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

FACTUM OF THE MONITOR
(Meetings Order)
(returnable February 12, 2019)

February 8, 2019

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PART I - INTRODUCTION

1 FTI Consulting Canada Inc. in its capacity as the Court-appointed monitor (the "Monitor") in the proceedings of Sears Canada Inc. ("**Sears Canada**") and certain of its affiliates (the "**Sears Canada Entities**") under the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended (the "**CCAA**" and such proceedings, the "**CCAA Proceedings**") requests 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 (as defined in the Plan) (the "**Meetings**") for the purpose of considering and voting on the Plan.

2 With the exception of the Estate 2013 Dividend Litigation described below, the wind-down of the Sears Canada Entities' estates is substantially completed. In order to implement the resolution of certain claims against the Sears Canada Entities, to provide a mechanism to distribute remaining asset value to creditors fairly and efficiently, and to allow creditors to elect to participate in the funding and potential recoveries of the Estate 2013 Dividend Litigation, the Monitor proposes the Plan, a copy of which is included in the Twenty-Ninth Report of the Monitor dated February 6, 2019.[1]

PART II - THE FACTS

3 The facts with respect to this motion are further detailed in the Twenty-Ninth Report.[2] All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Plan and in the Twenty-Ninth Report.

4 On June 22, 2017, the Sears Canada Entities sought and obtained an initial order (as amended and restated on July 13, 2017, the "**Initial Order**") under the CCAA.[3]

[1] Appendix A to the Twenty-Ninth Report of the Monitor dated February 6, 2019 (the "**Twenty-Ninth Report**"), Motion Record of the Monitor ("**Monitor's Record**"), Tab 2A.
[2] Twenty-Ninth Report, Monitor's Record, Tab 2.

5 On July 13, 2017, the Court appointed:

(a) Koskie Minsky LLP (the "**Pension Representative Counsel**") to act 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 benefit matters; and

(b) Ursel Phillips Fellows Hopkinson LLP ("**Employee Representative Counsel**") to act as representative counsel for the non-unionized active and former employees of the Sears Canada Entities.[4]

6 On December 3, 2018, the Court granted an Order, amongst other things, establishing a governance protocol (the "Governance Protocol") pursuant to which the Monitor has taken over supervision of the Sears Canada Entities' participation in the remaining matters to be completed in these proceedings. Amongst other things, the Governance Protocol empowers the Monitor to draft the Plan and bring any motion to the Court in respect thereto.[5]

7 The Sears Canada Entities have closed all of their stores, discontinued their operations and liquidated substantially all of their assets.[6]

8 On December 3, 2018, the Monitor and the Honourable J. Douglas Cunningham, Q.C. as Court-appointed litigation trustee, were authorized by the Court to pursue litigation against certain third parties on behalf of Sears Canada Inc. and its creditors, in connection with the payment of certain dividends (the "**2013 Dividend**") by Sears Canada Inc. to its shareholders in 2013 (the "**Estate 2013 Dividend Litigation**"). The Court also lifted the stay of proceedings in

[3] Twenty-Ninth Report at para. 1, Monitor's Record, Tab 2, p. 11.
[4] Twenty-Ninth Report at para. 3, Monitor's Record, Tab 2, p. 12.
[5] Schedule "A" to the Governance Protocol Order dated December 3, 2018, Appendix "F" to the Twenty-Ninth Report, Monitor's Record, Tab 2F, p. 46.
[6] Twenty-Ninth Report, at paras. 17 and 18, Monitor's Record, Tab 2, p. 15.

the Initial Order to allow the Estate 2013 Dividend Litigation, as well as a claim by the Pension Plan Administrator, and a claim by certain "Sears Hometown" store dealers (collectively, the "**Dealers**"), each also arising from the 2013 Dividend, to be commenced or continued.[7]

9 On June 13, 2018, a Court-approved mediation process (the "**Mediation**") was initiated to attempt to facilitate a resolution of certain of the most material disputed claims against the Sears Canada Entities.[8]

10 Further to the Mediation, the Monitor reached agreements on the resolution of: (i) a significant class action claim against Sears Canada Inc. by the Dealers, (ii) claims of substantially all landlords, excluding post-filing, environmental claims and D&O Claims, and (iii) the priority and quantum of the claim for the wind-up deficiency under the defined benefit component of the Pension Plan (the "**Pension Resolution**"). The terms of these various settlements are reflected in the Plan.[9]

11 In order to distribute recoveries to creditors of the Sears Canada Entities in accordance with their legal entitlements, the Monitor has developed the Plan, which is now proposed on behalf of the Sears Canada Entities.

A. The Plan

12 The purpose of the Plan is to, among other things:

(a) implement a distribution of the Sears Canada Entities' remaining funds to their creditors in accordance with such creditors' legal entitlements;

[7] Twenty-Ninth Report at para. 13, Monitor's Record, Tab 2, p. 14.
[8] Twenty-Ninth Report, at para. 8, Monitor's Record, Tab 2, p. 13.
[9] Twenty-Ninth Report, at paras. 9 -12, Monitor's Record, Tab 2, p. 13.

(b) provide a mechanism for the Estate 2013 Dividend Litigation to proceed for the benefit of the unsecured creditors of Sears Canada who have not opted out of sharing the costs of and the benefit of any recoveries from such claims; and

(c) implement the terms of the settlements agreed to pursuant to the Mediation.[10]

13 For the purposes of voting on the Plan and receiving a distribution thereunder, the Plan provides for two classes of Affected Unsecured Creditors (each an "**Unsecured Creditor Class**" and together the "**Unsecured Creditor Classes**"), which are:

(a) the **Sears Creditor Class**, being all Affected Unsecured Creditors of any of the Sears Canada Entities other than 9370-2751 Québec Inc. ("**Former Corbeil**"), 191020 Canada Inc. ("**Former SLH**") and 168886 Canada Inc. ("**168886**") (collectively, the "**Sears Parties**"); and

(b) the SLH Creditor Class, being all Affected Unsecured Creditors of Former SLH and 168886 (collectively, the "**SLH Parties**").[11]

14 With respect to Former Corbeil, as its creditors will be fully repaid under the Plan from its assets, they will not be entitled to vote on or approve the Plan.[12]

15 Under the Plan, members of the Sears Creditor Class would be paid out of the assets of the Sears Parties, who would be partially substantively consolidated under the Plan, while the members of the SLH Creditor Class would be paid out of the assets of the SLH Parties, who would be similarly substantively consolidated.[13]

[10] Twenty-Ninth Report at para. 31, Monitor's Record, Tab 2, p. 18.
[11] Twenty-Ninth Report at para. 33, Monitor's Record, Tab 2, pp. 18-19.
[12] Twenty-Ninth Report at para. 35, Monitor's Record, Tab 2, p. 19.
[13] Twenty-Ninth Report at para. 34, Monitor's Record, Tab 2, p. 19.

16 Each of the Sears Parties, other than Sears Canada, is a subsidiary of Sears Canada and has no material assets or creditors of its own other than intercompany receivables and claims. The substantive consolidation of these parties will not have any material impact on the recoveries of third party creditors of Sears Canada, relative to the recoveries that would be obtained on a stand-alone basis for each of these entities.[14]

17 Former SLH is a wholly-owned subsidiary of Sears Canada which carried on a stand-alone transportation and logistics business that was sold during these CCAA Proceedings. 168886 is a wholly-owned subsidiary of Former SLH that employed individuals to provide services to the business of Former SLH and did not have business operations independent of Former SLH. The substantive consolidation of these entities has the effect of increasing the pool of claims against the assets of Former SLH as 168886 has substantial claims against it that arise primarily from employees, but no material assets.[15]

18 As indicated above, while Former Corbeil is a party to the Plan, the creditors of Former Corbeil will be fully repaid from the assets of Former Corbeil under the Plan and any residual assets of Former Corbeil will be distributed to Sears Canada, as the sole shareholder of Former Corbeil.[16]

19 The estimated recoveries to unsecured creditors of the SLH Parties and Former Corbeil are substantially higher than the estimated recoveries to unsecured creditors of the Sears Parties. If the Sears Canada Entities were all treated as one substantially consolidated debtor group, the result would be substantially lower recoveries for unsecured creditors of Former

[14] Twenty-Ninth Report at para. 36, Monitor's Record, Tab 2, p. 19.
[15] Twenty-Ninth Report at para. 37, Monitor's Record, Tab 2, pp. 19-20.
[16] Twenty-Ninth Report at para. 41, Monitor's Record, Tab 2, pp. 21-22.

Corbeil and the SLH Parties, with only modest increases to the estimated recoveries for unsecured creditors of Sears Canada.[17]

20 Under the Plan, any recoveries from the Estate 2013 Dividend Litigation would be available on a pro rata basis to Affected Unsecured Creditors of the Sears Parties who do not opt out of participation in the funding and potential benefits of the litigation.[18]

21 In accordance with the Pension Resolution, the Plan is subject to a condition that it must be implemented on or before April 30, 2019 or such later date as agreed by the Pension Parties and the Monitor.[19]

B. The Meetings Order

22 The proposed Meetings Order provides for voting on the Plan by the Unsecured Creditor Classes at meetings of each class to be held on March 28, 2019 (each a "**Meeting**") in Toronto. Each of the two Unsecured Creditor Classes will vote separately at the meeting.[20]

23 Affected Unsecured Creditors holding Voting Claims or Unresolved Voting Claims (collectively, "**Eligible Voting Claims**") (or such Affected Unsecured Creditors' proxy holders) will be allowed to vote on the Plan. However, the votes of Affected Unsecured Creditors holding Unresolved Voting Claims will be separately tabulated and reported to the Court, provided that the vote cast in respect of any Unresolved Voting Claim shall not be considered for Plan approval purposes unless and until it is finally determined to be a Proven Claim.[21]

[17] Twenty-Ninth Report at para. 44, Monitor's Record, Tab 2, p. 22.
[18] Twenty-Ninth Report at para. 49, Monitor's Record, Tab 2, p. 24..
[19] Twenty-Ninth Report at para. 65(e), Monitor's Record, Tab 2, p. 29.
[20] Twenty-Ninth Report at para. 67, Monitor's Record, Tab 2, p. 30.
[21] Twenty-Ninth Report at para. 73, Monitor's Record, Tab 2, p. 32.

24 The Meetings Order provides notification procedures for the Meetings that ensure notice is broadly circulated while reasonably limiting administrative costs in view of the number of creditors included in these proceedings and anticipated recoveries. In particular:

(a) the Meetings are proposed to be scheduled for March 28, 2019, being more than six weeks after the date of the Monitor's motion for the Meetings Order;[22]

(b) the Monitor has prepared a comprehensive information package to be delivered to Affected Unsecured Creditors, other than those Affected Unsecured Creditors below specified dollar thresholds, those Affected Unsecured Creditors who hold warranty claims, or those Affected Unsecured Creditors who are represented by either Employee Representative Counsel or Pension Representative Counsel;[23]

(c) the Monitor will work with Employee Representative Counsel and Pension Representative Counsel to ensure reasonable notice of the Meetings and the Plan is provided to those individuals they represent;[24]

(d) as is customary, the Monitor will cause notice of the Meetings to be placed in The Globe and Mail and La Presse for at least two business days;[25] and

(e) the Monitor will post all materials in respect of the Meetings on the Monitor's case website.[26]

25 In respect of the Eligible Voting Claims of ERC Employees and PRC Retirees:

[22] Twenty-Ninth Report, at para. 67, Monitor's Record, Tab 2, p. 30.
[23] Twenty-Ninth Report, at para. 68(c), Monitor's Record, Tab 2, p. 30-31.
[24] Twenty-Ninth Report, at para. 68(a) to (b), Monitor's Record, Tab 2, p. 30.
[25] Twenty-Ninth Report, at para. 68(e), Monitor's Record, Tab 2, p. 31.
[26] Twenty-Ninth Report, at para. 68(d), Monitor's Record, Tab 2, p. 31.

(a) Employee Representative Counsel shall be deemed to be a proxyholder in respect of each Eligible Voting Claim of ERC Employees in connection with their Employee Claims; and

(b) Pension Representative Counsel shall be deemed to be a proxy holder in respect of each Eligible Voting Claim of PRC Retirees (other than in connection with any Employee Claims or the Pension Claims in respect of the wind-up deficiency of the Pension Plan)[27].

26 Only the Pension Plan Administrator or its designated proxy holder may vote the Pension Claims in respect of the wind-up deficiency of the Pension Plan.[28]

27 If the Plan is approved at the Meetings by the required majorities in each Unsecured Creditor Class, the Monitor is also seeking authorization to proceed with a motion for an order sanctioning the Plan on April 3, 2019, which would allow the Plan, if sanctioned, to be implemented within the timelines required under the Pension Resolution.[29]

PART III - ISSUES AND THE LAW

28 The Monitor submits that the issues to be considered on this motion are whether:

(a) the Plan should be accepted for filing and the Meetings should be authorized to proceed;

(b) the proposed substantive consolidation of the Sears Parties and the SLH Parties is appropriate;

(c) the proposed classification of Affected Unsecured Creditors is appropriate; and

[27] Twenty-Ninth Report, at para. 74, Monitor's Record, Tab 2, p. 32.
[28] Twenty-Ninth Report, at para. 75, Monitor's Record, Tab 2, p. 32..
[29] Twenty-Ninth Report, at para. 77, Monitor's Record, Tab 2, p. 32..

(d) Pension Representative Counsel and Employee Representative Counsel should be deemed to be proxy holders at the Meetings for the clients they represent.

A. THE PLAN SHOULD BE ACCEPTED FOR FILING AND THE MEETINGS SHOULD BE AUTHORIZED TO PROCEED

29 The CCAA provides that the Court may order a meeting of creditors, or class of creditors, to vote on a compromise or an arrangement.[30]

30 Courts are not required to address the fairness and reasonableness of the Plan at this stage. These issues are to be considered at the Sanction Hearing, if the Plan is approved by the required majorities of creditors at the Meetings.[31]

31 The Monitor submits that stakeholders should be provided with an opportunity to consider and vote upon the proposed Plan to move these proceedings toward conclusion. The filing of the Plan creates an opportunity to efficiently resolve the remaining matters in these proceedings and creates no apparent prejudice to any Affected Unsecured Creditors.

32 The Plan does not contain any provisions that would render it incapable of being approved by creditors and implemented, if approved by the Court.

33 The provisions of the Meetings Order governing the noticing, calling and conduct of the meetings are reasonable and appropriate in the circumstances.

B. THE PROPOSED PARTIAL SUBSTANTIVE CONSOLIDATION OF THE SEARS CANADA ENTITIES IS APPROPRIATE

34 The CCAA is intended to be interpreted liberally, as remedial legislation that is purposely flexible to adapt to the unique attributes of specific cases.[32]

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[30] *CCAA*, s. 4.

[31] *ScoZinc Ltd.,Re*, 2009 NSSC 163, at paras. 4 to 7, Book of Authorities of the Monitor ("**Monitor's Authorities**"),Tab 1; *Jaguar Mining Inc., Re*, 2014 ONSC 494, at para. 48, Monitor's Authorities, Tab 2; *Arrangement relatif à Bloom Lake*, 2018 QCCS 1657 [***Bloom Lake***] at para 19, Monitor's Authorities, Tab 3.

35 Where Courts have seen fit to grant an order consolidating the assets and liabilities of multiple debtor companies under the CCAA, they have relied upon their equitable jurisdiction and discretionary power under the CCAA.[33]

36 The Monitor submits that the principal objective when reviewing a request to substantively consolidate debtor companies should be a balancing of economic benefits and prejudice to creditors resulting from the proposed consolidation.[34]

37 Courts have considered the following factors when reviewing requests for substantive consolidation:

(a) difficulty in segregating assets;

(b) presence of consolidated financial statements;

(c) profitability of consolidation at a single location;

(d) comingling of assets and business functions;

(e) unity of interest in ownership;

(f) existence of intercorporate loan guarantees; and

(g) transfer of assets without observing corporate formalities.[35]

38 This Court has stated that "substantive consolidation is an equitable remedy" with the primary purpose of ensuring the equitable treatment of all creditors.[36] This Court framed the general principles of the substantive consolidation analysis as follows:

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[32] *U.S. Steel Canada Inc. (Re)*, 2016 ONCA 662, at para. 43, Monitor's Authorities, Tab 4.
[33] *Nortel Networks Corp., Re*., 2015 ONSC 2987 [***Nortel***], at para. 216, Monitor's Authorities, Tab 6.
[34] *Nortel*, at para. 217, Monitor's Authorities, Tab 6.
[35] *Northland Properties Ltd., Re*, [1988] B.C.W.L.D. 2663 at para. 50, Monitor's Authorities, Tab 5; *Nortel*, at para. 221, Monitor's Authorities, Tab 5.

(a) are the factors listed above present, such as the intertwining of corporate functions and other commonalities across the group?

(b) do the benefits of consolidation outweigh the prejudice to particular creditors?

(c) is consolidation fair and reasonable in the circumstances?[37]

39 All of the Sears Parties functioned to support the business of Sears Canada and carried on business functions that allowed Sears Canada to operate and manage the retail business for the group as a whole. Through Sears Canada, there was a unity of interest in the ownership of these entities and the individual functions of these entities could not be easily segregated.

40 Former SLH carried on a stand-alone transportation and logistics business that was sold during these CCAA Proceedings. 168886 is a wholly-owned subsidiary of Former SLH that employed individuals to provide services to the business of Former SLH and did not have business operations independent of Former SLH. 168886 existed solely to support the business of Former SLH, and incurred costs doing so. Through Former SLH's ownership of 168886, there was a unity of interests in ownership of the SLH Parties. There was also a commingling of business functions between these entities, with the profit centre being Former SLH.

41 The benefits of consolidation outweigh the prejudice to particular creditors with respect to the consolidation of the Sears Parties and of the SLH Parties. Among other things:

(a) the substantive consolidation of the Sears Parties will not have any material impact on the recoveries of creditors of Sears Canada, relative to the recoveries that would have been obtained on a stand-alone basis for each of these entities;

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[36] *Redstone Investment Corp. (Receiver of), Re*, 2016 ONSC 4453 [***Redstone***] at para. 89, Monitor's Authorities, Tab 7.
[37] *Redstone* at para. 78, Monitor's Authorities Tab 7.

(b) the substantive consolidation of the SLH Parties has the effect of increasing the pool of claims against the assets of Former SLH as 168886 has substantial claims against it that arise primarily from employees, but no assets. The Monitor believes this outcome is justified in view of the fact that Former SLH had the benefit of the employees of 168886 during its operation and the two entities operated in a highly integrated manner; and

(c) the proposed partial substantial consolidation significantly increases the overall projected recoveries for the SLH Parties and Former Corbeil while only slightly decreasing recoveries for the Sears Parties in comparison to a full substantial consolidation of the Sears Canada Entities. In the Monitor's view, there are not factors present that would justify a full substantive consolidation of all Sears Canada Entities.

42 In the Monitor's view, the consolidation structure as proposed under the Plan is fair and reasonable in the circumstances. It recognizes that the Sears Parties all ultimately functioned to support the Sears Canada business and their respective creditors should share in its value to the extent there are any claims against such entities, which are minimal. Similarly, it recognizes that 168886 existed to support the business of Former SLH and its creditors should share in the value of that business. Finally, the proposed structure recognizes that Former SLH and Former Corbeil carried on businesses that were independent from Sears Canada, had substantially separate and unrelated creditor pools, and should provide recoveries to those separate creditor pools that reflect the value of the respective businesses of Former Corbeil and Former SLH, each on a stand-alone basis.

43 For the reasons above, the Monitor believes that the substantive consolidation proposed under the Plan is just and equitable.

C. THE PROPOSED CLASSIFICATION OF CREDITORS FOR VOTING PURPOSES IS APPROPRIATE

44 The Monitor request approval of the classification of Affected Creditors as set out in the Plan.

45 Section 22(1) of the *CCAA* provides that:

> A debtor company may divide its creditors into classes for the purpose of a meeting to be held under section 4 or 5 in respect of a compromise or arrangement relating to the company and, if it does so, it is to apply to the court for approval of the division before the meeting is held.

46 Section 22(2) of the *CCAA* further provides that, for the purposes of Section 22(1), creditors with a "commonality of interest" may be included in the same class.

47 The factors to be considered in determining whether creditors have a "commonality of interest" are listed in Section 22(2) of the *CCAA*:

> (a) the nature of the debts, liabilities or obligations giving rise to their claims;
>
> (b) the nature and rank of any security in respect of their claims;
>
> (c) the remedies available to the creditors in the absence of the compromise or arrangement being sanctioned, and the extent to which the creditors would recover their claims by exercising those remedies; and
>
> (d) any further criteria, consistent with those set out in paragraphs (a) to (c) that are prescribed.

48 Creditors must be classified with the underlying purpose of the CCAA in mind, which is to facilitate successful restructurings. A fragmentation of classes that would render it

excessively difficult to obtain approval of a CCAA plan would be contrary to the purpose of the CCAA and ought to be avoided.[38]

49 For the purposes of voting on the Plan and receiving a distribution thereunder, the Plan provides for two classes of Affected Unsecured Creditors: (i) the Sears Creditor Class, being all Affected Unsecured Creditors of the Sears Parties; and (ii) the SLH Creditor Class, being all Affected Unsecured Creditors of the SLH Parties.

50 The Sears Creditor Class as well as the SLH Creditor Class each consist of unsecured creditors with proven unsecured claims against the Sears Parties, or the SLH Parties respectively. The commonality in the nature of the debts owed to these parties, the absence of security and the legal remedies available to these parties as unsecured creditors leads to the clear conclusion that these creditors should be classified as proposed in the Meetings Order.

51 The proposed voting structure matches the distribution structure under the Plan through which members of the Sears Creditor Class would be paid out of the assets of the Sears Parties and members of the SLH Creditor Class would be paid out of the assets of the SLH Parties.

52 Accordingly, the Monitor believes the proposed classification is appropriate.

D. EMPLOYEE REPRESENTATIVE COUNSEL'S AND PENSION REPRESENTATIVE COUNSEL'S DEEMED PROXY IS APPROPRIATE IN THE CIRCUMSTANCES

53 The draft Meetings Order proposes that Pension Representative Counsel and Employee Representative Counsel be proxy holders for the Affected Unsecured Creditors that they represent.

54 Deemed proxies in favour of representative counsel have been considered and approved in past CCAA proceedings.[39]

[38] *Norcen Energy Resources Ltd. v. Oakwood Petroleums Ltd.* (1988), 72 C.B.R. (N.S.) 20 at para. 27, Monitor's Authorities, Tab 8.

55 The Monitor believes the use of the deemed proxy is appropriate in the circumstances of this case based upon: (i) the large volume of individual creditors that Pension Representative Counsel and Employee Representative Counsel represent, (ii) the potential recoveries based upon known distributable asset values at this time; and (iii) the fact that the proposed Plan serves primarily to distribute the remaining assets of the Sears Canada Entities to creditors in accordance with their legal entitlements, (iv) the fact that Employee Representative Counsel and Pension Representative Counsel have been actively involved, or consulted, throughout these proceedings, including in respect of the settlements achieved further to the Mediation, and (v) the reasonable assumption, that given the purpose of this Plan, individual employees and retirees are not likely to have divergent views and interests.

56 The Monitor submits that the benefits of the deemed proxy in this case outweigh the potential concerns that individual creditors represented by Employee Representative Counsel or Pension Representative Counsel may wish to have the opportunity to vote their individual claim.

PART IV - ORDER REQUESTED

57 For the reasons set out above, the Monitor request that this Court grant the proposed Meetings Order and authorize the filing of the Plan at this time.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 8th day of February, 2019.

Norton Rose Fulbright Canada LLP

Norton Rose Fulbright Canada LLP

Lawyers for the Monitor, FTI Consulting Canada Inc.

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[39] *Bloom Lake*, at para 41 and 52, Monitor's Authorities, Tab 3. See also Plan Filing and Meeting Order dated December 1, 2016, *In the matter of Nortel Networks Corporation, et al.,* Court File No. 09-CL-7950, Monitor's Authorities, Tab 9.

SCHEDULE "A"
LIST OF AUTHORITIES

1 *ScoZinc Ltd., Re*, 2009 NSSC 163.

2 *Jaguar Mining Inc., Re,* 2014 ONSC 494.

3 *Arrangement relatif à Bloom Lake,* 2018 QCCS 1657.

4 *U.S. Steel Canada Inc. (Re),* 2016 ONCA 662

5 *Northland Properties Ltd., Re,* [1988] B.C.W.L.D. 2663

6 *Nortel Networks Corp., Re.,* 2015 ONSC 2987

7 *Redstone Investment Corp. (Receiver of), Re,* 2016 ONSC 4453

8 *Norcen Energy Resources Ltd. v. Oakwood Petroleums Ltd.* (1988), 72 C.B.R. (N.S.) 20

9 Plan Filing and Meeting Order dated December 1, 2016, In the matter of Nortel Networks Corporation, et al., Court File No. 09-CL-7950

SCHEDULE "B"
RELEVANT STATUTES

ss. 4, 22(1) and 22(2) of the *Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended*

Compromise with unsecured creditors

4 Where a compromise or an arrangement is proposed between a debtor company and its unsecured creditors or any class of them, the court may, on the application in a summary way of the company, of any such creditor or of the trustee in bankruptcy or liquidator of the company, order a meeting of the creditors or class of creditors, and, if the court so determines, of the shareholders of the company, to be summoned in such manner as the court directs.

…

Classes of Creditors

Company may establish classes

22 (1) A debtor company may divide its creditors into classes for the purpose of a meeting to be held under section 4 or 5 in respect of a compromise or arrangement relating to the company and, if it does so, it is to apply to the court for approval of the division before the meeting is held.

Factors

(2) For the purpose of subsection (1), creditors may be included in the same class if their interests or rights are sufficiently similar to give them a commonality of interest, taking into account

(a) the nature of the debts, liabilities or obligations giving rise to their claims;

(b) the nature and rank of any security in respect of their claims;

(c) the remedies available to the creditors in the absence of the compromise or arrangement being sanctioned, and the extent to which the creditors would recover their claims by exercising those remedies; and

(d) any further criteria, consistent with those set out in paragraphs (a) to (c), that are prescribed.

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Proceeding commenced at Toronto

FACTUM OF THE MONITOR
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(ret. February 12, 2019)

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