will be moot.
30. Based on the above, I make this affidavit in support of an Order for security for costs in favour of the Moving Landlords and an Order varying the Claims Procedure Order of the



**TAB A**

THIS IS EXHIBIT

"A"

TO THE AFFIDAVIT OF  
**JESSICA WUTHMANN**  
SWORN BEFORE ME ON

August 31, 2018



**Alex Mireille Fernet Brochu, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law.  
Expires March 10, 2020.**

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST



THE HONOURABLE MR.  
JUSTICE HAINEY

)  
)  
)

FRIDAY, THE 8<sup>th</sup>  
DAY OF DECEMBER, 2017

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS CANADA INC., CORBEIL ÉLECTRIQUE INC., S.L.H. TRANSPORT INC., THE CUT INC., SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611 CANADA INC.

(each, an "**Applicant**", and collectively, the "**Applicants**")

**CLAIMS PROCEDURE ORDER**

THIS MOTION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. c-36, as amended (the "CCA") for an order establishing a claims procedure for the identification and quantification of certain claims against (i) the Applicants and SearsConnect (collectively, the "**Sears Canada Entities**") and (ii) the current and former directors and officers of the Sears Canada Entities, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of the Applicants, the Affidavit of Billy Wong sworn on December 1, 2017 including the exhibits thereto, the Eighth Report of FTI Consulting Canada

Inc., in its capacity as monitor (the “**Monitor**”), filed, and on hearing the submissions of respective counsel for the Applicants, the Monitor, Pension Representative Counsel (as defined below), Employee Representative Counsel (as defined below), the Pension Plan Administrator (as defined below), the Superintendent (as defined below), and such other counsel as were present, no one else appearing although duly served as appears from the Affidavits of Service of Justine Erickson sworn December 4, 2017,

#### **SERVICE**

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

#### **DEFINITIONS AND INTERPRETATION**

2. THIS COURT ORDERS that any capitalized term used and not defined herein shall have the meaning ascribed thereto in the Amended and Restated Initial Order in these proceedings dated June 22, 2017 as amended, restated, supplemented and/or modified from time to time (the “**Initial Order**”).

3. THIS COURT ORDERS that for the purposes of this Order the following terms shall have the following meanings:

- (a) “**Advisors**” means, collectively, any actuarial, financial, legal and other advisors and assistants;
- (b) “**Agent**” means the contractual joint venture comprised of Gordon Brothers Canada ULC, Merchant Retail Solutions ULC, Tiger Capital Group, LLC and GA Retail Canada ULC;

- (c) “Agency Agreements” means: (i) the Amended and Restated Agency Agreement between Sears Canada Inc. and the Agent dated July 12, 2017 and amended and restated on July 14, 2017, and (ii) the Amended and Restated Agency Agreement between Sears Canada Inc. and the Agent dated October 10, 2017;
- (d) “Assessments” means Claims of Her Majesty the Queen in Right of Canada or of any Province or Territory or Municipality or any other taxation authority in any Canadian or foreign jurisdiction, including, without limitation, amounts which may arise or have arisen under any notice of assessment, notice of objection, notice of reassessment, notice of appeal, audit, investigation, demand or similar request from any taxation authority;
- (e) “Business Day” means a day, other than a Saturday, Sunday or statutory holiday, on which banks are generally open for business in Toronto, Ontario;
- (f) “CCAA Proceedings” means the CCAA proceedings commenced by the Applicants in the Court under Court File No. CV-17-11846-00CL;
- (g) “Claim” means:
  - (i) any right or claim of any Person against any of the Sears Canada Entities, whether or not asserted, including in connection with any indebtedness, liability or obligation of any kind whatsoever of any such Sears Canada Entity to such Person, in existence on the Filing Date, whether or not such right or claim is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured; disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present, future, known, or

unknown, by guarantee, surety or otherwise, and whether or not such right is executory or anticipatory in nature, including rights or claims with respect to any Assessment, Construction Claim, Warranty, any claim brought by any representative plaintiff on behalf of a class in a class action, or contract, or by reason of any equity interest, right of ownership of or title to property or assets or right to a trust or deemed trust (statutory, express, implied, resulting, constructive or otherwise), and any right or ability of any Person to advance a claim for contribution or indemnity or otherwise against any of the Sears Canada Entities with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the future, which right or claim, including in connection with indebtedness, liability or obligation, is based in whole or in part on facts that existed prior to the Filing Date, including for greater certainty any claim against any of the Sears Canada Entities for indemnification by any Director or Officer in respect of a D&O Claim (each, a “**Pre-Filing Claim**”, and collectively, the “**Pre-Filing Claims**”);

- (ii) any right or claim of any Sears Supplier against any of the Sears Canada Entities in connection with any non-payment by any such Sears Canada Entity to such Sears Supplier for goods or services supplied to such Sears Canada Entity on or after the Filing Date (each, a “**Post-Filing Claim**”, and collectively, the “**Post-Filing Claims**”);
- (iii) any right or claim of any Person against any of the Sears Canada Entities, including in connection with any indebtedness, liability or obligation of any

kind whatsoever of any such Sears Canada Entity to such Person, arising on or after the Filing Date, including without limitation rights or claims arising with respect to the restructuring, disclaimer, rescission, termination or breach by such Sears Canada Entity on or after the Filing Date of any contract, lease or other agreement whether written or oral, but excluding any Post-Filing Claims (each, a “**Restructuring Period Claim**”, and collectively, the “**Restructuring Period Claims**”); and

- (iv) any right or claim of any Person against one or more of the Directors and/or Officers howsoever arising, whether or not such right or claim is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present, future, known, or unknown, by guarantee, surety or otherwise, and whether or not such right is executory or anticipatory in nature, including any Assessments and any right or ability of any Person to advance a claim for contribution, indemnity or otherwise against any of the Directors and/or Officers with respect to any matter, action, cause or chose in action, however arising, for which any Director or Officer is alleged to be, by statute or otherwise by law or equity, liable to pay in his or her capacity as a Director or Officer (each a “**D&O Claim**”, and collectively, the “**D&O Claims**”),

including any Claim arising through subrogation against any Sears Canada Entity or Director or Officer, provided however that in any case “**Claim**” shall not include an Excluded Claim;

- (h) “**Claimant**” means any Person asserting a Claim, including without limitation any Construction Claimant, General Creditor Claimant, Landlord Claimant or Intercompany Claimant;
- (i) “**Claims Officer**” means the individuals designated by the Court pursuant to paragraph 62 of this Order;
- (j) “**Claims Process**” means the procedures outlined in this Order in connection with the solicitation and assertion of Claims against the Sears Canada Entities and/or the Directors and Officers;
- (k) “**Construction Claim**” means: (i) a Claim, including a D&O Claim, asserted under the trust provisions of applicable Provincial Lien Legislation or a Claim asserted against the holdback under applicable Provincial Lien Legislation; or (ii) a Claim secured in whole or in part by the registration of a builders’ or construction lien under applicable Provincial Lien Legislation against any real property that has been or is owned or leased by any of the Sears Canada Entities, or a Claim secured in whole or in part by any security held in connection with a Vacated or Discharged Lien;
- (l) “**Construction Claimant**” means a Person asserting a Construction Claim;
- (m) “**Construction Claims Bar Date**” means 5:00 p.m. on February 15, 2018;
- (n) “**Construction Claims Package**” means the document package consisting of a Notice of Construction Claim, a blank Notice of Dispute of Construction Claim, a Construction Contractor Instruction Letter, a Construction Sub-Contractor

Instruction Letter and such other materials as the Monitor, in consultation with the Sears Canada Entities, may consider appropriate or desirable;

- (o) **“Construction Contractor”** means a Construction Claimant contracting directly with the Sears Canada Entities or an agent of the Sears Canada Entities in connection with the improvement of any real property that has been or is owned or leased by any of the Sears Canada Entities;
- (p) **“Construction Contractor Instruction Letter”** means the instruction letter to Construction Contractors, substantially in the form attached as Schedule “M” hereto, regarding the Notice of Construction Claim, completion of a Notice of Dispute of Construction Claim by a Construction Contractor, and the Claims Process described herein, and directing such Construction Contractors to send a copy of the Notice of Construction Claim and the Construction Sub-Contractor Instruction Letter to all Construction Sub-Contractors with which such Construction Contractor has a direct contractual agreement or engagement in connection with the relevant improvement to any real property that has been or is owned or leased by any of the Sears Canada Entities;
- (q) **“Construction Sub-Contractor”** means a Construction Claimant not contracting directly with or employed directly by the Sears Canada Entities or an agent of the Sears Canada Entities but who supplied services, materials or work to an improvement to any real property that has been or is owned or leased by any of the Sears Canada Entities under an agreement (written or oral) or engagement with a Construction Contractor or under an agreement or engagement with another subcontractor of any level;

- (r) **“Construction Sub-Contractor Instruction Letter”** means the instruction letter to be sent by each Construction Contractor and Construction Sub-Contractor to all Construction Sub-Contractors with which each such Construction Contractor or Construction Sub-Contractor has a direct contractual agreement or engagement in connection with the relevant improvement, substantially in the form attached as Schedule “N” hereto, notifying such Construction Sub-Contractors that all Construction Claims in respect of their services as Construction Sub-Contractors shall be included in the Claim of the relevant Construction Contractor for the purposes of this Claims Process and directing such Construction Sub-Contractors to: (i) send a copy of the Notice of Construction Claim and the Construction Sub-Contractor Instruction Letter to all Construction Sub-Contractors with which such Construction Sub-Contractor has a direct contractual agreement or engagement in connection with the relevant improvement, and (ii) contact their Construction Contractor directly to determine and negotiate with their Construction Contractor any rights they may have with respect to any such Construction Contractor’s Construction Claim;
- (s) **“Court”** means the Ontario Superior Court of Justice (Commercial List);
- (t) **“D&O Claim Instruction Letter”** means the letter containing instructions for completing the D&O Proof of Claim form, substantially in the form attached as Schedule “D” hereto;
- (u) **“D&O Proof of Claim”** means the proof of claim to be filed by Claimants in connection with any D&O Claim, substantially in the form attached as Schedule “E” hereto, which shall include all supporting documentation in respect of such

D&O Claim; and for greater certainty, a “D&O Proof of Claim” shall include a D&O Proof of Claim filed online through the Monitor’s website;

- (v) “**Director**” means anyone who is or was or may be deemed to be or have been, whether by statute, operation of law or otherwise, a director or *de facto* director of any of the Sears Canada Entities, in such capacity;
- (w) “**Employee**” means any (i) active or inactive union or non-union employee of any one of the Sears Canada Entities on or after the Filing Date, including an employee of any one of the Sears Canada Entities who received notice of termination of employment dated on or after the Filing Date; and (ii) former employee of any one of the Sears Canada Entities who was terminated for cause at any time or who received notice of cessation of termination or severance payments dated on or after the Filing Date;
- (x) “**Employee Claim**” means a Claim, including a D&O Claim, that may be asserted by or on behalf of an Employee, and shall include any Employee Claim arising through subrogation;
- (y) “**Employee Claims Process**” means a claims process to be approved pursuant to a further Order of this Court that shall, among other things, set forth the procedure for the solicitation and assertion of Employee Claims against the Sears Canada Entities and/or the Directors and Officers;
- (z) “**Employee Letter**” means the letter from Employee Representative Counsel to be disseminated by the Monitor, in consultation with the Sears Canada Entities and Employee Representative Counsel, to all Employees represented by Employee

Representative Counsel advising, among other things, that their Employee Claims will be dealt with through a separate Employee Claims Process, which letter shall be substantially in the form attached hereto as Schedule "P";

- (aa) **"Employee Representative Counsel"** means Ursel Phillips Fellows Hopkinson LLP;
- (bb) **"Employee Representative Counsel's Website"** means <http://www.upfhlaw.ca/areas-of-practice/sears-canada-employees-and-former-employees/>;
- (cc) **"Employee Representatives"** means Paul Webber, Nancy Demeter, Sheena Wrigglesworth, Barb Wilser and Darrin Whitney, or such other representatives as may be duly appointed by Employee Representative Counsel;
- (dd) **"Excluded Claim"** means any:
  - (i) Claim that may be asserted by any beneficiary of the Administration Charge, the FA Charge, the KERP Priority Charge, the Directors' Priority Charge, the KERP Subordinated Charge and the Directors' Subordinated Charge and any other charges granted by the Court in the CCAA Proceedings, with respect to such charges;
  - (ii) Claim by the Agent under the Agency Agreements;
  - (iii) Employee Claim;
  - (iv) Sears Pension Claim;

- (v) Other Pensioner Claim;
- (vi) Monitor Claim; and
- (vii) Claim that may be asserted by any of the Sears Canada Entities against any Directors and/or Officers;

and for greater certainty, shall include any Excluded Claim arising through subrogation;

- (ee) “**Filing Date**” means June 22, 2017;
- (ff) “**General Creditor Claim**” means a Claim, other than a Construction Claim or Intercompany Claim;
- (gg) “**General Creditor Claimant**” means a Person asserting a General Creditor Claim;
- (hh) “**General Creditor Claims Bar Date**” means 5:00 p.m. on March 2, 2018;
- (ii) “**General Creditor Claims Package**” means the document package which shall be disseminated by the Monitor to any potential General Creditor Claimant in accordance with the terms of this Order (including, if practicable, by way of email, where electronic addresses are known), consisting of the Notice to General Creditor Claimants, a blank Proof of Claim, a Proof of Claim Instruction Letter, a blank D&O Proof of Claim, and a D&O Claim Instruction Letter, and such other materials as the Monitor, in consultation with the Sears Canada Entities, may consider appropriate or desirable;

- (jj) “**General Creditor Post-Filing Claims Bar Date**” means 5:00 p.m. on April 2, 2018;
- (kk) “**General Creditor Restructuring Period Claims Bar Date**” means, in respect of a Restructuring Period Claim, the later of (i) 5:00 p.m. on the date that is 45 days after the date on which the Monitor sends a General Creditor Claims Package with respect to a Restructuring Period Claim and (ii) the General Creditor Claims Bar Date;
- (ll) “**Intercompany Claim**” means any Claim that may be asserted against any of the Sears Canada Entities by or on behalf of any of the Sears Canada Entities or any of their affiliated companies, partnerships, or other corporate entities (and for greater certainty, excluding any Claim that may be asserted against any of the Sears Canada Entities by or on behalf of Sears Holdings Corporation or any of its affiliated companies, partnerships or other corporate entities that are not Sears Canada Entities) and excluding any Monitor Claim;
- (mm) “**Intercompany Claimant**” means a Person asserting an Intercompany Claim;
- (nn) “**Landlord**” means a landlord under any real property lease or occupancy agreement for any of the Applicants’ leased premises;
- (oo) “**Landlord Claim**” means any Claim, including any D&O Claim, of a Landlord;
- (pp) “**Landlord Claimant**” means a Landlord asserting a Landlord Claim;
- (qq) “**Landlord Claims Bar Date**” means, in respect of a Landlord Claim, the later of (i) 5:00 p.m. on the date that is 45 days after the date on which the Monitor sends a

General Creditor Claims Package with respect to a Landlord Claim and (ii) 5:00 p.m. on April 2, 2018;

- (rr) **“Meeting”** means any meeting of the creditors of the Sears Canada Entities called for the purpose of considering and voting in respect of a Plan;
- (ss) **“Monitor Claim”** means a Claim, including a D&O Claim and any claim pursued in accordance with section 36.1 of the CCAA, that may be asserted by the Monitor;
- (tt) **“Monitor’s Website”** means <http://cfcanada.fticonsulting.com/searscanada/>;
- (uu) **“Monitor’s Intercompany Claims Report”** shall have the meaning set out in paragraph 60 herein;
- (vv) **“Notice of Construction Claim”** means the notice, substantially in the form attached as Schedule “K” hereto, advising each Construction Contractor of its Construction Claim (which shall, for greater certainty, be deemed to include the Construction Claims of all Construction Sub-Contractors who provided materials and/or services under an agreement with the Construction Contractor or another Construction Sub-Contractor of any level in connection with the improvement) as valued by the Sears Canada Entities with the assistance of the Monitor based on the books and records of the Sears Canada Entities;
- (ww) **“Notice of Dispute of Construction Claim”** means the notice, substantially in the form attached as Schedule “L” hereto, which may be delivered to the Monitor by a Construction Contractor or, where appropriate, by a Construction Sub-Contractor disputing a Notice of Construction Claim, with reasons for its dispute;

- (xx) “**Notice to General Creditor Claimants**” means the notice for publication by the Monitor, substantially in the form attached as Schedule “A” hereto, which shall include, without limitation: (i) a notice to all Claimants (that are not Sears Suppliers) with potential General Creditor Claims below \$1,000 that such Claimants will not be provided with a General Creditor Claims Package and should obtain a copy from the Monitor’s website or request a copy from the Monitor; (ii) a notice to holders of Warranties stating that no Proofs of Claim are required to be filed in connection with any potential Warranty Claim because all Proofs of Claim with respect to potential Warranty Claims will be deemed to be properly submitted by the Sears Canada Entities, based on the Sears Canada Entities’ books and records, on behalf of each Warranty holder, and (iii) a notice informing holders of gift cards and Sears Loyalty Points that all gift cards and Sears Loyalty Points will no longer be accepted by the Sears Canada Entities after January 21, 2018;
- (yy) “**Notice of Dispute of Revision or Disallowance**” means the form substantially in the form attached as Schedule “F” hereto;
- (zz) “**Notice of Revision or Disallowance**” means the form substantially in the form attached as Schedule “G” hereto;
- (aaa) “**Officer**” means anyone who is or was or may be deemed to be or have been, whether by statute, operation of law or otherwise, an officer or *de facto* officer of any of the Sears Canada Entities, in such capacity;
- (bbb) “**Order**” means this Claims Procedure Order;

- (ccc) **“Other Employee Letter”** means the letter from the Monitor to be disseminated by the Monitor, in consultation with the Sears Canada Entities, to Employees not represented by Employee Representative Counsel (provided that where such Employees are subject to union representation, the Monitor shall only be required to send such letter to the unions representing the unionized Employees) advising, among other things, that their Employee Claims will be dealt with through a separate Employee Claims Process, which letter shall be substantially in the form attached hereto as Schedule “H”;
- (ddd) **“Other Pensioner”** means any retiree and any current or former employee of the Sears Canada Entities with (i) entitlements under the Supplemental Plan, and any other pension or retirement plan of the Sears Canada Entities (not including the Sears Pension Plan), and/or (ii) other post-employment benefits entitlements;
- (eee) **“Other Pensioner Claim”** means a Claim, including a D&O Claim, that may be asserted by or on behalf of an Other Pensioner, and shall include any Other Pensioner Claim arising through subrogation;
- (fff) **“Pensioner”** means any Sears Pensioner or Other Pensioner;
- (ggg) **“Pensioner Claim”** means any Sears Pension Claim or Other Pensioner Claim;
- (hhh) **“Pensioner Claims Process”** means a claims process to be approved pursuant to a further Order of this Court that shall, among other things, set forth the procedure for the solicitation and assertion of Pensioner Claims against the Sears Canada Entities and/or the Directors and Officers;

*YH*  
\* with such other changes as may be agreed to by Pension Representative Counsel, the Pension Plan Administrator, the Sears Canada Entities and the Monitor - 16 -

- (iii) **"Pensioner Letter"** means the letter from Pension Representative Counsel to be disseminated by Pension Representative Counsel, in consultation with the Sears Canada Entities, the Pension Plan Administrator (in respect of the Sears Pension Plan) and the Monitor, to all Pensioners advising, among other things, that their Pensioner Claims will be dealt with through a separate Pensioner Claims Process, which letter shall be substantially in the form attached hereto as Schedule "J";
- (ijj) **"Pension Plan Administrator"** means Morneau Shepell Ltd. in its capacity as administrator of the Sears Pension Plan;
- (kkk) **"Pension Plan Administrator Website"** means [https://www.pensionwindups.morneaushepell.com/\\_private/select\\_plan.asp?DURL=/en/plan\\_info/srrp/plan\\_info.asp](https://www.pensionwindups.morneaushepell.com/_private/select_plan.asp?DURL=/en/plan_info/srrp/plan_info.asp);
- (lll) **"Pension Representative Counsel"** means Koskie Minsky LLP;
- (mmm) **"Pension Representative Counsel's Website"** means <https://kmlaw.ca/cases/sears-canada/>;
- (nnn) **"Pensioner Representatives"** means Bill Turner, Ken Eady and Larry Moore;
- (ooo) **"Person"** means any individual, firm, corporation, limited or unlimited liability company, general or limited partnership, association, trust (including a real estate investment trust), unincorporated organization, joint venture, government or any agency or instrumentality thereof or any other entity;
- (ppp) **"Plan"** means, as further defined in the Initial Order, any proposed plan of compromise or arrangement that may be filed in respect of any or all of the Sears

Canada Entities pursuant to the CCAA as the same may be amended, supplemented or restated from time to time in accordance the terms thereof;

(qqq) **“Pre-Filing Period”** means the period prior to the Filing Date;

(rrr) **“Proof of Claim”** means the proof of claim to be filed by General Creditor Claimants in respect of Pre-Filing Claims, Post-Filing Claims and Restructuring Period Claims, substantially in the form attached as Schedule “C” hereto; and for greater certainty, a “Proof of Claim” shall include a Proof of Claim filed online through the Monitor’s website;

(sss) **“Proof of Claim Instruction Letter”** means the letter containing instructions for completing the Proof of Claim form, substantially in the form attached as Schedule “B” hereto;

(ttt) **“Provincial Lien Legislation”** means the *Construction Lien Act*, R.S.O., 1990, c. C.30, the *Builders’ Lien Act*, R.S.A. 2000, c. B-7, the *Builders’ Lien Act*, R.S.N.S. 1989, c. 277, the *Mechanics’ Lien Act*, R.S.N.B. 1973, c. M-6, *The Builders’ Liens Act*, C.C.S.M. c. B91, the *Builders Lien Act*, S.B.C. 1997, c. 45, and any other similar provincial mechanics, builders or construction lien legislation in Canada;

(uuu) **“Restructuring Period”** means the period on or after the Filing Date;

(vvv) **“Sears Loyalty Points”** means any points issued and outstanding under the Sears Club Reward Program;

- (www) **"Sears Pension Claim"** means a Claim, including a D&O Claim, that may be asserted by or on behalf of a Sears Pensioner, Pension Representative Counsel, the Superintendent or the Pension Plan Administrator, and shall include any Sears Pension Claim arising through subrogation;
- (xxx) **"Sears Pension Plan"** means the Sears Canada Inc. Registered Retirement Plan (Reg. #0360065), a pension plan registered under the Ontario *Pension Benefits Act*, R.S.O. 1990, c. P.8 and *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) with a defined benefit component and a defined contribution component;
- (yyy) **"Sears Pensioner"** means any retiree and any current or former employee of the Sears Canada Entities with entitlements under the Sears Pension Plan;
- (zzz) **"Sears Supplier"** means any Person who has supplied goods or services to any Sears Canada Entity;
- (aaaa) **"Superintendent"** means the Ontario Superintendent of Financial Services as administrator of the Pension Benefits Guarantee Fund;
- (bbbb) **"Supplemental Plan"** means the Sears Canada Inc. Supplementary Retirement Plan, a non-registered supplemental pension plan maintained to provide benefits to eligible participants in the defined benefit component of the Sears Pension Plan;
- (cccc) **"Vacated or Discharged Liens"** means the builders' or construction liens previously registered against title to any real property that has been or is owned or leased by any of the Sears Canada Entities under applicable Provincial Lien Legislation and that have been vacated pursuant to previous court orders or discharged pursuant to agreements with applicable Construction Claimants, in each

case in accordance with the requirements under applicable Provincial Lien Legislation; and

(dddd) "**Warranty**" means a customer warranty provided by any one of the Sears Canada Entities, including any Sears Protection Agreement but excluding any manufacturer's warranty.

4. THIS COURT ORDERS that all references as to time herein shall mean local time in Toronto, Ontario, Canada, and any reference to an event occurring on a Business Day shall mean prior to 5:00 p.m. on such Business Day unless otherwise indicated herein, and any reference to an event occurring on a day that is not a Business Day shall mean the next following day that is a Business Day.

5. THIS COURT ORDERS that all references to the word "including" shall mean "including without limitation", all references to the singular herein include the plural, the plural include the singular, and any gender includes all genders.

#### **GENERAL PROVISIONS**

6. THIS COURT ORDERS that any Claim denominated in a foreign currency shall be converted to Canadian dollars at the Bank of Canada exchange rate in effect at the Filing Date. For reference, the exchange rate that will be applied to Claims denominated in U.S. dollars is 1.3241 CAD/USD.

7. THIS COURT ORDERS that notwithstanding any other provisions of this Order, the solicitation by the Monitor of Proofs of Claim and D&O Proofs of Claim, the delivery by the Monitor of Notices of Construction Claim, and the filing or deemed submission by any Claimant of any Proof of Claim or D&O Proof of Claim shall not, for that reason only, grant any Person any

rights, including without limitation, in respect of the nature, quantum and priority of its Claims or its standing in the CCAA Proceedings, except as specifically set out in this Order.

8. THIS COURT ORDERS that the Monitor, in consultation with the Sears Canada Entities and the applicable Directors and Officers in respect of any D&O Claim, is hereby authorized to use reasonable discretion as to the adequacy of compliance with respect to the manner in which any forms delivered hereunder are completed and executed and the time in which they are submitted, and may, where the Monitor, in consultation with the Sears Canada Entities and the applicable Directors and Officers in respect of any D&O Claim, is satisfied that a Claim has been adequately proven, waive strict compliance with the requirements of this Order, including in respect of the completion, execution and time of delivery of such forms; provided that it is recognized and understood that certain Claims will be contingent in nature and therefore will not contain particulars of such Claims that are not yet known as at the time they are filed.

9. THIS COURT ORDERS that amounts claimed in Assessments shall be subject to this Order and there shall be no presumption of validity or deeming of the amount due in respect of the Claim set out in any Assessment.

10. THIS COURT ORDERS that the Applicants shall return to Court to seek approval of an Employee Claims Process and a Pensioner Claims Process, which shall be developed in consultation with Employee Representative Counsel, Pension Representative Counsel, the Pension Plan Administrator, the Superintendent, and the Monitor, as appropriate.

#### **MONITOR'S ROLE**

11. THIS COURT ORDERS that, in addition to its prescribed rights, duties, responsibilities and obligations under the CCAA, the Initial Order and any other orders of the Court in the CCAA Proceedings, the Monitor is hereby directed and empowered to implement the Claims Process set

out herein and to take such other actions and fulfill such other roles as are authorized by this Order or incidental thereto.

12. THIS COURT ORDERS that the Monitor (i) shall have all of the protections given to it by the CCAA, the Initial Order, any other orders of the Court in the CCAA Proceedings, and this Order, or as an officer of the Court, including the stay of proceedings in its favour; (ii) shall incur no liability or obligation as a result of the carrying out of the provisions of this Order, including in respect of its exercise of discretion as to the completion, execution or time of delivery of any documents to be delivered hereunder, other than in respect of its gross negligence or wilful misconduct; (iii) shall be entitled to rely on the books and records of the Sears Canada Entities and any information provided by the Sears Canada Entities, all without independent investigation, provided that Intercompany Claims are subject to independent investigation by the Monitor as provided in paragraph 60 herein; and (iv) shall not be liable for any claims or damages resulting from any errors or omissions in such books, records or information.

13. THIS COURT ORDERS that: (a) the Sears Canada Entities, Officers, Directors, Employees, agents and representatives shall fully cooperate with the Monitor in the exercise of its powers and discharge of its duties and obligations under this Order, and (b) any credit insurers and factors that have: (i) offered services to vendors of the Sears Canada Entities; (ii) have acquired payables of the Sears Canada Entities to such vendors, and/or (iii) have drawn on letters of credit issued by any of the Sears Canada Entities in their favour to satisfy vendor claims as a result of any non-payment by any of the Sears Canada Entities, shall fully cooperate with the Monitor and the Sears Canada Entities by providing information to assist in the assessment of the quantum and validity of Claims.

**EMPLOYEE REPRESENTATIVE COUNSEL'S ROLE**

14. THIS COURT ORDERS that all Employees hired by the Applicants during the Restructuring Period shall be represented by Employee Representative Counsel pursuant to the Employee Representative Counsel Order dated July 13, 2017 *nunc pro tunc*, unless such Employees specifically notify Employee Representative Counsel that such Employees wish to opt-out of representation by the Employee Representatives and Employee Representative Counsel.

15. THIS COURT ORDERS that Darrin Whitney shall replace Sara Sawyer as an Employee Representative in these CCAA Proceedings, and that Employee Representative Counsel shall hereby be authorized to appoint any additional Employee Representatives as it deems necessary or desirable from time to time.

16. THIS COURT ORDERS that, in addition to the rights, duties, responsibilities and obligations granted to it under the Employee Representative Counsel Order dated July 13, 2017 and any other orders of the Court in the CCAA Proceedings, Employee Representative Counsel is hereby directed and empowered to assist in the establishment and implementation of an Employee Claims Process and the determination of the quantum and validity of Employee Claims for Employees represented by Employee Representative Counsel, in conjunction with the Sears Canada Entities and the Monitor, and to take such other actions and fulfill such other roles as are authorized by this Order or incidental thereto.

17. THIS COURT ORDERS that Employee Representative Counsel, the Employee Representatives and any Advisors retained by Employee Representative Counsel (i) shall have no personal liability or obligations as a result of the performance of its duties in carrying out the provisions of this Order, save and except for liability arising out of gross negligence or wilful misconduct; (ii) shall be entitled to rely on the books and records of the Sears Canada Entities and

any information provided by the Sears Canada Entities, all without independent investigation; and (iii) shall not be liable for any claims or damages resulting from any errors or omissions in such books, records or information.

18. THIS COURT ORDERS that the Sears Canada Entities and the Monitor shall cooperate with Employee Representative Counsel in the exercise of its powers and discharge of its duties and obligations under this Order.

**PENSION REPRESENTATIVE COUNSEL'S ROLE**

19. THIS COURT ORDERS that, in addition to the rights, duties, responsibilities and obligations granted to it under the Pension Representative Counsel Order dated July 13, 2017 and any other orders of the Court in the CCAA Proceedings, Pension Representative Counsel is hereby directed and empowered to assist in the establishment and implementation of a Pensioner Claims Process and the determination of the quantum and validity of Pensioner Claims in conjunction with the Sears Canada Entities, the Monitor, the Pension Plan Administrator and the Superintendent, and to take such other actions and fulfill such other roles as are authorized by this Order or incidental thereto.

20. THIS COURT ORDERS that Pension Representative Counsel, the Pensioner Representatives and any Advisors retained by Pension Representative Counsel (i) shall have no personal liability or obligations as a result of the performance of its duties in carrying out the provisions of this Order, save and except for liability arising out of gross negligence or wilful misconduct; (ii) shall be entitled to rely on the books and records of the Sears Canada Entities and any information provided by the Sears Canada Entities, all without independent investigation; and (iii) shall not be liable for any claims or damages resulting from any errors or omissions in such books, records or information.

21. THIS COURT ORDERS that the Sears Canada Entities and the Monitor shall cooperate with Pension Representative Counsel in the exercise of its powers and discharge of its duties and obligations under this Order and with the Pension Plan Administrator and Superintendent in carrying out its duties and obligations.

**NOTICE OF CLAIMS AND CLAIMS PROCESS**

22. THIS COURT ORDERS that as soon as practicable, but no later than 5:00 p.m. on December 20, 2017, the Monitor shall cause a Construction Claims Package to be sent to all known Construction Claimants who are Construction Contractors, as evidenced by the books and records of the Sears Canada Entities and at the respective last known addresses as recorded in the Sears Canada Entities' books and records or in the construction lien documentation registered on title to any real property that has been or is owned or leased by any of the Sears Canada Entities, as deemed appropriate by the Monitor with the assistance of the Sears Canada Entities. The Monitor and the Sears Canada Entities shall specify in the Notice of Construction Claim included in the Construction Claims Package the Construction Contractor's Construction Claim as valued by the Sears Canada Entities, in consultation with the Monitor, based on the books and records of the Sears Canada Entities.

23. THIS COURT ORDERS that the Notice of Construction Claim provided to each Construction Contractor shall be deemed to include the Construction Claims of all Construction Sub-Contractors under an agreement (written or oral) with the Construction Contractor or another Construction Sub-Contractor of any level in connection with the improvement to any real property that has been or is owned or leased by any of the Sears Canada Entities. Each Construction Contractor and Construction Sub-Contractor is hereby directed to forward forthwith a copy of the appropriate Notice of Construction Claim and the Construction Sub-Contractor Instruction Letter

to each Construction Sub-Contractor with which it has a direct contractual agreement or engagement in connection with the relevant improvement. Any dispute regarding a Construction Claim of a Construction Sub-Contractor is to be submitted through the Construction Contractor's Notice of Dispute of Construction Claim. For greater certainty, no Construction Sub-Contractor shall be required to submit a separate Notice of Dispute of Construction Claim in respect of its Construction Claim to the extent that such Construction Sub-Contractor's Construction Claim is captured by its Construction Contractor's Notice of Construction Claim or Notice of Dispute of Construction Claim. The Construction Sub-Contractor Instruction Letter shall direct all Construction Sub-Contractors to contact their Construction Contractor directly to review and submit any disputes with respect to their Construction Claims.

24. THIS COURT ORDERS that as soon as practicable, but no later than 5:00 p.m. on December 20, 2017, the Monitor shall cause a General Creditor Claims Package to be sent to:

- (a) each party that appears on the Service List or has requested a General Creditor Claims Package; and
- (b) any Person known to the Sears Canada Entities as potentially asserting a General Creditor Claim against any of the Sears Canada Entities (excluding any potential General Creditor Claimant with a potential General Creditor Claim below \$1,000 and that is not a Sears Supplier), as evidenced by and to the respective last known address recorded in the books and records of the Sears Canada Entities.

25. THIS COURT ORDERS that the Monitor shall cause the Notice to General Creditor Claimants to be published at least three (3) times in The Globe and Mail (National Edition) and La Presse, and in such other international publications and with such frequency as is determined by the Monitor in consultation with the Sears Canada Entities.

26. THIS COURT ORDERS that the Monitor shall cause the Notice to General Creditor Claimants, the Employee Letter, the Other Employee Letter, the Pensioner Letter and the General Creditor Claims Package to be posted to the Monitor's Website by no later than 5:00 p.m. on December 13, 2017.

27. THIS COURT ORDERS that the Monitor shall: (i) cause the Employee Letter to be sent to all Employees represented by Employee Representative Counsel, and (ii) cause the Other Employee Letter to be sent to Employees not represented by Employee Representative Counsel (provided that where such Employees are subject to union representation, the Monitor shall only send such letter to the unions representing the unionized Employees), as soon as practicable but no later than 5:00 p.m. on December 20, 2017.

28. THIS COURT ORDERS that the Applicants shall cause the Employee Letter, the Other Employee Letter and the Pensioner Letter to be posted to the my.sears.ca portal, as soon as practicable but no later than 5:00 p.m. on December 20, 2017.

29. THIS COURT ORDERS that Employee Representative Counsel shall cause the Employee Letter to be posted to Employee Representative Counsel's Website, as soon as practicable but no later than 5:00 p.m. on December 20, 2017.

30. THIS COURT ORDERS that Pension Representative Counsel shall (i) cause the Pensioner Letter to be sent to all Pensioners, and (ii) cause the Pensioner Letter to be posted to Pension Representative Counsel's Website, as soon as practicable but no later than 5:00 p.m. on December 20, 2017.

31. THIS COURT ORDERS that the Pension Plan Administrator shall cause the Pensioner Letter to be posted to the Pension Plan Administrator Website, as soon as practicable but no later than 5:00 p.m. on December 20, 2017.

32. THIS COURT ORDERS that to the extent any Claimant requests documents or information relating to the Claims Process prior to the General Creditor Claims Bar Date, the General Creditor Post-Filing Claims Bar Date, the General Creditor Restructuring Period Claims Bar Date, or the Landlord Claims Bar Date, as applicable, the Monitor shall forthwith send such Claimant a General Creditor Claims Package, and shall direct such Claimant to the documents posted on the Monitor's Website or otherwise respond to the request for documents or information as the Monitor, in consultation with the Sears Canada Entities, may consider appropriate in the circumstances. If the Sears Canada Entities or the Monitor become aware of any further General Creditor Claims after the mailing contemplated in paragraph 24, the Monitor shall forthwith send such potential General Creditor Claimant a General Creditor Claims Package or may direct such potential Claimant to the documents posted on the Monitor's Website.

33. THIS COURT ORDERS that to the extent any Construction Claimant requests documents or information relating to the Claims Process prior to the Construction Claims Bar Date, or if the Sears Canada Entities or the Monitor become aware of any further Construction Claims, the Monitor shall respond to the request for documents or information as the Monitor, in consultation with the Sears Canada Entities, may consider appropriate in the circumstances, and/or, if appropriate, shall send such Claimant a Construction Claims Package.

34. THIS COURT ORDERS that any notices of disclaimer or resiliation delivered after the date of this Order to potential General Creditor Claimants in connection with any action taken by the Sears Canada Entities to restructure, disclaim, resiliate, terminate or breach any contract, lease

or other agreement, whether written or oral, pursuant to the terms of the Initial Order, shall be accompanied by a General Creditor Claims Package.

35. THIS COURT ORDERS that the Claims Process and the forms of Notice to General Creditor Claimants, Proof of Claim Instruction Letter, D&O Claim Instruction Letter, Employee Letter, Other Employee Letter, Pensioner Letter, Proof of Claim, D&O Proof of Claim, Notice of Revision or Disallowance, Notice of Dispute of Revision or Disallowance, Notice of Construction Claim, Notice of Dispute of Construction Claim, Construction Contractor Instruction Letter, and Construction Sub-Contractor Instruction Letter are hereby approved, subject to any minor non-substantive changes to the forms as the Monitor and the Sears Canada Entities may consider necessary or desirable to be made from time to time.

36. THIS COURT ORDERS that the sending of the Construction Claims Package, the Construction Sub-Contractor Instruction Letter, the Employee Letter, the Other Employee Letter, the Pensioner Letter, and the General Creditor Claims Package to the applicable Persons as described above, and the publication of the Notice to General Creditor Claimants, in accordance with this Order, shall constitute good and sufficient service and delivery of notice of this Order, the Construction Claims Bar Date, the General Creditor Claims Bar Date, the General Creditor Post-Filing Claims Bar Date, the General Creditor Restructuring Period Claims Bar Date and the Landlord Claims Bar Date on all Persons who may be entitled to receive notice and who may wish to assert a Claim, and no other notice or service need be given or made and no other document or material need be sent to or served upon any Person in respect of this Order.

## FILING OF PROOFS OF CLAIM

### (A) Pre-Filing Claims

37. THIS COURT ORDERS that any General Creditor Claimant, excluding any Landlord Claimant, that intends to assert a Pre-Filing Claim or D&O Claim relating to the Pre-Filing Period shall file a Proof of Claim or D&O Proof of Claim, as applicable, with the Monitor on or before the General Creditor Claims Bar Date. Any General Creditor Claimant may file a Proof of Claim or D&O Proof of Claim through the online portal on the Monitor's website, and such Proof of Claim or D&O Proof of Claim shall be deemed to have been received by the Monitor as of the time it is submitted on the Monitor's website. For the avoidance of doubt, a Proof of Claim or D&O Proof of Claim, as applicable, must be filed by every such General Creditor Claimant in respect of every such Pre-Filing Claim or D&O Claim relating to the Pre-Filing Period, regardless of whether or not a legal proceeding in respect of such Pre-Filing Claim or D&O Claim has been previously commenced.

38. THIS COURT ORDERS that any General Creditor Claimant, excluding any Landlord Claimant, that does not file a Proof of Claim or D&O Proof of Claim, as applicable, so that such Proof of Claim or D&O Proof of Claim is received by the Monitor on or before the General Creditor Claims Bar Date, or such later date as the Monitor may agree in writing or the Court may otherwise direct:

- (a) be and is hereby forever barred, estopped and enjoined from asserting or enforcing any such Pre-Filing Claim or any such D&O Claim relating to the Pre-Filing Period and all such Pre-Filing Claims or D&O Claims shall be forever extinguished;
- (b) will not be permitted to vote at any Meeting on account of such Pre-Filing Claim(s) or D&O Claim(s) relating to the Pre-Filing Period;

- (c) will not be entitled to receive further notice with respect to the Claims Process or these proceedings unless the Monitor and/or the Sears Canada Entities become aware that such General Creditor Claimant has any other Claim; and
- (d) will not be permitted to participate in any distribution under any Plan on account of such Pre-Filing Claim(s) or D&O Claim(s).

**(B) Post-Filing Claims**

39. THIS COURT ORDERS that after the date of this Order, upon becoming aware of a potential Post-Filing Claim, the Monitor shall send a General Creditor Claims Package to the General Creditor Claimant in respect of such Post-Filing Claim in the manner provided for herein or may direct such potential Claimant to the documents posted on the Monitor's website.

40. THIS COURT ORDERS that any General Creditor Claimant, excluding any Landlord Claimant, that intends to assert a Post-Filing Claim shall file a Proof of Claim with the Monitor on or before the General Creditor Post-Filing Claims Bar Date. Any General Creditor Claimant, excluding any Landlord Claimant, may file a Proof of Claim through the online portal on the Monitor's website, and such Proof of Claim shall be deemed to have been received by the Monitor as of the time it is submitted on the Monitor's website.

41. THIS COURT ORDERS that any General Creditor Claimant, excluding any Landlord Claimant, that does not file a Proof of Claim in respect of a Post-Filing Claim so that such Proof of Claim is received by the Monitor on or before the General Creditor Post-Filing Claims Bar Date, or such later date as the Monitor may agree in writing or the Court may otherwise direct:

- (a) be and is hereby forever barred, estopped and enjoined from asserting or enforcing any such Post-Filing Claim and all such Post-Filing Claims shall be forever extinguished;
- (b) will not be permitted to vote at any Meeting on account of such Post-Filing Claim(s);
- (c) will not be entitled to receive further notice with respect to the Claims Process or these proceedings unless the Monitor and/or the Sears Canada Entities become aware that such General Creditor Claimant has any other Claim; and
- (d) will not be permitted to participate in any distribution under any Plan on account of such Post-Filing Claim(s).

**(C) Restructuring Period Claims**

42. THIS COURT ORDERS that after the date of this Order, upon becoming aware of a circumstance giving rise to a potential Restructuring Period Claim, the Monitor shall send a General Creditor Claims Package to the General Creditor Claimant in respect of such Restructuring Period Claim in the manner provided for herein or may direct such potential Claimant to the documents posted on the Monitor's Website.

43. THIS COURT ORDERS that any General Creditor Claimant, excluding any Landlord Claimant, that intends to assert a Restructuring Period Claim or D&O Claim relating to the Restructuring Period shall file a Proof of Claim or D&O Proof of Claim, as applicable, with the Monitor on or before the General Creditor Restructuring Period Claims Bar Date. Any General Creditor Claimant, excluding any Landlord Claimant, may file a Proof of Claim or D&O Proof of Claim through the online portal on the Monitor's website, and such Proof of Claim or D&O Proof

of Claim shall be deemed to have been received by the Monitor as of the time it is submitted on the Monitor's website. For the avoidance of doubt, a Proof of Claim or D&O Proof of Claim must be filed by every such General Creditor Claimant in respect of every such Restructuring Period Claim or D&O Claim relating to the Restructuring Period, regardless of whether or not a legal proceeding in respect of such Restructuring Period Claim or D&O Claim has been previously commenced.

44. THIS COURT ORDERS that any General Creditor Claimant, excluding any Landlord Claimant, that does not file a Proof of Claim or D&O Proof of Claim, as applicable, so that such Proof of Claim or D&O Proof of Claim is received by the Monitor on or before the General Creditor Restructuring Period Claims Bar Date, or such later date as the Monitor may agree in writing or the Court may otherwise direct:

- (a) be and is hereby forever barred, estopped and enjoined from asserting or enforcing any such Restructuring Period Claim or any such D&O Claim relating to the Restructuring Period and all such Restructuring Period Claims or D&O Claims shall be forever extinguished;
- (b) will not be permitted to vote at any Meeting on account of such Restructuring Period Claim(s) or D&O Claim(s);
- (c) will not be entitled to receive further notice with respect to the Claims Process or these proceedings unless the Monitor and/or the Sears Canada Entities become aware that such General Creditor Claimant has any other Claim; and
- (d) will not be permitted to participate in any distribution under any Plan on account of such Restructuring Period Claim(s) or D&O Claim(s).

(D) Landlord Claims

45. THIS COURT ORDERS that any Landlord Claimant that intends to assert a Landlord Claim shall file a Proof of Claim or D&O Proof of Claim, as applicable, with the Monitor on or before the Landlord Claims Bar Date. Any Landlord Claimant may file a Proof of Claim or D&O Proof of Claim through the online portal on the Monitor's website, and such Proof of Claim or D&O Proof of Claim shall be deemed to have been received by the Monitor as of the time it is submitted on the Monitor's website. For the avoidance of doubt, a Proof of Claim or D&O Proof of Claim, as applicable, must be filed by every Landlord Claimant in respect of every Landlord Claim, regardless of whether or not a legal proceeding in respect of such Claim has been previously commenced.

46. THIS COURT ORDERS that any Landlord Claimant that does not file a Proof of Claim or D&O Proof of Claim, as applicable, so that such Proof of Claim or D&O Proof of Claim is received by the Monitor on or before the Landlord Claims Bar Date, or such later date as the Monitor may agree in writing or the Court may otherwise direct:

- (a) be and is hereby forever barred, estopped and enjoined from asserting or enforcing any such Landlord Claim and all such Landlord Claims shall be forever extinguished;
- (b) will not be permitted to vote at any Meeting on account of such Landlord Claim(s);
- (c) will not be entitled to receive further notice with respect to the Claims Process or these proceedings unless the Monitor and/or the Sears Canada Entities become aware that such Landlord Claimant has any other Claim; and

- (d) will not be permitted to participate in any distribution under any Plan on account of such Landlord Claim(s).

47. THIS COURT ORDERS that the provisions of paragraphs 37, 38, 40, 41, and 43 to 46 herein shall not apply to Intercompany Claims or any Claims with respect to Warranties. Proofs of Claim for all Claims with respect to Warranties shall be deemed to have been properly submitted as Pre-Filing Claims or Restructuring Period Claims, as applicable, in accordance with the applicable requirements of this Order.

#### **ADJUDICATION OF CLAIMS OTHER THAN INTERCOMPANY CLAIMS**

48. THIS COURT ORDERS that, for greater certainty, the procedures outlined in paragraphs 49 to 59 herein shall not apply to the adjudication of Intercompany Claims.

#### ***Construction Claims***

49. THIS COURT ORDERS that if a Construction Claimant disputes the amount of the Claim, including any D&O Claim, as set out in the Notice of Construction Claim, such Construction Claimant shall ensure that the Construction Contractor who received such Notice of Construction Claim shall deliver to the Monitor a Notice of Dispute of Construction Claim. All Notices of Dispute of Construction Claim must be received by the Monitor by no later than the Construction Claims Bar Date.

50. THIS COURT ORDERS that, in the event that a dispute raised in a Notice of Dispute of Construction Claim is not settled within a time period or in a manner satisfactory to the Monitor, in consultation with the Sears Canada Entities and the applicable Directors and Officers in respect of any D&O Claim included in a Notice of Dispute of Construction Claim, the Monitor shall refer the dispute raised in the Notice of Dispute of Construction Claim to a Claims Officer or the Court for adjudication at its election. For greater certainty, any party may file additional evidence,

documentation, reports or information on any hearing to resolve the issues raised in a Notice of Dispute of Construction Claim and no party will object to the filing of such additional evidence on the basis that such evidence, documentation, report or information was not included in the initial Notice of Construction Claim or Notice of Dispute of Construction Claim.

51. THIS COURT ORDERS that if a Construction Contractor does not deliver to the Monitor a completed Notice of Dispute of Construction Claim, and no other Notices of Dispute of Construction Claim have been received by the Monitor from any Construction Sub-Contractors in respect of such Claim, by the Construction Claims Bar Date disputing the Construction Claim as set out in a Notice of Construction Claim, then all Construction Claimants associated with such Notice of Construction Claim shall be deemed to have accepted the Construction Contractor's Construction Claim and no such Construction Claimant shall have any further right to dispute same.

52. THIS COURT ORDERS that the Monitor shall make reasonable efforts to promptly deliver a copy of any Notice of Dispute of Construction Claim that asserts a Construction Claim against any of the Directors and Officers to such named Directors and Officers.

***General Creditor Proofs of Claim***

53. THIS COURT ORDERS that the Monitor, in consultation with the Sears Canada Entities, shall review each Proof of Claim submitted in accordance with this Order and received on or before the General Creditor Claims Bar Date, the General Creditor Post-Filing Claims Bar Date, the General Creditor Restructuring Period Claims Bar Date, or the Landlord Claims Bar Date, as applicable, and shall accept, revise or reject each Claim set forth in each such Proof of Claim.

54. THIS COURT ORDERS that the Monitor shall make reasonable efforts to promptly deliver a copy of any D&O Proofs of Claim, Notices of Revision or Disallowance with respect to any

D&O Claim, and Notices of Dispute of Revision or Disallowance with respect to any D&O Claim, to the applicable Directors and Officers named therein.

55. THIS COURT ORDERS that the Monitor, in consultation with the Sears Canada Entities and the applicable Directors and Officers named in any D&O Proof of Claim, and any counsel for such Directors and Officers, shall review each D&O Proof of Claim submitted in accordance with this Order and received on or before the General Creditor Claims Bar Date, the General Creditor Restructuring Period Claims Bar Date or the Landlord Claims Bar Date, as applicable. The Monitor shall accept, revise or reject each Claim set forth in each such D&O Proof of Claim, provided that the Monitor shall not accept or revise any portion of a D&O Claim absent consent of the applicable Directors and Officers or further Order of the Court.

56. THIS COURT ORDERS that the Monitor shall notify the General Creditor Claimant who has delivered such Proof of Claim or D&O Proof of Claim, as applicable, that such Claim has been revised or rejected and the reasons therefor, by sending a Notice of Revision or Disallowance by no later than July 31, 2018 or such later date as ordered by the Court on application by the Monitor.

57. THIS COURT ORDERS that any General Creditor Claimant who intends to dispute a Notice of Revision or Disallowance hereof shall:

- (a) deliver a completed Notice of Dispute of Revision or Disallowance, along with the reasons for the dispute, to the Monitor by no later than thirty (30) days after the date on which the General Creditor Claimant is deemed to receive the Notice of Revision or Disallowance, or such other date as may be agreed to by the Monitor in writing (provided that any General Creditor Claimant may file such Notice of Dispute of Revision or Disallowance through the online portal on the Monitor's website, and such Notice of Dispute of Revision or Disallowance shall be deemed

to have been received by the Monitor as of the time it is submitted on the Monitor's website); and

- (b) in the event that a dispute raised in a Notice of Dispute of Revision or Disallowance is not settled within a time period or in a manner satisfactory to the Monitor, in consultation with the Sears Canada Entities and the applicable Directors and Officers in respect of any D&O Claim, the Monitor shall refer the dispute raised in the Notice of Dispute of Revision or Disallowance to a Claims Officer or the Court for adjudication at its election. For greater certainty, any party may file additional evidence, documentation, reports or information on any hearing to resolve the issues raised in a Notice of Dispute of Revision or Disallowance and no party will object to the filing of such additional evidence on the basis that such evidence, documentation, report or information was not included in the initial Proof of Claim, D&O Proof of Claim or Notice of Revision or Disallowance.

58. THIS COURT ORDERS that where a General Creditor Claimant that receives a Notice of Revision or Disallowance does not file a completed Notice of Dispute of Revision or Disallowance by the time set out in paragraph 57(a), such General Creditor Claimant's Claim or D&O Claim relating to such Claim shall be deemed to be as set out in the Notice of Revision or Disallowance and such General Creditor Claimant shall have no further right to dispute same.

59. THIS COURT ORDERS that the Monitor, in consultation with the Sears Canada Entities and the applicable Directors and Officers in respect of any D&O Claim, may refer any Claim to a Claims Officer or the Court for adjudication at its election by sending written notice to the applicable parties at any time.

#### INTERCOMPANY CLAIMS

60. THIS COURT ORDERS that the Monitor shall prepare a report to be served on the Service List and filed with the Court for the Court to consider, detailing its review of all Intercompany Claims and assessing in detail with reasonably sufficient particulars and analysis the validity and quantum of such Claims (the "Monitor's Intercompany Claims Report"). The Monitor's Intercompany Claims Report shall be served on or before the General Creditor Claims Bar Date, unless otherwise ordered by this Court on application by the Monitor and shall contain a recommendation with respect to the next steps to be taken, if any, with respect to the determination and adjudication of Intercompany Claims. For greater certainty, nothing in the Monitor's Intercompany Claims Report shall bind the Court with respect to its determination of the Intercompany Claims as the Court sees fit, including without limitation, the validity, priority or quantum of such Intercompany Claims.

61. THIS COURT ORDERS that each Intercompany Claim identified in the Monitor's Intercompany Claims Report shall be deemed to have been properly submitted through a Proof of Claim in respect of such Intercompany Claim by the Intercompany Claimant as if such Claim was a Pre-Filing Claim or Restructuring Period Claim, as applicable, in accordance with the requirements of this Order, and any Intercompany Claims not included in the Monitor's Intercompany Claims Report shall be deemed to be a General Creditor Claim barred pursuant to paragraph 38 of this Order.

#### CLAIMS OFFICER

62. THIS COURT ORDERS that the Hon. Mr. James Farley, Q.C., and such other Persons as may be appointed by the Court from time to time on application of the Monitor, in consultation with the Sears Canada Entities, be and are hereby appointed as Claims Officers for the Claims Process. The Monitor, in consultation with the Sears Canada Entities, is hereby permitted to seek

the Court's referral of a disputed Construction Claim to a Construction Lien Master, who shall be appointed as a Claims Officer hereunder, in accordance with applicable Provincial Lien Legislation.

63. THIS COURT ORDERS that a Claims Officer shall determine the validity and amount of disputed Claims in accordance with this Order and to the extent necessary may determine whether any Claim or part thereof constitutes an Excluded Claim and shall provide written reasons. A Claims Officer shall determine all procedural matters which may arise in respect of his or her determination of these matters, including the manner in which any evidence may be adduced. A Claims Officer shall have the discretion to determine by whom and to what extent the costs of any hearing before a Claims Officer shall be paid.

64. THIS COURT ORDERS that the Monitor, the General Creditor Claimant, the Sears Canada Entities and the applicable Directors and Officers in respect of any D&O Claim may, within ten (10) days of such party receiving notice of a Claims Officer's determination of the value of a General Creditor Claimant's Claim, appeal such determination or any other matter determined by the Claims Officer in accordance with paragraph 63 or otherwise to the Court by filing a notice of appeal, and the appeal shall be initially returnable for scheduling purposes within ten (10) days of filing such notice of appeal.

65. THIS COURT ORDERS that the Monitor, any Construction Claimant, including a Construction Sub-Contractor, the Sears Canada Entities and the applicable Directors and Officers in respect of any D&O Claim relating to a Construction Claim may, within ten (10) days of such party receiving notice of a Claims Officer's determination of the value of a Construction Contractor's Construction Claim, appeal such determination or any other matter determined by the Claims Officer in accordance with paragraph 63 or otherwise to the Court by filing a notice of

appeal, and the appeal shall be initially returnable for scheduling purposes within ten (10) days of filing such notice of appeal.

66. THIS COURT ORDERS that, if no party appeals the determination of value of a Claim by a Claims Officer in accordance with the requirements set out in paragraphs 64 and 65 above, the decision of the Claims Officer in determining the value of the Claim shall be final and binding upon the Sears Canada Entities, the Monitor, the applicable Directors and Officers in respect of a D&O Claim and the Claimant, and there shall be no further right of appeal, review or recourse to the Court from the Claims Officer's final determination of a Claim.

67. THIS COURT ORDERS that the provisions of paragraphs 62 to 66 herein shall not apply to Intercompany Claims.

#### **NOTICE OF TRANSFEREES**

68. THIS COURT ORDERS that, from the date of this Order until seven (7) days prior to the date fixed by the Court for any distribution in the CCAA Proceedings or any other proceeding, including a bankruptcy, leave is hereby granted to permit a Claimant to provide to the Monitor notice of assignment or transfer of a Claim to any third party, and that no assignment or transfer of a partial Claim shall be permitted.

69. THIS COURT ORDERS that, subject to the terms of any subsequent Order of this Court, if, after the Filing Date, the holder of a Claim transfers or assigns the whole of such Claim to another Person, neither the Monitor nor the Sears Canada Entities shall be obligated to give notice to or otherwise deal with the transferee or assignee of such Claim in respect thereof unless and until actual notice of transfer or assignment, together with satisfactory evidence of such transfer or assignment, shall have been received and acknowledged by the Monitor in writing and thereafter such transferee or assignee shall, for the purposes hereof, constitute the "Claimant" in respect of

the whole of such Claim. Any such transferee or assignee of a Claim shall be bound by any notices given or steps taken in respect of such Claim in accordance with this Order prior to receipt and acknowledgement by the Monitor of satisfactory evidence of such transfer or assignment. A transferee or assignee of a Claim takes the Claim subject to any rights of set-off to which the Sears Canada Entities and/or the applicable Directors and Officers may be entitled with respect to such Claim. For greater certainty, a transferee or assignee of a Claim is not entitled to set-off, apply, merge, consolidate or combine any Claim assigned or transferred to it against or on account or in reduction of any amounts owing by such Person to the Sears Canada Entities or the applicable Directors and Officers.

#### **SERVICE AND NOTICE**

70. THIS COURT ORDERS that the Monitor may, unless otherwise specified by this Order, serve and deliver or cause to be served and delivered the Construction Claims Package, the Employee Letter, the Other Employee Letter and the General Creditor Claims Package, and any letters, notices or other documents, to the appropriate Claimants, Employees, Pensioners, unions, or other interested Persons by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery, facsimile transmission or email to such Persons at the physical or electronic address, as applicable, last shown on the books and records of the Sears Canada Entities or, where applicable, as set out in such Claimant's Proof of Claim or D&O Proof of Claim.

71. THIS COURT ORDERS that Pension Representative Counsel may, unless otherwise specified by this Order, serve and deliver or cause to be served and delivered the Pensioner Letter, and any letters, notices or other documents, to the Pensioners by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery, facsimile transmission or email to such Persons

at the physical or electronic address, as applicable, last shown on the books and records of the Sears Canada Entities.

72. THIS COURT ORDERS that such service and delivery of any documents in connection with this Claims Process shall be deemed to have been received: (i) if sent by ordinary mail, on the third Business Day after mailing to an address within Ontario, the fifth Business Day after mailing to an address within Canada (other than within Ontario), and the tenth Business Day after mailing to an address internationally; (ii) if sent by courier or personal delivery, on the next Business Day following dispatch; and (iii) if delivered by facsimile transmission or email by 5:00 p.m. on a Business Day, on such Business Day and if delivered after 5:00 p.m. or other than on a Business Day, on the following Business Day.

73. THIS COURT ORDERS that any notice or communication required to be provided or delivered by a Claimant to the Monitor under this Order shall, unless otherwise specified in this Order, be in writing in substantially the form, if any, provided for in this Order and will be sufficiently given only if delivered by prepaid ordinary mail, registered mail, courier, personal delivery, facsimile transmission or email addressed to:

FTI Consulting Canada Inc., Sears Canada Monitor  
TD Waterhouse Tower  
79 Wellington Street West  
Suite 2010, P.O. Box 104  
Toronto, ON M5K 1G8

Attention: Sears Canada Claims Process  
Email: searscanada@fticonsulting.com  
Fax: 416-649-8101

Subject to paragraphs 37, 43 and 57(a) hereto, any such notice or communication delivered by a Claimant shall be deemed received upon actual receipt by the Monitor thereof during normal

business hours on a Business Day, or if delivered outside of normal business hours, the next Business Day.

74. THIS COURT ORDERS that if, during any period during which notices or other communications are being given pursuant to this Order, a postal strike or postal work stoppage of general application should occur, such notices or other communications sent by ordinary or registered mail and then not received shall not, absent further Order of this Court, be effective and notices and other communications given hereunder during the course of any such postal strike or work stoppage of general application shall only be effective if given by courier, personal delivery, facsimile transmission or email in accordance with this Order.

#### **MISCELLANEOUS**

75. THIS COURT ORDERS that the Sears Canada Entities, the Monitor, Employee Representative Counsel, Pension Representative Counsel, the Pension Plan Administrator and the Superintendent may from time to time apply to this Court to extend the time for any action which the Sears Canada Entities, the Monitor, Employee Representative Counsel, Pension Representative Counsel, the Pension Plan Administrator or the Superintendent is required to take if reasonably required to carry out its duties and obligations pursuant to this Order and for advice and directions concerning the discharge of its powers and duties under this Order or the interpretation or application of this Order.

76. THIS COURT ORDERS that nothing in this Order shall prejudice the rights and remedies of any Directors or Officers or other Persons under the Directors' Priority Charge, the Directors' Subordinated Charge or any applicable insurance policy or prevent or bar any Person from seeking recourse against or payment from the Sears Canada Entities' insurance or any Director's or Officer's liability insurance policy or policies that exist to protect or indemnify the Directors or

Officers or other Persons, whether such recourse or payment is sought directly by the Person asserting a Claim from the insurer or derivatively through the Director or Officer or any Sears Canada Entity; provided, however, that nothing in this Order shall create any rights in favour of such Person under any policies of insurance nor shall anything in this Order limit, remove, modify or alter any defence to such Claim available to the insurer pursuant to the provisions of any insurance policy or at law; and further provided that any Claim or portion thereof for which the Person receives payment directly from, or confirmation that he or she is covered by, the Sears Canada Entities' insurance or any Director's or Officer's liability insurance or other liability insurance policy or policies that exist to protect or indemnify the Directors or Officers or other Persons shall not be recoverable as against a Sears Canada Entity or Director or Officer as applicable.

77. THIS COURT ORDERS that this Order shall have full force and effect in all provinces and territories in Canada.

78. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative bodies, having jurisdiction in Canada or in the United States of America, to give effect to this Order and to assist the Sears Canada Entities, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Sears Canada Entities and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Sears Canada Entities and the Monitor and their respective agents in carrying out the terms of this Order.

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

DEC 08 2017

PER / PAR:

**TAB B**

THIS IS EXHIBIT

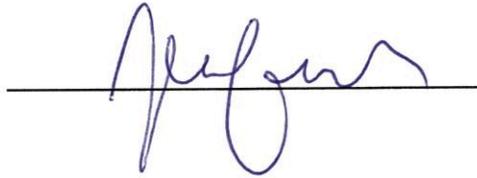
"B"

TO THE AFFIDAVIT OF

**JESSICA WUTHMANN**

SWORN BEFORE ME ON

August 31, 2018



**Alex Mireille Fernet Brochu, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law.  
Expires March 10, 2020.**

---

**From:** D. J. Miller [mailto:DJMiller@tgf.ca]  
**Sent:** July 9, 2018 10:48 AM  
**To:** 'Gauthier, Virginie'; David T. Ullmann; Linda Galessiere; Edmond Lamek (edmond.lamek@dlapiper.com); MacParland, Natasha (NMacParland@dwpv.com); John C. Wolf; Mudasir Marfatia; Mighton, Jesse (JMighton@dwpv.com)  
**Cc:** Bishop, Paul; Greg Watson (greg.watson@fticonsulting.com); Steven Bissell (steven.bissell@fticonsulting.com); Pearson, Lizzy (Lizzy.Pearson@fticonsulting.com); Pasparakis, Orestes; Cobb, Evan; Merskey, Alan  
**Subject:** RE: Sears Canada Inc.: Extension of Time to File NODs

Hi Virginie:

Referring to the portion of your email below that it is your strong view that “further delay [beyond July 31] is prejudicial”, can you please advise as to what exactly that prejudice is in the circumstances of this case? That was the question in my letter of July 5.

This issue should not require a back-and-forth by counsel and multiple individuals on behalf of the Monitor and its counsel, and it doesn't seem to be an efficient use of estate resources. Our clients should similarly not be put to further expense in dealing with these requests, either on a drip-feed basis with 2 week extensions, or otherwise.

The requested tolling of the date by which NODs are to be filed is not just based on the continuing discussions with landlord counsel (which, in and of itself may be an unnecessary expense at this time), but rather, because unless and until there is a resolution to the deemed trust issue, no fees whatsoever should be spent by the estate or our clients in dealing with any claims of unsecured creditors. As a practical matter, and for cost efficiency, the deadline for filing NODs should be 30 days after the earlier of: (i) a settlement of the deemed trust issue; or (ii) a final determination of the deemed trust issue. Any date that is earlier than that is causing unnecessary fees to be spent from the estate, and by creditors.

Can you please update this group as to what steps the Monitor is taking to effect a resolution of that gating issue of the deemed trust, and what the Monitor's plan is? For example, has the Monitor advised the pension interests that if an acceptable resolution is not achieved by “X” date, steps to effect a bankruptcy will follow?

Landlord counsel are working to see if there is some efficient way to resolve claims filed, but landlord claims are not creating any impediment or delay in any aspect of this proceeding.

D.J.

D. J. Miller | Direct Line: +1 416 304-0559 | Thornton Grout Finnigan LLP | [www.tgf.ca](http://www.tgf.ca)

PRIVILEGED & CONFIDENTIAL - This electronic transmission is subject to solicitor-client privilege and contains confidential information intended only for the above. Any other distribution, copying or disclosure is strictly prohibited. If you have received this e-mail in error, please notify our office immediately by call and delete this e-mail without forwarding it or making a copy.

**From:** Gauthier, Virginie [mailto:virginie.gauthier@nortonrosefulbright.com]

**Sent:** Friday, July 6, 2018 2:36 PM

**To:** David T. Ullmann <DUllmann@blaney.com>; D. J. Miller <DJMiller@tgf.ca>; Linda Galessiere <lgalessiere@cglegal.ca>; Edmond Lamek (edmond.lamek@dlapiper.com) <edmond.lamek@dlapiper.com>; MacParland, Natasha (NMacParland@dwpv.com) <NMacParland@dwpv.com>; John C. Wolf <jwolf@blaney.com>; Mudasir Marfatia <MMarfatia@tgf.ca>; Mighton, Jesse (JMighton@dwpv.com) <JMighton@dwpv.com>

**Cc:** Bishop, Paul <Paul.Bishop@fticonsulting.com>; Greg Watson (greg.watson@fticonsulting.com) <greg.watson@fticonsulting.com>; Steven Bissell (steven.bissell@fticonsulting.com) <steven.bissell@fticonsulting.com>; Pearson, Lizzy (Lizzy.Pearson@fticonsulting.com)

<Lizzy.Pearson@fticonsulting.com>; Pasparakis, Orestes <orestes.pasparakis@nortonrosefulbright.com>; Cobb, Evan <evan.cobb@nortonrosefulbright.com>; Merskey, Alan <alan.merskey@nortonrosefulbright.com>

**Subject:** RE: Sears Canada Inc.: Extension of Time to File NODs

In light of continuing discussions amongst certain landlord counsel and the Monitor, the Monitor will extend the deadline for your clients to file notices of dispute in respect of the NORDs that you have received, to July 31, 2018. As you know the Monitor is strongly of the view that issues need to be resolved without further delay. We are extending this courtesy to you but note our strong view that further delay is prejudicial.

**Virginie Gauthier**

Partner

Norton Rose Fulbright Canada LLP / S.E.N.C.R.L., s.r.l.  
Royal Bank Plaza, South Tower, Suite 3800  
200 Bay Street, P.O. Box 84, Toronto, ON M5J 2Z4 Canada  
T: +1 416.216.4853 | M: +1 416.844.5391 | F: +1 416.216.3930  
[virginie.gauthier@nortonrosefulbright.com](mailto:virginie.gauthier@nortonrosefulbright.com)

**NORTON ROSE FULBRIGHT**

**From:** Gauthier, Virginie

**Sent:** June-20-18 1:22 PM

**To:** 'David T. Ullmann'; D. J. Miller; Linda Galessiere; Edmond Lamek (edmond.lamek@dlapiper.com); MacParland, Natasha (NMacParland@dwpv.com); John C. Wolf; Mudasir Marfatia; Mighton, Jesse (JMighton@dwpv.com)

**Cc:** Bishop, Paul; Greg Watson (greg.watson@fticonsulting.com); Steven Bissell (steven.bissell@fticonsulting.com); Pearson, Lizzy (Lizzy.Pearson@fticonsulting.com); Pasparakis, Orestes; Cobb, Evan; Merskey, Alan

**Subject:** RE: Sears Canada Inc.: Extension of Time to File NODs

David and all:

The Monitor is concerned about further delays in dealing with claims in the estate and is not inclined to extend the time to file a notice of dispute at this time.

The Monitor is however prepared to discuss with interested landlords a proposed formula which the Monitor believes forms a reasonable basis for the valuation of the landlords' claims and the allocation of the related dividend amongst your clients. As such, the Monitor will be contacting individual landlord counsel in the coming days to discuss the proposed formula.

**Virginie Gauthier**

Partner

Norton Rose Fulbright Canada LLP / S.E.N.C.R.L., s.r.l.  
Royal Bank Plaza, South Tower, Suite 3800  
200 Bay Street, P.O. Box 84, Toronto, ON M5J 2Z4 Canada  
T: +1 416.216.4853 | M: +1 416.844.5391 | F: +1 416.216.3930  
[virginie.gauthier@nortonrosefulbright.com](mailto:virginie.gauthier@nortonrosefulbright.com)

**NORTON ROSE FULBRIGHT**

**From:** David T. Ullmann [<mailto:DULLmann@blaney.com>]  
**Sent:** June-19-18 3:14 PM  
**To:** Gauthier, Virginie; D. J. Miller; Linda Galessiere; Edmond Lamek ([edmond.lamek@dlapiper.com](mailto:edmond.lamek@dlapiper.com)); MacParland, Natasha ([NMacParland@dwpv.com](mailto:NMacParland@dwpv.com)); John C. Wolf; Mudasir Marfatia; Mighton, Jesse ([JMighton@dwpv.com](mailto:JMighton@dwpv.com))  
**Cc:** Bishop, Paul; Greg Watson ([greg.watson@fticonsulting.com](mailto:greg.watson@fticonsulting.com)); Steven Bissell ([steven.bissell@fticonsulting.com](mailto:steven.bissell@fticonsulting.com)); Pearson, Lizzy ([Lizzy.Pearson@fticonsulting.com](mailto:Lizzy.Pearson@fticonsulting.com)); Pasparakis, Orestes; Cobb, Evan; Merskey, Alan  
**Subject:** RE: Sears Canada Inc.: Extension of Time to File NODs

Virginie,

*Redacted*

Can you please confirm that the July 14<sup>th</sup> date in your email below is further extended on this basis *[Redacted]*

Finally, we confirm that we are reserving our rights to ask for further extensions, beyond the 30 day toll contemplated above, to accommodate the delivery of any necessary and further evidence that may be required as part of the filing of any notices of dispute. Once the 30 day time period has actually begun, we will raise with you further issues in that regard if necessary.

Regards,

David

David T. Ullmann

Partner

[dullmann@blaney.com](mailto:dullmann@blaney.com)

☎ 416-596-4289 | ☎ 416-594-2437

**From:** Gauthier, Virginie [<mailto:virginie.gauthier@nortonrosefulbright.com>]  
**Sent:** May-29-18 12:02 PM  
**To:** D. J. Miller; Linda Galessiere; Edmond Lamek ([edmond.lamek@dlapiper.com](mailto:edmond.lamek@dlapiper.com)); MacParland, Natasha ([NMacParland@dwpv.com](mailto:NMacParland@dwpv.com)); John C. Wolf; David T. Ullmann; Mudasir Marfatia; Mighton, Jesse ([JMighton@dwpv.com](mailto:JMighton@dwpv.com))  
**Cc:** Bishop, Paul; Greg Watson ([greg.watson@fticonsulting.com](mailto:greg.watson@fticonsulting.com)); Steven Bissell ([steven.bissell@fticonsulting.com](mailto:steven.bissell@fticonsulting.com)); Pearson, Lizzy ([Lizzy.Pearson@fticonsulting.com](mailto:Lizzy.Pearson@fticonsulting.com)); Pasparakis, Orestes; Cobb, Evan; Merskey, Alan  
**Subject:** RE: Sears Canada Inc.: Extension of Time to File NODs

The Monitor is agreeable to the request to extend the deadline to file NODs in respect of NORDs that have been issued, or will be issued prior to May 30, to July 14, 2018.

Many thanks!

**Virginie Gauthier**  
Partner

Norton Rose Fulbright Canada LLP / S.E.N.C.R.L., s.r.l.  
Royal Bank Plaza, South Tower, Suite 3800  
200 Bay Street, P.O. Box 84, Toronto, ON M5J 2Z4 Canada  
T: +1 416.216.4853 | M: +1 416.844.5391 | F: +1 416.216.3930  
[virginie.gauthier@nortonrosefulbright.com](mailto:virginie.gauthier@nortonrosefulbright.com)

## NORTON ROSE FULBRIGHT

---

**From:** D. J. Miller [<mailto:DJMiller@tgf.ca>]  
**Sent:** May-28-18 7:45 PM  
**To:** Gauthier, Virginie; Linda Galessiere; Edmond Lamek ([edmond.lamek@dlapiper.com](mailto:edmond.lamek@dlapiper.com)); MacParland, Natasha ([NMacParland@dwpv.com](mailto:NMacParland@dwpv.com)); John C. Wolf ([jwolf@blaney.com](mailto:jwolf@blaney.com)); David T. Ullmann ([DUllmann@blaney.com](mailto:DUllmann@blaney.com)); Mudasar Marfatia; Mighton, Jesse ([JMighton@dwpv.com](mailto:JMighton@dwpv.com))  
**Cc:** Bishop, Paul; Greg Watson ([greg.watson@fticonsulting.com](mailto:greg.watson@fticonsulting.com)); Steven Bissell ([steven.bissell@fticonsulting.com](mailto:steven.bissell@fticonsulting.com)); Pearson, Lizzy ([Lizzy.Pearson@fticonsulting.com](mailto:Lizzy.Pearson@fticonsulting.com)); Pasparakis, Orestes; Cobb, Evan; Merskey, Alan  
**Subject:** RE: Sears Canada Inc.: Extension of Time to File NODs

We refer to the email below, and write on behalf of all landlord counsel copied.

Notices of Disallowance (NOD) have been received by or on behalf of various landlords represented by counsel copied on this email, including several received today. The proposed tolling set out in the email from Virginie below is not sufficient. There needs to be a complete tolling for a period of 30 days after the termination of the mediation for the filing of Dispute Notices to any NOD's for landlords. Not on a piecemeal basis, but across the board. We are all either focusing on the preparation of detailed Dispute Notices and going down that path, or we are focusing on a potential consensual resolution through mediation - not both. Landlords are not prepared to lose 2 weeks of the 30 day time period that we would otherwise have to focus on the Dispute Notices, or incur additional costs by "twin tracking". In that case, our clients may simply choose to allocate their resources by focusing on responses to the step taken by the Monitor in issuing the NODs, rather than the mediation that we were invited to participate in.

Please confirm that the full 30 day time period for the delivery of a Dispute Notice to a NOD received by a landlord at any point prior to the mediation (June 14), will commence on June 14 and not before. Thank you.

D.J.

---

**From:** Gauthier, Virginie [<mailto:virginie.gauthier@nortonrosefulbright.com>]  
**Sent:** May-17-18 9:58 AM  
**To:** Linda Galessiere <[lgalessiere@clegal.ca](mailto:lgalessiere@clegal.ca)>; Edmond Lamek ([edmond.lamek@dlapiper.com](mailto:edmond.lamek@dlapiper.com)) <[edmond.lamek@dlapiper.com](mailto:edmond.lamek@dlapiper.com)>; MacParland, Natasha ([NMacParland@dwpv.com](mailto:NMacParland@dwpv.com)) <[NMacParland@dwpv.com](mailto:NMacParland@dwpv.com)>; John C. Wolf ([jwolf@blaney.com](mailto:jwolf@blaney.com)) <[jwolf@blaney.com](mailto:jwolf@blaney.com)>; David T. Ullmann ([DUllmann@blaney.com](mailto:DUllmann@blaney.com)) <[DUllmann@blaney.com](mailto:DUllmann@blaney.com)>; D. J. Miller <[DJMiller@tgf.ca](mailto:DJMiller@tgf.ca)>; Mudasar Marfatia <[MMarfatia@tgf.ca](mailto:MMarfatia@tgf.ca)>; Mighton, Jesse ([JMighton@dwpv.com](mailto:JMighton@dwpv.com)) <[JMighton@dwpv.com](mailto:JMighton@dwpv.com)>  
**Cc:** Bishop, Paul <[Paul.Bishop@fticonsulting.com](mailto:Paul.Bishop@fticonsulting.com)>; Greg Watson ([greg.watson@fticonsulting.com](mailto:greg.watson@fticonsulting.com)) <[greg.watson@fticonsulting.com](mailto:greg.watson@fticonsulting.com)>; Steven Bissell ([steven.bissell@fticonsulting.com](mailto:steven.bissell@fticonsulting.com)) <[steven.bissell@fticonsulting.com](mailto:steven.bissell@fticonsulting.com)>; Pearson, Lizzy ([Lizzy.Pearson@fticonsulting.com](mailto:Lizzy.Pearson@fticonsulting.com)) <[Lizzy.Pearson@fticonsulting.com](mailto:Lizzy.Pearson@fticonsulting.com)>; Pasparakis, Orestes <[orestes.pasparakis@nortonrosefulbright.com](mailto:orestes.pasparakis@nortonrosefulbright.com)>; Cobb, Evan <[evan.cobb@nortonrosefulbright.com](mailto:evan.cobb@nortonrosefulbright.com)>; Merskey, Alan <[alan.merskey@nortonrosefulbright.com](mailto:alan.merskey@nortonrosefulbright.com)>  
**Subject:** Sears Canada Inc.: Extension of Time to File NODs

At our meeting on Friday May 11, you have asked the Monitor to consider granting your clients who have received notices of revision or disallowance (“**NORDs**”) an extension of the time to file notices of disputes (“**NODs**”). This will confirm that the Monitor, exercising its discretion pursuant to the Claim Procedure Orders issued by the Court, agrees to extend the deadline by which NODs in respect of NORDs that you or your clients have received, or may be receiving prior to May 30, 2018, may be filed, to **July 3, 2018** or such later date as may be agreed to by the Monitor following the Mediation. To the extent that NORDs are issued to your clients after May 30 and prior to the Mediation, the Monitor will work with you to extend the time to file related NODs to a date that will provide your clients no less than 30 days to file NODs. Many thanks, and don't hesitate to reach out with any further questions.

**Virginie Gauthier**

Partner

Norton Rose Fulbright Canada LLP / S.E.N.C.R.L., s.r.l.  
Royal Bank Plaza, South Tower, Suite 3800  
200 Bay Street, P.O. Box 84, Toronto, ON M5J 2Z4 Canada  
T: +1 416.216.4853 | M: +1 416.844.5391 | F: +1 416.216.3930  
[virginie.gauthier@nortonrosefulbright.com](mailto:virginie.gauthier@nortonrosefulbright.com)

## **NORTON ROSE FULBRIGHT**

Law around the world  
[nortonrosefulbright.com](http://nortonrosefulbright.com)

CONFIDENTIALITY NOTICE: This email is confidential and may be privileged. If you are not the intended recipient please notify the sender immediately and delete it.

**TAB C**

THIS IS EXHIBIT

"C"

TO THE AFFIDAVIT OF

**JESSICA WUTHMANN**

SWORN BEFORE ME ON

August 31, 2018



**Alex Mireille Fernet Brochu, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law.  
Expires March 10, 2020.**

David T Ullmann

D: 416-596-4289 F: 416-594-2437  
dullmann@blaney.com

July 5, 2018

**BY EMAIL TO [orestes.pasparakis@nortonrosefulbright.com](mailto:orestes.pasparakis@nortonrosefulbright.com)**

Mr. Orestes Pasparakis  
Norton Rose Fulbright Canada LLP  
Royal Bank Plaza, South Tower  
200 Bay Street, Suite 3800  
Toronto, ON, M5J 2Z4

Dear Orestes

**RE: Claims Process in the CCAA Proceedings of Sears Canada ("Sears")**

As you may recall we are counsel to Bentall Kennedy (Canada) LP, QuadReal Property Group, Primaris Management Inc., First Capital Asset Management ULC, Westcliff Management Ltd., Tanurb (Festival Marketplace) Inc., and Cogir Real Estate, and to each of their respective sub-entities or managed properties described in these Sears proceedings.

Our clients have filed a total of twenty-eight proofs of claim in this matter. In response to these proofs of claim we have received numerous notices of disallowance from the Monitor for a variety of reasons.

In accordance with the Claims Procedure Order, as amended by emails exchanged with your office related to the recent mediation, our clients are now being required by the Monitor to file Notices of Dispute which are to include all evidence required to further determine the claims and the disputes in question.

The Monitor suspended the obligation to file these Notices of Dispute in accordance with its discretion pending the outcome of the Mediation in this matter. As you are aware, the Mediation did not reach a conclusion on June 13, 2018, but it was proposed it would be continued later in July. We now understand from the Monitor that will not occur and the Mediation is thus terminated, notwithstanding that discussions have been ongoing to resolve the landlord proof of claim issues, including most recently in regards to the new proposal put forward by the Monitor for consideration by the landlord group (which was received by our office only on Friday, June 29, 2018, just before the Canada Day weekend).

We believe the Monitor has taken the position that the Notices of Dispute are due on July 16, 2018, and the unwillingness to extend this deadline was re-iterated by you on June 29<sup>th</sup>, despite various communications from our office advising that additional time would be required. We understand from you that at least in part the demand for our clients to incur administrative resources, third party expense and of course legal expenses is to create pressure to respond to the June 29<sup>th</sup> Monitor's proposal in a timely manner.

Firstly, there is no reasonable way that the Notices of Dispute can be delivered in a useful or fulsome manner within the time period provided.

To put the scope of this task in perspective, we consider that each of our Notices of Dispute to represent effectively a lawsuit for damages ranging between twenty and fifty million dollars. It is wholly unreasonable to expect one side of such litigation to produce what is effectively an entire trial record of affidavits, experts evidence, and other materials necessary to determine such a complex claim in a two to three week process, even if we are only speaking about one claim. To consider that in the context of tens of claims further amplifies the issue.

Further, and most importantly, we are all aware that recovery in the Sears insolvency proceeding is now anticipated to be in the low single digits, conditional upon the Deemed Trust issue being settled, (which has been is and remains the central gating Issue). It is unfair and unreasonable to expect clients to spend hundred cent dollars in order to attend to all the necessary actions we would attend to establish the legitimacy of our claims (beyond the general proof of claims we have filed to date).

Similarly, we are very concerned by your advice last Friday that the Monitor would proceed to incur significant expenses in order to peer review and otherwise respond to these claims.

We remind you that these claims are not simple matters, such as a dispute over the delivery or the failure to deliver various goods or other easily quantifiable amounts. These cases involve legitimate but subjective issues related to damages, failure to maintain premises, co-tenancy rights, diminution to the value of the Mall, environmental issues and claims against the Directors and Officers.

Fourthly, and of direct relevance is the fact that no pressure is needed for our landlord group to respond to the Monitor's proposal. We have been hard at it, including briefing clients.

The landlord counsel as early as yesterday morning has held meetings to discuss the nature of the proposal being put forward and the fairness of the procedural issues in place. Numerous emails have been exchanged as we narrow a group response.

In this regard we can say that while we believe that there is a high probability that there can be some very useful steps forward based in part upon what has been proposed, there is quite a complex web of clients, instructions, and site-by-site issues, which have to be considered and reviewed in light of what is being proposed and which will require the proposal to be tweaked and amended to, even on a rough justice basis, have any utility.

In light of the forgoing, we are writing to you to ask the Monitor to reconsider its position with respect to the tolling of this issue. It is more efficient for all parties to dedicate their efforts to the discussion of the proposed resolution you put forward, and to the determination as to whether or not there really is any recovery possible for any other parties, rather than having us focusing our energy on working on our claims. Further, we would point out to you the important fact if our clients are called upon to spend serious funds and become further entrenched in their claims, their willingness to engage in any kind of compromise will be reciprocally diminished.

We also remind you that the landlord group began this process and began the Mediation from the point of view that the threshold gating issue was to resolve the treatment of the pensions and the deemed trust. The fact that those matters remain as far as we know entirely

unresolved (as is the bankruptcy strategy which the Monitor advised the Court it would proceed with if the Mediation failed), is also contributing to the difficulty in seeking or receiving useful instructions from our clients in relations to the Monitor's Proposal.

If you are not prepared to proceed on the basis of a mutually agreeable and commercially reasonable extension of the tolling, we intend to seek an immediate 9:30am attendance with Justice Hainey to seek an extension of the time period for filing Notices of Disputes.

We would recommend that the Notices of Dispute not be filed until such time as a hearing can be held at which point the legitimate scheduling issues, on a claim by claim basis, can be put forward in front of the Court in order to determine the reasonableness of the evidentiary requirements and issues of procedure. We would recommend such a hearing in order to determine those scheduling matters be no sooner than sometime in September of this year.

In the alternative to the forgoing, we are also happy to file blanket Notices of Disputes to merely indicate that our clients maintain their claims in full and are unwilling to accept in any cases the disallowances that have been sent out by the Monitor.

Please provide us with your response as soon as possible and in any event before Noon on Monday July 8<sup>th</sup>, 2018. If we have not heard from you by that point or otherwise have reached a resolution by that time we will schedule an immediate 9:30am at the soonest available time before his Honour, Justice Hainey to seek the extension which we are describing in this letter.

Yours very truly,

**Blaney McMurtry LLP**



David Ullmann  
DU/ab

c.c.: John Wolf  
Edmond Lamek  
Natasha McParland  
Linda Galessiere  
D.J. Miller

**TAB D**

THIS IS EXHIBIT

"D"

TO THE AFFIDAVIT OF

**JESSICA WUTHMANN**

SWORN BEFORE ME ON

August 31, 2018



**Alex Mireille Fernet Brochu, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law.  
Expires March 10, 2020.**



Thornton Grout Finnigan LLP  
RESTRUCTURING + LITIGATION

Toronto-Dominion Centre  
100 Wellington Street West  
Suite 3200, P.O. Box 329  
Toronto, ON Canada M5K 1K7  
T 416.304.1616 F 416.304.1313

D.J. Miller  
T: 416-304-0559  
E: djmiller@tgf.ca  
File No. 1143-010

July 5, 2018

**VIA EMAIL**

Norton Rose Fulbright Canada LLP  
Royal Bank Plaza, South Tower  
200 Bay Street, Suite 3800  
P.O. Box 84  
Toronto, ON M5J 2Z4

**Attention: Orestes Pasparakis /  
Virginie Gauthier/  
Evan Cobb**

Dear Sirs/Madam:

**RE: CCAA proceedings involving Sears Canada Inc., et al (“Sears”)**

We represent Oxford Properties Group and OPGI Management Limited Partnership (collectively referred to herein as “OPG”) in connection with the above-noted CCAA proceedings, and refer to a letter sent by Blaney McMurtry LLP today to you as Monitor’s counsel regarding the claims process (the “Blaney Letter”).

We also refer to the two-day mediation conducted by R.S.J. Morawetz last month, the primary purpose of which was to determine if a consensual resolution could be achieved to the deemed trust priority claim asserted by those parties representing the pension interests. As all parties recognized: (i) if the deemed trust issue was not resolved consensually (whether through mediation or otherwise); and (ii) if the position asserted by the proponents of the deemed trust priority position was ultimately upheld by final Order of a Court, there would be no distribution whatsoever for any other creditor in this CCAA proceeding.

The deemed trust priority issue is therefore a “gating issue” to everything else in the CCAA proceeding at this point, particularly the issue of any distribution to creditors. The entire purpose for a claims process is to facilitate distributions to creditors.

We support the request made in the Blaney letter, but for slightly different reasons than are articulated in that letter.

The claims process only has any relevance if there is some likelihood of a distribution to unsecured creditors. If there is not, every dollar spent on any aspect of the claims process (by creditors and by professionals paid from the estate) is a waste of time and money. That recognition presumably formed the basis for the Monitor originally agreeing to hold open the timeframe for any landlord to respond with a Dispute Notice, to any Notice of Revision or Disallowance (“NORD”) received on the eve of the commencement of the mediation. The premise is equally applicable now, as the deemed trust issue remains unresolved and creates a hurdle to any potential distributions to other creditors.

There would appear to be no rationale for putting creditors to unnecessary expense in having to respond to NORDs while that issue remains unresolved. Further, there is no basis to have the Monitor or its counsel, or others, spend estate money reviewing Notices of Dispute or taking any steps in respect of the claims process unless and until the deemed trust issue has been resolved or determined, so that parties can know if there will be any distribution to unsecured creditors.

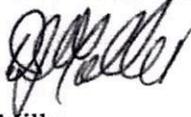
If the Monitor’s intention is to do nothing once Dispute Notices are received (a legitimate position, as a cash-saving measure or otherwise), we query why Dispute Notices would be required to be filed at this time and why a further tolling of the time period would create any prejudice. On the other hand, if the Monitor’s intention is to proceed with the determination of claims upon Dispute Notices being filed, we similarly question why those costs would be incurred if it may all be moot?

We believe that proceeding with the requirement to file Dispute Notices at this time, putting creditors to further expense that may prove to be entirely unnecessary, and incurring further costs in the estate is not appropriate at this time. If the situation changes such that there is a prospect of distributions being available to unsecured creditors, the Monitor can advise counsel that they then have 30 days to file any Dispute Notices they intend to file.

Separately, the Blaney Letter refers to a proposal received from the Monitor on June 29, 2018 with respect to landlord claims. Please provide the undersigned with a copy of any proposal delivered in respect of landlord claims, and we will seek our client’s instructions.

Yours truly,

**Thornton Grout Finnigan LLP**



D.J. Miller

cc: David Ullman / John Wolf; Edmond Lamek; Natasha MacParland; Linda Galessiere

# TAB E

THIS IS EXHIBIT

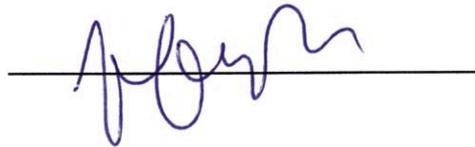
"E"

TO THE AFFIDAVIT OF

**JESSICA WUTHMANN**

SWORN BEFORE ME ON

August 31, 2018

A handwritten signature in blue ink is written over a solid horizontal line. The signature is cursive and appears to read 'Alex Mireille Fernet Brochu'.

**Alex Mireille Fernet Brochu, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law.  
Expires March 10, 2020.**

## Jessica Wuthmann

---

**From:** David T. Ullmann  
**Sent:** Monday, July 23, 2018 5:36 PM  
**To:** Cindy.Elphinstone@Ontario.ca  
**Cc:** Gauthier, Virginie; JDacks@osler.com; Cobb, Evan; John C. Wolf  
**Subject:** Sears - Scheduling Request to be Added to July 24th hearing

July 23, 2018

***BY EMAIL TO Cindy.Elphinstone@ontario.ca***

Honourable Mr. Justice Hainey  
c/o Cindy Elphinstone, Judicial Secretary  
Ministry of the Attorney General  
Superior Court of Justice  
361 University Avenue  
Toronto, ON, M5G 1T3

Your Honour,

**Re: In the matter of Sears Canada (“Sears”) CCAA Proceeding**

At the Sears Hearing to be held tomorrow, **July 24, 2018**, the landlord clients represented by Blaney McMurtry LLP (representing in excess of 20 disclaimed Sears locations) will seek to schedule a motion to be heard on a date to be set by Your Honour. The Motion will seek an order to extend the time periods for the filing of further claim disputes and disallowances in accordance with your Claims Procedure Order. This matter is urgent as the current date for the filing of dispute notices under the Claims Procedure Order is July 31, 2018. As such, we respectfully request this be added to the aspects of the Sears matter before Your Honour for tomorrow.

We apologize for the lateness of this request, but it arises as a result of negotiations among the parties which unfortunately came to an unsuccessful conclusion earlier today.

The substance of the request in our motion will be to extend the time periods in the Claims Procedure Order until such time as the deemed trust issue in the Sears proceeding, which is before your Honour tomorrow in the form of a Case Conference, is resolved and the parties have a better appreciation as to whether or not there will be any proceeds in the estate over which to assert contested claims, and whether or not it makes sense for any further funds to be spent on such contested claims by any party.

We have asked the Monitor to exercise their discretion to make such a motion unnecessary, but they have declined to do so. We note the Monitor is seeking an extension under the Claims Procedure Order to October 1, 2018, for certain matters relating to the D&O process (at paragraphs 93-96 of its 21<sup>st</sup> Report.)

We have advised the Monitor of our intent to make this scheduling request of the Court.

Yours very truly,  
**Blaney McMurtry LLP**

David T. Ullmann  
DTU/ab

David T. Ullmann

Partner

dullmann@blaney.com

📞 416-596-4289 | 📠 416-594-2437

🌐 Blaney.com



This communication is intended only for the party to whom it is addressed, and may contain information which is privileged or confidential. Any other delivery, distribution, copying or disclosure is strictly prohibited and is not a waiver of privilege or confidentiality. If you have received this telecommunication in error, please notify the sender immediately by return electronic mail and destroy the message.

**TAB F**

THIS IS EXHIBIT

"F"

TO THE AFFIDAVIT OF

**JESSICA WUTHMANN**

SWORN BEFORE ME ON

August 31, 2018



**Alex Mireille Fernet Brochu, a Commissioner, etc.,**  
Province of Ontario, while a Student-at-Law.  
Expires March 10, 2020.

David T. Ullmann  
(T) 416-596-4289 (F) 416-594-2437  
dullmann@blaney.com

July 31, 2018

FTI Consulting Canada Inc., Sears Canada Monitor  
TD Waterhouse Tower  
79 Wellington Street West  
Suite 2010, P.O. Box 104  
Toronto, Ontario M5K 1G8  
searscanada@fticonsulting.com

Attn: Sears Canada Claims Process

Dear Sears Canada's Monitor:

**Re: Notice of Disputes re Sears Canada Claims Process**

Please find 26 Notices of Dispute of Revision or Disallowance attached:

Attachment Number	CLIENT	PROPERTY	PROOF OF CLAIM	D+O CLAIM	NOTICE OF REVISION OR DISALLOWANCE	NOTICE OF DISPUTE
1.	PRIMARIS	Cataraqui	X	X	X	X
2.	PRIMARIS	McAllister	X	X	X	X
3.	PRIMARIS	Medicine Hat	X	X	X	X
4.	PRIMARIS	Kildonan	X	X	X	X
5.	PRIMARIS	Park Place	X	X	X	X
6.	PRIMARIS	Regent Mall	X	X	X	X
7.	PRIMARIS	Stone Road	X	X	X	X
8.	QUADREAL	Bower Place	X	X	X	X
9.	QUADREAL	Capilano	X	X	X	X
10.	QUADREAL	Meridian Place	X	X	X	X
11.	QUADREAL	Willowbrook	X	X	X	X
12.	BENTALL	Eastgate	X	X	X	X
13.	BENTALL	Hillside	X	X	X	X

Attachment Number	CLIENT	PROPERTY	PROOF OF CLAIM	D+O CLAIM	NOTICE OF REVISION OR DISALLOWANCE	NOTICE OF DISPUTE
14.	BENTALL	North Hill	X	X	X	X
15.	BENTALL	Vaughn	X	X	X	X
16.	BENTALL	WSC	X	X	X	X
17.	TANURB	Festival Marketplace	X	X	X	X
18.	COGIR (MONTEZ)	Sorel	X	X	X	X
19.	COGIR (MONTEZ)	Corner Brook	X	X	X	X
20.	WESTCLIFF	Levis	X	X	X	X
21.	WESTCLIFF	Granby	X	X	X	X
22.	WESTCLIFF	Place Vertu	X	X	X	X
23.	LES IMMEUBLES CARREFOUR	Drummondville	X	X	X	X
24.	LES IMMEUBLES CARREFOUR	St. Jean	X	X	X	X
25.	LES IMMEUBLES CARREFOUR	St. Jerome	X	X	X	X
26.	LES IMMEUBLES CARREFOUR	Angrignon	X	X	X	X

Our clients, as referred to in the attached, reject the Notices of Revision and Disallowances in full.

Blaney McMurtry submits these Notices of Dispute on behalf of its clients without prejudice to their position in the pending motion that we are bringing on their behalf (to be heard on a date in September at a time to be determined by the court) to determine the appropriateness of the dates in the claims procedure and their requirement to file anything further at this time.

To the extent any additional material is required, such material will be provided in accordance with a schedule to be set by the claims officer, on the understanding that any hearing of any substance before the claims officer would be after the Deemed Trust motion, which we understand is to be in late October.

Our motion in September may also ask the court to seal our clients' attached claims on the basis that they contain confidential business information. We expect the Monitor to hold these claims confidential until this motion can be heard.

We encourage the Monitor to take no further steps on our clients' claims until the motion is heard in September as the September motion and the motion to be heard on August 27, 2018 may limit the role of the Monitor.

Please contact John Wolf or me with any questions.

Yours very truly,

**Blaney McMurtry LLP**

A handwritten signature in black ink, appearing to read 'D. Ullmann', written in a cursive style.

David T. Ullmann  
DTU/JW/ab

Encls.

c.c.: John Wolf

**IN THE MATTER OF THE COMPANIES' CREDITORS' ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS CANADA INC. ET AL.**

---

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

---

**MOTION RECORD OF THE MOVING LANDLORDS**  
(Returnable September 20, 2018)

**BLANEY McMURTRY LLP**  
1500 - 2 Queen Street East  
Toronto, ON M5C 3G5

**David T. Ullmann** (LSO #42357D)  
Tel: (416) 596-4289  
Fax: (416) 594-2437

**John C. Wolf** (LSO #30165B)  
Tel: (416) 593-2994  
Fax: (416) 596-2044

Lawyers for the Moving Landlords