

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

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

**FIRST SUPPLEMENT TO THE TWENTY-FIFTH REPORT OF FTI CONSULTING  
CANADA INC., AS MONITOR**

**September 19, 2018**

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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., 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

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

**A. INTRODUCTION**

1. On September 17, 2018, the Monitor filed the Twenty-Fifth Report to the Court (the “**Twenty-Fifth Report**”) in these CCAA Proceedings in response to the Moving Landlords’ Motion.
2. As described in greater detail in the Twenty-Fifth Report, settlement has been achieved with the vast majority of Landlord Claimants, representing approximately 77% of the value of the claims asserted by the Landlord Claimants. The Moving Landlords have, as is their right, decided to pursue their claims through litigation. At the same time, and through the Moving Landlords’ Motion, they seek to have litigation of their claims held in abeyance until resolution of the Deemed Trust Motion.

3. The purpose of this First Supplement to the Twenty-Fifth Report (the “**First Supplement**”) is to provide responses to certain questions submitted by the Moving Landlords and to provide the Court with information relating to the Moving Landlords’ request for an adjournment of the Moving Landlords’ Motion.
4. Capitalized terms used herein and not otherwise defined in this First Supplement have the meanings given to them in the Twenty-Fifth Report. This First Supplement should be read in conjunction with the Twenty-Fifth Report.
5. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars.

**B. QUESTIONS SUBMITTED BY MOVING LANDLORDS**

6. By e-mail of September 18, 2018, the Moving Landlords submitted a number of questions to the Monitor related to the Moving Landlords’ Motion and the Monitor’s Twenty-Fifth Report.
7. The responses to the Moving Landlords’ questions were provided to the Moving Landlords by e-mail on September 19, 2018. A copy of the e-mail and the Monitor’s answers, except to question 7 over which the Moving Landlords have asserted confidentiality, are attached as **Appendix “A”** to this Twenty-Fifth Report.

**C. ADJOURNMENT REQUEST**

8. On July 26, 2018, the Moving Landlords advised that they were seeking dates for the scheduling of a motion to vary the Claims Procedure Order, and provided their preferred dates of September 17, 20 or 21. On July 27, 2018, the Monitor responded with available dates. On August 1, 2018, the Moving Landlords’ Motion was scheduled for September 20, 2018. A copy of correspondence in this regard is attached as **Appendix “B”**.
9. On August 7, 2018, the Monitor requested that the Moving Landlords “provide us with a copy of your Notice of Motion as soon as possible”. This request, as well as a request for a schedule, was reiterated on August 13, 2018. A copy of correspondence in this regard is attached as **Appendix “C”**.

10. The Moving Landlords served their Motion Record on September 6, 2018.
11. The Monitor served the Twenty-Fifth Report on September 13, 2018.
12. On September 16, 2018, the Moving Landlords advised that they sought to “examine the Monitor on the statements made therein prior to the hearing of the Motion”, stating:

The purpose of the examination is to test the statements made by the Monitor about the alleged prejudice to the estate from the relief sought by my clients, which the Monitor has made the tent pole concept of its opposition to our motion. The report is woefully inadequate in that regard and makes several unsupported statements about alleged prejudice to the estate for which no or little evidence is in the record before the Court. We also wish to test the statements made by the Monitor about its motivation and why it should not be exposed to costs and why security for costs is not appropriate. This second point may require the production of further correspondence than what is put forward in your record, in particular, correspondence by the Monitor with other stakeholders, parties to the Sears CCAA, other claimants, entities at Sears and other third parties

13. On September 17, 2018, the Monitor responded and requested that the Moving Landlords “provide your list of questions, in accordance with the accepted practice, for the Monitor’s consideration and response”.
14. In response, the Moving Landlords requested an adjournment of the September 20, 2018 motion. The Monitor declined to agree to an adjournment, particularly in light of the fact that:
  - (a) Justice Hainey had limited availability as had been advised to the parties on an attendance of September 4, 2018; and
  - (b) the motion was booked in August based on the availability of the Moving Landlords.
15. The Monitor further advised that if the list of questions was provided on September 17, 2018, the Monitor would attempt to provide responses before 4 p.m. on September 18, 2018, and earlier if possible.

16. In response, the Moving Landlords stated:

We did not anticipate examining the Monitor in this matter, but we also did not anticipate the anemic report you chose to serve which necessitated further examination. We also served our materials two weeks before the Motion and you chose to serve your report on Friday. As such, the blame for the time crunch is at best shared. The fact that the Monitor continues to be rigid about this for no reason will be commented on at some point soon we expect.

Correspondence in this regard is attached as **Appendix “D”**.

17. The Moving Landlords provided their questions on September 18, 2018. Correspondence in this regard is attached as **Appendix “E”**.

18. On September 18, 2018, the Moving Landlords also wrote to Justice Hainey and provided an amended Notice of Motion in respect of the September 20, 2018 motion and advised of their intention to seek an adjournment. A copy of the covering letter to Justice Hainey, without attachments, is attached as **Appendix “F”**.

19. The Monitor has not consented to the adjournment because:

- (a) The process for the resolution of the Moving Landlords’ claims will not begin until resolution of this motion. Indeed, the procedural order of Justice Farley, as described at paragraph 58 of the Twenty-Fifth Report, bases the date for delivery of materials and, ultimately the hearing itself, by reference to the “issuance of the decision of The Honourable Justice Hainey in respect of the September 20 Motion”;
- (b) The Monitor is concerned that an adjournment may be a matter of many weeks rather than days; and
- (c) As described in the Twenty-Fifth report, delays to the resolution of the Moving Landlords’ claims causes additional costs for Sears Canada and potentially interferes with the orderly administration of the estate.

**D. SUBSEQUENT DEVELOPMENTS**

20. On September 17, 2018, Morneau Shepell Ltd., in its capacity as Administrator for the Sears Canada Inc. Registered Retirement Plan, submitted written questions to the Monitor relating to the Deemed Trust Motion. A copy of the letter submitting these questions is attached as **Appendix “G”**. A copy of the Monitor’s responses are attached as **Appendix “H”**.
21. The questions included requests for disclosure and information relating to the status of Landlord claims, particularly in light of “the potential for different treatment of landlord claims on a conversion of the CCAA proceedings to bankruptcy”. The answers also provide information addressing Landlord claims, including the proportion of outstanding claims attributable to the Moving Landlords.
22. The Monitor is of the opinion that these questions and answers demonstrate both the need to finalize claims as well as the ongoing impact of Landlord claims on, among other things, the Deemed Trust Motion, which further support the Monitor’s opposition to the Moving Landlords’ Motion.

The Monitor respectfully submits to the Court this, its First Supplement to the Twenty-Fifth Report.

Dated this 19th day of September, 2018.

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



Paul Bishop  
Senior Managing Director



Greg Watson  
Senior Managing Director

## APPENDIX "A"



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**From:** Merskey, Alan  
**Sent:** September-19-18 12:47 PM  
**To:** David T. Ullmann; Pasparakis, Orestes  
**Cc:** John C. Wolf; Gauthier, Virginie; Cobb, Evan; Jessica Wuthmann; Taylor, Stephen  
**Subject:** RE: Motion Thursday vs Meeting re formula  
**Attachments:** Questions for the Monitor September 18, 2018.pdf; Confidential answer 7.pdf

David, John

Attached are the Monitor's answers to your questions. In accordance with your request, the answer to question #7 is attached separately, although the Monitor does not agree in so doing that the contents are confidential.

Best regards

**Alan Merskey**  
Partner

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**NORTON ROSE FULBRIGHT**

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**From:** David T. Ullmann [mailto:DUllmann@blaney.com]  
**Sent:** September-18-18 10:30 AM  
**To:** Pasparakis, Orestes  
**Cc:** Merskey, Alan; John C. Wolf; Gauthier, Virginie; Cobb, Evan; Jessica Wuthmann  
**Subject:** RE: Motion Thursday vs Meeting re formula

Please see our questions attached.

The questions are all directly relevant to the failure for the Monitor to prove prejudice, to balance prejudice, and the question as to whether or not the Monitor is selectively prosecuting the Moving Landlords for an improper and collateral purpose, as our Notice of Motion asserts or to prove that a delay in dealing with the Moving Landlords is in any real way an impediment to a distribution in the Sears estate, which you have asserted to be the case.

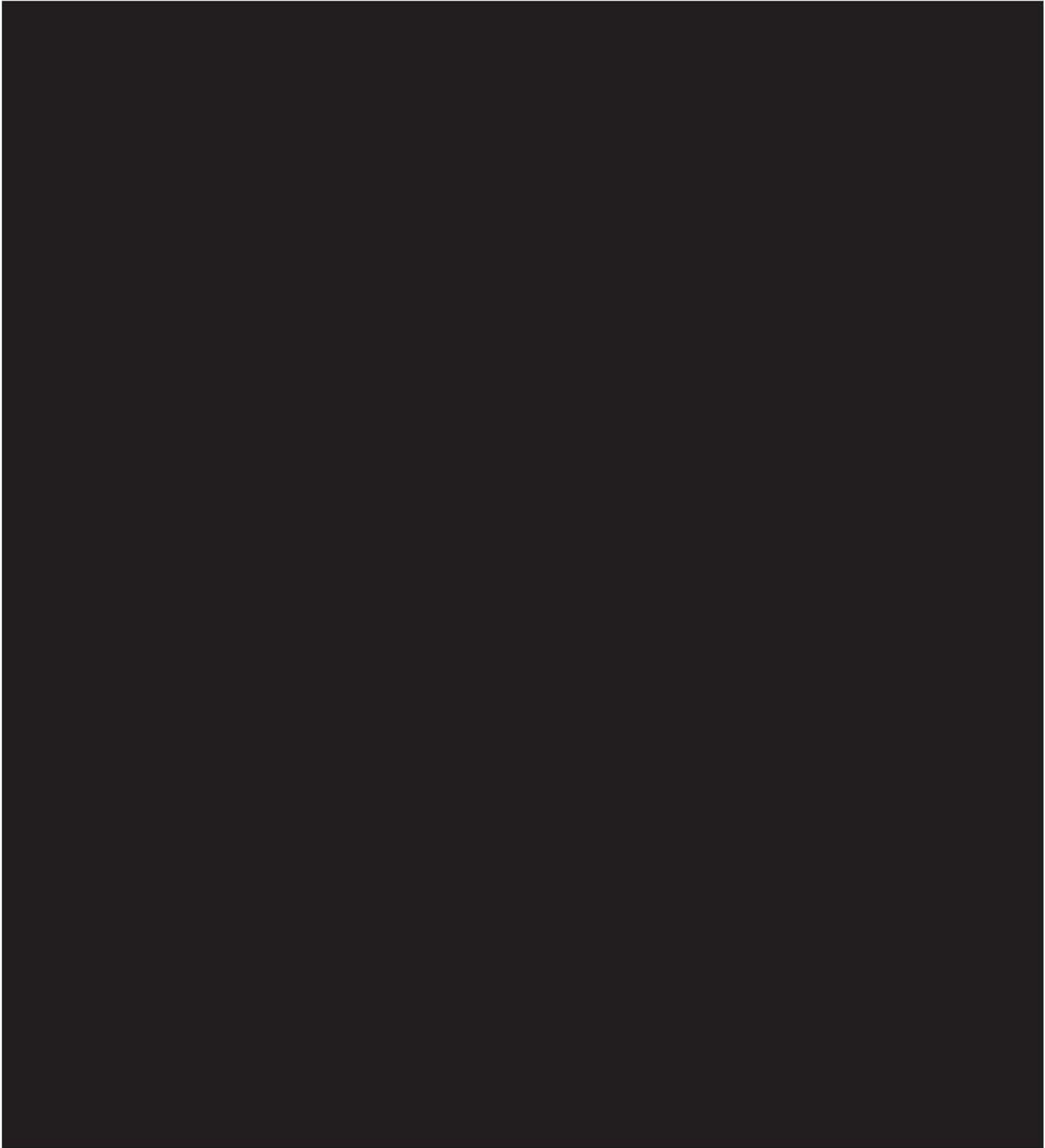
There is no practical way for these responses to be provided in a time which makes them useful for Thursday's hearing. It was the Monitor's choice to demand written questions rather than consent to an examination in person.

I respectfully request the courtesy of you agreeing to an adjournment. There is zero urgency to this matter and your failure to grant an adjournment in this circumstance can only be viewed as further attempt to extract a settlement through leverage. Given that both myself, and some of my clients, are effectively offline until Thursday morning, all the leverage in the world is not going to matter at this point.

Regards,

David Ullmann

David T. Ullmann  
Partner



## Questions for the Monitor

The following questions/requests for clarification or further information arise from a review of the 25th Monitor's report (the "**Report**") and the recommendations and positions taken by the Monitor therein. As the questions set out below are akin to an examination, we expect the answers to be provided by the Monitor personally, and not provided or written by counsel to the Monitor, and they will be relied on as such evidence directly from the Monitor. Please identify the individual from the Monitor who provides the responses. If there is more than one person responding, please identify the person doing so on a question by question basis.

*The Monitor does not accept the restrictions proposed by the Moving Landlords. The Monitor is a corporate entity consisting of more than one individual and as in any significant proceeding its reports are a product of its organizational knowledge. Similarly, as with any interrogatory process, the Monitor is entitled to the assistance of counsel and has properly received such assistance here.*

- 1 Please produce a list of all Sears employees, on a Moving Landlord premises by premises basis, who have institutional knowledge of the Moving Landlord disputed claims at issue.

***Answer:** Anita Short (Director of Real Estate) for claim amounts arising from the underlying leases including rent and rent-like amounts (CAM, Property Taxes, Utilities). Greg Paliouras (VP Facilities) for assessment of repair-related claim amounts; and Steffen Binder (VP Store Operations) for assessment of claims related to removal of FF&E.*

- 2 Of the Sears' employees referenced in the response to question 1, please advise which of those employees remain employed by Sears as of today's date.

***Answer:** Messrs. Paliouras and Binder.*

- 3 Of the Sears' employees who are referred to in the response to question 1 and remain employed by Sears, please advise when, if at all, it is anticipated that these various individuals are to be discharged or will end their employment with Sears.

***Answer:** The Monitor regularly reviews staffing requirements with the remaining Sears management. As the estate winds-down and time goes on, the risk of losing remaining employees with institutional knowledge increases.*

- 4 Please advise who would be produced by Sears as an affiant for examination in respect of each Moving Landlords' claim. If the individuals are different than the individuals listed in response to question 3 above, please provide when, if at all, it is anticipated that these individuals are to be discharged or will end their employment with Sears.

***Answer:** Given the vague and undefined nature of the Moving Landlord claims it is difficult to ascertain with any certainty who the specific witnesses might be. The individuals referenced in answer to question 3 are possible participants, among others.*

- 5 The Report advises that a key person had already been discharged as of August 31, 2018:

- (a) Who is this person?

***Answer:** Anita Short*

- (b) What was her/his title?

***Answer:** Director of Real Estate*

(c) How is the Monitor planning to address the disputed claims without this person?

***Answer:** The Monitor has acquired significant knowledge on landlord issues and claims through its work with Ms. Short over the last 10 months. Also, the responsibilities of Ms. Short have been transitioned to remaining Sears employees. It is however inevitable that institutional knowledge will be lost when employees like Ms. Short leave.*

6 Assuming that all 26 of the Moving Landlords' claims would be prosecuted individually, please provide a realistic estimate of the costs which would be incurred by the Monitor and Sears and their respective counsel in adjudicating the Moving Landlord Claims.

***Answer:** Given (a) the bald nature of claims asserted; and (b) the discretion in the Moving Landlords as to what material will actually be filed in support of their claims the Monitor cannot provide a reasonable estimate of this cost. The Monitor also notes its suggestion at the case conference with the Claims Officer that the Moving Landlords could bring representative claims for determination by the Claims Officer rather than having all their claims determined at once.*

7 The Monitor states in the Report that the claims were partially allowed. Having reviewed each notice of disallowance, the total amount allowed by the Monitor in each claim appears to actually be zero in every case (other than some de minimis amounts of post filing claims). Please explain this discrepancy and confirm what claims were allowed and in what amount, on a premises by premises basis, based on the record as filed with the court. **[We require this information be provided confidentially to us and the Court and not distributed to the service list]**

***Answer:** Answer provided confidentially as requested, although the Monitor does not agree that confidentiality attaches to this information.*

8 Please advise as to the anticipated remaining funds in the estate as at November 1, 2018, net of any known or budgeted professional costs up to and including August 2018.

***Answer:** Please refer to question 38 for the estimated remaining funds in the estate of \$164 million as of December 22, 2018. The net cash outflows between November 1, 2018 and December 22, 2018 per the most recently filed cash flow forecast are estimated to be \$4 million. As such, the expected funds in the estate are estimated to be \$168 million as of November 1, 2018.*

9 Please provide evidence of the written agreements with the other 4 major landlord groups referred to in the Report pursuant to which the Monitor advises these claims are settled.

***Answer:** Sears, the Monitor and 42 landlords (or agents on their behalf) represented by Thornton Grout Finnigan LLP, Davies Ward Phillips & Vineberg LLP, Camelino Galissiere LLP and DLA Piper (collectively, the "Group of 4") have entered into joinder agreements (the "Joinder Agreements") in relation to a term sheet dated July 26, 2018 (the "Term Sheet" and collectively with the Joinder Agreements, the "Settlement Agreement"). The Settlement Agreement contains confidentiality provisions that restrict the Monitor's ability to provide copies of same.*

*The economic terms of the Term Sheet were discussed amongst Ms. Gauthier, Mr. Pasparakis, Mr. Paul Bishop of the Monitor and Mr. Ullmann on a without prejudice conference call that took place July 27, 2018.*

10 Please provide copies of the settlements entered into with the other landlords. Please identify any differences in these settlements from the version executed with the initial four major landlord groups.

**Answer:** *The Settlement Agreements that were entered into by landlords (or agents on their behalf) other than those represented by the Group of 4 are in the same form as the Settlement Agreements that were signed by the landlords represented by the Group of 4. The Settlement Agreement contains confidentiality provisions that restrict the Monitor's ability to provide copies of same.*

- 11 Please confirm that all landlords, other than the Moving Landlords, approached by the Monitor have agreed to the Settlement. If this is not the case, please advise how many landlords, other than the Moving Landlords, have rejected the settlement.

**Answer:** *In addition to landlords represented by the Group of 4 and the Moving Parties, the Monitor has approached all other landlords (or counsel on their behalf) with a claim against Sears whose claims had not already been accepted by the Monitor. At the time of answering these questions, the Monitor is aware of only 3 landlord claims that are disputed, out of which only one may need to be referred to the claims officer. The aggregate disputed amount for all three claims is less than \$6 million.*

- 12 How many premises, beyond the 26 connected with the Moving Landlords, are currently not settled pursuant to the settlement?

**Answer:** *Other than environmental claims and D&O Claims, all landlord claims filed by landlords have been allowed either as filed or pursuant to Settlement Agreements with the exception of the claims of the 3 landlords referred to in paragraph 11 above. Each of these claims is in respect of 1 premise.*

- 13 Please confirm whether or not the settlement formula also applies to disputes involving operating agreements between landlords and Sears. If not, how many such disputes are outstanding and how are they to be resolved?

**Answer:** *The Settlement Agreements only apply to claims filed by landlords in their capacity as landlords. They do not apply to claims asserted by counter-parties to operating agreements ("OA Claims"). The Monitor has issued 11 notices of revision or disallowance in respect of OA Claims and received 7 notices of disputes in respect of same, including 3 from the Moving Landlords. Any dispute in respect of OA Claims that is not settled within a time period or in a manner satisfactory to the Monitor will be referred to the Claims Officer in accordance with the Claims Procedure Order dated December 8, 2018.*

- 14 Of the landlords who rejected the settlement referred to in the response to question 11, if any, have those landlords also been required to file notices of disallowances? Has the Monitor proceeded to set a schedule for the determination of those unsettled claims? If so, what is the schedule?

**Answer:** *The landlords whose claims are currently disputed have filed notices of dispute and/or additional documentation supporting their original claim. This material is currently being reviewed by the Monitor and Sears. The Monitor anticipates that only 1 of the disputed claims may need to be referred to the Claims Officer.*

- 15 Please confirm that the settlement with the other landlords has been approved as reasonable by the other key stakeholders.

**Answer:** *Such approval was not sought or required. It is the Monitor's obligation to resolve claims. In general terms the Monitor understands that other key stakeholders do not object to the resolution and that it could form in part, in conjunction with the resolution of other estate questions, a feasible basis for a plan of arrangement.*



16 Please provide a list of other outstanding claims in Sears and the schedule, if any, currently in place for the resolution of those claims.

**Answer:** *The Monitor has focussed upon review, resolution or adjudication of material claims (over \$1 million). But for one other claim (described below) the Moving Landlords collectively have the second largest disputed claim in the estate, of approximately \$626 million (including OA Claims having a face value of \$16 million). Accordingly the Monitor has focused upon resolving the Moving Landlords Claims (among others) as one of the largest individual claims.*

*The Monitor notes that no other claimant with claims remotely approaching those of the level of the Moving Landlords has delivered claims without a material information base. The Monitor also notes that most other significant claimants are concurrently engaged in settlement discussions. The Monitor can provide the following information on other significant claims:*

- (a) *Two former parties to operating and land acquisition agreements have asserted competing claims against each other and Sears to certain properties in British Columbia. The asserted value of one claim is \$1.2 billion. While certain of the Monitor's communications constitute settlement privilege, the Monitor advised these parties in August that absent a resolution and release of their claims against the estate the Monitor intended to seek an expedited resolution of all their claims before the claims officer commencing September 2018. The parties requested a time limited deferral to September 30, 2018, on the basis that they were engaged in without prejudice settlement discussions as amongst themselves that if successful would result in claims being withdrawn. These parties provided confidential information to the Monitor to satisfy the Monitor of the extent and complexity of their discussions.*
- (b) *Sears Hometown Dealers Class Action – The claim value is approximately \$110 million. Without prejudice discussions were undertaken in August, 2018. No discussions held for approximately 3 weeks. Absent an agreement or potentially coordination with the Litigation Inspector process (which may affect this claim) the Monitor has indicated to the claimants an intention to move on an expedited basis before the Claims Officer, and does not believe there is any opposition to this intention.*
- (c) *Defined Benefit Plan Spousal Waivers – The administrator of the Sears defined benefit pension plan has advised of a potential increase in their claim of approximately \$30 million. For purposes of efficiency the Monitor requested and the administrator agreed that issues relating to the spousal waiver be adjudicated by the Court in conjunction with the deemed trust priority motion. The administrator has served its motion in that regard and it is scheduled for hearing Nov 1-2.*
- (d) *Concord North Hill Limited Partnership environmental claim - \$24.25 million. This claim is also the subject of proceedings before the Alberta environmental regulator for which a mediation was scheduled for September 11 and postponed at the request of other parties. The Monitor has received in conjunction with the claim detailed costing which it reviewed and produced rebuttal calculations. Absent a negotiated resolution at mediation or otherwise the Monitor's view is that this claim may be readily scheduled before the claims officer either after or concurrently with the Moving Landlord Claims.*
- (e) *Other environmental – there are approximately 4 other environmental claims by separate parties with claim amounts ranging from \$4.25 million to \$10 million. While the degree of claim support varies, the Monitor is currently reviewing the additional material provided by these claimants with a view to either reaching a consensual resolution or refer same to the claims officer.*

*These examples are illustrative. In general terms the Monitor's approach has been to seek settlement, and concurrently engage in scheduling discussions. The Moving Landlords have been*

*the most resistant to engaging in any constructive planning steps. The Moving Landlords are also, after the deemed trust and \$1.2 billion claim referenced above, the single largest claim issue affecting the estate. The deemed trust claim is scheduled for hearing on November 1-2. As noted above, the Monitor has received a time limited deferral request from the parties to the other claim, with the reasonable prospect that the claim may be withdrawn. As such the Monitor has prioritized the Moving Landlords as the most pressing remaining issue in the claims administration.*

- 17 What is the Monitor's anticipated budget to deal with the anticipated claim disputes referred to in the response to question 16.

**Answer:** *Please refer to answer to question 32.*

- 18 Please provide the Monitor's basis for asserting the jurisdiction of the claims officer to adjudicate the co-tenancy issues which form one of the disputed parts of the Moving Landlord Claims.

**Answer:** *While this is a legal question which is not necessarily the proper subject matter of an interrogatory the Monitor notes that the question proceeds from an incorrect premise; the onus lies with the Moving Landlords to establish that there is in fact or law any basis to object to the jurisdiction of the claims officer. Without prejudice to that position the Monitor would also refer the Moving Landlords to paragraph 62 of the Claims Procedure Order, which provides in relevant part that "a Claims Officer shall determine the validity and amount of disputed Claims in accordance with this Order..."*

- 19 Please provide the Monitor's position as to whether or not the co-tenancy claim is a proper claim against Sears? Why or why not?

**Answer:** *This is a legal question – see note above. The claims as asserted are also so bald as to be almost incapable of evaluation and have been disallowed. Without prejudice to that position, and without limiting the Monitor's position, the Monitor believes that the Moving Landlords are in general terms intent on making claims against Sears for damages arising from the breach of other parties' contracts with the Moving Landlords, to which Sears is not a party. This raises, among other things, significant factual and legal issues of privity, remoteness and indirect damages.*

- 20 Please confirm what value, if any, was accepted by the Monitor in the landlord settlement formula with respect to the co-tenancy claims claimed by landlords generally.

**Answer:** *The Settlement Agreement contains confidentiality provisions that restrict the Monitor's ability to provide copies of same. The Monitor can advise that there are no values currently ascribed to co-tenancy claims in the formula. The Monitor notes that signatories receive the right to claim on evidence an increase in value depending upon the outcome of the Moving Landlords' co-tenancy claim, which is another reason the Monitor regards obtaining an expedited determination of this issue before the Claims Officer to be a first priority in the claims administration process.*

- 21 Please confirm that the formula settled with the landlords settles all issues between those landlords and Sears.

**Answer:** *The Settlement Agreements settle the valuation of all claims filed by landlords who have signed the Settlement Agreement except for environmental claims, valid post-filing claims which, subject to the next preceding sentence, were paid and D&O Claims. Valid post-filing claims of Moving Landlords have not yet been paid as counsel to the Moving Landlords has declined to return any of the Monitor's numerous recurring calls and emails asking for confirmation of amounts owed and owing and wire transfer information.*

22 Does the landlords' settlement formula leave nothing further for the Monitor to determine or to be contested with respect to the amount of those claims? If it does not, please advise what is still to be determined and the timeline for doing so.

**Answer:** *Nothing further to determine except as set out in answer 20.*

23 Please provide an estimate (similar to estimates previously provided by the Monitor in earlier reports) of the likely dividend payable to the unsecured creditors in the event the Moving Landlords' claims are approved as filed.

**Answer:** *Based on the most recent information contained in the recovery analysis appended to the Monitor's 22<sup>nd</sup> report and the assumptions contained therein (the "Recovery Analysis"), but assuming that the Moving Landlords' claims were accepted as filed, the recovery rate to unsecured creditors would approximate 6.4% and the resulting dividend amount to the Moving Landlords would be \$40.3 million.*

24 Please provide an estimate (similar to estimates previously provided by the Monitor in earlier reports) of the likely dividend in the event the Moving Landlords' claims are denied in full.

**Answer:** *Based on the Recovery Analysis, but assuming that the Moving Landlords' claims were valued at zero, the recovery rate to unsecured creditors would approximate 8.7% and the resulting dividend amount to the Moving Landlords would be \$0.*

25 Please confirm the difference between the dividend payable to the moving landlords in each of the foregoing events versus the amount which would be payable to the Moving Landlords if the formula used for the other landlords was applied in each case.

**Answer:** *Based on the Recovery Analysis, but assuming that the Moving Landlords' claims were valued in accordance with the Settlement Agreements, the recovery rate to unsecured creditors would approximate 8.4% and the resulting dividend amount to the Moving Landlords would be \$6.4 million.*

26 Assuming the Moving Landlords' claims are denied in full after adjudication, please provide the aggregate impact on the dividend caused by the likely costs of contesting those claims. Please include in those costs the cost of the claims officer's daily rate.

**Answer:** *See answer 6. Incapable of determination as a result of the baldness of the claims.*

27 Please produce the latest draft of the Plan of Arrangement and advise when that draft was last circulated to the creditors.

**Answer:** *The Monitor is not aware of a draft plan of arrangement. However, in preparation for the mediation, counsel to Sears prepared a detailed plan term sheet itemizing issues to be addressed in a plan. The draft term sheet was provided to a number of stakeholders on a confidential basis in advance of the mediation.*

28 Please provide the agreed to or projected timeline for the delivery of the Plan of Arrangement to the creditors.

**Answer:** *Please see answer to question 27.*

29 Please provide the agreed to or projected timeline for distribution of dividends to the creditors.



**Answer:** There is no one projected timeline. Absent settlement of the deemed trust claim, the time line is years. In the event of resolution of that claim, and an expedited determination of the claims described above (including these) the timeline would be months.

- 30 Please advise what the impact on the dividends - provided in response to question 29 - would be in the event of a holdback for the Moving Landlord claims in the various scenarios set out above.

**Answer:** The impact is illustrated by the answer given in question 23.

- 31 Please advise if the Monitor anticipates any other amount being held back from the dividend for any purpose or for any period pending the outcome of any other unknowns in these proceedings.

**Answer:** The Moving Landlords Claims would be the primary cause of any holdback based on the information outlined in this response.

- 32 What would the net savings to the estate be if the Monitor were to suspend all further work on disputes pending the outcome of the Deemed Trust matter?

**Answer:** For the period between July 15, 2018 to December 22, 2018, the Monitor had estimated fees of approximately \$1.1 million in relation to the claims process and NRFC \$500,000.

- 33 Please advise what the anticipated realization was from the Sears assets at the time the initial deemed trust motion was served in August.

**Answer:** Please see response to question 38 below. The realization assumptions between August 2018 and now have not changed.

- 34 Please advise what the aggregate professional fees was at that time. Please break out from that amount the aggregate fees of the Monitor and its counsel.

**Answer:** Please see response to question 37 below. The response reflects professional fees to September 1, 2018.

- 35 Please advise what the anticipated realization in the Sears matter was at the time of the claims order hearing in December.

**Answer:** Realizations/recovery analysis had not been completed in December 2017 given that the first claims bar date was not until March 2018 and most real estate transactions had not been completed.

- 36 Please advise what the aggregate professional fees was at that time. Please break out from that amount the aggregate fees of the Monitor and its counsel.

**Answer:** As of December 8, 2017, professional fees paid totaled \$53.4 million of which \$8.9 million were paid to the Monitor and \$5 million to NRFC.

- 37 Please confirm the total aggregate professional fees at this time. Please break out from that amount the aggregate fees of the Monitor and its counsel.

**Answer:** As of September 1, 2018, professional fees paid totaled \$82.1 million of which \$18.6 million were paid to the Monitor and \$12 million to NRFC.

- 38 Please advise as to the total net proceeds of the estate at this time.

**Answer:** \$164 million based on cash flows to December 22, 2018.

We reserve the right to ask further questions or follow up questions arising from the response to any of the foregoing in accordance with the Rules of Civil Procedure as they relate to written examinations. We will endeavour to do so promptly following your response, although we note the Rules provide for 10 days to respond.

## APPENDIX "B"

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**From:** David T. Ullmann <DUllmann@blaney.com>  
**Sent:** August-01-18 11:31 AM  
**To:** Ariyana Botejue; Merskey, Alan; Cobb, Evan; Gauthier, Virginie; Pasparakis, Orestes  
**Cc:** Jessica Wuthmann; John C. Wolf  
**Subject:** RE: In the Matter of A Plan of Compromise or Arrangement of Sears Canada Inc., et al.

Thank You. Alan, will you notify the service list or would you like us to do so?

Regards,

David

David T. Ullmann

Partner

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

☎ 416-596-4289 | ☎ 416-594-2437

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**From:** Ariyana Botejue  
**Sent:** August 1, 2018 10:25 AM  
**To:** 'Merskey, Alan'; Cobb, Evan; Gauthier, Virginie; Pasparakis, Orestes  
**Cc:** David T. Ullmann; Jessica Wuthmann; John C. Wolf  
**Subject:** RE: In the Matter of A Plan of Compromise or Arrangement of Sears Canada Inc., et al.

Good day All.

The Court has scheduled a motion in the above noted matter for September 20 at 10am for 1 hour before Justice Hainey (see attached email). Room to be determined.

Thank you,

Ariyana Botejue

Legal Assistant to Stephen Gaudreau and David Ullmann

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

☎ 416-593-1221 ext 4777

---

**From:** Merskey, Alan [<mailto:alan.merskey@nortonrosefulbright.com>]  
**Sent:** July-27-18 11:20 AM  
**To:** Pasparakis, Orestes; Ariyana Botejue  
**Cc:** David T. Ullmann; John C. Wolf; Cobb, Evan; Gauthier, Virginie  
**Subject:** RE: In the Matter of A Plan of Compromise or Arrangement of Sears Canada Inc., et al.

David,

Pls make dates Sept 20, 21, 17 in that order. Form is fine, please let me know when you receive the confirmation of date and proposed schedule.

**Alan Merskey**

Partner

Norton Rose Fulbright Canada LLP / S.E.N.C.R.L., s.r.l.  
Royal Bank Plaza, South Tower, Suite 3800  
200 Bay Street, P.O. Box 84, Toronto, ON M5J 2Z4 Canada  
T: +1 416.216.4805 | F: +1 416.216.3930  
[alan.merskey@nortonrosefulbright.com](mailto:alan.merskey@nortonrosefulbright.com)

## NORTON ROSE FULBRIGHT

---

**From:** Pasparakis, Orestes  
**Sent:** July-26-18 1:53 PM  
**To:** Ariyana Botejue  
**Cc:** David T. Ullmann; John C. Wolf; Merskey, Alan  
**Subject:** Re: In the Matter of A Plan of Compromise or Arrangement of Sears Canada Inc., et al.

Pls copy Alan in the future. He will respond.

On Jul 26, 2018, at 1:43 PM, Ariyana Botejue <[ABotejue@blaney.com](mailto:ABotejue@blaney.com)> wrote:

Dear Mr. Pasparakis,

Please see correspondence from Mr. Ullmann.

Thank you,

<image001.png>

Ariyana Botejue

Legal Assistant to Stephen Gaudreau and David Ullmann

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

<image002.png> 416-593-1221 ext 4777

<image003.png> [Blaney.com](http://Blaney.com)

<image012.png> <image013.png> <image014.png> <image015.png>

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<2018-07-26 - LT Pasparakis re motion.pdf>

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

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

July 26, 2018

**BY EMAIL TO orestes.pasparakis@nortonrosefulbright.com**

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

Dear Mr. Pasparakis,

**Re: Landlord group (“Landlord Group”) Offer to Settle, on an omnibus basis, landlord claims (“Landlord Claims”) in the Sears Canada (“Sears”) CCAA Proceeding**

We contacted the Commercial List Court and have been provided with dates before Justice Hainey in order to bring our client’s motion to vary the Claims Bar Order. Please see the enclosed Request Form, which is for a 1 hour motion before His Honour for the dates of August 29, September 17, 20, or 21. Please advise which date is most amicable. Also, please note that I will be away on August 29, and expect many others may be, as well. Therefore, the September dates are preferred.

Please also confirm that we may sign the Request Form on your behalf.

Yours truly,

**Blaney McMurtry LLP**



David T. Ullmann  
DTU/ab

Encl.

cc: John C. Wolf

Commercial List File Number:	YR/CL	CV-17-11846-00CL
Civil File Number:	YR/CV/	

Date Filed: July 26, 2018

**SUPERIOR COURT OF JUSTICE – COMMERCIAL LIST**  
REQUEST FORM 10am Motion

A	Short Title of Proceeding: <b>In the Matter of A Plan of Compromise or Arrangement of Sears Canada Inc., et al.</b>		
B	The estimated time for the hearing of this matter is		
	#MINUTES(S)	<b>1</b> #HOUR(S)	#DAY(S)
C	If hearing is to be 1 day or more in duration, please provide an estimate of reading time required for judge to prepare for hearing		
	# MINUTE(S)	# HOUR(S)	# DAY(S)
D	The nature of this hearing in this continuing matter is:  <b>Seeking a variance of Justice Hainey's Claims Bar Order, dated July 20, 2018</b>		
E	State the date(s) and time(s) for hearing the matter that has (have) been arranged with other counsel.		
	(1) <b>September 17 @ 10am</b>	(2) <b>September 20 @ 10am</b>	(3) <b>September 21 @ 10am</b>
F	Specify if this matter is already being dealt with in the court system (giving particulars as court number and office, when and by what judge or other judicial official). <b>Justice Hainey is seized with this matter.</b>		
G	The following materials will be necessary for the matter to be considered. (It is the responsibility of counsel to confirm that the proper materials are available for the Court.) <b>Motion Record of the Respondents, Bentall Kennedy (Canada) LP/QuadReal Property Group, Primaris Management Inc., First Capital Asset Management ULC, Westcliff Management Ltd., BIM North Hill Inc. and Westpen North Hill LP</b>		

COUNSEL FOR APPLICANT/MOVING PARTY		COUNSEL FOR OTHER PARTY	
<b>Party</b>	Respondents	<b>Party</b>	Monitor
<b>Counsel</b>	David Ullmann	<b>Counsel</b>	Orestes Pasparakis
	PRINT AND SIGN OR INITIAL		PRINT AND SIGN OR INITIAL
<b>Address</b>	Blaney McMurtry LLP 2 Queen Street East, Suite 1500 Toronto, ON, M5C 3G5	<b>Address</b>	Norton Rose Fulbright Canada LLP Royal Bank Plaza, South Tower 200 Bay Street, Suite 3800 Toronto, ON M5J 2Z4
<b>Phone</b>	416-596-4289	<b>Phone</b>	416-216-4815
<b>Fax</b>	416-594-2437	<b>Fax</b>	
<b>E-Mail</b>	dullmann@blaney.com	<b>E-Mail</b>	orestes.pasparakis@nortonrosefulbright.com

(IF MORE THAN 2 PARTIES INVOLVED, ADD ADDITIONAL SIGNATURES AND PARTICULARS ON REVERSE OR SEPARATE PAGE)

To be submitted to: Commercial List Office, 393 University Avenue, 10<sup>th</sup> Floor, Toronto Ontario Fax to: (416) 327-6228  
You may also convert to PDF and email to [Toronto.Commerciallist@jus.gov.on.ca](mailto:Toronto.Commerciallist@jus.gov.on.ca)

<b>Endorsement/Disposition</b> <input type="checkbox"/> See attached Yellow Endorsement Form
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## APPENDIX “C”



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**From:** Merskey, Alan  
**Sent:** August-13-18 12:59 PM  
**To:** David T. Ullmann  
**Cc:** John C. Wolf; Cobb, Evan; Pasparakis, Orestes; Gauthier, Virginie; greg.watson@fticonsulting.com; Paul.Bishop@fticonsulting.com; Bissell, Steven (Steven.Bissell@fticonsulting.com)  
**Subject:** RE: In the Matter of Seras Canada - Court File No. CV-17-11846-00CL

David,

Thank you for your email.

The core of your various clients' positions is that the administration of the estate should be paused indefinitely pending resolution of the deemed trust claim. The Monitor does not believe this is a responsible approach. The Monitor also does not agree that there is anything improper in moving forward to get clarification over your clients' large and bald claims. To the extent you believe your motion – which you had ample time to bring already – has an effect on scheduling matters you are welcome to raise that issue with the Claims Officer. With respect to the co-tenancy issue, given the paucity of materials filed this would in fact make an appropriate initial matter for the claims officer, likely at relatively little expense to your clients. Perhaps they would welcome an expeditious clarification. Finally as to the state of the evidentiary record, that has been a function of your clients' choices to date. No doubt you will seek to explain why expansion is appropriate at this juncture, and you already have our position in that regard. Accordingly, we will be requesting time for a case conference with Justice Farley to address these matters, and coordinate with you on that.

With respect to your motion date we are happy to advise the service list, but you have neither provided your notice of motion as previously requested, or a schedule for the motion. We expect that either or both of those would be of interest to the service list at the same time. Accordingly, could you please advise as to your proposed schedule.

Best regards

**Alan Merskey**  
Partner

Norton Rose Fulbright Canada LLP / S.E.N.C.R.L., s.r.l.  
Royal Bank Plaza, South Tower, Suite 3800  
200 Bay Street, P.O. Box 84, Toronto, ON M5J 2Z4 Canada  
T: +1 416.216.4805 | F: +1 416.216.3930  
[alan.merskey@nortonrosefulbright.com](mailto:alan.merskey@nortonrosefulbright.com)

**NORTON ROSE FULBRIGHT**

---

**From:** David T. Ullmann [mailto:DUllmann@blaney.com]  
**Sent:** August-08-18 10:11 AM  
**To:** Merskey, Alan  
**Cc:** John C. Wolf; Cobb, Evan; Pasparakis, Orestes; Gauthier, Virginie; greg.watson@fticonsulting.com; Paul.Bishop@fticonsulting.com; Dawson, Cathy  
**Subject:** RE: In the Matter of Seras Canada - Court File No. CV-17-11846-00CL

Alan,

Thank you for your letter. The filing of our client's Notices of Dispute was necessitated by the Monitor's insistence that something be filed even though our motion to vary the time lines in the order was pending. Had the Monitor been more flexible in this regard, our notices could have waited for the motion to be heard. Our cover letter was quite clear in that regard.

Our motion is proceeding on September 20<sup>th</sup>, as advised. The relief being sought remains to vary the Claims Procedure Order such that no further time or expense be spent in respect of contested claims until such time as the entitlement for the deemed trust has been heard and a final order has been granted. In our view, any further actions by the Monitor to attempt to move forward with our claims at this time would be in violation of the convention that one does not proceed to take further steps in the face of a pending motion which questions those same steps. If you ignore that convention, you do so at your own risk that any fees which are incurred by the Monitor or its counsel will be disallowed by the Court and that the Monitor's conduct will not be approved.

We note you have not advised the Service List of our pending motion. Please consider this as our second request that you do so.

As to the condition of the record, we are confident that Justice Farley will have no interest in attempting to limit the trial record to the facts currently in evidence. If there is to be a dispute on this matter, His Honour will require a full record and we will readily provide it if so required, on a reasonable time frame. In that regard, we confirm that we will insist that each of our client's claims proceed with due process and with full rights of discovery and evidence applied to ensure an appropriate result is reached. We remind you that the claims procedure order specifically allows for further evidence to be filed. We also point out that we have no evidence whatsoever from Sears on the "record" in these disputes. As such, the only evidence before the court at this point is our clients' claims and related records. The bald denial of those claims from the Monitor is not evidence of anything upon which a trier of fact can rely. It is simply a position taken in opposition to our claims.

We also do not think a claims officer can make any determination as to the validity of our client co-tenancy claims until the question of whether or not such a claim is a proper claim has been tried in court. The claims officer process is not the right venue to establish the law on that question, as you know, and we would certainly respectfully object to any attempt by the claims officer to do so.

Finally, we remind you that Orestes was quite clear that the Monitor does not require the resolution of our claims for any purpose, given that all other landlord claims are, according to the Monitor, otherwise dealt with and the "landlord solution" has already been presented to the other stakeholders for consideration without any holdback or reservation that it is conditional on the outcome of our disputes. There is therefore no urgency to dealing with our matter and we would encourage the Monitor to cease acting like there is. The complexity of our clients' claims should not in any way limit their right to have those claims fairly determined on a full record and we object to the Monitor taking a position to the contrary and encourage it to behave in a more impartial manner in the circumstances and quit trying to use timelines as leverage, as it admitted to the Court at the last hearing it was doing in this instance.

Regards,

David

David T. Ullmann

Partner

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

☎ 416-596-4289 | ☎ 416-594-2437

---

**From:** Hume, Chloe [mailto:[chloe.hume@nortonrosefulbright.com](mailto:chloe.hume@nortonrosefulbright.com)]

**Sent:** August 7, 2018 4:23 PM

**To:** David T. Ullmann

**Cc:** John C. Wolf; Cobb, Evan; Pasparakis, Orestes; Gauthier, Virginie; [greg.watson@fticonsulting.com](mailto:greg.watson@fticonsulting.com); [Paul.Bishop@fticonsulting.com](mailto:Paul.Bishop@fticonsulting.com); Merskey, Alan; Dawson, Cathy

**Subject:** In the Matter of Seras Canada - Court File No. CV-17-11846-00CL

**Sent on behalf of Alan Merskey**

Please see the attached.

Thank you,  
Mary for,

**Chloe Hume**

Assistant to Jennifer Teskey | Geoff Mens

Norton Rose Fulbright Canada LLP / S.E.N.C.R.L., s.r.l.  
Royal Bank Plaza, South Tower, Suite 3800  
200 Bay Street, P.O. Box 84, Toronto, ON M5J 2Z4 Canada  
T: +1 416.216.2977 | F: +1 416.216.3930  
[chloe.hume@nortonrosefulbright.com](mailto:chloe.hume@nortonrosefulbright.com)

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August 7, 2018

**Sent By E-mail**

David Ullman  
Blaney McMurtry LLP  
2 Queen Street East, Suite 1500  
Toronto, Ontario M5C 3G5

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

F: +1 416.216.3930  
[nortonrosefulbright.com](http://nortonrosefulbright.com)

**Alan Merskey**  
416.216.4805  
[alan.merskey@nortonrosefulbright.com](mailto:alan.merskey@nortonrosefulbright.com)

Our reference  
1000299972

Dear Mr. Ullman:

**In the Matter of Sears Canada  
Court File No. CV-17-11846-00CL**

We are writing with respect to the Notices of Dispute (**NOD**) you delivered on behalf of your clients on July 31, 2018 and your motion scheduled for September 20, 2018.

At the July 24, 2018 case conference you indicated that the purpose of your motion, if brought, would be to extend a time period for the filing of the NODs. Given that you have now filed these NODs the purpose of your motion is unclear. Kindly provide us with a copy of your Notice of Motion as soon as possible.

With respect to your NODs themselves, they are bald and simply a reiteration of the position expressed in your proofs of claim. Please be advised that the Monitor does not accept the position expressed in your covering letter that the Notices of Dispute are submitted in any fashion without prejudice to your pending motion, or any other matter, nor is the Monitor prepared to accede to your ongoing requests to delay indefinitely your clients participation in the claims procedure.

Accordingly, we will be forwarding a package of your proof of claims, notices of allowance, notices of revision or disallowance and NODs to the claims officer, Justice Farley and requesting a case conference with him at his earliest availability to set a schedule for the resolution of your NODs. Please be advised that once this matter has been referred to Justice Farley, the Monitor's position is that your claims will be determined by Justice Farley on the record you have produced. Please ensure that your clients are aware of the risks.

Yours truly,

  
Alan Merskey

AM/

Copies to: John Wolf, Blaney McMurtry LLP  
Paul Bishop / Greg Watson, FTI Consulting  
Orestes Pasparakis, Norton Rose Fulbright LLP  
Evan Cobb, Norton Rose Fulbright LLP  
Virginie Gauthier, Norton Rose Fulbright LLP

can\_dms: \121492519

## APPENDIX "D"

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**From:** David T. Ullmann <DUllmann@blaney.com>  
**Sent:** September-17-18 12:50 PM  
**To:** Merskey, Alan; John C. Wolf  
**Cc:** Pasparakis, Orestes; Cobb, Evan; Gauthier, Virginie; Jessica Wuthmann  
**Subject:** RE: In the matter of Sears Canada Inc., Court File No. CV-17-11846-00CL - 25th Report of the Monitor

Alan,

We did not anticipate examining the Monitor in this matter, but we also did not anticipate the anemic report you chose to serve which necessitated further examination. We also served our materials two weeks before the Motion and you chose to serve your report on Friday. As such, the blame for the time crunch is at best shared. The fact that the Monitor continues to be rigid about this for no reason will be commented on at some point soon we expect.

We will see where we are tomorrow and then figure out what is reasonable for Thursday.

I will see you shortly.

Regards,

David

David T. Ullmann  
Partner

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

☎ 416-596-4289 | ☎ 416-594-2437

---

**From:** Merskey, Alan [mailto:[alan.merskey@nortonrosefulbright.com](mailto:alan.merskey@nortonrosefulbright.com)]  
**Sent:** September 17, 2018 11:57 AM  
**To:** David T. Ullmann; John C. Wolf  
**Cc:** Pasparakis, Orestes; Cobb, Evan; Gauthier, Virginie; Jessica Wuthmann  
**Subject:** RE: In the matter of Sears Canada Inc., Court File No. CV-17-11846-00CL - 25th Report of the Monitor

David,

Thank you for your response.

The difficulty with a short adjournment is that, as you may recall from our attendance on September 4<sup>th</sup>, Justice Hainey has limited availability. Additionally, since this motion was booked in August based on your availability, these things could have been accommodated had you proposed a schedule and delivered materials slightly earlier. In any event, it is our experience that the drafting of a list may provide significant assistance in focussing your inquiries, which we assume you have been considering since Friday. If you deliver us the list today, we will attempt to provide responses before 4 pm/sundown Tuesday, and earlier if possible. If there is some fundamental difficulty in incorporating them into your submissions for Thursday (taking into account the intervention of Yom Kippur), then it would make more sense to address on Thursday morning.

Insofar as the process is concerned, we have no strong views on whether you send the list of questions to the service list or not. By analogy to cross-examination, the answers should be served on the service list, by either party, if either party intends to rely upon them.

Best regards



**Alan Merskey**

Partner

Norton Rose Fulbright Canada LLP / S.E.N.C.R.L., s.r.l.  
Royal Bank Plaza, South Tower, Suite 3800  
200 Bay Street, P.O. Box 84, Toronto, ON M5J 2Z4 Canada  
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[alan.merskey@nortonrosefulbright.com](mailto:alan.merskey@nortonrosefulbright.com)

## **NORTON ROSE FULBRIGHT**

---

**From:** David T. Ullmann [mailto:DUllmann@blaney.com]

**Sent:** September-17-18 10:48 AM

**To:** Merskey, Alan; John C. Wolf

**Cc:** Pasparakis, Orestes; Cobb, Evan; Gauthier, Virginie; Jessica Wuthmann

**Subject:** RE: In the matter of Sears Canada Inc., Court File No. CV-17-11846-00CL - 25th Report of the Monitor

**Importance:** High

Good Morning Alan,

I was aware of this practice point but I thought, in the interest of expedience, an examination in person would have been more efficient. In light of your response, will the Monitor consent to a short adjournment to the motion so that we can provide our written questions, consider the responses and be able to put that information in our submissions to the court? Given other commitments I have today (including a multi hour meeting with you) I do not realistically think we will be able to produce our questions until tomorrow. As you are aware, we are under some pressure because of Yom Kippur essentially taking out 2 of the next 3 days. There is really no reason this matter needs to be heard Thursday that I am aware of.

On a related practice point, it is my understanding that written questions are copied to the Service List, as are the responses. Do you agree that is the correct procedure?

Also, please be advised we will be serving an amended notice of motion to amend our relief sought to a stay of the claims process until only after Hainey J rules on the pending motion (as opposed to our original motion which you took to mean we were waiting to exhaust all avenues of appeal). Redacted (Privilege)

Redacted In addition, our amended notice will seek a sealing order with respect to the Claims Brief, as discussed. If there is to be an adjournment of the motion, it would be efficient to include the new date in our amended motion. Please advise.

Regards,

David

David T. Ullmann

Partner

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

 416-596-4289 |  416-594-2437

---

**From:** Merskey, Alan [mailto:alan.merskey@nortonrosefulbright.com]

**Sent:** September 17, 2018 9:06 AM

**To:** David T. Ullmann; John C. Wolf

**Cc:** Pasparakis, Orestes; Cobb, Evan; Gauthier, Virginie

**Subject:** RE: In the matter of Sears Canada Inc., Court File No. CV-17-11846-00CL - 25th Report of the Monitor

David,

Thank you for your email.

Your request to examine the Monitor on its report (presumably pursuant to Rule 39 although you do not specify) is not the proper procedure for examination of a court officer, as consistently set out in the applicable case law: see for instance *Bell Canada International Inc*, [2003] O.J. No. 4738 (SCJ) at para 8; *Martellaci, Re*, 2014 ONSC 5188 per Newbould J. at para 21:

The general practice accepted in Ontario is that if a party has questions regarding a report of such a court officer, those questions should be put to the court officer. Generally in my experience, the court officer will answer the questions fully and any follow-up questions that may arise and cross-examination is not necessary. If there is some good reason to cross-examine the court officer, it can be ordered. **I do not agree that a person has a *prima facie* right at large to cross-examine a court officer** such as a trustee and I would not extend the practice in that way. See Farley J. in *Bell Canada International* at paras. 8 and 9 and his discussion of the limits on cross-examination of a court officer. I agree with his comments. [Emphasis added]

Please provide your list of questions, in accordance with the accepted practice, for the Monitor's consideration and response.

Best regards

**Alan Merskey**

Partner

Norton Rose Fulbright Canada LLP / S.E.N.C.R.L., s.r.l.  
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200 Bay Street, P.O. Box 84, Toronto, ON M5J 2Z4 Canada  
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[alan.merskey@nortonrosefulbright.com](mailto:alan.merskey@nortonrosefulbright.com)

**NORTON ROSE FULBRIGHT**

---

**From:** David T. Ullmann [mailto:DUllmann@blaney.com]

**Sent:** September-16-18 11:12 AM

**To:** Merskey, Alan

**Cc:** Taylor, Stephen; Ma, Catherine; Gauthier, Virginie; John C. Wolf

**Subject:** RE: In the matter of Sears Canada Inc., Court File No. CV-17-11846-00CL - 25th Report of the Monitor

Alan,

Thank you for providing us with the 25<sup>th</sup> report of the Monitor. We would like to examine the Monitor on the statements made therein prior to the hearing of the Motion. Please advise who is the author of the report (we see it is signed by two people) so we know who to examine or, in the alternative, we may examine both signatories. Please advise when the Monitor's representatives would be available for examination. As you know, I am unavailable from 4 pm on Tuesday until 9pm on Wednesday.

The purpose of the examination is to test the statements made by the Monitor about the alleged prejudice to the estate from the relief sought by my clients, which the Monitor has made the tent pole concept of its opposition to our motion. The report is woefully inadequate in that regard and makes several unsupported statements about alleged prejudice to the estate for which no or little evidence is in the record before the Court. We also wish to test the statements made by the Monitor about its motivation and why it should not be exposed to costs and why security for costs is not appropriate. This second point may require the production of further correspondence than what is put forward in your record, in particular, correspondence by the Monitor with other stakeholders, parties to the Sears CCAA, other claimants, entities at Sears and other third parties.



Regards,

David

David T. Ullmann

Partner

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



416-596-4289



416-594-2437

---

**From:** Merskey, Alan [mailto:[alan.merskey@nortonrosefulbright.com](mailto:alan.merskey@nortonrosefulbright.com)]

**Sent:** September 14, 2018 1:41 PM

**To:** David T. Ullmann

**Cc:** Taylor, Stephen; Ma, Catherine; Gauthier, Virginie; John C. Wolf

**Subject:** RE: In the matter of Sears Canada Inc., Court File No. CV-17-11846-00CL - 25th Report of the Monitor

Suit yourself. You will need to bring the sealing order and establish the *Sierra Club* grounds.

**Alan Merskey**

Partner

Norton Rose Fulbright Canada LLP / S.E.N.C.R.L., s.r.l.

Royal Bank Plaza, South Tower, Suite 3800

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[alan.merskey@nortonrosefulbright.com](mailto:alan.merskey@nortonrosefulbright.com)

**NORTON ROSE FULBRIGHT**

---

**From:** David T. Ullmann [mailto:[DUllmann@blaney.com](mailto:DUllmann@blaney.com)]

**Sent:** September-14-18 11:43 AM

**To:** Merskey, Alan

**Cc:** Taylor, Stephen; Ma, Catherine; Gauthier, Virginie; John C. Wolf

**Subject:** RE: In the matter of Sears Canada Inc., Court File No. CV-17-11846-00CL - 25th Report of the Monitor

Alan,

Thank you for your report and for asking our position on this issue. I have no idea why you would think anyone, other than perhaps the Judge, needs to see anything more about our claims other than the sample description you have provided in your report. The claims do contain confidential business information related to rental amounts, projected remediation costs, and other confidential business issues, which, among other things, will impact our clients ability to re-lease or re-demise the premises in the future, if that is possible. We have advised you that we believe that information is confidential. I have in other CCAA matters, seen this position accepted without question by the Monitor. Certainly that was the case in Target when that position was taken by RBC and others about their business information in their claims.

I would suggest that if you really believe the court needs to see the claims in order to make the determination on Sept 20th, we would consent to you providing that material to the court only and we will seek an order at the motion on the 20<sup>th</sup> sealing the brief.

Regards,

David

David T. Ullmann

Partner

---

**From:** Merskey, Alan [mailto:alan.merskey@nortonrosefulbright.com]  
**Sent:** September 14, 2018 9:22 AM  
**To:** David T. Ullmann  
**Cc:** Taylor, Stephen; Ma, Catherine; Gauthier, Virginie  
**Subject:** FW: In the matter of Sears Canada Inc., Court File No. CV-17-11846-00CL - 25th Report of the Monitor

David,

You will have seen that the monitor report refers to the brief of claims that was put before Justice Farley. As you may recall from my comments at the case conference, I don't think any confidentiality attaches to the claims or the claims process. I am not aware of anything in your clients' claim materials that would attract confidentiality either (in terms of an open litigation process that is, not business confidentiality). However, as a courtesy, we held back from service of the claims briefs though until you had seen the report.

Subject to any comments you may have we intend to serve the briefs at end of day, in order to give you the opportunity to review the issue.

Best regards

**Alan Merskey**  
Partner

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**NORTON ROSE FULBRIGHT**

---

**From:** Ma, Catherine  
**Sent:** September-13-18 6:34 PM  
**To:** mwasserman@osler.com; jdacks@osler.com; tsandler@osler.com; mdelellis@osler.com; sirving@osler.com; mcalvaruso@osler.com; sstidwill@osler.com; jerickson@osler.com; WMalik@osler.com; searscanada@fticonsulting.com; greg.watson@fticonsulting.com; paul.bishop@fticonsulting.com; jim.robinson@fticonsulting.com; steven.bissell@fticonsulting.com; linda.kelly@fticonsulting.com; kamran.hamidi@fticonsulting.com; Hrvoje.Muhek@fticonsulting.com; Pasparakis, Orestes; Gauthier, Virginie; Merskey, Alan; Cobb, Evan; Schmitt, Alexander; Ma, Catherine; solwayg@bennettjones.com; zweigs@bennettjones.com; ahatnay@kmlaw.ca; jlatham@goodmans.ca; rbaulke@goodmans.ca; rjacobs@casselsbrock.com; jdietrich@casselsbrock.com; skukulowicz@casselsbrock.com; bgoodis@casselsbrock.com; rschwill@dwvpv.com; nmacparland@dwvpv.com; sursel@upfhlaw.ca; sgraff@airdberlis.com; ken.rosenberg@paliareroland.com; max.starnino@paliareroland.com; lily.harmer@paliareroland.com; djmiller@tgf.ca; mmarfatia@tgf.ca; bernard.boucher@blakes.com; sebastien.guy@blakes.com; jcarhart@millertomson.com; skettle@millertomson.com; joe.kamer@tempursey.com; pfesharaki@tgf.ca; charles.simco@shibleyrighton.com; JPawlyk@bmlp.ca; ashwin@canadiandownandfeather.com; andree.lemayroux@cominar.com; jshaffer@longviewcomms.ca; pblock@longviewcomms.ca; ivukosavic@longviewcomms.ca; brian@sica.ca; FGagnon@blg.com; ELefebvre@blg.com; neil.desai@cowen.com; Aaron.Welch@gov.bc.ca; AGLSBRevTax@gov.bc.ca; tdunn@mindengross.com; mkaplan@foglers.com; vdare@foglers.com; ljackson@casselsbrock.com; tpinos@casselsbrock.com; manon.deslauriers@cominar.com; mzigler@kmlaw.ca; hferris@lawsonlundell.com; harvey@chaitons.com; george@chaitons.com; nguizani@millertomson.com; jwolf@blaney.com; dullmann@blaney.com; john.mori@cowen.com; lborsook@weirfoulds.com; cmills@millertomson.com; jwarin@lavery.ca; nparent@beauward.com; rhamelin@beauward.com; lauren.pearce@paliareroland.com; alykhans@pafgroup.com;

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kim.graf@gov.ab.ca; sean.boyd@gov.mb.ca; justice.comments@gnb.ca; Philippe.Theriault2@gnb.ca; justice@gov.nl.ca; justweb@gov.ns.ca; JUSTMIN@novascotia.ca; informations@justice.gouv.qc.ca; ministre@justice.gouv.qc.ca; jus.minister@gov.sk.ca; sthorne@gov.pe.ca; SFriedberg@seaportglobal.com; kgianis@contrariancapital.com; cbesant@grllp.com; James.Rego@samsonite.com; rcuervolorens@blaney.com; TGordner@blaney.com; anthony.dale@unifor.org; paul@argopartners.net; tduncan@grllp.com; h.rosenberg@battistonlaw.com; arapoport@haincapital.com; boberg@haincapital.com; rkoltai@haincapital.com; emily.lawrence@paliareroland.com; Sushrat@MehanGroup.ca; linc.rogers@blakes.com; aryo.shalviri@blakes.com; sglustein@alvarezandmarsal.com; anackan@farberfinancial.com; rstelzer@farberfinancial.com; sara.vanallen@dentons.com; esther.chung@baml.com; ante.jakic@baml.com; ryan.weddle@baml.com; jmonteyne@kmlaw.ca; atang@kmlaw.ca; Gus.Tertigas@ca.ey.com; clachance@dwpv.com; edreyer@kw-law.com; aryo.shalviri@blakes.com; john.salmas@dentons.com; vanja.ginic@dentons.com; bkofman@ksvadvisory.com; ngoldstein@ksvadvisory.com; asanche@rickettsharris.com; dlangley@wvllp.ca; dsterns@sotosllp.com; aseretis@sotosllp.com; gplottel@millerthomson.com; thomas.mcrae@shibleyrighton.com; rachel.migicovsky@shibleyrighton.com; dmagisano@lernalers.ca; louis.frapparti@gowlingwlg.com; rtannor@tannorpartners.com; tdenari@centerbridge.com; adam.rosen@alrcounsel.com; tpavalis@diamondmccarthy.com; kmccormack@contrariancapital.com; leslie.mccauley@michelin.com; blizzul@ninashoes.com; dwright@wm.com; jboyle@coxandpalmer.com; collections.group@fortisbc.com; iroher@teplitskycolson.com; ekadouri@teplitskycolson.com; KEnsslen@upfhlaw.ca; Korourke@upfhlaw.ca; gphoenix@loonix.com; TDiTirro@rosenthalinc.com; sunny.handa@blakes.com; robert\_cohen@lenox.com; gmurdoch@sorbaralaw.com; morrison@mmwlaw.ca; cbrock@ibew213.org; WPederson@lelandlaw.ca; roger.simard@dentons.com; lawofficesofteddslevine@gmail.com; akauffman@fasken.com; morr@leasedirect.com; 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**Subject:** In the matter of Sears Canada Inc., Court File No. CV-17-11846-00CL - 25th Report of the Monitor

## TO THE SERVICE LIST

Please find attached the Twenty-Fifth Report of FTI Consulting Canada Inc., in its capacity as court-appointed Monitor in the above-noted proceedings.

This report is served in connection with the motion brought by the Moving Landlords seeking an order varying the Claims Procedure Order of the Honourable Justice Hainey dated December 8, 2017, among other things, which is returnable on Thursday, September 20, 2018.

**Catherine Ma**  
Law Clerk

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## **NORTON ROSE FULBRIGHT**

---

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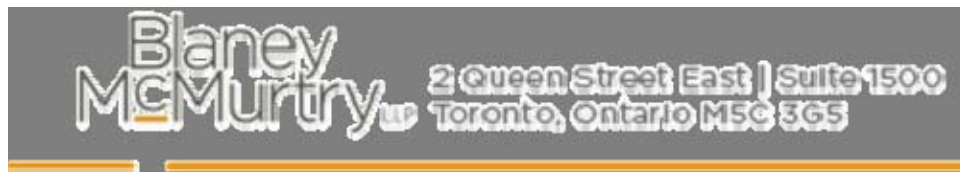
**Cc:** David T. Ullmann; John C. Wolf

**Subject:** In the Matter of Sears Canada Inc. et al | Court File No. CV-17-11846-00CL

To the Service List.

Please see attached, a Motion Record for the Moving Landlords for the hearing returnable September 20, 2018.

Thank you,



Ariyana Botejue

Legal Assistant to Stephen Gaudreau and David Ullmann

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## APPENDIX "E"



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**From:** Taylor, Stephen  
**Sent:** September-18-18 5:12 PM  
**To:** Taylor, Stephen  
**Subject:** FW: Motion Thursday vs Meeting re formula

**From:** David T. Ullmann [<mailto:DUllmann@blaney.com>]  
**Sent:** September-18-18 10:30 AM  
**To:** Pasparakis, Orestes  
**Cc:** Merskey, Alan; John C. Wolf; Gauthier, Virginie; Cobb, Evan; Jessica Wuthmann  
**Subject:** RE: Motion Thursday vs Meeting re formula

Please see our questions attached.

The questions are all directly relevant to the failure for the Monitor to prove prejudice, to balance prejudice, and the question as to whether or not the Monitor is selectively prosecuting the Moving Landlords for an improper and collateral purpose, as our Notice of Motion asserts or to prove that a delay in dealing with the Moving Landlords is in any real way an impediment to a distribution in the Sears estate, which you have asserted to be the case.

There is no practical way for these responses to be provided in a time which makes them useful for Thursday's hearing. It was the Monitor's choice to demand written questions rather than consent to an examination in person.

I respectfully request the courtesy of you agreeing to an adjournment. There is zero urgency to this matter and your failure to grant an adjournment in this circumstance can only be viewed as further attempt to extract a settlement through leverage. Given that both myself, and some of my clients, are effectively offline until Thursday morning, all the leverage in the world is not going to matter at this point.

Regards,

David Ullmann

David T. Ullmann  
Partner

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---

**From:** David T. Ullmann  
**Sent:** September 17, 2018 4:19 PM  
**To:** Pasparakis, Orestes  
**Cc:** 'Merskey, Alan'; John C. Wolf  
**Subject:** Motion Thursday vs Meeting re formula

Without Prejudice

Redacted (Privilege)



Redacted (Privilege)

Regards,

David



David T. Ullmann

Partner

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

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The following questions/requests for clarification or further information arise from a review of the 25<sup>th</sup> Monitor's report (the "**Report**") and the recommendations and positions taken by the Monitor therein. As the questions set out below are akin to an examination, we expect the answers to be provided by the Monitor personally, and not provided or written by counsel to the Monitor, and they will be relied on as such evidence directly from the Monitor. Please identify the individual from the Monitor who provides the responses. If there is more than one person responding, please identify the person doing so on a question by question basis.

1. Please produce a list of all Sears employees, on a Moving Landlord premises by premises basis, who have institutional knowledge of the Moving Landlord disputed claims at issue.
2. Of the Sears' employees referenced in the response to question 1, please advise which of those employees remain employed by Sears as of today's date.
3. Of the Sears' employees who are referred to in the response to question 1 and remain employed by Sears, please advise when, if at all, it is anticipated that these various individuals are to be discharged or will end their employment with Sears.
4. Please advise who would be produced by Sears as an affiant for examination in respect of each Moving Landlords' claim. If the individuals are different than the individuals listed in response to question 3 above, please provide when, if at all, it is anticipated that these individuals are to be discharged or will end their employment with Sears.
5. The Report advises that a key person had already been discharged as of August 31, 2018:
  - a. Who is this person?
  - b. What was her/his title?
  - c. How is the Monitor planning to address the disputed claims without this person?
6. Assuming that all 26 of the Moving Landlords' claims would be prosecuted individually, please provide a realistic estimate of the costs which would be incurred by the Monitor and Sears and their respective counsel in adjudicating the Moving Landlord Claims.
7. The Monitor states in the Report that the claims were partially allowed. Having reviewed each notice of disallowance, the total amount allowed by the Monitor in each claim appears to actually be zero in every case (other than some de minimis amounts of post filing claims). Please explain this discrepancy and confirm what claims were allowed and in what amount, on a premises by premises basis, based on the record as filed with the court. **[We require this information be provided confidentially to us and the Court and not distributed to the service list]**

8. Please advise as to the anticipated remaining funds in the estate as at November 1, 2018, net of any known or budgeted professional costs up to and including August 2018.
9. Please provide evidence of the written agreements with the other 4 major landlord groups referred to in the Report pursuant to which the Monitor advises these claims are settled.
10. Please provide copies of the settlements entered into with the other landlords. Please identify any differences in these settlements from the version executed with the initial four major landlord groups.
11. Please confirm that all landlords, other than the Moving Landlords, approached by the Monitor have agreed to the Settlement. If this is not the case, please advise how many landlords, other than the Moving Landlords, have rejected the settlement.
12. How many premises, beyond the 26 connected with the Moving Landlords, are currently not settled pursuant to the settlement?
13. Please confirm whether or not the settlement formula also applies to disputes involving operating agreements between landlords and Sears. If not, how many such disputes are outstanding and how are they to be resolved?
14. Of the landlords who rejected the settlement referred to in the response to question 11, if any, have those landlords also been required to file notices of disallowances? Has the Monitor proceeded to set a schedule for the determination of those unsettled claims? If so, what is the schedule?
15. Please confirm that the settlement with the other landlords has been approved as reasonable by the other key stakeholders.
16. Please provide a list of other outstanding claims in Sears and the schedule, if any, currently in place for the resolution of those claims.
17. What is the Monitor's anticipated budget to deal with the anticipated claim disputes referred to in the response to question 16.
18. Please provide the Monitor's basis for asserting the jurisdiction of the claims officer to adjudicate the co-tenancy issues which form one of the disputed parts of the Moving Landlord Claims.
19. Please provide the Monitor's position as to whether or not the co-tenancy claim is a proper claim against Sears? Why or why not?
20. Please confirm what value, if any, was accepted by the Monitor in the landlord settlement formula with respect to the co-tenancy claims claimed by landlords generally.
21. Please confirm that the formula settled with the landlords settles all issues between those landlords and Sears.

22. Does the landlords' settlement formula leave nothing further for the Monitor to determine or to be contested with respect to the amount of those claims? If it does not, please advise what is still to be determined and the timeline for doing so.
23. Please provide an estimate (similar to estimates previously provided by the Monitor in earlier reports) of the likely dividend payable to the unsecured creditors in the event the Moving Landlords' claims are approved as filed.
24. Please provide an estimate (similar to estimates previously provided by the Monitor in earlier reports) of the likely dividend in the event the Moving Landlords' claims are denied in full.
25. Please confirm the difference between the dividend payable to the moving landlords in each of the foregoing events versus the amount which would be payable to the Moving Landlords if the formula used for the other landlords was applied in each case.
26. Assuming the Moving Landlords' claims are denied in full after adjudication, please provide the aggregate impact on the dividend caused by the likely costs of contesting those claims. Please include in those costs the cost of the claims officer's daily rate.
27. Please produce the latest draft of the Plan of Arrangement and advise when that draft was last circulated to the creditors.
28. Please provide the agreed to or projected timeline for the delivery of the Plan of Arrangement to the creditors.
29. Please provide the agreed to or projected timeline for distribution of dividends to the creditors.
30. Please advise what the impact on the dividends - provided in response to question 29 - would be in the event of a holdback for the Moving Landlord claims in the various scenarios set out above.
31. Please advise if the Monitor anticipates any other amount being held back from the dividend for any purpose or for any period pending the outcome of any other unknowns in these proceedings.
32. What would the net savings to the estate be if the Monitor were to suspend all further work on disputes pending the outcome of the Deemed Trust matter?
33. Please advise what the anticipated realization was from the Sears assets at the time the initial deemed trust motion was served in August.
34. Please advise what the aggregate professional fees was at that time. Please break out from that amount the aggregate fees of the Monitor and its counsel.
35. Please advise what the anticipated realization in the Sears matter was at the time of the claims order hearing in December.
36. Please advise what the aggregate professional fees was at that time. Please break out from that amount the aggregate fees of the Monitor and its counsel.

37. Please confirm the total aggregate professional fees at this time. Please break out from that amount the aggregate fees of the Monitor and its counsel.
38. Please advise as to the total net proceeds of the estate at this time.

We reserve the right to ask further questions or follow up questions arising from the response to any of the foregoing in accordance with the Rules of Civil Procedure as they relate to written examinations. We will endeavour to do so promptly following your response, although we note the Rules provide for 10 days to respond.

## APPENDIX “F”

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

September 18, 2018

**BY EMAIL**

The Honourable Justice Hainey  
c/o Alsou Anissimova and April Taylor  
Commercial Trial Coordinator  
Superior Court of Justice  
Commercial Court  
330 University Ave., 7th Floor  
Toronto, ON, M5G 1R7

Honourable Justice Hainey,

**Re: In the Matter of Sears Canada Inc. et al (Court File No. CV-17-11846-00CL)**

Please find an amended Notice of Motion of the Moving Landlords for the motion returnable on September 20<sup>th</sup>, 2018. Under the amended notice, the Moving Landlords are now seeking that the suspension of the claims procedure sought in our original motion await only the determination of the hearing of the Deemed Trust motion by the Ontario Superior Court, regardless of the fact that determination of the Ontario Superior Court may be appealed thereafter.

The amended Notice of Motion also provides for a request for a sealing order, given that the Monitor has elected to file all of the disputed claims with the Court and those claims contain confidential business information.

Also, please be advised that we have elected to examine the Monitor by written interrogatories on the information in the 25<sup>th</sup> Report. We do not yet have responses to those interrogatories (as they were only recently sent to the Monitor). As such, we will ask the Court to adjourn the motion on September 20<sup>th</sup> pending the completion of the record. The Monitor is not consenting to that adjournment.

Thank you,

Yours very truly,



**Blaney McMurtry LLP**

David T Ullmann

DTU/ab

Encl.

cc: *Monitor's Counsel*

## APPENDIX “G”





Blake, Cassels & Graydon LLP  
Barristers & Solicitors  
Patent & Trade-mark Agents  
199 Bay Street  
Suite 4000, Commerce Court West  
Toronto ON M5L 1A9 Canada  
Tel: 416-863-2400 Fax: 416-863-2653

**Pamela L. J. Huff**

Dir: 416-863-2958

pamela.huff@blakes.com

September 17, 2018

**VIA E-MAIL**

Reference: 00010903/000002

Orestes Pasparakis / Alan Merskey  
Norton Rose Fulbright Canada LLP  
Suite 3800, Royal Bank Plaza, South Tower  
200 Bay Street, P.O. Box 84  
Toronto Ontario M5J 2Z4

**RE: In the Matter of Sears Canada Inc., et al. (Court File No. CV-17-11846-00CL)**

**Re: Information for Motions Returnable November 1 and 2, 2018**

---

Dear Mr. Pasparakis and Mr. Merskey:

We are writing on behalf of our client, Morneau Shepell Ltd., in its capacity as Administrator for the Sears Canada Inc. Registered Retirement Plan, regarding the motion records and Twenty-Second Report of FTI Consulting Canada Inc., as Monitor (the “**Twenty-Second Report**”), which were delivered on September 7, 2018. These materials raise a number of factual issues and questions relevant to the motions currently scheduled to be heard on November 1 and 2, 2018, as set out below.

Former employee entitlements under the Wage Earner Protection Program

In paragraphs 35 through 38 of the Twenty-Second Report, the Monitor notes that there are claims totalling \$192 million made by former employees. The Monitor also suggests that unsecured creditors, such as the former employees, may receive little to no recoveries from Sears Canada if the deemed trust and/or joint and several claims in respect of the Pension Plan are upheld by the Court. The Monitor makes no mention of amounts that may be recoverable by former employees under the Wage Earner Protection Program (referred to in other reports of the Monitor).

As such, we request that the Monitor disclose the following information relating to the former employee claims:

1. How many former employees have filed employee claims against the Sears Canada Entities?
2. What amount of the employee claims are termination and severance claims?
3. How many former employees have employee claims against the Sears Canada Entities that are greater than the prescribed maximum amount payable under the Wage Earner Protection Program (\$3,976.92 for 2018)?

4. How many former employees have employee claims against the Sears Canada Entities that are greater than the maximum amount payable under the Wage Earner Protection Program if the maximum payment of Employment Insurance insurable earnings is increased from four weeks to seven weeks (estimated to be \$6,959.61 for 2018)?
5. What is the estimated net amount of the employee claims against the Sears Canada Entities after accounting for anticipated employee recoveries under the Wage Earner Protection Program at both (a) the current prescribed maximum (\$3,976.92 per employee for 2018) and (b) the potential increased maximum (\$6,959,61 per employee for 2018)?

## Landlord claims

In paragraph 35 of the Twenty-Second Report, the Monitor identifies four creditor groups which it says “make up a significant portion of the aggregate unsecured claim pool of Sears Canada”, yet makes no specific mention of landlord claims which we are aware form a substantial part of the unsecured claim pool.

Given the significance of the landlord claims and the potential for different treatment of landlord claims on a conversion of the CCAA proceedings to bankruptcy, we ask that the Monitor disclose the following information regarding the landlord claims on a location-by-location basis:

1. What is the amount of landlord claims that have been accepted and finally determined? What is the amount of landlord claims that have been disallowed and remain subject to determination?
2. What is the breakdown of the landlord claims referred to in #1 above in terms of (a) claims for future rent versus (b) claims for other damages?
3. What were the effective dates for each of the lease disclaimers that were delivered to all landlords?

Given the current timetable for the motions, we kindly ask that the requested information be provided as soon as possible and, in any event, by no later than September 21<sup>st</sup>. Depending on the information provided, we may have additional follow up questions.

If it would be helpful, we would be happy to schedule a call to discuss any of these issues at your convenience.

Yours truly,



for

Pamela L.J. Huff



- c. M. Barrack / K. Bush / K. Bourassa / K. Patel (Blakes)  
K. Rosenberg / L. Harmer / M. Starnino / E. Rathbone (Paliare Roland)  
A. Hatnay / D. Yiokaris / A. Tang (Koskie Minsky)  
S. Ursel / K. Ensslen (Ursel Phillips)  
V. Gauthier / E. Cobb (Norton Rose)

## APPENDIX "H"





- 4 How many former employees have employee claims against the Sears Canada Entities that are greater than the maximum amount payable under the Wage Earner Protection Program if the maximum payment of Employment Insurance insurable earnings is increased from four weeks to seven weeks (estimated to be \$6,959.61 for 2018)?

**Answer:** There are 5,409 Employees who have a Termination Claim that is greater than the proposed WEPP amount of \$6,959.61.

- 5 What is the estimated net amount of the employee claims against the Sears Canada Entities after accounting for anticipated employee recoveries under the Wage Earner Protection Program at both

- (a) the current prescribed maximum (\$3,976.92 per employee for 2018); and

**Answer:**

- 8,793 Termination Claims totalling \$8,977,308 would be paid by WEPP in full
- 6,795 Termination Claims totalling \$27,023,171 would be paid by WEPP in part
- Total WEPP payments of \$36,000,479

*Resulting in:*

- 6,795 Termination Claims remaining with a value of \$149,847,031
- 1 subrogated claim in respect of Termination Claims paid by WEPP of \$36,000,479
- **Total Termination Claims value = \$185,847,511**

- (b) the potential increased maximum (\$6,959.61 per employee for 2018)?

**Answer:**

- 10,179 Termination Claims totalling \$16,308,565 would be paid by WEPP in full
- 5,409 Termination Claims totalling \$37,644,585 would be paid by WEPP in part
- Total WEPP payments of \$53,953,149

*Resulting in:*

- 5,409 Termination Claims remaining with a value of \$131,894,361
- 1 subrogated claim in respect of Termination Claims paid by WEPP of \$53,953,149
- **Total Termination Claims value = \$185,847,511**

*Representatives of Service Canada and the Federal Labour Program have confirmed to the Monitor, SCI and employee representative counsel that they intended to exercise their subordinated claim right.*

**Landlord Claims**

- 1 What is the amount of landlord claims that have been accepted and finally determined? What is the amount of landlord claims that have been disallowed and remain subject to determination?

**Answer:** Allowed landlord claims total \$352 million. The original aggregate face amount of these claims was \$1.250 billion. Landlord claims having a face value of \$601 million are disputed, \$590 million of which are represented by a single law firm. Please refer to the tables attached as **Appendix 1** and **Appendix 2** to this letter for certain claim by claim details.

- 2 What is the breakdown of the landlord claims referred to in #1 above in terms of (a) claims for future rent versus (b) claims for other damages?

**Answer:**

*Allowed Landlord Claims: \$326 million allowed in respect of rent and \$26 million in respect of other damage claims. Please refer to the table attached as **Appendix 1** to this letter for certain claim by claim details regarding the allowed rent claims.*

*Disputed claims: given that \$590 million of disputed landlord claims are unparticularized, the Monitor is not in a position to provide a breakdown between rent and other damage claims for those. However, a breakdown can be provided for the other 3 disputed claims. Please refer to the table attached as **Appendix 2** to this letter for claim by claim details.*

- 3 What were the effective dates for each of the lease disclaimers that were delivered to all landlords?

**Answer:** Please refer to the table attached as **Appendix 3** to this letter for location by location details.

Yours very truly,

  
Alan Merskey

AM/ls

Copy to: M. Barrack / K. Bush / K. Bourassa / K. Patel (Blakes)  
K. Rosenberg / L. Harmer / M. Starnino / E. Rathbone (Paliare Roland)  
A. Hatnay / D. Yiokaris / A. Tang (Koskie Minsky)  
S. Ursel / K. Ensslen (Ursel Phillips)  
E. Cobb / O. Pasparakis / V. Gauthier (Norton Rose Fulbright)  
P. Bishop / G. Watson (FTI Consulting)



APPENDIX 1  
(see attached)

Totals		82	\$ 1,249,845,236	\$ 326,342,958	\$ 352,423,792
Claim Number	Number of Sites	Pre-Filing & Restructuring Claim Filed	Allowed Rent Claim	Allowed Final Claim	
4996	1	1,584,257	1,579,257		
5277	1	176,147	165,534		
7291	1	573,376	382,892		
6372	1	91,569	91,569		
7269	1	15,255,816	3,118,076		
8601	1	2,935,303	2,793,947		
7351	1	5,145,501	4,859,971		
8319	1	5,180,061	951,871		
8523	1	11,354,453	11,354,453		
8282	1	67,590,517	4,582,252		
8284	1	24,715,033	4,845,939		
7696	1	962,689	770,119		
7603	1	2,167,668	1,498,680		
7226	7	88,551,232	21,362,188		
6041	1	77,384	77,384		
7249	1	1,101,377	1,032,098		
7250	1	1,927,476	1,854,174		
7272	1	1,564,373	874,813		
6598	1	355,390	305,133		
8335	1	2,530,578	1,835,494		
7224	1	6,067,149	19,072		
8286	1	8,156,122	3,304,948		
8323	3	89,648,435	10,832,267		
7668	1	2,705,818	2,703,818		
7674	1	4,571,044	4,152,010		
8288	1	39,692,564	8,623,180		
6658	1	2,822,865	2,822,865		
7275	1	106,552	96,552		
7669	1	6,933,083	6,116,716		
7676	1	24,849,998	3,324,783		
7667	1	2,536,287	2,531,389		
5990	1	589,533	589,533		
7680	1	9,421,355	7,412,437		
7671	1	19,933,326	1,495,530		
8325	3	134,861,599	19,224,158		
7410	2	619,363	619,363		
8521	1	20,563,438	20,563,438		
7273	1	33,451,646	2,492,473		
7290	6	174,516,232	23,203,886		
7686	1	61,444,403	15,122,005		
8290	1	55,997,543	7,884,998		
7683	1	59,147,331	6,473,404		
7689	1	74,421,508	4,100,544		
8321	1	7,431,041	2,089,398		
7697	1	6,659,115	764,781		
8326	1	29,682,561	6,163,460		
6817	1	909,232	909,232		
7164	1	1,622,839	1,620,993		
7187	1	2,319,503	2,172,247		
7173	1	1,775,755	1,695,272		
7165	1	1,818,909	1,815,821		
7181	1	6,595,648	6,595,648		
7190	1	1,649,271	1,647,981		
8328	1	37,378,168	7,589,255		
7161	1	118,697	118,697		
8292	1	2,084,293	1,685,876		
7700	1	604,908	353,480		
7244	1	628,625	-		
4965	-	607,255	-		
4966	-	48,197	48,197		
4952	-	45,429	45,429		
4964	-	37,583	-		
4954	-	4,817	4,817		
4955	-	4,746	4,746		
4960	-	2,300	-		
4961	-	1,565	-		
5314	1	209,112	209,112		
7694	1	4,970,486	3,345,740		
7602	1	14,068,247	7,748,247		
6302	1	48,979,460	48,979,460		
7242	1	12,503,112	12,502,889		
7094	1	20,697	20,697		
7349	1	102,746	102,746		
7690	1	63,525	63,525		

**APPENDIX 2**  
**(see attached)**

Totals	25	\$ 601,463,330	\$ 5,559,389	\$ 5,674,814
Claim Number	Number of Sites	Pre-Filing & Restructuring Claim Filed	Rent Claim	Damage Claim
7703	1	5,038,592	38,592	5,000,000
8107	1	2,500,000	Unknown	Unknown
8295	1	50,000,000	Unknown	Unknown
7469	1	50,000,000	Unknown	Unknown
8246	1	50,000,000	Unknown	Unknown
7582	1	22,320,000	Unknown	Unknown
7247	1	4,288,839	4,281,280	7,558
8095	1	50,000,000	Unknown	Unknown
7765	1	50,000,000	Unknown	Unknown
7253	1	1,906,773	1,239,517	667,255
7823	1	60,130,000	Unknown	Unknown
7881	1	28,530,000	Unknown	Unknown
8170	1	7,150,000	Unknown	Unknown
7525	1	13,146,137	Unknown	Unknown
8200	1	18,231,005	Unknown	Unknown
8000	1	17,910,000	Unknown	Unknown
8059	1	19,960,000	Unknown	Unknown
7642	1	3,600,000	Unknown	Unknown
8190	1	3,000,000	Unknown	Unknown
8136	1	21,190,000	Unknown	Unknown
8147	1	50,000,000	Unknown	Unknown
8179	1	13,610,000	Unknown	Unknown
8209	1	33,840,000	Unknown	Unknown
8229	1	12,573,700	Unknown	Unknown
7235	1	12,538,285	Unknown	Unknown

**APPENDIX 3**  
**(see attached)**

STATUS	DISCLAIM DATE	Store #	Claim #
Disclaimed	10/18/2017	1336	5314, 4965, 4961, 4955, 4964
Disclaimed	11/16/2017	1349	6658
Disclaimed	9/17/2017	7668	7224
Disclaimed	2/3/2018	Vaughan	7694
Disclaimed	1/22/2018	1819	7247
Disclaimed	1/22/2018	1410	7686
Disclaimed	1/28/2018	1331	7683
Disclaimed	1/22/2018	1822	7249
Disclaimed	1/22/2018	1411	7250
Disclaimed	12/23/2017	1370	7164
Disclaimed	10/25/2017	3801	7187
Disclaimed	10/25/2017	1395	7173
Disclaimed	10/25/2017	1381	7165
Disclaimed	12/23/2017	1393	7181
Disclaimed	10/25/2017	1364	7190
Disclaimed	2/3/2018	Calgary - 304051 / 30830	8523
Disclaimed	11/16/2017	7471	7161
Disclaimed	4/30/2018	97324	7244
Disclaimed	1/22/2018	1416	7242, 7235
Disclaimed	11/16/2017	1448	7390
Disclaimed	1/28/2018	1816	7468
Disclaimed	1/22/2018	1811	8249
Disclaimed	1/22/2018	1040	7582
Disclaimed	1/28/2018	1102	8095
Disclaimed	1/22/2018	1818	7764
Disclaimed	1/22/2018	1432	7823
Disclaimed	1/28/2018	1096	7881
Disclaimed	11/16/2017	1383	8170
Disclaimed	1/28/2018	1037	7525
Disclaimed	1/28/2018	1035	8200
Disclaimed	11/16/2017	1678	8000
Disclaimed	1/14/2018	1428	8059
Disclaimed	11/16/2017	1647	7642
Disclaimed	11/16/2017	1391	8190
Disclaimed	1/22/2018	1422	8136
Disclaimed	1/22/2018	1330	8145
Disclaimed	1/22/2018	1622	8179
Disclaimed	1/22/2018	1022	8209
Disclaimed	1/28/2018	1310	8229
Disclaimed	1/22/2018	1041	8239
Disclaimed	1/14/2018	Winnipeg Warehouse - 30838	8107
Disclaimed	2/4/2018	1338	6598
Disclaimed	11/16/2017	1839	7269
Disclaimed	1/28/2018	1049	8319
Disclaimed	1/22/2018	1328	8282
Disclaimed	1/28/2018	1032	8284
Disclaimed	11/16/2017	1019	7226
Disclaimed	1/22/2018	1312	7226
Disclaimed	1/22/2018	1086	7226
Disclaimed	11/16/2017	1311	7226
Disclaimed	11/16/2017	1646	7226
Disclaimed	10/25/2017	1348	7226
Disclaimed	2/9/2018	Pierre Bertrand - 12552	7226
Disclaimed	1/28/2018	1418	8323
Disclaimed	11/16/2017	1417	7272
Disclaimed	1/22/2018	1045	8323
Disclaimed	1/28/2018	1083	8323
Disclaimed	1/28/2018	1027	7668
Disclaimed	1/22/2018	1429	8288
Disclaimed	1/22/2018	1098	7275
Disclaimed	1/22/2018	1244	7669
Disclaimed	1/22/2018	1414	7671
Disclaimed	1/22/2018	1821	8325
Disclaimed	1/22/2018	1015	8325
Disclaimed	11/16/2017	1238	8325
Disclaimed	1/28/2018	1323	7273
Disclaimed	11/16/2017	1664	7290
Disclaimed	1/22/2018	1011	7290
Disclaimed	1/22/2018	1436	7290
Disclaimed	1/28/2018	1014	7290
Disclaimed	1/28/2018	1034	7290
Disclaimed	1/22/2018	1616	7290
Disclaimed	1/28/2018	1016	8290
Disclaimed	1/22/2018	1812	8321
Disclaimed	11/16/2017	1435	7697
Disclaimed	1/22/2018	1241	8326
Disclaimed	11/16/2017	1835	8328
Disclaimed	1/28/2018	1018	8292
Disclaimed	11/26/2017	St John Call Centre - 5468	8335
Disclaimed	1/13/2018	1029	5990
Disclaimed	11/16/2017	1080	6041
Disclaimed	10/25/2017	1357	6817
Disclaimed	1/28/2018	1057	7351
Disclaimed	11/16/2017	1318	6372
Disclaimed	1/28/2018	1094	7676
Disclaimed	1/28/2018	1087	7667
Disclaimed	1/28/2018	1319	7410
Disclaimed	10/25/2017	1346	7410
Disclaimed	1/28/2018	1013	8521
Disclaimed	1/22/2018	1623	7602
Disclaimed	2/28/2018	HQ - 030122	7696
Disclaimed	8/19/2017	1373	5277
Disclaimed	11/16/2017	1430	8601
Disclaimed	10/25/2017	1354	7253
Disclaimed	11/16/2017	1047	7703
Disclaimed	1/14/2018	1036	7603
Disclaimed	1/28/2018	1033	7674
Disclaimed	11/16/2017	1618	7700
Disclaimed	4/30/2018	Valleybrook - 97316	7680
Disclaimed	11/16/2017	1434	4996
Disclaimed	2/3/2018	Montreal	6302
Disclaimed	11/16/2017	7585	4488
Disclaimed	1/22/2018	1828	8286
Disclaimed	1/22/2018	1425	7689
Continuing	TBD	070493-4th	TBD
Disclaimed	2/3/2018	0704933rd	7291

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at TORONTO

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

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