

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

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

FORTIETH REPORT OF FTI CONSULTING CANADA INC., AS MONITOR

September 24, 2020

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
SEARS CANADA INC., 9370-2751 QUÉBEC INC., 191020 CANADA INC., THE CUT INC.,
SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., 9845488
CANADA INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR
COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741
CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041
ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC. AND
3339611 CANADA INC.

APPLICANTS

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

A. INTRODUCTION

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

2. The Initial Order, among other things:
 - (a) appointed FTI Consulting Canada Inc. as monitor of the Sears Canada Entities (the “**Monitor**”) in the CCAA Proceedings;
 - (b) granted an initial stay of proceedings against the Sears Canada Entities until July 22, 2017 (the “**Stay Period**”); and
 - (c) scheduled a comeback motion for July 13, 2017 (the “**Comeback Motion**”).

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

4. On July 18, 2017, the Court issued an order approving an agreement and a process for the liquidation of inventory and FF&E at certain initial closing Sears Canada locations.
5. On October 13, 2017, the Court issued, among other orders, an order approving an agreement and a process for the liquidation of the inventory and FF&E at all remaining Sears Canada retail locations.
6. The liquidation of all inventory and FF&E is now completed and all Sears Canada retail locations are closed.
7. On December 8, 2017, the Court issued an Order (the “**Claims Procedure Order**”) approving a claims process for the identification, determination, and adjudication of claims of creditors against the Sears Canada Entities and their Officers and Directors.
8. On February 22, 2018, the Court issued an Employee and Retiree Claims Procedure Order (the “**E&R Claims Procedure Order**” and, together with the Claims Procedure Order, the “**Claims Procedure Orders**”) approving a process for the identification, determination, and adjudication of claims of employees and retirees of the Sears Canada Entities.
9. On March 2, 2018, the Court issued an Order appointing Lax O’Sullivan Lisus Gottlieb LLP as Litigation Investigator (as amended on April 26, 2018, the “**Litigation Investigator Order**”), with a mandate to identify and report on certain rights and claims that the Sears Canada Entities or any creditors of the Sears Canada Entities may have against any parties.
10. On March 29, 2018, the Superintendent issued an order winding-up the Pension Plan effective October 1, 2017.
11. On May 9, 2018, the Court issued an Order approving a process for a mediation among stakeholders with the goal of achieving a resolution of significant claim and distribution matters (the “**Mediation**”) as a preliminary step toward a global resolution of material estate matters. The Mediation commenced on June 13, 2018 with Regional Senior

Justice Morawetz as mediator and resulted in settlements with major creditors as further described in Prior Reports (as defined below).

12. On December 3, 2018, the Monitor and the Honourable J. Douglas Cunningham, Q.C., as Court-appointed litigation trustee (the “**Litigation Trustee**”), were authorized by the Court to pursue litigation against certain third parties on behalf of Sears Canada and its creditors, in connection with the payment of certain dividends (the “**2013 Dividend**”) by Sears Canada to its shareholders in 2013 (the “**Estate 2013 Dividend Litigation**”). The Court also lifted the stay of proceedings in the Initial Order to allow the Estate 2013 Dividend Litigation, as well as a claim by Morneau Shepell Ltd., as administrator of the Pension Plan (the “**Pension Plan Administrator**”) and class action claims (collectively, the “**Dealer Class Action**”) by certain “Sears Hometown” store dealers, each also arising from the 2013 Dividend, to be commenced or continued.
13. On February 15, 2019, the Court issued an Order (the “**Meetings Order**”) authorizing the Monitor to file a joint plan of compromise and arrangement in respect of the Sears Canada Entities (the “**Plan**”) and to convene meetings of Affected Unsecured Creditors (the “**Meetings**”) for the purpose of considering and voting on the Plan.
14. The Stay Period was most recently extended to September 30, 2020 by Order of the Court granted on March 31, 2020.
15. In connection with the CCAA Proceedings, the Monitor has provided thirty-nine reports and twenty-four supplemental reports (collectively, the “**Prior Reports**”), and prior to its appointment as Monitor, FTI also provided to this Court a pre-filing report of the proposed Monitor dated June 22, 2017 (the “**Pre-Filing Report**”). The Pre-Filing Report, the Prior Reports, and other Court-filed documents and notices in these CCAA Proceedings are, or will be made, available on the Monitor’s website at cfcanada.fticonsulting.com/searscanada.

B. PURPOSE

16. The purpose of this fortieth report of the Monitor (the “**Fortieth Report**”) is to provide the Court with information regarding:

- (a) the current status of various matters in the CCAA Proceedings, including the activities of the Monitor and the Sears Canada Entities since the date of the Monitor's Thirty-Sixth Report to the Court dated March 24, 2020 (the "**Thirty-Sixth Report**");
- (b) an update on the status of the Plan and the Meetings;
- (c) the Monitor's request for an order (the "**Stay Extension Order**") extending the Stay Period (as defined in the Initial Order) to January 31, 2021; and
- (d) the Monitor's comments and recommendations in connection with the foregoing.

C. TERMS OF REFERENCE

- 17. In preparing this Fortieth Report, the Monitor has relied upon audited and unaudited financial information of the Sears Canada Entities, the Sears Canada Entities' books and records, and discussions and correspondence with, among others, advisors to the Sears Canada Entities' stakeholders (collectively, the "**Information**").
- 18. Except as otherwise described in this Fortieth Report:
 - (a) the Monitor has not audited, reviewed, or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the *Chartered Professional Accountants of Canada Handbook*; and
 - (b) the Monitor has not examined or reviewed the financial forecasts or projections referred to in this Fortieth Report in a manner that would comply with the procedures described in the *Chartered Professional Accountants of Canada Handbook*.
- 19. Future-oriented financial information reported in or relied on in preparing this Fortieth Report is based on assumptions regarding future events. Actual results will vary from these forecasts and such variations may be material.

20. The Monitor has prepared this Fortieth Report in connection with its request for the Stay Extension Order. The Fortieth Report should not be relied on for any other purpose.
21. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars.
22. Capitalized terms not otherwise defined herein have the meanings ascribed to them in the following documents filed as part of the CCAA Proceedings: (i) the affidavits of Mr. Billy Wong, the former Chief Financial Officer of Sears Canada; (ii) the affidavit of Ms. Becky Penrice, the former Executive Vice-President and Chief Operating Officer of Sears Canada; (iii) the affidavits of Mr. Philip Mohtadi, the former General Counsel and Corporate Secretary of Sears Canada; (iv) the Plan; and (v) the Prior Reports.

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

23. Set out below is a summary of material developments since the date of the Thirty-Sixth Report.

Claims Process

24. As noted in Prior Reports, in connection with the Claims Procedure Orders, the Monitor has received nearly 3,000 Proofs of Claim and D&O Proofs of Claim.
25. To the extent that disputes in respect of Claims and D&O Claims were not able to be resolved consensually and expeditiously, the Monitor has referred those claims to The Honourable James Farley (the “**Claims Officer**”), one of the two claims officers appointed pursuant to the Claims Procedure Orders, for adjudication.
26. In total, eight disputed claims have been referred to the Claims Officer so far, all of which have now been finally determined by the Claims Officer, or consensually resolved.
27. There are approximately 14 claims against the Sears Canada Entities that have not yet been resolved. Unresolved claims against the Sears Canada Entities are comprised mostly of (i) insurance claims, the resolution of which is being led by the Sears Canada

Entities' insurance adjuster, (ii) claims filed in respect of Sears Canada's former full-line store located at the North Hill Centre shopping mall in Calgary (the "**Calgary North Hill Claims**"); (iii) certain landlord claims; and (iv) certain employee-related claims.

28. While Sears Canada settled certain Calgary North Hill Claims with Suncor Energy Inc. and Her Majesty the Queen in Right of Alberta, as described in greater detail in the Thirty-Seventh Report of the Monitor, dated July 29, 2020, certain parties including Concord North Hill G.P. Inc. continue to assert Claims emanating from the historical environmental contamination at the Calgary North Hill Shopping Centre location. However, those remaining claims are based upon either contract or tort and do not assert any priority recovery rights. These claims are currently proceeding through the claims adjudication process.
29. As set out in the Thirty-Eighth Report of the Monitor, dated August 18, 2020, all D&O Proofs of Claim were, at that time, either disallowed without dispute or resolved with the exception of (i) placeholder claims, (ii) claims related to the subject matter of the Estate 2013 Dividend Litigation, (iii) a single claim by an individual creditor that was in the process of being resolved, and (iv) a claim by an equity holder of Sears Canada for oppression and breaches of duty by the directors and officers of Sears Canada in connection with the commencement of the CCAA Proceedings by Sears Canada. Subject to the settlement with the Former Director Defendants (as defined below) becoming effective, the Monitor is not aware of any unresolved D&O Proof of Claim that now advances a specified claim in a specified amount other than the claims described in (iii) and (iv) (but solely to the extent that those two claims relate to matters, if any, not covered by the settlement with the Former Director Defendants).

Pension Support Agreement

30. As described in the Monitor's Thirty-First Report, the Monitor, the Pension Plan Administrator, the Superintendent and Pension Representative Counsel, entered into a Pension Support Agreement (the "**PSA**") on October 18, 2018. The PSA initially contemplated an April 30, 2019 outside date for the implementation of the Plan, which

date has subsequently been extended to October 1, 2020. The parties to the PSA are currently discussing a further extension.

Employee Matters

31. As of the date of this Fortieth Report, the Applicants have four remaining employees working part time.
32. To date, the Monitor has received 104 applications for assistance from the Employee Hardship Fund, of which 76 have been approved. So far, approximately \$176,000 has been paid out of the Employee Hardship Fund. The time period for applications to the Employee Hardship Fund currently expires on September 30, 2020. An extension of the time period for these applications to January 31, 2021 will be sought. The Plan contemplates that any funds remaining in the Employee Hardship Fund at the time of implementation of the Plan will be distributed to creditors in accordance with the Plan.
33. On October 16, 2018, the Court issued an order (as amended and restated, the "**Receivership Order**") pursuant to section 243(1) of the *Bankruptcy and Insolvency Act* appointing FTI Consulting Canada Inc. as receiver (the "**Receiver**") without security of specific bank accounts in the names of the Sears Canada Entities who currently employ, or previously employed, employees. In accordance with the Receivership Order, FTI issued its Receivership Certificate commencing the receivership on January 7, 2019
34. The primary purpose of the Receivership Order is to allow for payments from the Federal Government to eligible former employees of the Sears Canada Entities pursuant to the *Wage Earner Protection Program Act* (the "**WEPPA**").
35. To date, Service Canada has made payments in the amount of \$47.2 million to former employees of the Sears Canada Entities in connection with the WEPPA.

Litigation Matters

36. On December 3, 2018, the Monitor and the Litigation Trustee were authorized by the Court to pursue the Estate 2013 Dividend Litigation. The Court also lifted the stay of

proceedings in the Initial Order to allow the Estate 2013 Dividend Litigation, as well as a claim by the Pension Plan Administrator and the Dealer Class Action, each arising from the 2013 Dividend (collectively, the “**2013 Dividend Litigation**”), to be commenced or continued.

37. On December 19, 2018, the Monitor commenced an action seeking, among other things, a declaration that the transfer of funds to Sears Canada’s shareholders by way of the 2013 Dividend was a “transfer at undervalue” for the purposes of section 96 of the *Bankruptcy and Insolvency Act*. This action, together with the other claims comprising the 2013 Dividend Litigation, proceeded in the Commercial List court under the case management of Justice McEwen.
38. The following parties were named as defendants in the 2013 Dividend Litigation: (i) Edward S. Lampert, ESL Investments, Inc. and certain affiliates of ESL Investments, Inc. (the “**ESL Parties**”); (ii) certain former directors of Sears Canada (the “**Former Director Defendants**”); and (iii) Sears Holdings Corporation (“**SHC**”).
39. All claims in the 2013 Dividend Litigation are now the subject of settlement agreements that have been approved by the Court pursuant to orders granted on: (i) March 17, 2020, in the case of the settlement with SHC; (ii) August 25, 2020, in the case of the settlement with the Former Director Defendants; and (iii) September 18, 2020, in the case of the ESL Parties.¹
40. The settlements of the 2013 Dividend Litigation will, upon implementation, result in aggregate settlement proceeds of \$72.5 million to the plaintiffs in the 2013 Dividend Litigation. The Monitor can advise that 54.6% of those gross settlement proceeds will be allocated to Sears Canada, with the remaining gross proceeds allocated to the Dealer Class Action plaintiffs and the Pension Plan. The only remaining conditions to effectiveness of the settlements with the Former Director Defendants and the ESL Parties are the expiry of all remaining appeal periods in connection with the Court

¹ The Thirty-Fifth Report of the Monitor, the Thirty-Eighth Report of the Monitor and the Thirty-Ninth Report of the Monitor describe these settlement agreements.

approval of these settlements, the execution of agreed forms of release, and the payment of the settlement funds by the applicable defendants.

Other Activities of the Monitor

41. The Monitor, in addition to assisting in the matters detailed above, has also undertaken the following activities:
- (a) monitored the Sears Canada Entities' receipts and disbursements;
 - (b) maintained the Service List for the CCAA Proceedings and posted regular updates of the Service List to the Monitor's Website;
 - (c) supervised and assisted in activities related to the recovery of certain cash collateral held by third parties;
 - (d) worked with Employee Representative Counsel, Pension Representative Counsel, and their advisors to respond to questions and provide information to their respective constituents;
 - (e) worked with the Sears Canada Entities to assist in appropriately accounting for pre-filing and post-filing obligations;
 - (f) attended meetings and teleconferences with stakeholders, their counsel, and advisors;
 - (g) responded to requests by former employees for financial assistance under the Employee Hardship Fund and the WEPP;
 - (h) continued to operate and monitor its telephone hotline and email account for stakeholder inquiries and to respond to such inquiries; and
 - (i) continued its work in connection with the claims processes contemplated pursuant to the Claims Procedure Orders.

E. THE PLAN

42. In order to distribute the proceeds from the liquidation of the assets of the Sears Canada Entities to their creditors in accordance with their legal entitlements, and to facilitate pursuit of the Estate 2013 Dividend Litigation, the Monitor developed the Plan. The Plan was accepted for filing by the Court on February 15, 2019.
43. A detailed description of the Plan is included in the Twenty-Ninth Report of the Monitor dated February 6, 2019 and the Supplement thereto.
44. Pursuant to the Meetings Order, the date for the Meetings of the SLH Creditor Class and the Sears Creditor Class was set for March 28, 2019. In accordance with the Meetings Order, the Monitor notified all Affected Unsecured Creditors of the Meetings.
45. On March 25, 2019, the Monitor determined that an adjournment of the Meetings to a date to be communicated later by the Monitor was required. In accordance with the Meetings Order, a notice of the adjournment (the “**Adjournment Notice**”) was served on the Service List and posted on the Monitor’s Website. In addition, the Monitor sent a copy of the Adjournment Notice by email to all Affected Unsecured Creditors and employees represented by Employee Representative Counsel for which the Monitor had email addresses.
46. The primary impediments to moving forward with Meetings at the time of the Adjournment Notice were: (i) uncertainty on the quantum of a limited number of unresolved claims; and (ii) questions regarding the quantum and priority of the Calgary North Hill Claims. These matters could have affected the ability of Sears Canada to satisfy the distributable asset value thresholds and claim value thresholds that are conditions to implementation of the Plan in favour of the Pension Parties. The Monitor believes any questions related to asset value thresholds and claim value thresholds have now been resolved.
47. The recent settlement of the 2013 Dividend Litigation will require certain amendments to the Plan, including to provide for releases as contemplated by these settlements.

48. The Monitor now believes it will be in a position to proceed with the Meetings and hopes to provide notice to creditors of the new date for the Meetings in the near future.

F. RECEIPTS AND DISBURSEMENTS FOR THE TWENTY-SIX WEEK PERIOD ENDING SEPTEMBER 12, 2020

49. The Sears Canada Entities' actual net cash outflow on a consolidated basis for the twenty-six week period ended September 12, 2020 was approximately \$4.7 million², compared to a forecast net cash outflow of \$10.9 million, resulting in a positive variance of approximately \$6.2 million as indicated in the table below:

VARIANCE REPORT	Actual	Forecast	Variance
(CAD in Millions)			
Receipts	2.2	-	2.2
Operating Disbursements			
Payroll and Employee Related Costs	(0.1)	(0.1)	-
Owned Real Property - Carrying Costs	(4.1)	-	(4.1)
Non-Merchandise Vendors	(0.3)	(6.7)	6.4
Rent and Property Taxes	0.1	-	0.1
IT and Data Storage Costs[6]	(0.0)	(0.0)	-
Total Operating Disbursements	(4.4)	(6.8)	2.4
Net Operating Cash Inflows / (Outflows)	(2.2)	(6.8)	4.6
Professional Fees	(2.5)	(4.1)	1.6
Net Cash Inflows / (Outflows)	(4.7)	(10.9)	6.2

50. Explanations for the key variances in actual cash flows are as follows:

- (a) A positive permanent variance in Receipts of \$2.2 million consisting primarily of:
- (i) Sale tax refunds (\$1.4 million), mostly in respect of input tax credits associated with professional fee payments, which are not included in the cash flow forecast due to uncertainty with respect to the timing of refunds;

² Net cash flows before payments of professional fees incurred in respect of the Estate 2013 Dividend Litigation.

- (ii) Accrued interest on cash balances (\$0.6 million); and
 - (iii) Distributions on account of a joint venture to which Sears Canada was a 50% partner (\$0.2 million).
- (b) A negative permanent variance in Owned Real Property – Carrying Costs of approximately \$4.1 million related to a payment to Suncor Energy Inc. contemplated in a Court-approved release and settlement agreement related to environmental matters associated with Sears Canada’s former full-line store located at the North Hill Centre shopping mall in Calgary.
- (c) A positive timing variance in Non-merchandise Vendors of \$6.4 million consisting of differences between actual and forecast disbursements in respect of post-filing warranty claims (\$4.7 million), workers’ compensation liabilities (\$1.3 million) and other post-filing obligations (\$0.4 million) which are expected to reverse in future forecast periods.
- (d) A positive, permanent variance in Rent and Property Tax disbursements of \$0.1 million related to a property tax refund in respect of a sold property.
- (e) A positive variance in professional fees primarily as a result of timing differences related to the postponement of the Meetings to consider and vote on a Plan and the implementation of that Plan, which is expected to reverse in future forecast periods.
51. Actual ending cash as of September 12, 2020 was approximately \$196.4 million, which reflects payments of professional fees in respect of the Estate 2013 Dividend Litigation which will be recovered from future distributions to Opt-In creditors as contemplated in the proposed Plan.
52. The Sears Canada Entities’ cumulative receipts and disbursements since the commencement of the CCAA Proceedings through the week ended September 12, 2020 are reflected in the table below:

CUMULATIVE RECEIPTS AND DISBURSEMENTS	
(CAD in Millions)	
For the Period Ending September 12, 2020	
Receipts	1,372.9
Operating Disbursements	
Payroll and Employee Related Costs	(268.3)
Merchandise Vendors	(289.4)
Owned Real Property - Carrying Costs	(4.5)
Non-Merchandise Vendors	(179.8)
Rent and Property Taxes	(91.3)
Sales Taxes	(65.3)
Pension	(14.7)
IT Costs	(27.3)
Recovery of Expenses from Agent	83.6
Capital Expenditures	(0.8)
Total Operating Disbursements	(857.7)
Net Operating Cash Inflows / (Outflows)	515.1
Professional Fees	(107.2)
Repayments of Existing Credit Facilities	(283.3)
DIP Fees and Interest Paid	(19.7)
Net Cash Inflows / (Outflows)	105.0
Cash	
Beginning Balance	126.5
Net Cash Inflows / (Outflows)	105.0
DIP Draws / (Repayments)	(32.0)
Others incl. FX Valuation	(3.1)
Ending Balance	196.4

53. The Initial Order allowed the Sears Canada Entities to continue to use their existing Cash Management System as described in the First Wong Affidavit and the Pre-Filing Report. After the commencement of the CCAA Proceedings, the Sears Canada Entities continued to use their Cash Management System in a manner consistent with past practice. Sears Canada, in consultation with the Monitor, continues to close bank accounts that are no longer needed and consolidate funds in the remaining operating accounts. Substantially all of these amounts will be transferred to the Monitor's trust

account. The Monitor continues to permit these funds to be made available to Sears Canada to the extent necessary to fund remaining ordinary course costs.

G. REVISED CASH FLOW FORECAST FOR THE PERIOD ENDING JANUARY 31, 2021

54. A revised cash flow forecast for the period September 13, 2020 until January 31, 2021 has been prepared and is presented in the table below (the “**Revised Cash Flow Forecast**”):

Sears Canada Entities

CCAA Cash Flow Forecast

(CAD in thousands)

Forecast:	Sept 13, 2020 - Jan 31, 2021
Total Receipts	-
Operating Disbursements	
Payroll and Employee Related Costs ^[2]	(90)
Non-Merchandise Vendors ^[3]	(6,750)
IT and Data Storage Costs ^[4]	(10)
Total Operating Disbursements	(6,850)
Net Operating Cash Inflows / (Outflows)	(6,850)
Professional Fees ^[5]	(2,730)
Net Cash Inflows / (Outflows)	(9,580)
Cash	
Beginning Balance	196,400
Net Cash Inflows / (Outflows)	(9,580)
Ending Cash Balance	186,820

Notes:

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

[2] Forecast Payroll and Employee Related Costs are based on recent payroll amounts.

[3] Forecast Non-Merchandise Vendor disbursements primarily relate to the payment of post-filing warranties and potential amounts owing to provincial workers' compensation bodies.

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

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

55. Pursuant to section 23(1)(b) of the CCAA, the Monitor hereby reports to the Court as follows:

- (a) the Revised Cash Flow Forecast was prepared for the purpose described in the notes to the Revised Cash Flow Forecast (the “**Forecast Notes**”), using the Probable Assumptions and Hypothetical Assumptions set out therein;
- (b) since Hypothetical Assumptions need not be supported, the Monitor’s procedures with respect to the Hypothetical Assumptions were limited to evaluating whether the Hypothetical Assumptions were consistent with the purpose of the Revised Cash Flow Forecast. The Monitor has also reviewed the support for the Probable Assumptions;
- (c) based on that review, and as at the date of this Fortieth Report, nothing has come to the attention of the Monitor that causes it to believe that:
 - (i) the Hypothetical Assumptions are inconsistent with the purpose of the Revised Cash Flow Forecast;
 - (ii) the Probable Assumptions are not suitably supported or consistent with the plans of the Sears Canada Entities or do not provide a reasonable basis for the Revised Cash Flow Forecast, given the Hypothetical Assumptions; or
 - (iii) the Revised Cash Flow Forecast does not reflect the Probable and Hypothetical Assumptions; and
- (d) since the Revised Cash Flow Forecast is based on assumptions regarding future events, actual results will vary from the forecast even if the Hypothetical Assumptions occur. Those variations may be material. Accordingly, the Monitor expresses no assurance as to whether the Revised Cash Flow Forecast will be achieved. The Monitor also expresses no opinion or other form of assurance with respect to the accuracy of any financial information presented in this Fortieth Report, or relied upon by the Monitor in preparing this Fortieth Report.

56. The Revised Cash Flow Forecast assumes a continuation of these CCAA Proceedings toward a resolution pursuant to a plan of compromise or arrangement. If it appears to the Monitor that this assumption ceases to be reasonable, the Monitor will report to the Court

regarding any adjustments to the Revised Cash Flow Forecast that may be required to reflect an alternative path to completion of these proceedings.

57. The Revised Cash Flow Forecast also assumes fees of legal counsel to the board of directors, Employee Representative Counsel, Pension Representative Counsel and their respective financial advisors remain consistent with prior periods.
58. The Revised Cash Flow Forecast may be updated if developments occur that have a material impact on the forecasted cash flows of the Sears Canada Entities.
59. The Revised Cash Flow Forecast has been prepared solely for the purpose described in the Forecast Notes. The Revised Cash Flow Forecast should not be relied upon for any other purpose.
60. The Revised Cash Flow Forecast shows total net operating cash outflows of approximately \$6.9 million, before professional fees of approximately \$2.7 million, such that net cash outflows for the period are forecasted to be approximately \$9.6 million.
61. Aside from professional fees, forecast disbursements consists primarily of disbursements in respect of post-Filing Warranty claims and potential amounts owing to provincial workers' compensation bodies.
62. The professional fee forecast has been prepared based on fee estimates provided by professional firms or based on observed run rates where no forecast was provided. The total forecast professional fee disbursements of \$2.7 million is primarily comprised of forecast future (and not currently accrued) fees to the end of the forecast period.
63. The Revised Cash Flow Forecast does not include any estimated professional fees or disbursements associated with the Estate 2013 Dividend Litigation or recoveries from the Estate 2013 Dividend Litigation settlements.

H. STAY EXTENSION

64. The Stay Period currently expires on September 30, 2020.

65. The Monitor is requesting an extension of the Stay Period until and including January 31, 2021.
66. The Applicants have proceeded in good faith and with due diligence under the supervision of the Monitor in accordance with the Governance Protocol since the date of the last extension of the Stay Period. However, additional time is required to complete necessary matters including holding the Meetings, seeking the Sanction Order and, if approved by creditors and the Court, implementing the Plan. Additional time is also required to continue to implement certain of the settlements in the Estate 2013 Dividend Litigation.
67. The Applicants have sufficient liquidity to fund these proceedings during the proposed extension of the Stay Period.
68. The Monitor believes that an extension of the Stay Period is appropriate, and that the length of the extension requested will minimize the need for multiple Court appearances and is reasonable in the circumstances.
69. Consistent with past requests to extend the Stay Period, the Monitor also believes that a concurrent extension of the application period for the Employee Hardship Fund to January 31, 2021 is appropriate.

The Monitor respectfully submits to the Court this, its Fortieth Report.

Dated this 24th day of September, 2020.

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



Paul Bishop
Senior Managing Director



Greg Watson
Senior Managing Director

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS CANADA INC., *et al.*

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at TORONTO

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

NORTON ROSE FULBRIGHT CANADA LLP

Royal Bank Plaza, South Tower, Suite 3800
222 Bay Street, Suite 3000
P.O. Box 53
Toronto, Ontario M5K 1E7 CANADA

Orestes Pasparakis, LSO#: 36851T

Tel: +1 416.216.4815

Alan Merskey, LSO#: 41377I

Tel: +1 416.216.4805

Evan Cobb, LSO#: 55787N

Tel: +1 416.216.1929

Fax: +1 416.216.3930

orestes.pasparakis@nortonrosefulbright.com

alan.merskey@nortonrosefulbright.com

evan.cobb@nortonrosefulbright.com

Lawyers for FTI Consulting Canada Inc., in its capacity as
Monitor