

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

SEARS CANADA INC., by its Court-appointed Litigation Trustee,
J. DOUGLAS CUNNINGHAM, Q.C.

Plaintiff

and

ESL INVESTMENTS INC., ESL PARTNERS, LP, SPE I PARTNERS, LP,
SPE MASTER I, LP, ESL INSTITUTIONAL PARTNERS, LP,
EDWARD S. LAMPERT, EPHRAIM J. BIRD, DOUGLAS CAMPBELL,
WILLIAM CROWLEY, WILLIAM HARKER, R. RAJA KHANNA, JAMES
MCBURNEY, DEBORAH ROSATI ~~and~~ DONALD ROSS, and SEARS
HOLDINGS CORP.

Defendants

**MOTION RECORD OF THE DEFENDANTS
(DIRECTIONS RE STATUS OF SCI CREDITORS)**

RETURNABLE NOVEMBER 15, 2019

November 1, 2019

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TO: **THE LITIGATION SERVICE LIST**

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Tab 1

Court File No. CV-18-00611214-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

SEARS CANADA INC., by its Court-appointed Litigation Trustee,
J. DOUGLAS CUNNINGHAM, Q.C.

Plaintiff

and

ESL INVESTMENTS INC., ESL PARTNERS, LP, SPE I PARTNERS, LP,
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MCBURNEY, DEBORAH ROSATI ~~and~~ DONALD ROSS, and SEARS
HOLDINGS CORP.

Defendants

**NOTICE OF MOTION
(DIRECTIONS RE STATUS OF SCI CREDITORS)**

The defendants will make a motion to The Honourable Justice McEwen on November 15, 2019 at 10:00 a.m., or as soon after that time as the motion can be heard at the court house, 330 University Avenue, 8th Floor, Toronto, Ontario, M5G 1R7.

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

THE MOTION IS FOR:

- (a) A direction that creditors of the Sears Canada Inc. estate who have not opted out of this proceeding are “immediate beneficiaries” of this proceeding pursuant to Rule 31.03(8);
- (b) The costs of this motion; and

- (c) Such further and other relief as to this Honourable Court may seem just.

THE GROUNDS FOR THE MOTION ARE:

- (a) On June 22, 2017, Sears Canada Inc. (“**SCI**”) entered CCAA protection. Approximately 16 months after that, in December 2018, after investigating a number of SCI’s corporate actions, the Monitor, the Litigation Trustee, and the Pension Plan Administrator commenced actions seeking to recover the money SCI paid as a dividend in 2013;
- (b) The plaintiffs are advancing claims against SCI’s former directors and some of the recipient shareholders;
- (c) Rule 31.03(8) grants the defendants the presumptive right to examine any person who stands to “immediately benefit” from the litigation in addition to the party bringing or defending an action;
- (d) The defendants will seek to summons a select few of the almost 1,200 general unsecured creditors who stand to immediately benefit from the Litigation Trustee’s action in accordance with Rule 31.03(8);
- (e) As the Litigation Trustee recognized at paragraph 16 of his amended statement of claim, he has brought his action on behalf of SCI “and its creditors”;
- (f) As such, the creditors the defendants seek to examine are immediate beneficiaries of the Litigation Trustee’s claim;
- (g) The presumptive right under Rule 31.03(8) to examine these creditors can only be limited where the Court is satisfied that the examination would be oppressive, vexatious or

unnecessary. The defendants' proposed examinations are the opposite—they are crucial to make full answer and defence and neither prejudicial nor oppressive to the persons to be examined;

- (h) SCI's creditors' expectations are relevant to the Litigation Trustee's oppression claim and the defendants are entitled to assess whether those expectations were reasonable in the unique circumstances of each creditor's relationship with SCI.

Other Grounds

- (i) Rules 31.03(8) and 57.03 of the *Rules of Civil Procedure*, RRO 1990, Reg. 194; and
- (j) Such further and other grounds as the lawyers may advise.

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

- (a) The Twenty Seventh Report of FTI Consulting Canada in its capacity as court appointed Monitor to Sears Canada, dated November 5, 2018;
- (b) The Thirty First Report of FTI Consulting Canada in its capacity as court appointed Monitor to Sears Canada, dated April 17, 2019;
- (c) The pleadings in this proceeding; and
- (d) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

November 1, 2019

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AND TO: **THE LITIGATION SERVICE LIST**

SEARS CANADA INC., by its Court-appointed Litigation Trustee,
J. DOUGLAS CUNNINGHAM, Q.C.
Plaintiff

-and- ESL INVESTMENTS INC. et al.
Defendants

Court File No. CV-18-00611214-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT
TORONTO

NOTICE OF MOTION
(Directions re Status of SCI Creditors)

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Tab 2

Court File No. CV-18-00611214-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

BETWEEN:

SEARS CANADA INC., by its Court-appointed Litigation Trustee,
J. DOUGLAS CUNNINGHAM, Q.C.

Plaintiff

and

ESL INVESTMENTS INC., ESL PARTNERS LP, SPE I PARTNERS, LP,
SPE MASTER I, LP, ESL INSTITUTIONAL PARTNERS, LP,
EDWARD LAMPERT, EPHRAIM J. BIRD, DOUGLAS CAMPBELL,
WILLIAM CROWLEY, WILLIAM HARKER, R. RAJA KHANNA, JAMES
MCBURNEY, DEBORAH ROSATI, and DONALD ROSS, and SEARS
HOLDINGS CORP.

Defendants

AMENDED AMENDED STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The Claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date December 19, 2018 Issued by “Ray Williams”
Local Registrar

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CLAIM

1. The Plaintiff claims:

- (a) damages on a joint and several basis in the amount of \$509 million,
 - (i) as against the Former Directors (as defined below) and Ephraim J. Bird (“**Bird**”) for breach of fiduciary duty, breach of the duty of care, and conspiracy;
 - (ii) as against the ~~ESL Parties~~ Significant Shareholders (as defined below), for inducing the Former Directors and Bird to breach their duties owed to Sears Canada Inc. (“**Sears Canada**”), knowing assistance, and conspiracy;
- (b) in the alternative to paragraph (a) (ii) above, damages against the ~~ESL Parties~~ Significant Shareholders on a joint and several basis in the amount of \$402 million for inducing the Former Directors and Bird to breach their duties owed to Sears Canada, knowing assistance, and conspiracy;
- (c) a declaration that the ~~ESL Parties~~ Significant Shareholders knowingly received the proceeds of a breach of fiduciary duty and/or were unjustly enriched, hold the proceeds of the Dividend (as defined below) in trust for Sears Canada (except with respect to Sears Holdings Corp.) and must disgorge the proceeds they received on account of the Dividend to Sears Canada;

- (d) a declaration that the authorization and payment of the Dividend was oppressive and unfairly disregarded and was prejudicial to the interests of Sears Canada and its stakeholders and an Order setting aside the Dividend;
- (e) except with respect to Sears Holdings Corp., punitive and exemplary damages;
- (f) pre-judgment and post-judgment interest in accordance with sections 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (g) the costs of this proceeding, plus all applicable taxes; and
- (h) such further and other relief as to this Honourable Court may seem just.

Overview

2. In the early 2010s, Sears Canada was one of Canada's largest retailers. It operated more than 100 of its own full-line department stores, and had more than 25,000 employees.

3. However, Sears Canada was facing serious financial and operational challenges. Since 2007, its revenues and EBITDA had declined each year. In 2011, its management recognized that Sears Canada was falling behind its peers and identified a need to modernize its business in order to keep pace in an increasingly competitive retail environment. This required significant capital investment in order to refresh Sears Canada's stores and improve its e-commerce platform.

4. Despite these warnings, Sears Canada's board of directors ("**Board**") failed to authorize capital investments in the business. Instead, between 2005 and 2012, the company sold assets worth approximately \$2.86 billion and distributed approximately \$2.97 billion in capital to its shareholders.

5. The primary recipients of these distributions were Sears Canada's majority shareholders: Sears Holdings Corp. ("**Sears Holdings**"), the hedge fund ESL Investments, Inc. ("**ESL**") and its affiliates ("**ESL**"), and ESL's founder and proprietor, the billionaire investor Edward S. Lampert (collectively, the "**Significant Shareholders**").

6. In late 2013, Sears Canada was in the midst of its worst year yet. Its revenues declined by more than \$300 million year-over-year and its operating losses reached almost \$188 million. In September, its CEO resigned in frustration at the refusal of the Board to allocate sufficient capital to implement a turnaround strategy.

7. At the same time, ESL was experiencing a liquidity crisis. Its investors had submitted billions of dollars in redemption requests, which it was having difficulty funding.

8. Over the course of the year, Sears Canada sold off a number of its most important assets (the "**Key Asset Sales**"): the leases underlying some of its largest and most lucrative stores. The Sears Canada directors involved in the Key Asset Sales included a number of former ESL and Sears Holdings employees who had been selected for their roles by Lampert. In addition, even though he was not an officer or director of Sears Canada, Lampert was personally involved in the negotiations concerning these transactions.

9. The Key Asset Sales generated extraordinary proceeds of approximately \$591 million. At a November 2013 meeting of the Board held at the offices of Sears Holdings' lawyers in New York City, less than a week after the final sale closed (the "**November 2013 Meeting**"), Sears Canada's management proposed a plan to distribute more than \$509 million to its shareholders through an extraordinary dividend (the "**Dividend**").

10. The Board was not given any advance notice of the proposed Dividend: it did not even appear on the agenda for the November 2013 Meeting. Although the Board was given extensive materials by management, those materials did not address the proposed Dividend or any analysis of its potential impacts on Sears Canada's business. Nor did the Board receive legal or financial advice in relation to it. Nevertheless, the Board authorized the payment of the Dividend.

11. ~~Lampert, and ESL, and Sears Holdings~~ improperly used their influence with the Board to procure the Dividend, for the purpose of providing funds to ~~themselves~~ Significant Shareholders. In accordance with their shareholdings in Sears Canada, 79% of the Dividend was paid to the Significant Shareholders.

12. The payment of the Dividend diverted funds from Sears Canada at a time when the Defendants knew, or ought to have known, that it would be in the best interests of Sears Canada to reinvest the funds in the business or to preserve liquidity to satisfy increasing losses and creditor claims. By mid-2017, Sears Canada had become insolvent, and, on June 22, 2017, it was granted protection under the *Companies' Creditors Arrangement Act* (the "CCAA"). Sears Canada has since liquidated its remaining assets and ceased operations, leaving massive unsatisfied debts owed to its unsecured creditors, including former employees and pensioners.

13. It was not until after the CCAA Proceeding (defined below) commenced that it was discovered that the declaration of the Dividend had taken place in improper circumstances.

14. The Plaintiff seeks to set aside the Dividend and seeks damages to compensate Sears Canada and therefore its creditors for the losses they have suffered as a result of the Dividend.

The Parties

15. The Plaintiff, Sears Canada, is a corporation incorporated under the laws of Canada, with its headquarters in Toronto.

16. Sears Canada is insolvent. It is an applicant in a *CCAA* proceeding commenced on June 22, 2017 (the “*CCAA Proceeding*”). By order dated December 3, 2018, the presiding court in that proceeding (the “*CCAA Court*”) appointed the Honourable J. Douglas Cunningham, Q.C., as Litigation Trustee for Sears Canada to pursue claims on behalf of Sears Canada and its creditors against third parties, including the Defendants.

16.1. The Defendant Sears Holdings is a corporation incorporated under the laws of Delaware, in the United States of America, with its headquarters in Hoffman Estates, Illinois, in the United States of America. Sears Holdings was Sears Canada’s majority shareholder in 2013. Sears Holdings filed for bankruptcy protection under Chapter 11 of the U.S. Bankruptcy Code on October 15, 2018.

17. The Defendant, ESL Investments Inc., is a corporation incorporated under the laws of Delaware, in the United States of America, with its headquarters in Bay Harbor Islands, Florida, in the United States of America. It is a hedge fund which operates through a number of subsidiary entities, namely: ESL Partners, LP, SPE I Partners, LP, SPE Master I, LP, and ESL Institutional Partners, LP. These entities are collectively referred to herein as “ESL”. As a whole, ESL was at all relevant times the largest shareholder of Sears Holdings.

18. The Defendant, Edward S. Lampert, is an individual residing in Indian Creek, Florida, in the United States of America. Lampert was the CEO of Sears Holdings from May 2013 to October 2018. Lampert owns and controls ESL, and has served as ESL Investments Inc.’s Chairman and

Chief Executive Officer since he founded it in 1988. Collectively, ESL and Lampert are referred to herein as the “**ESL Parties**”.

19. The Defendant Ephraim J. Bird is an individual residing in Salado, Texas, in the United States of America. Bird was a director of Sears Canada between May 2006 and November 13, 2013, and its interim CFO, and later permanent CFO, from March 2013 until June 2016.

20. The Defendant Douglas Campbell (“**Campbell**”) is an individual residing in Toronto. Campbell was Sears Canada’s COO from November 2012 until September 24, 2013, and its CEO and a director from that date until October 2014.

21. The Defendant William Crowley (“**Crowley**”) is an individual residing in New York, New York, in the United States of America. Crowley was the Chairman of Sears Canada’s Board in late 2013, and was a director of Sears from May 2005 to April 2015.

22. The Defendant William Harker (“**Harker**”) is an individual residing in New York, New York, in the United States of America. Harker was a director of Sears Canada from November 2008 to April 2015.

23. The Defendant R. Raja Khanna (“**Khanna**”) is an individual residing in Toronto. Khanna was a director of Sears Canada from October 2007 to August 2018.

24. The Defendant James McBurney (“**McBurney**”) is an individual residing in London, in the United Kingdom. McBurney was a director of Sears Canada from April 2010 until 2015.

25. The Defendant Deborah Rosati (“**Rosati**”) is an individual residing in Wainfleet, Ontario. Rosati was a director of Sears Canada from April 2007 to August 2018.

26. The Defendant Donald Ross (“**Ross**”) is an individual residing in New York, New York, in the United States of America. Ross was a director of Sears Canada from May 2012 until 2014.

27. The Defendants, other than the ~~ESL Parties~~ Significant Shareholders and Bird, are referred to herein as the “**Former Directors**”. All of the Former Directors were members of the Board during the November 2013 Meeting.

Lampert’s Purchase of Sears Holdings

28. In early 2005, the ESL Parties acquired a controlling share in the American retailer Sears, Roebuck & Co. (“**Sears Roebuck**”), the then-parent company of Sears Canada. After the acquisition, the ESL Parties established Sears Holdings to hold their stakes in Sears Roebuck and Kmart, another retailer.

29. Lampert appointed himself Chairman of Sears Holdings, and later made himself CEO. From 2005 onwards, he played a direct role in the formulation of Sears Holdings’ business strategy.

30. Soon after the acquisition, Lampert replaced the existing senior management of Sears Roebuck, in many cases with former ESL executives. Appointments to key positions at Sears Holdings made by Lampert included:

- (a) Crowley, the President and COO of ESL, who became Sears Holdings’ CFO;
- (b) Harker, the former General Counsel of ESL, who became Sears Holdings’ General Counsel and Corporate Secretary;

- (c) Bird, the CFO of ESL from 1991 to 2002, who became a board member and the CFO of Sears Hometown and Outlet Stores, Inc., an important Sears Holdings subsidiary; and
- (d) Jeffrey Stollenwerck (“**Stollenwerck**”), a Vice President at ESL, who became Senior Vice President and then President of Sears Holdings’ real estate business.

31. Over the last several years, Sears Holdings has closed hundreds of Kmart and Sears stores and laid off thousands of employees. ~~On October 15, 2018, Sears Holdings filed for bankruptcy protection under Chapter 11 of the U.S. Bankruptcy Code. Sears Holdings is now bankrupt.~~

32. By 2013, Sears Canada was an independent public company and was no longer a Canadian operating subsidiary of Sears Holdings. Nevertheless, Sears Holdings still owned 51% of the shares of Sears Canada at the time.

Lampert’s Involvement in the Operations of Sears Canada

33. As he had at Sears Holdings, Lampert took a direct role in developing Sears Canada’s business strategy.

34. The ESL Parties had significant direct shareholdings in Sears Canada. As of November 2013, the ESL Parties beneficially owned more than 28.1 million Sears Canada shares, amounting to 27.6% of its outstanding shares.

34.1. As a whole, the Significant Shareholders owned almost four fifths of Sears Canada’s shares. At the time, the ESL Parties were the controlling shareholders of Sears Holdings and Lampert was its CEO. Lampert used his position at Sears Holdings, along with his and ESL’s

direct shareholdings in Sears Canada, to cause Sears Canada to act in a way that would benefit him and ESL.

35. Lampert influenced the appointment of Sears Canada's management, including its chief executive officers. This included the appointment of Bird, a former ESL executive, as Sears Canada's interim, and later permanent, CFO in March 2013.

36. Crowley was appointed as the Chairman of the Board of Sears Canada in 2006, and Harker became a director in 2008. Bird was appointed as a Sears Canada director from 2006 to November 13, 2013, when he resigned from the Board but stayed on as the company's CFO.

37.1 By early 2013, Crowley and Harker, with the assistance of Bird, exercised extensive control over Sears Canada. They were instrumental in both management of day-to-day operations and high-level strategic planning. Crowley and Harker also played a major role in the appointment of Douglas Campbell as Sears Canada's CEO in September 2013, as well as the appointment of new directors to the Board.

37.2 Crowley and Harker communicated with Lampert and took direction from him regarding the management of Sears Canada.

Sears Canada's Financial and Operational Problems

37. Between 2011 and 2013, Sears Canada suffered aggregate operating losses of more than \$310 million.

38. As early as September 2011, the company's 2011-2014 Strategic Plan (the "**Strategic Plan**") explained that "Sears Canada requires a full transformation to be able to compete and win in the increasingly competitive Canadian retail environment."

39. Management provided the Board with regular updates on Sears Canada's operations, including the progress of the Strategic Plan. A March 2012 presentation to the Board noted that: "Customer and employee perceptions have been in decline, yet to find bottom", "Sears is ... failing to connect with the next generation", and "[we h]ave underinvested recently in stores".

40. In September 2013, Sears Canada's CEO, Calvin McDonald ("McDonald"), resigned. McDonald later told the press that he had left in frustration at not being able to take the steps necessary to save the company, as a result of Lampert's refusal to authorize investments in Sears Canada's business. McDonald stated that "there was not a real long term commitment to save this business".

41. The minutes of Sears Canada's September 23, 2013 Board meeting summarize a presentation given by Douglas Campbell, Sears Canada's then-COO, which noted that "At current trends, the projection for 2016 EBITDA will be -\$105 million", and that sales "continue to decline across the business at 2.6%". Campbell joined the Board the following day.

42. At the same meeting, the Board received a presentation on the Strategic Plan, which explained that the company's e-commerce system was "seriously substandard", and advised that "To catch competitors, significant investment and transformation is required."

43. By October 2013, the Board was well aware of the problems facing Sears Canada and that its long term viability was at risk. In the circumstances, it was obvious to the Board that Sears Canada urgently needed capital to invest in its business or to preserve value to satisfy its rapidly growing losses and liabilities.

44. However, instead of investing in Sears Canada's business or preserving value to fund liabilities and increasing losses, the Former Directors authorized a plan under which the company sold off its most lucrative assets and sent the proceeds directly to its shareholders.

The Dividend Plan

ESL's Need for Liquidity to Satisfy Redemptions

45. In 2012, ESL received a large number of redemption requests from its investors. These requests totaled approximately \$3.5 billion (US), an amount equal to more than half of ESL's total assets under management at the time. The redemptions were payable in 2013.

46. ESL did not have sufficient cash on hand to satisfy its investors' demands. As a result, it was forced to liquidate significant portions of its portfolio and to pay in-kind redemptions, made up of shares of the companies it owned.

47. To help ESL fund the redemptions, Lampert devised a plan to cause Sears Canada to make a large dividend payment, the majority of which would go to the Significant Shareholders. ESL would use the cash it received to fund redemptions, or distribute its Sears Holdings shares, which would be increased in value as a result of the Dividend, to its own investors as in-kind redemptions.

47.1 Lampert, at the time the CEO of Sears Holdings, planned to use Sears Holdings as a conduit to direct the proceeds of the Key Asset Sales to ESL and himself.

Sale of Sears Canada's Assets

48. As a result of its large operating losses, Sears Canada did not have sufficient cash on hand to fund a large dividend payment. The only way it could raise the necessary funds was to liquidate a number of its "crown jewels": the long-term under-market-value leases for its largest and most lucrative stores.

48.1 In late 2012 or early 2013, Lampert enlisted the assistance and agreement of Crowley, Harker, and Bird to effect a scheme whereby Sears Canada would sell certain of its important assets and then declare a dividend to distribute the proceeds from the sale to Sears Canada's shareholders. Crowley, Harker, and Bird agreed with Lampert to use their respective positions at Sears Canada to execute the plan. These agreements were concluded through telephone calls, correspondence or at in-person meetings in New York City, Sears Holdings's headquarters in Hoffman Estates, Illinois, or ESL's offices in Miami, Florida.

49. Sears Canada had liquidated many of its assets since being acquired by the ESL Parties in 2005. However, in that context, the 2013 Key Asset Sales were notable for their size and impact on Sears Canada's operations.

50. Over the course of 2013, Sears Canada sold seven of its most valuable leases for approximately \$591 million. The sales were carried out in two transactions:

- (a) the sale of two leases – at the Yorkdale Shopping Centre in Toronto and the Square One Mall in Mississauga – to Oxford Properties Group in June 2013 for \$191 million; and
- (b) the sale of five leases – its flagship store in the Toronto Eaton Centre and four other large stores (two in the Greater Toronto Area, and one each in London, Ontario and Richmond, BC) – in November 2013 to Cadillac Fairview Corporation Limited for \$400 million (the “**Cadillac Fairview Sale**”).

51. Sears Canada also reached an agreement, in early November 2013, to sell its 50% interest in a group of eight Quebec shopping centres to Montez Income Properties Corporation for \$315 million. That transaction closed in January 2014.

52. With the agreement of Crawley, Harker, and Bird, Lampert played a direct role in negotiating the Key Asset Sales, even though he was not a director or an officer of Sears Canada. He provided direct instructions to Sears Canada on the price sought by Sears for the Key Asset Sales. Among other things, Lampert personally directed the negotiation strategy in connection with the Cadillac Fairview Sale. Stollenwerck, a senior executive at Sears Holdings' real estate division and a former ESL employee, was the primary negotiator for Sears Canada, even though he was not a Sears Canada employee.

52.1 As part of the scheme, Crowley, Harker, and Bird also played a key role in the organization of the Key Asset Sales. They assisted in the identification of the assets to be sold, and the direction of negotiations. They also liaised with the other Former Directors to ensure that the Board would approve of the Key Assets Sales and the distribution of the proceeds through the declaration of the Dividend.

53. The Former Directors and Bird knew that the Key Asset Sales would significantly reduce Sears Canada's earnings capacity, since the stores being closed were some of the company's most valuable locations. A presentation to the Board (which at the time included Bird) at its September 2013 meeting projected a significant loss in earnings as a result of the liquidation of four of the large stores that were ultimately included in the Cadillac Fairview Sale.

The Dividend Proposal

54. At the same time the Cadillac Fairview Sale was closing in November 2013, ~~three former ESL employees~~ Bird, Crowley, and Harker worked to finalize the proposal for a large extraordinary dividend. Over the course of the ten-day period from November 8 to 18, 2013, Bird, Crowley and Harker settled on a proposed dividend payment of \$5 per share, or more than \$509 million in total.

55. At the time, the Significant Shareholders owned more than 79% of Sears Canada's outstanding shares, and therefore stood to receive a total of approximately \$402 million from a \$5 per share Dividend.

Lack of Notice and Undue Haste

56. The Cadillac Fairview Sale closed on Tuesday, November 12, 2013. The Dividend was approved at a board meeting held less than a week later, on the following Monday and Tuesday, November 18-19, 2013.

57. No information about or notice of the proposed Dividend was provided to the Board by Sears Canada's management in the lead-up to the meeting. Indeed, the Dividend was not even referred to in the agenda for the November 2013 Meeting.

58. Approval of the Dividend was treated as a foregone conclusion by Bird, Crowley and Harker. Although, as discussed below, the Board was not presented with any financial analysis of the Dividend, the minutes of the November 2013 Meeting note that the Board was "presented [with] a draft press release relating to the dividend" at the beginning of their discussion.

59. Notwithstanding the fact they did not receive adequate notice of the proposed Dividend before being asked to vote on it, the Former Directors did not seek any information or advice about the proposal before they approved it.

Insufficient Information Provided to the Board

60. The Board was not given sufficient information to understand the impact of the Dividend, nor did they seek additional information from management.

61. Extensive background materials (the “**Materials**”) were prepared by management and given to the Board before the November 2013 Meeting. However, the Materials did not contain any analysis of the Dividend. In fact, the Materials contained no references to the Dividend at all. The financial and operational plans included with the Materials also omitted any reference to the Dividend and failed to account for the Dividend in their calculations.

62. Even though Crowley, Bird, and Harker had previously undertaken a financial analysis of various Dividend scenarios in the weeks leading up to the declaration of the Dividend, none of their findings were presented to the Board.

63. Without even basic financial information or any professional advice, the Board was not in a position to properly assess the Dividend, even if it had tried or wanted to do so, which it did not.

Lack of Governance Procedures

64. The procedures adopted by Sears Canada’s Board at the November 2013 Meeting were manifestly insufficient for a transaction as large as the Dividend, particularly in light of Sears Canada’s precarious financial and operational position at the time.

65. The Board did not, *inter alia*:

- (a) seek advice from outside legal counsel;
- (b) commission any analysis from financial, accounting, or other advisors; or
- (c) convene an *in camera* session of the independent directors to discuss the Dividend prior to its approval.

66. The failure to take any of these steps before approving the Dividend differed from the Board's conduct with respect to previous dividends and failed to comply with proper governance procedures.

67. For example, before authorizing the payment of two smaller dividends in 2010, the Board implemented a number of significant governance procedures.

68. In 2010, Sears Canada's management provided the Board with a series of capital structure presentations, which were updated several times. These presentations explained the benefits and risks of returning capital to the Company's shareholders and included both extensive financial analysis and in-depth discussions of potential alternatives.

69. The proposed 2010 dividends were discussed during at least five separate board meetings between April and September 2010. The independent directors held an *in camera* meeting to discuss the dividend, and asked outside counsel to attend and provide information on the implications of the payment of an extraordinary dividend, as well as other potential options for use of the company's capital.

70. In November 2013, despite Sears Canada's far worse financial and operational situation, the Board did not conduct *any* of this due diligence. Instead, it approved the Dividend proposed

by Lampert's representatives in management and on the Board without any analysis of the implications to the company itself, or its minority shareholders, employees, creditors, or other stakeholders.

Sears Canada's Board Rubber-Stamped the Dividend Payment

71. After authorizing the liquidation of its most valuable assets, the Board failed to ensure that the proceeds were used for Sears Canada's benefit or to ensure that sufficient value would be available to satisfy creditor claims that would continue to accumulate as losses increased.

72. To the contrary, the Former Directors, almost immediately and without scrutiny or evaluation, decided to dividend out almost all of the money that Sears Canada earned from the Key Asset Sales.

73. The Former Directors could not have reasonably concluded that the Dividend was in Sears Canada's best interest based on the extremely limited information available to them at the time they approved the Dividend. Indeed, the Dividend was not in Sears Canada's best interest. By approving the Dividend, the Former Directors breached their common law and statutory obligations to Sears Canada.

Effects of the Dividend

74. Payment of the Dividend caused serious harm to Sears Canada and its stakeholders.

75. The funds used to pay the Dividend were derived from the sale of leases for some of Sears Canada's largest and best-performing stores, which were located in some of Canada's most densely populated areas. These divestments brought about a significant decline in Sears Canada's revenue-generation capacity without any corresponding long-term investment in its operations.

76. The main beneficiaries of the Dividend were Sears Holdings, ESL, and Lampert. Sears Canada did not receive any benefit from the Dividend.

77. After three more years of enormous losses, Sears Canada became insolvent in 2017. It has since liquidated all of its remaining inventory and assets and closed all of its stores. Sears Canada's liquidation has cost more than 15,000 employees their jobs, and has left its creditors with hundreds of millions of dollars in uncollectable debts.

The CCAA Proceeding

78. On June 22, 2017, Sears Canada and a number of its affiliates commenced the *CCAA* Proceeding.

79. Although the existence of the Dividend was known at the time it was paid, prior to the commencement of the *CCAA* Proceeding, the circumstances surrounding the Board's authorization of and the ~~ESL Parties'~~ Significant Shareholders' involvement in the Dividend were not known to anyone other than Sears Canada's senior management and directors, and the Significant Shareholders.

80. These facts, including Lampert's involvement in the sale of the real estate assets, the non-independent Directors' role in the plan to declare the Dividend, and the absence of information and manifestly inadequate governance procedure at the November 2013 Meeting, were not known and were only uncovered after the *CCAA* Proceeding commenced.

The Claims

81. The facts surrounding the authorization and payment of the Dividend give rise to a number of claims by Sears Canada against the Former Directors, Bird, and the ~~ESL Parties~~ Significant Shareholders.

The Former Directors and Bird: Breaches of Duties and Oppression

82. The Former Directors breached their common law and statutory duties of care and fiduciary duties by:

- (a) authorizing the Dividend in circumstances where it was not in the best interests of Sears Canada, thereby favouring the interests of the Significant Shareholders over those of the company and its other stakeholders; and
- (b) failing to exercise the care, diligence and skill that a reasonably prudent person would have exercised in comparable circumstances by, among other things, neglecting to obtain any information or professional advice about the impact on the business of Sears Canada in paying the Dividend, or in the alternative investing the \$509 million into its business or preserving this value to satisfy liabilities, before agreeing to authorize it.

83. Although Bird was not a director of Sears Canada at the time the November 2013 Meeting was held, he had been a director until immediately prior to the meeting. Bird attended the November 2013 Meeting in his capacity as chief financial officer of Sears Canada, and as such, he continued to owe fiduciary duties and a duty of care and loyalty to Sears Canada after his resignation from the Board.

84. Bird breached the duties he owed to Sears Canada by:

- (a) proposing the Dividend in circumstances where the Dividend was not in the best interests of Sears Canada;
- (b) proposing the Dividend for the benefit of the Significant Shareholders;
- (c) preparing and planning for the distribution of the Dividend without providing adequate information to the Board, in the hope that the Dividend would be declared by the Board;
- (d) withholding relevant financial information from the Former Directors that they required to properly analyze the merits of the Dividend, including information about Sears Canada's pension deficit; and
- (e) proposing and recommending the Dividend and then resigning from the Board before the November 2013 Meeting.

85. As a result of the breaches referred to in paragraphs 82 to 84 above, Sears Canada seeks to unwind the Dividend and seeks damages against the Former Directors and Bird in the amount of \$509 million.

86. Further, the Former Directors and Bird acted in an oppressive manner towards Sears Canada by:

- (a) disregarding the reasonable expectation of Sears Canada that their powers would be used for the benefit of the company, rather than for that of third parties like the Significant Shareholders; and

- (b) using their powers to authorize the Dividend, which was unfairly prejudicial to and disregarded the interests of Sears Canada and its creditors.

87. It is appropriate for Sears Canada, by way of its Litigation Trustee, to be the complainant for an oppression claim on its own behalf and on behalf of its creditors, who are all similarly affected by the oppressive conduct described above.

88. As a result of the Former Directors' and Bird's oppression Sears Canada seeks an Order:

- (a) declaring that the Former Directors and Bird, breached their duties owed to Sears Canada;
- (b) setting aside the Dividend; and
- (c) ordering the Former Directors and Bird to pay damages to Sears Canada on a joint and several basis in the amount of \$509 million.

89. An order setting aside the Dividend, imposing a constructive trust over those funds (except with respect to Sears Holdings), and/or ordering compensatory payments in the same amount would remedy the Former Directors' and Bird's oppression and return to Sears Canada the funds that rightly belong to it, for the ultimate benefit of its creditors.

The ~~ESL Parties~~ Significant Shareholders: Inducing Breaches of Duties; Knowing Assistance, Knowing Receipt, and Unjust Enrichment

90. The ~~ESL Parties~~ Significant Shareholders knowingly induced, encouraged, assisted and participated in the Former Directors' and Bird's breaches of fiduciary duty. They knew of the fiduciary duties the Former Directors and Bird owed to Sears Canada, and that the Dividend would

harm Sears Canada. The ~~ESL Parties~~ Significant Shareholders nonetheless influenced and encouraged the Former Directors to authorize the Dividend for ~~the ESL Parties'~~ their own benefit.

91. But for the ~~ESL Parties'~~ Significant Shareholders' inducement of and their assistance given to the Formers Directors' and Bird's breaches of their fiduciary duties to Sears Canada, those defendants would not have been put in circumstances where the breach of their duties in this manner was possible.

92. The ~~ESL Parties~~ Significant Shareholders knowingly assisted the Former Directors and Bird to take the wrongful step of authorizing and encouraging the Dividend, which resulted in prejudice to Sears Canada's rights, in circumstances where there was no right in the circumstances for the Former Directors and Bird to take such steps.

93. The ~~ESL Parties~~ Significant Shareholders are liable to Sears Canada for damages in the amount of \$509 million for inducing breaches of fiduciary duties and knowing assistance in the Former Directors' and Bird's breaches of their duties.

94. In the alternative, the ~~ESL Parties~~ Significant Shareholders are liable for disgorgement in the amount of \$140.8402 million for knowingly receiving the proceeds of the Former Directors' and Bird's breaches of fiduciary duty.

95. In addition, or in the further alternative, the ~~ESL Parties~~ Significant Shareholders were unjustly enriched by receiving \$140.8402 million by way of the Dividend in circumstances where it should not have been approved. The Dividend was paid gratuitously as a benefit to the ~~ESL Parties~~ Significant Shareholders, and caused a corresponding deprivation to Sears Canada. There was no juristic reason for the ~~ESL Parties~~ Significant Shareholders to receive the Dividend.

96. The appropriate remedy for the ESL Parties' unjust enrichment is the imposition of a constructive trust in favour of Sears Canada over the portion of the Dividend received by them. The appropriate remedy for Sears Holdings' unjust enrichment is disgorgement of the portion of the Dividend received by it.

Conspiracy By All Defendants

97. All of the Defendants acted together to generate the funds for and authorize the Dividend to the benefit of the Significant Shareholders and to the detriment of Sears Canada. This was unlawfully carried out through the Former Directors' and Bird's breaches of the duty of care, fiduciary duties, and oppressive conduct, as planned and directed by the ~~ESL Parties~~ Significant Shareholders. This conduct was directed at Sears Canada in circumstances where the Defendants knew, or ought to have known, that damage to Sears Canada would result.

97.1 This course of action involved an agreement in late 2012 and early 2013 amongst Lampert, acting in his personal capacity and as the CEO of Sears Holdings and the directing mind of ESL, Crowley, Harker, and Bird, to develop and execute the plan to sell the Key Assets and distribute the bulk of the proceeds to Sears Holdings and ESL, for the ultimate benefit of ESL and Lampert. The conspiracy occurred primarily via email and telephone conversations. At all material times, the conspiracy took place in the co-conspirators' places of residence, namely Florida, Texas, Toronto and New York.

97.2 In fall 2013, the conspiracy expanded to an agreement between Lampert (again, acting in his personal capacity and as the CEO of Sears Holdings and the directing mind of ESL), the Former Directors, and Bird, for the Former Directors to authorize the payment of the Dividend by Sears Canada for the benefit of Sears Holdings, ESL, and Lampert. The conspiracy occurred between

October and December 2013, primarily via email and telephone conversations. At all material times, the conspiracy took place in the co-conspirators' places of residence, namely Florida, Texas, Toronto and New York, and at a meeting in November 2013 in New York City.

98. The Defendants knew, or ought to have known, that it was not in the best interests of Sears Canada to distribute over half a billion dollars to its shareholders at a time when capital needed to be re-invested in the corporation to arrest its decline or to preserve value to satisfy liabilities. Instead, the distribution of the extraordinary revenues generated by the Key Asset Sales to shareholders accelerated Sears Canada's decline, thereby damaging its interests in the short-, medium-, and long-term, and ensured that \$509 million did not remain to satisfy increasing liabilities.

99. The Defendants are liable to Sears Canada for damages in the amount of \$509 million for conspiracy.

Service *Ex Juris*, Statutes Relied Upon, and Location of Trial

100. The Plaintiff is entitled to serve any Defendants who reside outside Ontario without a court order because this claim relates to a tort committed in Ontario, and because the Defendants carried on business in Ontario.

101. The plaintiff pleads and relies upon the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, sections 122, 238, and 241 and Rules 17.02(g) and 17.02(p) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

102. The plaintiff proposes that this action be tried in the City of Toronto.

~~December 19, 2018~~

~~July 2, 2019~~

July 19, 2019

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-and- ESL INVESTMENTS INC., et al.

Plaintiff

Defendants

Court File No. CV-18-00611214-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT
TORONTO

AMENDED AMENDED STATEMENT OF CLAIM

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Tab 3

Court File No. CV-17-11846-00CL

**SEARS CANADA INC.,
AND RELATED APPLICANTS**

TWENTY-SEVENTH REPORT OF FTI CONSULTING CANADA INC., AS MONITOR

November 5, 2018

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Court File No. CV-17-11846-00CL

**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 QUÉBEC 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.

APPLICANTS

**TWENTY-SEVENTH REPORT TO THE COURT
SUBMITTED BY FTI CONSULTING CANADA INC.,
IN ITS CAPACITY AS MONITOR**

A. INTRODUCTION

1. On June 22, 2017, Sears Canada Inc. ("**Sears Canada**" or "**SCI**") and a number of its operating subsidiaries (collectively, with Sears Canada, the "**Applicants**") sought and obtained an initial order (as amended and restated on July 13, 2017, the "**Initial Order**"), under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"). The relief granted pursuant to the Initial Order was also extended to Sears Connect, a partnership forming part of the operations of the Applicants (and together with the Applicants, the "**Sears Canada Entities**"). The proceedings commenced under the CCAA by the Applicants are referred to herein as the "**CCAA Proceedings**".

2. The Initial Order, among other things:
 - (a) appointed FTI Consulting Canada Inc. as monitor of the Sears Canada Entities (the “**Monitor**”) in the CCAA Proceedings;
 - (b) granted an initial stay of proceedings against the Sears Canada Entities until July 22, 2017; and
 - (c) scheduled a comeback motion for July 13, 2017 (the “**Comeback Motion**”).
3. Following the Comeback Motion, the Court extended the Stay Period. In addition, the following orders were issued:
 - (a) an order setting out the terms of the appointment of Ursel Phillips Fellows Hopkinson LLP as representative counsel for the non-unionized active and former employees of the Sears Canada Entities (“**Employee Representative Counsel**”);
 - (b) an order setting out the terms of the appointment of Koskie Minsky LLP as representative counsel to the non-unionized retirees and non-unionized active and former employees of the Sears Canada Entities with respect to pension and post-employment benefit matters (“**Pension Representative Counsel**”);
 - (c) an order authorizing the eventual suspension of special payments under the Sears Canada Pension Plan, certain payments in connection with supplemental pension plans and certain payments under post-retirement benefit plans pursuant to a term sheet agreed to by the Ontario Superintendent of Financial Services, as Administrator of the Pension Benefits Guarantee Fund (the “**Superintendent**”), Employee Representative Counsel, Pension Representative Counsel, each of their respective representatives, and the Sears Canada Entities; and
 - (d) an order approving a sale and investor solicitation process (the “**SISP**”) to solicit interest in potential transactions, including investment and liquidation proposals, involving the business, property, assets and/or leases of the Applicants.

4. On July 18, 2017, the Court issued an order approving an agreement and a process for the liquidation of inventory and FF&E at certain initial closing Sears Canada locations, which liquidation process is now completed.
5. On October 13, 2017, the Court issued, among other orders, an order approving an agreement and a process (the “**Second Liquidation Process**”) for the liquidation of the inventory and FF&E at all remaining Sears Canada retail locations, which liquidation commenced shortly thereafter and is now completed.
6. On December 8, 2017, the Court issued an Order (the “**Claims Procedure Order**”) approving a claims process for the identification, determination and adjudication of claims of creditors against the Sears Canada Entities and their Officers and Directors.
7. On February 22, 2018, the Court issued an Employee and Retiree Claims Procedure Order (the “**E&R Claims Procedure Order**” and, together with the Claims Procedure Order, the “**Claims Procedure Orders**”) approving a process for the identification, determination and adjudication of claims of employees and retirees of the Sears Canada Entities.
8. On March 2, 2018, the Court issued an Order appointing Lax O’Sullivan Lisus Gottlieb LLP as litigation investigator (the “**Litigation Investigator**”) to identify and report on certain potential rights and claims of the Sears Canada Entities and/or creditors of the Sears Canada Entities. The order was amended on April 26, 2018 (the “**LI Order**”).
9. The liquidation of assets at Sears Canada’s retail locations is now completed, all retail locations are closed, and leases in respect of such locations have been disclaimed or surrendered back to the landlord. The major assets of the Sears Canada Entities that remain to be realized upon are the Applicants’ remaining owned real estate assets.
10. In connection with the CCAA Proceedings, the Monitor has provided twenty-six reports and fifteen supplemental reports (collectively, the “**Prior Reports**”), and prior to its appointment as Monitor, FTI also provided to this Court a pre-filing report of the proposed Monitor dated June 22, 2017 (the “**Pre-Filing Report**”). The Pre-Filing Report, the Prior Reports and other Court-filed documents and notices in these CCAA

Proceedings are available on the Monitor's website at cfcanada.fticonsulting.com/searscanada/ (the "**Monitor's Website**").

B. PURPOSE

11. The purpose of this twenty-seventh report of the Monitor (the "**Twenty-Seventh Report**") is to provide the Court with information regarding motions:
 - (a) by the Monitor for, among other things,
 - (i) authorization and direction to proceed, pursuant to Section 36.1 of the CCAA, to issue and pursue a claim under Section 96 of the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**") relating to the 2013 Dividend (as defined below);
 - (ii) authorization and direction to take certain ancillary steps in connection therewith

((i) and (ii), collectively, the "**TUV Claim Motion**"); and
 - (b) by the Litigation Investigator for, among other things, an order authorizing the appointment of a litigation trustee and counsel to pursue the claims recommended in the First Report of the Litigation Investigator, dated November 5, 2018 (the "**LI Motion**").
12. The TUV Claim Motion does not seek any determination of liability of any party for claims under Section 96 of the BIA. The TUV Claim Motion seeks only approval for the investment of further time and estate resources to commence and pursue these claims. This Twenty-Seventh Report does not include a summary of all evidence and arguments that would be relevant to these claims if the Monitor was authorized to pursue them.
13. A copy of the Monitor's draft statement of claim in connection with the 2013 Dividend is attached hereto as **Appendix "A"**.

C. TERMS OF REFERENCE

14. In preparing this Twenty-Seventh Report, the Monitor has relied upon audited and unaudited financial information of the Sears Canada Entities, the Sears Canada Entities' books and records, certain financial information and forecasts prepared by the Sears Canada Entities and discussions and correspondence with, among others, the senior management ("**Management**") of, and advisors to, the Sears Canada Entities (collectively, the "**Information**").
15. Except as otherwise described in this Twenty- Seventh Report:
 - (a) the Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the *Chartered Professional Accountants of Canada Handbook*; and
 - (b) the Monitor has not examined or reviewed the financial forecasts or projections referred to in this Twenty- Seventh Report in a manner that would comply with the procedures described in the *Chartered Professional Accountants of Canada Handbook*.
16. Future-oriented financial information reported in or relied on in preparing this Twenty-Seventh Report is based on Management's assumptions regarding future events. Actual results will vary from these forecasts and such variations may be material.
17. The Monitor has prepared this Twenty-Seventh Report in connection with the TUV Claim Motion and the LI Motion. The Twenty-Seventh Report should not be relied on for any other purpose.
18. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars.
19. Capitalized terms not otherwise defined herein have the meanings ascribed to them in the following documents filed as part of the CCAA Proceedings: (i) the affidavits of Mr. Billy Wong, the former Chief Financial Officer of Sears Canada; (ii) the affidavit of Ms.

Becky Penrice, the former Executive Vice-President and Chief Operating Officer of Sears Canada; (iii) the affidavits of Mr. Philip Mohtadi, General Counsel and Corporate Secretary of Sears Canada; (iv) the Prior Reports; and (v) the First Report of the Litigation Investigator, dated November 5, 2018.

D. MONITOR'S INVESTIGATION OF TRANSACTIONS OF INTEREST

20. As described in the Eleventh Report of the Monitor, dated January 15, 2018, following its appointment, the Monitor commenced a review of certain material transactions, payments and dividends entered into, made or declared by the Sears Canada Entities in the period prior to their filing for protection under the CCAA. The review focused primarily on potential preference transactions and transfers at undervalue pursuant to Sections 95 and 96 of the BIA.
21. The Monitor identified the following Transactions of Interest:
 - (a) the dividend paid to Sears Canada shareholders on December 31, 2012 in the amount of approximately \$102 million (the “**2012 Dividend**”);
 - (b) the dividend paid to Sears Canada shareholders on December 6, 2013 in the amount of approximately \$509 million (the “**2013 Dividend**” and, together with the 2012 Dividend, the “**Dividends**”); and
 - (c) the surrender by Sears Canada of its exclusive right to use the Craftsman trademark in Canada in connection with the sale by Sears Holdings Corporation of the Craftsman business to Stanley Black & Decker in March 2017 (the “**Craftsman Transaction**”).
22. The Monitor received over 100,000 documents and files from Sears Canada and other associated parties from the time periods relevant to these transactions and has undertaken a targeted review of these documents.

E. MONITOR'S FINDINGS REGARDING THE CRAFTSMAN TRANSACTION

23. Sears Canada was a party to a licence agreement with Sears Holdings Corporation (“**Sears US**”) entered into in 1987 (“**License Agreement**”). The License Agreement provided Sears Canada the right to use trademarks owned by Sears US.
24. On February 28, 2017, Sears Canada’s board was informed that Sears US was selling its Craftsman business to Stanley, Black & Decker (“**SBD**”). The transaction would require the termination of the existing license rights held by Sears Canada with respect to the Craftsman trademarks.
25. Ultimately, Sears Canada agreed to terminate its rights to the Craftsman trademarks under the License Agreement, facilitating the sale to SBD. Sears Canada did not receive any portion of the consideration received by Sears US under the sale to SBD. Sears Canada and SBD entered into a replacement license agreement, providing Sears Canada with a royalty free license to these trademarks for a 15 year period, with a royalty-based license thereafter.
26. Following a detailed review of the Craftsman Transaction, the process followed by Sears Canada leading to the Craftsman Transaction, the advice received from Sears Canada’s professional advisors, and the circumstances surrounding the Craftsman Transaction, the Monitor has concluded that the agreement by Sears Canada to relinquish its license rights appears to have been an arm’s length negotiated transaction. The outcome of the transaction was the result of the relative bargaining position of Sears Canada, Sears US and SBD. Sears Canada was not reasonably in a position to insist that it receive any portion of the consideration paid to Sears US under the Craftsman Transaction. The royalty free license offered by SBD provided Sears Canada with sufficient ongoing license rights at no cost. In addition, if Sears Canada refused to cooperate in this transaction, Sears US had agreed with SBD to rely upon certain unilateral termination rights under the License Agreement, which would have affected all of Sears Canada’s licensed trademark rights and placed Sears Canada in a less favourable position than was available under the Craftsman Transaction. As a result, this transaction did not require further review.

F. MONITOR'S FINDINGS REGARDING 2012 DIVIDEND

27. The relevant facts associated with the 2012 Dividend will be discussed in greater detail below in the section of this Twenty-Seventh Report on the 2013 Dividend.
28. Similar to the 2013 Dividend, the Monitor has identified concerns regarding the process followed to approve and pay the 2012 Dividend. However, based upon its review of the facts as applied to the relevant law, the Monitor has determined that the Monitor should not proceed with any claim in respect of the 2012 Dividend due to (i) the specific tests that the Monitor would need to satisfy under the relevant provisions of the BIA and (ii) the challenges in satisfying those tests at this time in view of available evidence of the financial position and intentions of Sears Canada in 2012.

G. MONITOR'S FINDINGS REGARDING THE 2013 DIVIDEND

29. The remainder of this Twenty-Seventh Report will describe the Monitor's views on the 2013 Dividend and the Monitor's request to pursue remedies in connection with the 2013 Dividend.

Process to Approve the 2013 Dividend

30. The Monitor has identified material concerns regarding the process followed by Sears Canada to declare and pay the 2013 Dividend.
31. Sears Canada declared and paid dividends twice in 2010 ("**2010 Dividends**"). The Monitor considered the 2010 Dividends to obtain background information on Sears Canada's past approval processes when declaring dividends and for comparison against the process undertaken by the board and management in respect of the 2012 Dividend and 2013 Dividend.
32. The process followed by the Sears Canada board to approve the 2010 Dividends appears to have been robust. In 2010, Sears Canada's net operating income was positive. Management presentations were delivered to the board well in advance of the approval and payment of these dividends. Those presentations set out multiple options to fund the payment of these dividends as well as other options to return value to shareholders. A

calculation of the excess cash that would remain following implementation of each such option was also provided to the board. Independent directors (being directors without a material connection to significant existing shareholders) met separately with external independent counsel to review and discuss the potential dividends. Ultimately, a dividend of approximately \$376.7 million was approved by the board of directors on May 18, 2010 and was paid on June 4, 2010. A second dividend of approximately \$376.7 million was approved on September 9, 2010 and paid on September 24, 2010 and the approval process for that dividend was equally thorough.

33. The Monitor's review shows that, in contrast to the 2010 Dividend, the board and management devoted significantly less time and analysis to the declaration and payment of the 2012 and 2013 Dividends.
34. The first information the Monitor has identified as being delivered to the board of Sears Canada in connection with the 2012 Dividend was delivered on December 12, 2012, in the form of a five page presentation (excluding appendices) relating to the 2012 Dividend. The presentation forecasted cash on hand at December 30, 2012 in the amount of \$430 million. A 'downside' scenario showed negative excess cash for strategic uses forecasted for 2013. The presentation did not specifically consider the impact of the 2012 Dividend on creditors or Sears Canada's apparently weaker liquidity position relative to 2010. The presentation appears to have been sent to the Board at 11:56 am on December 12, 2012, in respect of a telephone meeting which took place from 2:00 pm to 3:00 pm later that day. The 2012 Dividend was declared at that teleconference board meeting and paid in an aggregate amount of approximately \$102 million on December 31, 2012. The then CFO of Sears Canada resigned on January 24, 2013.
35. The information available to the Monitor indicates the process to approve the 2013 Dividend was more limited. On November 18 and 19, 2013, the Sears Canada board met in New York at the offices of Sears US's counsel. At that meeting, the Sears Canada board approved the 2013 Dividend of approximately \$509 million in the aggregate, which was paid on December 6, 2013. The board materials (including the agenda and management presentation) provided for this meeting make no mention of any dividend

payment or the effect it would have on Sears Canada's liquidity and operations going forward. The Monitor has requested but not received or identified any evidence of a separate meeting or prior discussion amongst the independent directors (being those directors with no association with the major shareholders of Sears Canada). Email correspondence among senior management in Sears Canada's finance division show that at least some financial analysis was undertaken at the management level in respect of the 2013 Dividend. This analysis appears to have been completed the morning of November 18, 2013. The Monitor has not identified any correspondence through which this analysis was delivered to the board. The minutes do not make reference to any management presentation. The 2013 Dividend was approved by the full board (including independent and non-independent directors).

Significant Shareholders of Sears Canada

36. Publicly available information indicates that ESL Investments Inc., or its affiliates (collectively, "**ESL**"), Edward Lampert ("**Lampert**") and Sears US were shareholders of Sears Canada at the time of the 2013 Dividend. When the 2013 Dividend was *declared*, public disclosures indicate Sears US held just over 50% of the common shares of Sears Canada and ESL and Lampert held approximately 17% and 10% of the common shares of Sears Canada, respectively. Publicly available disclosures suggest that Lampert is the controlling shareholder of ESL and that Lampert and ESL held over 50% of the shares of Sears US at the time the 2013 Dividend was declared.
37. Before the 2013 Dividend was *paid*, the shareholdings of ESL and Lampert in Sears US dropped to approximately 48%.
38. At the time of the 2013 Dividend, two of eight directors and one officer of Sears Canada were former officers of Sears US and / or ESL.
39. Based upon a media review at and around the time of the 2013 Dividend declaration and payment, ESL appears to have had an urgent liquidity need at that time to satisfy redemption requests by clients of certain of its funds. Media reports indicate that these

redemptions were paid partly in cash and partly in shares of Sears US. An example of such a media report is attached hereto as **Appendix “B”**.

40. The evidence reviewed by the Monitor indicates that Lampert and individual directors of Sears Canada who were connected with ESL and Lampert, being William Harker and William Crowley (the “**Connected Directors**”), significantly influenced the determination to monetize assets to fund the 2013 Dividend and thereafter to declare and pay the 2013 Dividend.

Financial Circumstances of Sears Canada in 2013

41. The Monitor has considered the solvency of Sears Canada at the time of the 2013 Dividend. Based upon information available to the Monitor from public sources and from Sears Canada, the Monitor considered the value of Sears Canada from a going concern perspective and from a liquidation perspective.
42. The Monitor is not able to conclude that as of the date of the 2013 Dividend, Sears Canada was an insolvent person, as defined in the BIA.
43. A conclusion that Sears Canada’s property was not sufficient to enable payment of all of its liabilities as of December 2013 if the assets of the business were immediately sold or liquidated at that time, would require assumptions as to the net value of real estate holdings at that time. Under certain real estate value assumptions Sears Canada would have been insolvent and under other alternative value assumptions Sears Canada would not have been insolvent. However, in the Monitor’s view, further analysis to develop such assumptions would not be justified in view of third party analyses of Sears Canada’s real estate holdings at that time and the values ultimately received for this real estate and similar properties owned by other competitors.
44. From a cash flow perspective, Sears Canada continued to operate for several years after the 2013 Dividend. Accordingly, one could not reasonably conclude that Sears Canada had ceased paying or ceased to be able to pay its obligations as they were coming due at the time of, or as a result of, the 2013 Dividend.

45. As will be discussed further below, while the Monitor cannot conclude that Sears Canada was insolvent at the time of the 2013 Dividend, the Monitor does believe that the indications of a business facing severe and likely irreversible challenges were present at the time of the 2013 Dividend.

Relevant Law

46. Based upon information available to the Monitor at this time, the Monitor believes it is appropriate for the Monitor to advance a claim against Lampert and ESL that the portion of the 2013 Dividend they received was a transfer at undervalue that should be remedied under Section 96 of the BIA, as incorporated into the CCAA under Section 36.1. The Monitor believes it is appropriate to also extend this claim to the Connected Directors, as parties privy to the transaction.
47. While the Monitor also believes a corresponding claim could be advanced against Sears US, the Monitor is not recommending or seeking authority to advance such claim at this time in view of the recent filing by Sears US for protection under Chapter 11 of the United States Bankruptcy Code and the stay of proceedings triggered by that filing. The Monitor is currently considering next steps regarding this claim against Sears US and will await further information from the Chapter 11 proceedings.
48. The relevant portions of Section 96 of the BIA, with required modifications pursuant to Section 36.1 of the CCAA are as follows:

96 (1) On application by the [Monitor], a court may declare that a transfer at undervalue is void as against ... the [Monitor] ... or order that a party to the transfer or any other person who is privy to the transfer, or all of those persons, pay to the estate the difference between the value of the consideration received by the debtor and the value of the consideration given by the debtor — if

...

(b) the party was not dealing at arm's length with the debtor and

(i) the transfer occurred during the period that begins on the day that is one year before the [day on which proceedings commence under the CCAA] and that ends on the [day on which proceedings commence under the CCAA], or

(ii) the transfer occurred during the period that begins on the day that is five years before [day on which proceedings commence under the CCAA] and ends on the day before the day on which the period referred to in subparagraph (i) begins and

(A) the debtor was insolvent at the time of the transfer or was rendered insolvent by it, or

(B) the debtor intended to defraud, defeat or delay a creditor.

...

(3) In this section, a person who is privy means a person who is not dealing at arm's length with a party to a transfer and, by reason of the transfer, directly or indirectly, receives a benefit or causes a benefit to be received by another person.

49. A 'transfer at undervalue' is defined in section 2 of the BIA as:

a disposition of property or provision of services for which no consideration is received by the debtor or for which the consideration received by the debtor is conspicuously less than the fair market value of the consideration given by the debtor.

50. A person is privy to a transfer at undervalue if they (i) did not deal at arm's length with any party to the transfer, and (ii) by reason of the transfer, directly or indirectly, received a benefit or caused a benefit to be received by another person.

51. In the Monitor's view, the following are key considerations for a claim under Section 96 of the BIA and Section 36.1 of the CCAA to succeed in connection with the 2013 Dividend:

- (a) in addition to Section 101 of the BIA, Section 96 provides a second avenue to challenge a dividend as a reviewable transaction under the BIA;
- (b) the 2013 Dividend meets the criteria of a transfer at undervalue;
- (c) the parties receiving a portion of the 2013 Dividend were not dealing at arm's length with Sears Canada;

- (d) Sears Canada was either insolvent at the time of the 2013 Dividend, rendered insolvent by the 2013 Dividend or Sears Canada intended to defraud, defeat or delay creditors in connection with the 2013 Dividend; and
- (e) in the case of the Connected Directors, such directors were privy to the transfer as described above.

Section 101 of the BIA

- 52. Section 101 of the BIA (as modified by s. 36.1 of the CCAA) specifically addresses the payment of dividends within one year prior to the commencement of a CCAA proceeding. The Monitor has considered with its counsel whether Section 101 was intended to be the sole mechanism by which the Monitor could challenge a dividend payment under the BIA provisions.
- 53. The Monitor is of the view that there is a reasonable basis to conclude that Section 96 of the BIA can operate in combination with Section 101 of the BIA to remedy dividend transactions that adversely impact the assets of the estate available to creditors. The Monitor notes, however, that Canadian jurisprudence on this point is very limited. The only Canadian decision the Monitor has identified that deals directly with this point supports the conclusion that a dividend can be found to be a transfer at undervalue under a predecessor provision to Section 96 notwithstanding the concurrent operation of the predecessor provision to Section 101 of the BIA. The Monitor has identified no Canadian precedent addressing the application of Section 96 to the payment of shareholder dividends.
- 54. Section 101 addresses the payment of a shareholder dividend within one year before insolvency proceedings commence, unless the corporation or its shareholders can show that the corporation was not insolvent or rendered insolvent by the dividend payment. Section 96 provides additional remedies that can respond to transactions over a longer 'look-back' period if those transactions were engaged with non-arm's length parties while the debtor company was insolvent or with an intent to defraud, defeat or delay other creditors. The Monitor is of the view that, whereas Section 101 provides a

narrowly defined set of circumstances in which remedies for improper dividends will clearly be readily available, Section 96 can be interpreted to provide a broader set of protections for transactions, including dividends, where the facts, such as non-arm's length dealings, insolvency and/or intention to defraud, delay or defeat other creditors justify a remedy for the benefit of all creditors and to preserve the assets of the insolvent party's estate for the benefit of creditors.

2013 Dividend Meets the Criteria of a Transfer at Undervalue

55. A transfer at undervalue is (i) a disposition of property or provision of services; and (ii) for which no consideration is received by the debtor or for which the consideration received by the debtor is conspicuously less than the fair market value of the consideration given by the debtor.
56. The 2013 Dividend resulted in the disposition of approximately \$509 million in property value to shareholders.
57. Those shareholders who received the 2013 Dividend paid no direct consideration in return for that dividend. The Monitor recognizes that a dividend is, in substance, compensation for the use of the investment of shareholders. However, the Monitor also notes that, prior to a dividend being declared, a shareholder has no legally enforceable claim to any dividend funds and the debtor has no obligation to pay any such dividend funds. In receiving the dividend, a shareholder does not exchange or relinquish any valuable enforceable right it has vis-à-vis the corporation paying the dividend.

Non-Arm's Length Recipients of Dividends

58. Related parties are presumed, in the absence of evidence to the contrary, not to be dealing with each other at arm's length pursuant to Section 4 of the BIA. In the case of parties that were not related to each other at the time of the transaction, it is a question of fact whether they were dealing with each other at arm's length.
59. As noted above, the recipients of the 2013 Dividend would have included Sears US, as a majority holder of the shares of Sears Canada at the time of the declaration of the 2013

Dividend, ESL or its affiliates, as a direct holder of 17% of the shares of Sears Canada at that time, and Lampert, as a holder of 10% of the shares of Sears Canada at that time. As a result of Lampert's apparent control of ESL, and ESL's and Lampert's apparent control of Sears US, Sears US, ESL and Lampert, collectively, held sufficient shares to have majority ownership, as a group, of Sears Canada at the time of the declaration of the 2013 Dividend. If it is accepted that these parties operated as a group, they would be related to Sears Canada and presumed (absent evidence to the contrary) to be non-arm's length in connection with the 2013 Dividend.

60. The appointment of directors and officers of Sears Canada with material links to ESL and Sears US provides further evidence of the relationships between these parties at the relevant times.
61. The Monitor believes ESL, Lampert and Sears US, collectively, did not deal at arm's length with Sears Canada at the relevant time based upon the foregoing information.
62. The Monitor has not identified any material information to rebut this conclusion.

Sears Canada's Insolvency or Intention to Defraud, Defeat or Delay Creditors

63. As noted above, it is not clear from the available information that Sears Canada was an insolvent person at the time of the 2013 Dividend, within the meaning set out under the BIA.
64. The Monitor believes there is sufficient information to draw a preliminary conclusion, subject to review of further evidence as it becomes available, that at the end of 2013, Sears Canada was paying significant dividends while, at the same time, proceeding along a path to inevitable insolvency. This information includes:
 - (a) Sears Canada's policy of monetizing key assets and making significant distributions to shareholders without investing in the growth or re-alignment of the business or satisfying its obligations to material creditors;
 - (b) Sears Canada's steadily declining financial performance including negative net profitability and cash flow; and

- (c) Sears Canada's limited review, analysis and consideration of the effect of paying the 2013 Dividend upon its ability to satisfy its liabilities in the future, including the substantial pension wind-up obligations that Sears Canada had no plan to pay.

(a) Asset Monetization

65. Over 2012 and 2013, SCI engaged in several high-profile monetization transactions involving real estate assets in order to generate cash proceeds totalling in excess of \$1 billion. These transactions included key retail assets and the cessation of operations at key retail locations, namely: Yorkdale Shopping Centre; Square One Mississauga; Toronto Eaton Centre, Sherway Gardens, Markville Shopping Centre, Masonville Place and Richmond Centre. Certain parties knowledgeable about the 2013 real estate monetizations advised the Monitor that the 2013 real estate transactions appear to have been undertaken on an expedited basis, which may have materially depressed the sale values received.

(b) Declining Financial Performance

66. In 2010, Sears Canada had an operating profit of \$196.3 million.
67. 2010 was the last year Sears Canada generated a profit from operations. It experienced a steady decline in financial performance beginning in 2011. In 2011, it was operating at a loss of \$50.9 million, and by 2013 the annual operating loss was \$187.8 million.
68. The chart below illustrates the rapid deterioration of Sears Canada's financial condition immediately prior to and following the declaration of the Dividends:¹

¹ Sears Canada Inc.'s Annual Audited Financial Statements from 2010 – 2016.

Year	Total Revenues (\$ million)	Operating Profit (Loss) (\$ millions)	Gross Margin Rate
2010	4,938.5	196.3	39.3%
2011	4,619.3	(50.9)	36.5%
2012	4,300.7	(82.9)	36.7%
2013	3,991.8	(187.8)	36.2%
2014	3,424.5	(407.3)	32.6%
2015	3,145.5	(298.3)	31.8%
2016	2,613.6	(422.4)	27.3%

69. Analyst reports suggest that the market did not attach any material value to Sears Canada's ongoing operations in 2012 and 2013, and it should have been clear that Sears Canada would continue to experience increasing operational losses as it sold off valuable key assets.
70. FTI's review of cash flow forecasts presented by Sears Canada in early 2014 draws a similar conclusion. Once the forecast was normalized by FTI for appropriate assumptions regarding the financial performance of the business going forward based upon past trends, including store closures, preliminary conclusions indicate that Sears Canada's operations could not reasonably have been expected to be cash flow positive from 2014 onward absent a turnaround plan accompanied by substantial investment in the business, which does not appear to have been in Sears Canada's plans. If then existing trends continued during and after 2014, Sears Canada would have reasonably projected exhausting its cash reserves by 2016 (absent additional inflows from asset sales or debt financing). Even after accounting for asset realizations, available normalized projections

indicate that based upon then existing trends, Sears Canada would have forecasted to have negative cash of \$430 million by 2019.

71. In March of 2014, the Sears Canada board held a telephone meeting at which two further dividend scenarios were discussed in the amount of \$1.50 per share and \$2.50 per share. The process at this meeting was similar to the 2012 Dividend approval process as materials relating to these dividend scenarios were circulated less than one hour before the scheduled start time for the meeting. Sears Canada ultimately did not declare this dividend. Available evidence suggests this non-payment was the result of concerns about Sears Canada's financial position just three months after the 2013 Dividend was paid.

(c) Consideration of Impact on Creditors

72. From 2012 onward, Sears Canada appears to have been effectively undertaking a process of self-liquidation. The company appears to have moved quickly to monetize assets potentially at suboptimal values, which facilitated immediate payments to shareholders. In 2017, the liquidation was completed under the CCAA.
73. There is no evidence available to the Monitor at this time to show that Sears Canada considered in detail whether, after paying the dividends to shareholders in 2013, sufficient funds would remain to satisfy all liabilities. It is now clear that there would have been no reasonable basis to conclude that sufficient value would be available to pay creditors after paying this dividend, continuing to generate significant losses in future years, and after the process of liquidating all assets was complete. Monetizing assets and distributing proceeds to shareholders by means of the 2013 Dividend shifted risk to creditors and away from shareholders. It appears that payments to creditors may have been delayed for the benefit of shareholders and the 2013 Dividend could reasonably have been known to have a material and adverse impact on Sears Canada's ability to pay creditors in the future.
74. When considering the intention of Sears Canada regarding the 2013 Dividend, the Monitor believes the following factors are most relevant:
- (a) Significant portions of the dividends were paid to non-arm's length parties;

- (b) certain of these non-arm's length parties were facing their own liquidity pressures in the form of redemption requests from investors, which may have created an urgent need for the cash provided by the 2013 Dividend;
- (c) the real estate monetization transactions were undertaken at the direction of Lampert who was not a duly authorized representative of Sears Canada;
- (d) the 2013 Dividend appears to have been undertaken with undue haste and without the level of board process that one would have expected, and that was followed when the 2010 dividend was approved;
- (e) The 2013 Dividend was paid in the face of worsening financial results, significant outstanding debts, including with respect to pensions, and outstanding litigation. The Monitor notes that in a letter dated December 3, 2013, counsel to the plaintiff in a class proceeding commenced on behalf of certain Sears Hometown dealers raised the possibility that the proposed payment of the 2013 Dividend could leave Sears Canada without sufficient reserves to satisfy any judgment obtained on behalf of the Sears Hometown dealers against Sears Canada. Similar concerns regarding potential future dividends were raised by the Sears Canada Retiree Association in a letter dated January 30, 2013;
- (f) FTI's preliminary conclusions indicate that Sears Canada's operations could not reasonably have been expected to generate positive cash from 2014 onward absent a turn-around plan accompanied by substantial investment in the business, which was not planned; and
- (g) if existing trends continued during and after 2014, Sears Canada would have reasonably projected exhausting its cash reserves by 2016 (absent additional inflows from asset sales or debt financing). Even after accounting for asset realizations, FTI's projections indicate that based upon then existing trends, Sears Canada would have been forecast to have negative cash of \$430 million by 2019. Recent public statements by the then CEO of SCI in 2013 indicate that he was

denied the necessary capital to invest in initiatives to improve SCI's operational performance (including, among other things, a large-scale store refresh project).

The Connected Directors were privy to the 2013 Dividend

75. Both of the Connected Directors had close links to ESL and Lampert. Both were former long term officers of ESL Investments Inc. These parties, as a result of their positions, had significant influence over the decisions to monetize real estate and pay the 2013 Dividend. The Monitor has identified evidence that these parties played a material role in these transactions and may have caused the 2013 Dividend to be received by ESL, Lampert and Sears US.

H. MONITOR'S RECOMMENDATION ON TUV CLAIM MOTION

76. The Monitor is not in a position at this time to conclude with certainty that the 2013 Dividend is a transfer at undervalue that must be reversed. However, based upon the facts known to the Monitor at this time, the Monitor believes there is a reasonable basis for the Court to consider further, on a full record, whether:

- (a) Section 96 is available to remedy the payment of a dividend provided all requirements of that section are satisfied;
- (b) the 2013 Dividend meets the criteria of a transfer at undervalue;
- (c) ESL and Lampert received a significant portion of the 2013 Dividend and were not dealing at arm's length with Sears Canada;
- (d) Sears Canada intended to defraud, defeat or delay creditors through payment of the 2013 Dividend and recklessly disregarded the fact that the payment of the 2013 Dividend would defraud, defeat or delay creditors; and
- (e) the Connected Directors were privy to the transaction.

77. The 2013 Dividend in an aggregate amount exceeding \$500 million (a majority of which appears to have been received directly or indirectly by Sears US, Lampert and ESL) is a

very material matter for the creditors of Sears Canada. Recovery of even a portion of this amount from Lampert, ESL or the Connected Directors would materially increase the recoveries of creditors who, at this time, are projected to receive minimal or no recoveries from the Sears Canada estate.

78. The Monitor believes these arguments should be considered by the Court on a full record to determine if a claim under Section 96 of the BIA will succeed. The Monitor will provide a further update at a later date regarding any similar claim that it may seek to pursue against Sears US after further review of the implications of the Sears US insolvency and Chapter 11 proceedings.

I. MONITOR'S RECOMMENDATION ON LI MOTION

79. The Monitor and its counsel have reviewed the First Report of the Litigation Investigator and have engaged in consultation with the Litigation Investigator regarding the LI Motion and the claims proposed to be pursued thereunder.
80. The Monitor believes the appointment of a Litigation Trustee as a court officer to direct litigation on behalf of the Sears Canada Entities is appropriate in the circumstances given the current status of the Sears Canada Entities, the fact that litigation recoveries will be solely for the benefit of creditors of the Sears Canada Entities, the limited remaining employees of the Sears Canada Entities, the likelihood that the remaining employees will eventually cease to be so employed, and the possible duration of any litigation. The Monitor believes the proposed Litigation Trustee has the experience and knowledge to be properly qualified for the position.
81. In the Monitor's view, the litigation protocol proposed by the Litigation Investigator is efficient and sensible due to the overlapping facts associated with the Monitor's proposed claim under Section 36.1 of the CCAA, the Litigation Trustee's proposed claims and the other claims of third parties described in the Litigation Investigator's First Report, all of which relate to the 2013 Dividend.
82. The Monitor does not, in this Twenty-Seventh Report, provide a recommendation on the merits or likelihood of success of the claims described in the First Report of the

Litigation Investigator. However, the Monitor does believe, consistent with the Monitor's position on the TUV Claim Motion, that there is a sufficient basis to justify these claims being considered by the Court on a full record.

J. DIRECTOR AND OFFICER INDEMNITY CLAIMS

83. The claims that the Monitor and the Litigation Investigator recommend pursuing in connection with the 2013 Dividend include claims against current and former directors and officers of Sears Canada (the “**Current and Former D&Os**”).
84. Those Current and Former D&Os may have valid indemnity claims against Sears Canada to the extent that such Current and Former D&Os pay costs or damages in connection with these claims that are not covered by insurance.
85. In order to preserve such Current and Former D&Os' indemnity rights while at the same time not requiring the estate to reserve funds to satisfy such potential indemnity claims in the future, the Monitor and the Litigation Investigator have agreed that any recoveries they receive from the Current and Former D&Os will be net of any distributions that would have been payable to these Current and Former D&Os from the estate on account of the Current and Former D&Os corresponding indemnity claims. Current and Former D&Os will effectively be paid their distributions on account of indemnity claims directly from the litigation proceeds that those Current and Former D&Os may contribute to the estate.
86. The Monitor recognizes that this proposal does not fully protect the Current and Former D&Os in a circumstance where the litigation is unsuccessful and the Current and Former D&Os have indemnity claims for legal costs. However, any reserve required to satisfy such an indemnity claim solely for legal costs is expected to be a manageable reserve amount.

K. COST OF PURSUING CLAIMS UNDER SECTION 96

87. As noted in the First Report of the Litigation Investigator, an aggregate amount of \$12 million is proposed to be set aside from the estate of Sears Canada to fund all litigation

proposed to be commenced by the Litigation Trustee and the Monitor in connection with the 2013 Dividend. Any other third party claims will not be funded by Sears Canada.

88. The Monitor has reviewed the proposed amount of funding with the Litigation Investigator and believes the proposed amount of funding provides sufficient resources to diligently pursue this litigation. The Monitor notes that the proposed claims are expected to be both legally and factually complex and substantial resources will need to be allocated to all aspects of these claims. The proposed funding amount is intended to be a maximum amount that could be needed for the litigation. The Monitor and the Litigation Investigator have not budgeted for the full use of all available litigation funding. In many foreseeable circumstances, there will be significant surplus funds remaining after completion of the litigation. However, setting aside this amount now will ensure that this litigation process does not experience funding shortfalls in the future, when further access to funding may not be available, and clearly signals that the estate has ample resources to pursue these claims to the fullest extent possible in this case. The Monitor will review on an ongoing basis the expenditure of this proposed funding and will ensure that surplus funding that may remain at the completion of the litigation process would be returned to the estate.
89. The Monitor understands the Creditors' Committee established under the LI Order has also reviewed the proposed funding and is supportive of the funding to be provided for this litigation.
90. The Monitor recognizes that stakeholders may have differing views on the proposed litigation and believes an opt-out mechanism is an appropriate and practical approach to protect the interests of those stakeholders who are not in favour of pursuing the litigation. The opt-out mechanism proposed by the Monitor and the Litigation Investigator would segregate costs directly related to the litigation from the normal CCAA administration costs to ensure that any creditors of Sears Canada who neither wish to fund nor recover from any claims relating to the 2013 Dividend can preserve the unsecured recoveries they would receive if this litigation were not pursued. As part of this process, the Monitor and

its counsel would record their fees and disbursements in a manner that would permit any costs associated with this litigation to be separately identified going forward.

91. To implement the opt-out mechanism, the Monitor proposes to notify all known creditors with claims in excess of \$5,000 of the opt-out process and will advise these creditors that if they wish to exercise this right to opt-out they must return a signed opt-out notice on or before sixty days following receipt of such notice from the Monitor. The Monitor proposes to establish a \$5,000 threshold for efficiency and believes such a threshold is justified in view of the costs of delivering opt-out notices and the likely recoveries of creditors with claims of less than \$5,000 (excluding possible litigation proceeds). A copy of the form of opt-out notice and creditor communication is attached hereto as **Appendix “C”**.
92. The Monitor proposes that Employee Representative Counsel and Pension Representative Counsel be authorized to exercise opt-out rights on behalf of the parties they represent both for efficiency and because the question of whether to opt-out is in large part a determination of a party’s view of the legal merits of the proposed claims, for which Employee Representative Counsel and Pension Representative Counsel are well positioned to advise on behalf of their clients. The Monitor’s proposed draft order also confirms that Morneau Shepell Limited, as administrator of the Sears Canada Pension Plan, is the party with authorization to elect whether to opt-out in connection with the claim arising from the wind-up deficit in the defined benefit component of the Sears Canada Pension Plan.
93. Set out below is an illustrative estimate of recoveries to unsecured creditors of SCI who elect to opt out of participation in the claims relating to the 2013 Dividend relative to the recoveries of unsecured creditors of SCI who do not opt out at various levels of litigation recovery and at various percentages of creditors electing to opt out. The recoveries of unsecured creditors of SCI who elect to opt-out are, in all cases, estimated to be 7.4%. The recoveries of unsecured creditors of SCI who do not elect to opt out are estimated to be in the range of 6.0% to 64.6% depending upon the level of recoveries from the litigation and the proportion of opt-out creditors as shown in the table below.

Opt out %	\$0 Litigation Recovery		\$50 Million Litigation Recovery		\$150 Million Litigation Recovery		\$500 Million Litigation Recovery	
	Opt-out Recovery %	Non-Opt-out Recovery %	Opt-out Recovery %	Non-Opt-out Recovery %	Opt-out Recovery %	Non-Opt-out Recovery %	Opt-out Recovery %	Non-Opt-out Recovery %
0%	-	6.9%	-	9.2%	-	13.9%	-	30.3%
10%	7.4%	6.8%	7.4%	9.4%	7.4%	14.6%	7.4%	32.8%
20%	7.4%	6.7%	7.4%	9.7%	7.4%	15.5%	7.4%	36.0%
30%	7.4%	6.6%	7.4%	10.0%	7.4%	16.7%	7.4%	40.1%
40%	7.4%	6.5%	7.4%	10.4%	7.4%	18.2%	7.4%	45.5%
50%	7.4%	6.3%	7.4%	11.0%	7.4%	20.4%	7.4%	53.2%
60%	7.4%	6.0%	7.4%	11.9%	7.4%	23.6%	7.4%	64.6%


94. This recovery analysis is based on current cash on hand and estimated cash flows until December 2018 and is used for illustrative purposes only. The recovery analysis does not reflect proceeds that would be available from future real estate transactions. The recovery analysis reflects a reserve of \$10 million for any operating costs, professional fees and contingencies associated with the wind down of the estate after December 2018. The non-opt out analysis also reflects the litigation funding budget of \$12 million. Claims have been valued based on the Notices of Revision / Disallowance sent and the Notices of Dispute received (and in the case of material claims for which Notices of Dispute have been received, the Monitor's view of a reasonable valuation thereof), and are subject to change as claims are adjudicated. The recovery analysis also assumes that the claim in respect of the wind-up deficiency against Sears Canada Entities is an unsecured claim valued at \$650.5 million², out of which \$624.5 million relates to Sears Canada.
95. The Monitor believes there is substantial creditor support for the pursuit of the Monitor's claim to recover amounts in connection with the 2013 Dividend. However, if the extent of any opt outs from participation in the litigation is sufficient to question the overall level of creditor support for this litigation, the Monitor may return to court for further direction regarding this litigation.

² For indicative purposes only.

The Monitor respectfully submits to the Court this, its Twenty-Seventh Report.

Dated this 5th day of November, 2018.

FTI Consulting Canada Inc.
in its capacity as Monitor of
the Sears Canada Entities

A handwritten signature in blue ink that reads "Paul Bishop". The signature is written in a cursive style with a light blue background behind it.

Paul Bishop
Senior Managing Director

A handwritten signature in blue ink that reads "Greg Watson". The signature is written in a cursive style with a light blue background behind it.

Greg Watson
Senior Managing Director

Tab 4

Court File No. CV-17-11846-00CL

**SEARS CANADA INC.,
AND RELATED APPLICANTS**

THIRTY-FIRST REPORT OF FTI CONSULTING CANADA INC., AS MONITOR

APRIL 17, 2019

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**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 QUÉBEC INC., 191020 CANADA INC., THE CUT INC.,
SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., 9845488
CANADA 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.

APPLICANTS

**THIRTY-FIRST REPORT TO THE COURT
SUBMITTED BY FTI CONSULTING CANADA INC.,
IN ITS CAPACITY AS MONITOR**

A. INTRODUCTION

1. On June 22, 2017, Sears Canada Inc. (“**Sears Canada**”) and a number of its operating subsidiaries (collectively, with Sears Canada, the “**Applicants**”) sought and obtained an initial order (as amended and restated on July 13, 2017, the “**Initial Order**”), under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”). The relief granted pursuant to the Initial Order was also extended to Sears Connect, a partnership forming part of the operations of the Applicants (and together with the Applicants, the “**Sears Canada Entities**”). The proceedings commenced under the CCAA by the Applicants are referred to herein as the “**CCAA Proceedings**”.
2. The Initial Order, among other things:

- (a) appointed FTI Consulting Canada Inc. as monitor of the Sears Canada Entities (the “**Monitor**”) in the CCAA Proceedings;
 - (b) granted an initial stay of proceedings against the Sears Canada Entities until July 22, 2017 (the “**Stay Period**”); and
 - (c) scheduled a comeback motion for July 13, 2017 (the “**Comeback Motion**”).
3. Following the Comeback Motion, the Court extended the Stay Period. In addition, the following orders were issued:
 - (a) an order setting out the terms of the appointment of Ursel Phillips Fellows Hopkinson LLP as representative counsel for the non-unionized active and former employees of the Sears Canada Entities (“**Employee Representative Counsel**”);
 - (b) an order setting out the terms of the appointment of Koskie Minsky LLP as representative counsel to the non-unionized retirees and non-unionized active and former employees of the Sears Canada Entities with respect to pension and post-employment benefit matters (“**Pension Representative Counsel**”);
 - (c) an order authorizing the eventual suspension of special payments under the Sears Canada Pension Plan (the “**Pension Plan**”), certain payments in connection with supplemental pension plans, and certain payments under post-retirement benefit plans pursuant to a term sheet agreed to by the Ontario Superintendent of Financial Services, as Administrator of the Pension Benefits Guarantee Fund (the “**Superintendent**”), Employee Representative Counsel, Pension Representative Counsel, each of their respective representatives, and the Sears Canada Entities; and
 - (d) an order approving a sale and investor solicitation process to solicit interest in potential transactions, including investment and liquidation proposals, involving the business, property, assets and/or leases of the Applicants.
4. On July 18, 2017, the Court issued an order approving an agreement and a process for the liquidation of inventory and FF&E at certain initial closing Sears Canada locations.

5. On October 13, 2017, the Court issued, among other orders, an order approving an agreement and a process for the liquidation of the inventory and FF&E at all remaining Sears Canada retail locations.
6. The liquidation of all inventory and FF&E is now completed and all Sears Canada retail locations are closed.
7. On March 29, 2018, the Superintendent issued an order winding-up the Pension Plan effective October 1, 2017.
8. On December 8, 2017, the Court issued an Order (the “**Claims Procedure Order**”) approving a claims process for the identification, determination, and adjudication of claims of creditors against the Sears Canada Entities and their Officers and Directors.
9. On February 22, 2018, the Court issued an Employee and Retiree Claims Procedure Order (the “**E&R Claims Procedure Order**” and, together with the Claims Procedure Order, the “**Claims Procedure Orders**”) approving a process for the identification, determination, and adjudication of claims of employees and retirees of the Sears Canada Entities.
10. On March 2, 2018, the Court issued an Order appointing Lax O’Sullivan Lisus Gottlieb LLP as Litigation Investigator (as amended on April 26, 2018, the “**Litigation Investigator Order**”), with a mandate to identify and report on certain rights and claims that the Sears Canada Entities or any creditors of the Sears Canada Entities may have against any parties.
11. On May 9, 2018, the Court issued an Order approving a process for a mediation among stakeholders with the goal of achieving a resolution of significant claim and distribution matters (the “**Mediation**”) as a preliminary step toward a global resolution of material estate matters. The Mediation commenced on June 13, 2018 with Regional Senior Justice Morawetz as mediator and resulted in settlements with major creditors as further described in Prior Reports and below.

12. The only remaining material asset of the Sears Canada Entities, other than possible litigation-related assets, that has not been sold is a real property asset located in Barrie, Ontario.
13. On December 3, 2018, the Monitor and the Honourable J. Douglas Cunningham, Q.C. as Court-appointed litigation trustee (the “**Litigation Trustee**”), were authorized by the Court to pursue litigation against certain third parties on behalf of Sears Canada and its creditors, in connection with the payment of certain dividends (the “**2013 Dividend**”) by Sears Canada to its shareholders in 2013 (the “**Estate 2013 Dividend Litigation**”). The Court also lifted the stay of proceedings in the Initial Order to allow the Estate 2013 Dividend Litigation, as well as a claim by Morneau Shepell Ltd., as administrator of the Pension Plan (the “**Pension Plan Administrator**”) and class action claims (collectively, the “**Dealer Class Action**”) by certain “Sears Hometown” store dealers, each also arising from the 2013 Dividend, to be commenced or continued.
14. On February 15, 2019, the Court issued an Order (the “**Meetings Order**”) authorizing the Monitor to file a joint plan of compromise and arrangement in respect of the Sears Canada Entities (the “**Plan**”) and to convene meetings of Affected Unsecured Creditors (the “**Meetings**”) for the purpose of considering and voting on the Plan.
15. On February 26, 2019, the Court issued an Order (the “**NORD Extension Order**”) further extending the deadline for the Monitor to file Notices of Revision or Disallowances (“**NORDs**”) in respect of D&O Claims and claims filed by the Directors and Officers based upon claimed indemnity obligations of the Sears Canada Entities to such Directors and Officers in each case pursuant to the Claims Procedure Orders until a further Order of this Court.
16. In connection with the CCAA Proceedings, the Monitor has provided thirty reports and twenty-two supplemental reports (collectively, the “**Prior Reports**”), and prior to its appointment as Monitor, FTI also provided to this Court a pre-filing report of the proposed Monitor dated June 22, 2017 (the “**Pre-Filing Report**”). The Pre-Filing Report, the Prior Reports, and other Court-filed documents and notices in these CCAA

Proceedings are, or will be made, available on the Monitor's website at cfcanada.fticonsulting.com/searscanada/.

B. PURPOSE

17. The purpose of this thirty-first report of the Monitor (the "**Thirty-First Report**") is to provide the Court with information regarding:
- (a) the current status of various matters in the CCAA Proceedings, including the activities of the Monitor and the Sears Canada Entities since the date of the Monitor's Twenty-Eighth Report to the Court dated November 27, 2018 (the "**Twenty-Eighth Report**");
 - (b) the Monitor's request for an order (the "**Fourth Fee Approval and Stay Extension Order**"): (i) approving the fees and disbursements of the Monitor and its counsel, Norton Rose Fulbright Canada LLP ("**NRFC**"), for the periods set out in the Fee Affidavits (as defined below); and (ii) extending the Stay Period (as defined in the Initial Order) to September 30, 2019, and providing a corresponding extension of the application period for the Employee Hardship Fund; and
 - (c) the Monitor's comments and recommendations in connection with the foregoing.

C. TERMS OF REFERENCE

18. In preparing this Thirty-First Report, the Monitor has relied upon audited and unaudited financial information of the Sears Canada Entities, the Sears Canada Entities' books and records, certain financial information and forecasts prepared by the Sears Canada Entities, and discussions and correspondence with, among others, the senior management ("**Management**") of, and advisors to, the Sears Canada Entities (collectively, the "**Information**").
19. Except as otherwise described in this Thirty-First Report:
- (a) the Monitor has not audited, reviewed, or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with

Generally Accepted Assurance Standards pursuant to the *Chartered Professional Accountants of Canada Handbook*; and

- (b) the Monitor has not examined or reviewed the financial forecasts or projections referred to in this Thirty-First Report in a manner that would comply with the procedures described in the *Chartered Professional Accountants of Canada Handbook*.
20. Future-oriented financial information reported in or relied on in preparing this Thirty-First Report is based on Management's assumptions regarding future events. Actual results will vary from these forecasts and such variations may be material.
21. The Monitor has prepared this Thirty-First Report in connection with its request for the Fourth Fee Approval and Stay Extension Order. The Thirty-First Report should not be relied on for any other purpose.
22. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars.
23. Capitalized terms not otherwise defined herein have the meanings ascribed to them in the following documents filed as part of the CCAA Proceedings: (i) the affidavits of Mr. Billy Wong, the former Chief Financial Officer of Sears Canada; (ii) the affidavit of Ms. Becky Penrice, the former Executive Vice-President and Chief Operating Officer of Sears Canada; (iii) the affidavits of Mr. Philip Mohtadi, General Counsel and Corporate Secretary of Sears Canada; (iv) the Plan; and (v) the Prior Reports.

D. UPDATE ON THE CCAA PROCEEDINGS AND THE ACTIVITIES OF THE SEARS CANADA ENTITIES AND THE MONITOR

24. Set out below is a summary of material developments since the date of the Twenty-Eighth Report.

Claims Process

25. As noted in Prior Reports, in connection with the Claims Procedure Orders, the Monitor has received nearly 3,000 Proofs of Claim and D&O Proofs of Claim.

26. To the extent that disputes in respect of Claims and D&O Claims were not able to be resolved consensually and expeditiously, the Monitor has made arrangements to refer those claims to The Honourable James Farley (the “**Claims Officer**”), one of the two claims officers appointed pursuant to the Claims Procedure Orders, for adjudication.
27. In total, 8 disputed claims were referred to the Claims Officer so far, all of which, with the exception of one D&O Claim¹, have now been finally determined by the Claims Officer, or consensually resolved. The aggregate amount of Disputed Claims referred to the Claims Officer was (i) Pre-Filing Secured Claims totalling \$14.7 million, (ii) Pre-Filing Unsecured Claims totalling \$9.1 million, (iii) Restructuring Claims totalling \$15 million, and (iv) Post-Filing Claims totalling \$13.2 million. Those claims were determined or resolved in favour of the Monitor as follows: (i) no Pre-Filing Secured Claims, (ii) Pre-Filing and Restructuring Unsecured Claims of \$1.7 million, and (iii) Post-Filing Claims of \$27,500.
28. There are approximately 24² claims against the Sears Canada Entities that have not yet been resolved, and 95 unresolved D&O Claims. Unresolved claims against the Sears Canada Entities are comprised mostly of (i) insurance claims, the resolution of which is being led by the Sears Canada Entities’ insurance adjuster, and (ii) environmental claims, including duplicative claims filed by various parties in respect of Sears’ former full-line store located at the North Hill Centre shopping mall in Calgary (the “**North Hill Calgary Claims**”).
29. The resolution of the North Hill Calgary Claims is interrelated with appeal proceedings in respect of an Environmental Protection Order (“**EPO**”) in front of the Alberta Environmental Appeals Board. The appeals hearing is scheduled to take place in early June 2019.

¹ This claim includes three separate claims that are proceeding as one.

² This number does not include the Landlord Claims of 22 Moving Landlords represented by Blaney McMurtry LLP which have been resolved pursuant to a settlement agreement dated December 3, 2018, and in respect of which the Moving Landlords are taking the position that the amounts of each Moving Landlord’s Landlord Claims remains to be resolved.

30. The Applicants, the Monitor and the Monitor's counsel have been actively involved in mediation meetings and continue to work with the parties to the North Hill Calgary Claims with the goal of reaching agreement on the implementation of a remediation action plan contemplated under the EPO which, if achieved, would address matters scheduled to be heard at the appeals hearing and assist in the resolution of the North Hill Calgary Claims.
31. As described in Prior Reports, the Mediation, with the assistance of Regional Senior Justice Morawetz, initially resulted in agreements with landlords representing 77% of all claims filed by landlords, excluding environmental and D&O Claims, and in the PSA (as defined below).
32. Since the date of the Twenty-Eighth Report, the Monitor has entered into a settlement agreement dated December 3, 2018 with landlords (collectively, the "**Moving Landlords**") representing the remainder of landlord claims that were unresolved as at that time (excluding environmental and D&O Claims). However, the Moving Landlords have since taken the position that the quantum of each Moving Landlord's claim remains to be agreed. As a result, an additional mediation session with Senior Regional Justice Morawetz is scheduled to take place in the week of April 22, 2019. If no final resolution can be reached, the matter will be referred to the Court for determination.
33. The Monitor, Sears Canada and representative plaintiff (the "**Representative Plaintiff**") in the Dealer Class Action, have entered into an amended and restated settlement agreement dated December 14, 2018 in respect of the Proofs of Claims filed by the Representative Plaintiff against the Applicants. Entering into this agreement was an important step towards the completion of these proceedings.
34. The vast majority of unresolved D&O Claims are indemnity or indemnity and contribution claims filed by Directors and Officers against each other, and claims filed in connection with the 2013 Dividend.
35. As at the date of this Thirty-First Report, and assuming all Claims against the Applicants are valued as per the NORDs or, in the case of Landlord Claims, in accordance with the

settlements with landlords referred to herein and in Prior Reports, the initial amount of Claims against the Applicants has been reduced from approximately \$11 billion to approximately \$2.1 billion.

Real Estate Sale Process

36. At the time of the Monitor's Twenty-Eighth Report, Sears Canada continued to own the following real estate assets:
 - (a) Barrie full-line store (Barrie, ON); and
 - (b) Sainte-Agathe-des-Monts residual land (Sainte-Agathe-des-Monts, QC).
37. As of the date of this Thirty-First Report, the only remaining real property asset of Sears Canada that has not been sold is the Barrie full-line store (Barrie, ON).
38. Pursuant to an agreement dated July 15, 2007, RioCan Holdings Inc. ("**RioCan**") was granted an option to purchase the Barrie full-line store and surrounding lands in certain circumstances (the "**Barrie Purchase Option**"). On January 13, 2019, the Monitor received a notice from RioCan that it had exercised the Barrie Purchase Option. Pursuant to the terms of the Barrie Purchase Option, Sears Canada, in consultation with the Monitor, is working with RioCan to finalize a transaction in accordance with the process contemplated in the Barrie Purchase Option. In the event that a transaction is not finalized, Sears Canada will recommence the marketing of the Barrie property as early as this summer.
39. On March 22, 2019, the sale of the property located in Sainte-Agathe-des-Monts was completed following a marketing process conducted by an agent affiliated with CBRE. Pursuant to the Initial Order, the sale was not subject to Court approval.

Pension Support Agreement

40. As previously reported in the Twenty-Eighth Report, the Monitor, the Pension Plan Administrator, the Superintendent and Pension Representative Counsel, entered into a Pension Support Agreement (the "**PSA**") on October 18, 2018. The PSA initially contemplated an April 30, 2019 outside date for the implementation of the Plan.

41. Following discussions among the parties to the PSA, the PSA was amended pursuant to an amendment to pension support agreement entered into as of March 20, 2019 (the “**PSA Amendment Agreement**”) to contemplate a revised outside date of September 30, 2019. The parties to the PSA agreed to the amendment to allow the Monitor to complete certain outstanding matters prior to the Meeting Date and the Sanction Hearing. A copy of the PSA Amendment Agreement is attached as **Appendix “A”** to this Thirty-First Report.

Filing of the Plan, Meetings and Adjournment of the Meetings

42. In order to distribute the proceeds from the liquidation of the assets of the Sears Canada Entities to their creditors in accordance with their legal entitlements, and to facilitate pursuit of the Estate 2013 Dividend Litigation, the Monitor has developed the Plan. The Plan was accepted for filing by the Court on February 15, 2019.
43. A detailed description of the Plan is included in the Twenty-Ninth Report of the Monitor dated February 6, 2019 and the Supplement thereto.
44. Pursuant to the Meetings Order, the date for the Meetings of the SLH Creditor Class and the Sears Creditor Class was set for March 28, 2019. In accordance with the Meetings Order, the Monitor notified all Affected Unsecured Creditors of the Meetings.
45. On March 25, 2019, the Monitor determined that an adjournment of the Meetings to a date to be communicated later by the Monitor was required. In accordance with the Meetings Order, a notice of the adjournment (the “**Adjournment Notice**”) was served on the Service List and posted on the Monitor’s Website. In addition, the Monitor sent a copy of the Adjournment Notice by email to all Affected Unsecured Creditors and employees represented by Employee Representative Counsel for which the Monitor had email addresses. A copy of the Adjournment Notice is attached as **Appendix “B”** to this Thirty-First Report.
46. As at the date of this Thirty-First Report, a new date for the adjourned Meetings has not yet been selected. The Monitor continues to work diligently towards the resolution of certain pending matters before announcing a new date for the Meetings.

47. The Monitor has received, and is responding to, comments and questions from certain stakeholders on the Plan provisions. To the extent that revisions to the Plan may be required, the Monitor will communicate amendments to the Plan in accordance with the Meetings Order.

Employee Matters

48. As of the date of this Thirty-First Report, the Applicants have 7 remaining employees. The Monitor expects that the number of employees will continue to decrease as matters pending in the CCAA Proceedings are resolved and that those employees who remain will be moving to part-time arrangements starting in June 2019.
49. To date, the Monitor has received 92 applications for assistance from the Employee Hardship Fund, of which 68 have been approved. So far, approximately \$153,000 has been paid out of the Employee Hardship Fund. The time period for applications to the Employee Hardship Fund currently expires on May 2, 2019.
50. On October 16, 2018, the Court issued an order (as amended and restated, the "**Receivership Order**") pursuant to section 243(1) of the *Bankruptcy and Insolvency Act* appointing FTI Consulting Canada Inc. as receiver (the "**Receiver**") without security of specific bank accounts in the names of the Sears Canada Entities who currently employ, or previously employed, employees.
51. In accordance with the mechanism contemplated in the Receivership Order, on January 3, 2019, the Monitor served the Receivership Certificate on the Service List thereby triggering the effectiveness of the receivership.
52. The primary purpose of the Receivership Order is to allow for payments from the Federal Government to eligible former employees of the Sears Canada Entities pursuant to the *Wage Earner Protection Program Act* (the "**WEPPA**").
53. In accordance with the WEPPA guidelines, the Receiver has submitted information to Service Canada with respect to 15,574 former employees of the Sears Canada Entities holding an eligible wage claim for WEPPA purposes. Furthermore, the Receiver notified

all eligible employees by letter or email and provided them with information on how to apply for their Wage Earners Protection Program (the "**WEPP**") payment with Service Canada.

Directors and Governance

54. On December 3, 2018, the Court issued an Order approving the Governance Protocol which, among other things, authorized the Monitor to take all steps set out in the Governance Protocol with respect to the remaining matters to be finalized in these proceedings namely:
- (a) the resolution of claims filed pursuant to the Claims Procedure Orders;
 - (b) the disposition of the remaining owned real estate assets;
 - (c) the distribution of proceeds of the estates of the Sears Canada Entities; and
 - (d) the pursuit of litigation as recommended by the Monitor and the Litigation Investigator, in accordance with its mandate under the Litigation Investigator Order.
55. Pursuant to the Governance Protocol, the Monitor is overseeing the wind-down of the Sears Canada Entities.

Litigation Matters

56. In the Eleventh Report of the Monitor dated January 15, 2018, the Monitor identified certain Transactions of Interest to be further investigated to determine if remedies should be pursued by the Monitor in connection with such transactions pursuant to section 36.1 of the CCAA.
57. On December 3, 2018, the Monitor and the Litigation Trustee were authorized by the Court to pursue the Estate 2013 Dividend Litigation. The Court also lifted the stay of proceedings in the Initial Order to allow the Estate 2013 Dividend Litigation, as well as a

claim by the Pension Plan Administrator and the Dealer Class Action, each also arising from the 2013 Dividend, to be commenced or continued.

58. Together with the Litigation Trustee, the Monitor is pursuing the Estate 2013 Dividend Litigation.
59. On December 19, 2018, the Monitor commenced an action seeking, among other things, a declaration that the transfer of funds to Sears Canada's shareholders by way of the 2013 Dividend was a "transfer at undervalue" for the purposes of section 96 of the *Bankruptcy and Insolvency Act*. This action, together with the other action comprising the Estate 2013 Dividend Litigation as well as the Dealer Class Action and the claim by the Pension Plan Administrator are proceeding on the Commercial List of the Ontario Superior Court of Justice under the case management of Justice McEwen. Materials in connection with the Estate 2013 Dividend Litigation will be posted on the Monitor's Website.
60. On March 20, 2019, the defendants to the Estate 2013 Dividend Litigation brought motions seeking pre-pleading documentary production from the Monitor and the Litigation Trustee, and further particulars in respect of the Monitor's and Litigation Trustee's claims. Both motions were dismissed.
61. The current timetable for the Estate 2013 Dividend Litigation includes the following:
 - (a) Statements of Defence to be served by May 3, 2019;
 - (b) documentary production to be completed by June 30, 2019;
 - (c) discovery to begin in September 2019; and
 - (d) trial of the Estate 2013 Dividend Litigation to commence in February 2020.
62. Pursuant to an Order of this Court made on December 3, 2018, the Court approved a mechanism for Affected Unsecured Creditors of Sears Canada who did not wish to have their distributions under the Plan affected by the costs or recoveries of the Estate 2013 Dividend Litigation (the "**Opt-Out Creditors**") to opt-out of such participation. In total,

the Monitor has received opt-out notices from 38 Opt-Out Creditors with claims totalling \$49.4 million and from the defendants to the Estate 2013 Dividend Litigation.

63. On April 10, 2019, the Monitor, the Litigation Trustee, the Pension Plan Administrator and the Representative Plaintiff (collectively, the “**Canadian Plaintiffs**”), filed proofs of claim in the proceedings of Sears Holdings Corporation (“**SHC**”) under Chapter 11 of the United States Bankruptcy Code. These claims against SHC also arise from the 2013 Dividend.
64. On April 16, 2019, the Canadian Plaintiffs filed a motion in the SHC Chapter 11 proceedings seeking an order granting the Canadian Plaintiffs relief from the stay imposed in those proceedings for the purposes of (i) joining SHC as a defendant in each of the actions of the Canadian Plaintiffs discussed above, and (ii) prosecuting such causes of action before the Court to determine the validity and amount of the Canadian Plaintiffs’ claims against SHC. This motion is scheduled to be heard on May 21, 2019 in the United States Bankruptcy Court (Southern District of New York).

Other Activities of the Monitor

65. The Monitor has also undertaken the following activities:
 - (a) monitored the Sears Canada Entities’ receipts and disbursements;
 - (b) maintained the Service List for the CCAA Proceedings and posted regular updates of the Service List to the Monitor’s Website;
 - (c) supervised and assisted in activities related to the sale of the remaining real estate assets;
 - (d) worked with Employee Representative Counsel, Pension Representative Counsel, and their advisors to respond to questions and provide information to their respective constituents;
 - (e) worked with the Sears Canada Entities to assist in appropriately accounting for pre-filing and post-filing obligations;

- (f) attended numerous meetings and teleconferences with stakeholders, their counsel, and advisors;
- (g) planned and worked with the Sears Canada Entities to facilitate an orderly wind-down of their operations;
- (h) worked with the Sears Canada Entities to assist in certain refunds and the return of deposits held by vendors;
- (i) responded to requests by former employees for financial assistance under the Employee Hardship Fund as well as corresponded with over 1,600 former employees in respect of recoveries under the WEPP;
- (j) continued to operate and monitor its telephone hotline and email account for stakeholder inquiries and to respond to such inquiries;
- (k) with the assistance of the Sears Canada Entities, attended to matters with respect to the Plan and distribution mechanics; and
- (l) continued its work in connection with the claims processes contemplated pursuant to the Claims Procedure Orders, including:
 - (i) communicating with many creditors to resolve disputes in the quantum of their Claims, obtaining support for their Claims, or explanations for the disallowance or revision of their Claims;
 - (ii) achieving consensual resolutions of significant disputed claims;
 - (iii) working with counsel to present disputed claims to the Claims Officer;
 - (iv) attending mediation meetings in Calgary with respect to the North Hill Calgary Claim; and
 - (v) issuing NORDs in accordance with the Claims Procedure Orders. To date in these proceedings, the Monitor has issued over 850 NORDs in respect

of 1,600 claims³. The Monitor has received approximately 420 Notices of Dispute in respect of the NORDs that it has issued under the Claims Procedure Orders and has been working on resolving all remaining disputed claims.

E. RECEIPTS AND DISBURSEMENTS FOR THE TWENTY WEEK PERIOD ENDING APRIL 13, 2019

66. The Sears Canada Entities' actual net cash inflow on a consolidated basis for the twenty-week period ended April 13, 2019 was approximately \$2.4 million, compared to a forecast net cash outflow of \$8.3 million, resulting in a positive variance of approximately \$10.7 million as indicated in the table below:

VARIANCE REPORT	Actual	Forecast	Variance
(CAD in Millions)	For the 20 Week Period Ending April 13, 2019		
Operating Receipts	-	-	-
Other Receipts	9.4	-	9.4
Receipts	9.4	-	9.4
Operating Disbursements			
Payroll and Employee Related Costs	(0.5)	(0.5)	-
Non-Merchandise Vendors	0.1	(0.7)	0.8
Rent and Property Taxes	(0.2)	(0.1)	(0.1)
IT Costs	(0.1)	(0.5)	0.4
Total Operating Disbursements	(0.7)	(1.8)	1.1
Net Operating Cash Inflows / (Outflows)	8.7	(1.8)	10.5
Professional Fees	(6.3)	(6.5)	0.2
Net Cash Inflows / (Outflows)	2.4	(8.3)	10.7
Cash			
Beginning Balance	194.9	194.9	-
Net Cash Inflows / (Outflows)	2.4	(8.3)	10.7
Ending Balance	197.3	186.7	10.7

67. Explanations for the key variances are as follows:

- (a) the positive variance in Receipts of \$9.4 million is a positive permanent variance consisting primarily of:

³ This number includes NORDs issued pursuant to the E&R Claims Procedure Order.

- i. the recovery of approximately \$4.0 million of cash held in a foreign-domiciled bank account previously used to fund US-based vendors and suppliers which was not included in the forecast due to uncertainty of Sears Canada's ability to recover these funds;
 - ii. the receipt of tax refunds totaling approximately \$2.6 million which had not been included in the cash flow forecast due to uncertainty with respect to timing;
 - iii. the settlement of a class action lawsuit in which Sears Canada was a passive participant resulting in the receipt of approximately \$1.0 million;
 - iv. accrued interest of approximately \$1.3 million on cash balances held by the Sears Canada Entities and the Monitor;
 - v. approximately \$0.3 million from the settlement of post-Filing refunds from various vendors; and
 - vi. approximately \$0.1 million from the sale of real property which were not included in the cash flow forecast due to uncertainty with respect to the timing and amount of the sale proceeds.
- (b) the positive variance in Non-Merchandise Vendor disbursements of \$0.8 million is primarily due to a refund received from a large non-merchandise vendor that was not included in the forecast due to uncertainty with respect to the timing and amount of the refund;
- (c) the negative variance in Rent and Property Taxes of approximately \$0.1 million consists of a negative timing difference between actual and forecast property tax payment schedules which is expected to reverse in future forecast periods;
- (d) the positive variance in IT Costs of \$0.4 million is a permanent difference due to lower-than-forecasted disbursements; and

- (e) the positive variance in Professional Fees of \$0.2 million consists of a negative variance of \$0.7M in respect of professional fees associated with the Estate 2013 Dividend Litigation, offset by a positive permanent variance of \$0.9M related to lower-than-forecasted disbursements for professional fees.

68. The Sears Canada Entities' cumulative receipts and disbursements since the commencement of the CCAA Proceedings through the week ended April 13, 2019 are reflected in the table below:

CUMULATIVE RECEIPTS AND DISBURSEMENTS	
(CAD in Millions)	
For the 95 Week Period Ending April 13, 2019	
Receipts	1,346.8
Operating Disbursements	
Payroll and Employee Related Costs	(267.6)
Merchandise Vendors	(289.4)
Non-Merchandise Vendors	(176.7)
Rent and Property Taxes	(91.2)
Sales Taxes	(65.3)
Pension	(14.7)
IT Costs	(27.3)
Recovery of Expenses from Agent	83.6
Capital Expenditures	(0.8)
Total Operating Disbursements	(849.4)
Net Operating Cash Inflows / (Outflows)	497.4
Professional Fees	(88.6)
Repayments of Existing Credit Facilities	(283.3)
DIP Fees and Interest Paid	(19.7)
Net Cash Inflows / (Outflows)	105.8
Cash	
Beginning Balance	126.5
Net Cash Inflows / (Outflows)	105.8
DIP Draws / (Repayments)	(32.0)
Others incl. FX Valuation	(3.0)
Ending Balance	197.3

69. The Initial Order allowed the Sears Canada Entities to continue to use their existing Cash Management System as described in the First Wong Affidavit and the Pre-Filing Report. After the commencement of the CCAA Proceedings, the Sears Canada Entities have continued to use their Cash Management System in a manner consistent with past

practice. Sears Canada, in consultation with the Monitor, continues to close bank accounts that are no longer needed and to consolidate funds in the remaining operating accounts.

F. REVISED CASH FLOW FORECAST FOR THE PERIOD ENDING SEPTEMBER 30, 2019

70. A revised cash flow forecast for the period April 14, 2019 until September 30, 2019 has been prepared and is presented in the table below (the “**Revised Cash Flow Forecast**”):

Sears Canada Entities

CCAA Cash Flow Forecast

(CAD in thousands)

Week Ending (Saturday)	April 14 to September 30, 2019
Total Receipts^[2]	-
Operating Disbursements	
Payroll and Employee Related Costs ^[3]	(607)
Owned Real Property - Carrying Costs	(275)
Non-Merchandise Vendors ^[4]	(7,611)
Rent and Property Taxes ^[5]	(262)
IT and Data Storage Costs ^[6]	(18)
Total Operating Disbursements	(8,773)
Net Operating Cash Inflows / (Outflows)	(8,773)
Professional Fees ^[7]	(4,571)
Net Cash Inflows / (Outflows)	(13,343)
Cash	
Beginning Balance	197,343
Net Cash Inflows / (Outflows)	(13,343)
Ending Cash Balance	184,000

Notes:

[1] The purpose of this cash flow forecast is to estimate the liquidity requirements of the Sears Canada Entities during the forecast period.

[2] Forecast Total Receipts does not reflect any proceeds from the sale of any owned real estate property.

[3] Forecast Payroll and Employee Related Costs are based on recent payroll amounts and reflect future forecasted headcount reductions.

[4] Forecast Non-Merchandise Vendor disbursements primarily relate to the payment of post-filing warranties and environmental remediation costs.

[5] Forecast Rent and Property Taxes includes lease payments and property tax payments in respect of leased and owned real property.

[6] Forecast IT and Data Storage Costs reflect disbursements made to certain IT-related vendors for usage of IT services and storage of data based on existing terms and conditions of the contract.

[7] Forecast Professional Fees include legal and financial advisor fees associated with the CCAA proceedings payable by the Applicants including fees of Employee Representative Counsel, Pension Representative counsel and their advisors. Forecast professional fee disbursements do not include fees associated with the Estate 2013 Dividend Litigation.

71. Pursuant to section 23(1)(b) of the CCAA⁴ and in accordance with the Canadian Association of Insolvency and Restructuring Professionals Standard of Practice 09-1, the Monitor hereby reports to the Court as follows:

- (a) the Monitor has reviewed the Revised Cash Flow Forecast, which was prepared by Management for the purpose described in the notes to the Revised Cash Flow Forecast (the “**Forecast Notes**”), using the Probable Assumptions and Hypothetical Assumptions set out therein;
- (b) the review consisted of inquiries, analytical procedures and discussion related to information provided by certain members of Management and employees of the Sears Canada Entities. Since Hypothetical Assumptions need not be supported, the Monitor’s procedures with respect to the Hypothetical Assumptions were limited to evaluating whether the Hypothetical Assumptions were consistent with the purpose of the Revised Cash Flow Forecast. The Monitor has also reviewed the support for the Probable Assumptions and the preparation and presentation of the Revised Cash Flow Forecast;
- (c) based on that review, and as at the date of this Thirty-First Report, nothing has come to the attention of the Monitor that causes it to believe that:
 - (i) the Hypothetical Assumptions are inconsistent with the purpose of the Revised Cash Flow Forecast;
 - (ii) the Probable Assumptions are not suitably supported or consistent with the plans of the Sears Canada Entities or do not provide a reasonable basis for the Revised Cash Flow Forecast, given the Hypothetical Assumptions; or
 - (iii) the Revised Cash Flow Forecast does not reflect the Probable and Hypothetical Assumptions; and

⁴ Section 23(1)(b) of the CCAA requires the Monitor to review the Sears Canada Entities’ cash-flow statements as to its reasonableness and file a report with the court on the Monitor’s findings.

- (d) since the Revised Cash Flow Forecast is based on assumptions regarding future events, actual results will vary from the forecast even if the Hypothetical Assumptions occur. Those variations may be material. Accordingly, the Monitor expresses no assurance as to whether the Revised Cash Flow Forecast will be achieved. The Monitor also expresses no opinion or other form of assurance with respect to the accuracy of any financial information presented in this Thirty-First Report, or relied upon by the Monitor in preparing this Thirty-First Report.
72. The Revised Cash Flow Forecast assumes a continuation of these CCAA Proceedings toward a resolution pursuant to a plan of compromise or arrangement. If it appears to the Monitor that this assumption ceases to be reasonable, the Monitor will report to the Court regarding any adjustments to the Revised Cash Flow Forecast that may be required to reflect an alternative path to completion of these proceedings.
73. The Revised Cash Flow Forecast also assumes fees relating to the board of directors, legal counsel to the board of directors, Employee Representative Counsel, Pension Representative Counsel and their respective financial advisors remain consistent with prior periods.
74. The Revised Cash Flow Forecast may be updated if developments occur that have a material impact on the forecasted cash flows of the Sears Canada Entities.
75. The Revised Cash Flow Forecast has been prepared solely for the purpose described in the Forecast Notes. The Revised Cash Flow Forecast should not be relied upon for any other purpose.
76. The Revised Cash Flow Forecast shows total net operating cash outflows of approximately \$8.8 million, before professional fees of approximately \$4.6 million, such that net cash outflows for the period are forecasted to be approximately \$13.3 million, excluding any proceeds that may be generated from the sale of the Barrie store real property.

77. Forecast disbursements in respect of Non-Merchandise Vendors consists primarily of disbursements in respect of post-Filing Warranty claims and costs associated with environmental remediation efforts pursuant to the Alberta EPO.
78. The professional fee forecast has been prepared based on fee estimates provided by professional firms or based on observed run rates where no forecast was provided. The total forecast professional fee disbursements of \$4.6 million is primarily comprised of forecast fees to the end of the forecast period, as it is the Monitor's understanding from communications with each of the professional firms that there are limited accrued but unpaid fees as of the date of this Report.
79. The Revised Cash Flow Forecast does not include any estimated professional fees disbursements associated with respect to the Estate 2013 Dividend Litigation.

G. STAY EXTENSION

80. The Stay Period currently expires on May 2, 2019;
81. The Monitor is requesting an extension of the Stay Period until and including September 30, 2019;
82. The proposed extension of the Stay Period is consistent with the outside date for implementation of the Plan pursuant to the PSA Amendment Agreement.
83. The Monitor is of the view that the proposed extension of the Stay Period will allow for sufficient time to complete matters that need to be completed prior to holding the Meetings, obtaining the Sanction Order and implementing the Plan.
84. The Applicants have sufficient liquidity to fund these proceedings during the proposed extension of the Stay Period.
85. The Monitor believes that an extension of the Stay Period is appropriate, and that the length of the extension requested will minimize the need for multiple Court appearances and is reasonable in the circumstances.

86. Consistent with past requests to extend the Stay Period, the Monitor also believes that a concurrent extension of the application period for the Employee Hardship Fund to September 30, 2019 is appropriate.

H. FEE APPROVAL

87. The Monitor and NRFC have each maintained detailed records of their time and disbursements with respect to these CCAA Proceedings.
88. Pursuant to an order made on January 22, 2018 (the “**First Fee Approval Order**”), this Court approved the fees and disbursements of the Monitor and NRFC for the periods described in the First Fee Approval Order, being June 20, 2017 to December 31, 2017 in the case of FTI, and June 19, 2017 to December 17, 2017 for NRFC.
89. Pursuant to an order made on April 18, 2018 (the “**Second Fee Approval Order**”), this Court approved the fees and disbursements of the Monitor and NRFC for the periods described in the Second Fee Approval Order, being January 1, 2018 to March 31, 2018 for FTI, and December 18, 2017 to March 18, 2018 for NRFC.
90. Pursuant to an order made on September 13, 2018, (the “**Third Fee Approval Order**”), this Court approved the fees and disbursements of the Monitor and NRFC for the periods described in the Third Fee Approval Order, being April 1, 2018 to August 31, 2018 for FTI, and March 19, 2018 to August 12, 2018 for NRFC.
91. The Monitor and NRFC are now seeking the approval of their fees and disbursements since the Third Fee Approval Order.
92. Attached as **Exhibit “A”** to the Affidavit of Greg Watson sworn April 17, 2019 that is attached as **Appendix “C”** to this Thirty-First Report (the “**Watson Affidavit**”) are copies of the invoices rendered by the Monitor in respect of these CCAA Proceedings for the period from September 1, 2018 to March 31, 2019. For this period, the Monitor’s accounts total \$2,786,397.00 in fees, \$11,493.46 in disbursements, and \$363,725.74 in HST for a total amount of \$3,161,616.20. **Exhibit “C”** to the Watson Affidavit contains

a summary of the personnel, hours and hourly rates charged by the Monitor in respect of these proceedings during the applicable period.

93. Attached as **Appendix “D”** to this Thirty-First Report is the Affidavit of Orestes Pasparakis, sworn April 17, 2019 (the “**Pasparakis Affidavit**” and, together with the Watson Affidavit, the “**Fee Affidavits**”). For the period from August 13, 2018 to March 24, 2019, NRFC’s accounts total \$2,998,559.23 in fees, \$54,850.10 in disbursements and \$396,717.15 in HST for a total amount of \$3,450,126.48. At **Exhibit “C”** to the Pasparakis Affidavit are copies of invoices rendered by NRFC as counsel to the Monitor for such amounts, while **Exhibits “A”** and “**B”** to the Pasparakis Affidavit contain a summary of the personnel, hours, and hourly rates charged by NRFC in respect of these CCAA Proceedings during the applicable period.
94. The Fee Affidavits do not include, and the Monitor is not currently seeking any approval for, fees incurred in connection with the Estate 2013 Dividend Litigation for the period from and after December 2018.
95. As indicated in the invoices included in the Fee Affidavits and the descriptions of activities contained in this Thirty-First Report and the Prior Reports, the Monitor has played a central role in these proceedings over the past 22 months, including in connection with the Mediation and the discussions that have followed, in leading the claims processes contemplated pursuant to the Claims Procedure Orders, and in connection with the Plan and the Governance Protocol.
96. In addition to the activities noted in **Section D** of this Thirty-First Report, the Monitor and its counsel have:
 - (a) negotiated and finalized documents, and brought motions to the Court, to effect the sale of Sears’ Belleville, Windsor, Peterborough, Charlottetown, Chicoutimi, and Newmarket properties;
 - (b) prepared materials in connection with, and attended at, numerous Mediation sessions that ultimately culminated in the settlement agreements described in the Prior Reports and herein;

- (c) prepared Court materials and attended to various meetings in connection with the Estate 2013 Dividend Litigation;
- (d) finally resolved, and obtained Court Orders and arranged for distributions in respect of, the 30 secured claims of Construction Contractors as well as the claims of their Construction Sub-Contractors;
- (e) worked cooperatively with Employee Representative Counsel, Pension Representative Counsel and the Pension Plan Administrator in connection with the WEPP, the Receivership Order, and various administrative matters relating to the Pension Plan and the related supplemental plans, including Orders issued by the Court in respect thereof;
- (f) worked to resolve over 400 Disputed Claims, including Claims filed by Federal and provincial tax authorities, Quebec class action plaintiffs, suppliers, environmental claimants, insurance providers, employees, and concession holders;
- (g) performed an oversight role in respect of the wind-up of the Sears Canada Entities' business and the monetization of their remaining assets;
- (h) conducted all activities that were required or appropriate to undertake in connection with the Claims Procedure Orders, including various publication and communications to creditors;
- (i) resolved stakeholder issues and concerns constructively on a daily basis to ensure that Court appearances were limited;
- (j) worked on document retention procedures;
- (k) attended to matters in relation to the Chapter 11 proceedings of Sears Holdings Inc., including preservation of the estate's rights in those proceedings;
- (l) liaised with the various advisors to the Directors and Officers in respect of D&O Claims and litigation matters;

- (m) prepared and filed 7 reports and 4 supplemental reports to the Court;
 - (n) attended numerous hearings, case conferences, and Chambers appointments, and where appropriate, prepared Court materials, in connection with, among other things, the deemed trust motion of the Pension Plan Administrator, the bankruptcy application of Employee Representative Counsel, the co-tenancy lift stay motion of The Children's Place *et al.*, motions brought by the Moving Landlords, matters relating to the process to sell the Newmarket Property, the Receivership Order, and the Dividend 2013 Estate Litigation;
 - (o) responded to numerous enquiries from stakeholders, including employees, on the Claims Process, the WEPP, and the CCAA Proceedings generally;
 - (p) worked with the Applicants and stakeholder groups to develop a proposed path forward and the Plan and related materials;
 - (q) in connection with the Plan and the Estate 2013 Dividend Litigation, developed and obtained Court approval of an Opt-Out mechanism for creditors who chose to opt-out of any Dividend 2013 Estate Litigation, and worked on a Plan mechanism to effect distributions to Warranty Claim Holders; and
 - (r) worked to satisfy certain conditions precedent to the implementation of the Plan.
97. The Monitor respectfully submits that the respective fees and disbursements of the Monitor and its counsel are reasonable in the circumstances and have been validly incurred in accordance with the provisions of the Orders issued in these CCAA Proceedings. Accordingly, the Monitor respectfully seeks the approval of its fees and disbursements and the fees and disbursements of its counsel.

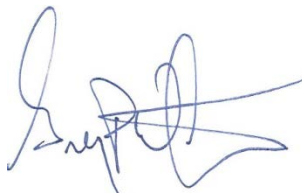
The Monitor respectfully submits to the Court this, its Thirty-First Report.

Dated this 17th day of April, 2019.

FTI Consulting Canada Inc.
in its capacity as Monitor of
the Sears Canada Entities

A handwritten signature in blue ink that reads "Paul Bishop". The signature is written in a cursive style with a large initial "P".

Paul Bishop
Senior Managing Director

A handwritten signature in blue ink that reads "Greg Watson". The signature is written in a cursive style with a large initial "G".

Greg Watson
Senior Managing Director

SEARS CANADA INC., by its Court-appointed Litigation Trustee,
J. DOUGLAS CUNNINGHAM, Q.C.
Plaintiff

-and- ESL INVESTMENTS INC. et al.
Defendants

Court File No. CV-18-00611214-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT
TORONTO

MOTION RECORD
(Directions re Status of SCI Creditors)

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