

**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.

**MOTION RECORD OF THE MONITOR
(Third Fee Approval and NORD Extension Order)
(returnable September 20, 2018)**

September 13, 2018

NORTON ROSE FULBRIGHT CANADA LLP
Royal Bank Plaza, South Tower
200 Bay Street, Suite 3800, P.O. Box 84
Toronto, Ontario M5J 2Z4

Orestes Pasparakis, LSO#: 36851T

Tel: +1 416.216.4815

Virginie Gauthier, LSO#: 41097D

Tel: +1 416.216.4853

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

virginie.gauthier@nortonrosefulbright.com

alan.merskey@nortonrosefulbright.com

evan.cobb@nortonrosefulbright.com

Lawyers to the Monitor, FTI Consulting
Canada Inc.

TO: THE SERVICE LIST

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Applicants

**NOTICE OF MOTION
(Third Fee Approval and NORD Extension Order
returnable September 20, 2018)**

FTI Consulting Canada Inc., in its capacity as Court-appointed monitor (the "**Monitor**") in the proceedings of the Applicants pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. c-36, as amended (the "**CCAA**") will make a motion to a Judge of the Ontario Superior Court of Justice (Commercial List), on Thursday, September 20, 2018, at 10:00 am or as soon after that time as the motion can be heard, at the courthouse located at 330 University Avenue, Toronto, Ontario.

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

THE MOTION IS FOR

- 1 An Order, substantially in the form attached at Schedule "A" hereto (the "**Third Fee Approval and NORD Extension Order**"), *inter alia*:

- (a) abridging the time for and validating the service of this Notice of Motion and the Twenty-Fourth Report of the Monitor dated September 13, 2018 (the “**Twenty-Fourth Report**”) and dispensing with further service thereof;
- (b) extending until December 18, 2018 (the “**Extended NORD Issuance Date**”) the deadline for the Monitor to issue Notices of Revision or Disallowance (as defined in the Claims Procedure Order dated December 8, 2017 (the “**Claims Procedure Order**”) and the Employee and Retiree Claims Procedure Order dated February 22, 2018, (the “**E&R Claims Procedure Order**” and together with the Claims Procedure Order, the “**Claims Procedure Orders**”) in respect of (i) D&O Claims (as defined in the Claims Procedure Orders); and (ii) indemnity claims (“**Indemnity Claims**”) of Directors and Officers (as defined in the Claims Procedure Orders), in each case filed pursuant to the Claims Procedure Orders;
- (c) approving the fees and disbursements of the Monitor for the period between April 1, 2018 and August 31, 2018 and its counsel, Norton Rose Fulbright Canada LLP (“**NRFC**”) for the period between March 19, 2018 and August 12, 2018 (such periods together, the “**Approval Periods**”); and
- (d) such further and other relief as counsel may request and this Court deems just.

THE GROUNDS FOR THE MOTION ARE:

- (a) on June 22, 2017, the Applicants were granted protection under the CCAA pursuant to an initial order (as amended and restated on July 13, 2017, the “**Initial Order**”). The Initial Order, among other things, appointed FTI Consulting Canada Inc. to act as Monitor of the Applicants;

- (b) the Initial Order also directed the Monitor and its counsel to pass their accounts from time to time;
- (c) on December 8, 2017, this Court issued the Claims Procedure Order approving a process for the identification, determination and adjudication of claims of creditors against the Sears Canada Entities and their Officers and Directors;
- (d) on February 22, 2018, the Court issued the E&R Claims Procedure Order approving a process for the identification, determination and adjudication of claims of employees and retirees of the Applicants;

Extension of time for issuing Notices of Revision or Disallowance

- (e) pursuant to the Claims Procedure Orders, the Monitor must notify claimants (other than a holder of a Sears Pension Claim (as defined in the E&R Claims Procedure Order)) whose claims have been revised or rejected of such revision or rejection and the reasons therefore by sending a Notice of Revision or Disallowance by no later than July 31, 2018 or such later date as ordered by the Court;
- (f) on July 24, 2018, this Court issued an Order extending the period to deliver Notices of Revision or Disallowance in connection with D&O Claims and Indemnity Claims to October 1, 2018;
- (g) at this time, the Monitor is still not in a position to consider the validity, or deliver Notices of Revision or Disallowance in respect of contingent D&O Claims and Indemnity Claims. The determination of these contingent claims is closely tied to the determination of significant litigation, the approach to which is still to be set. The Monitor believes that it is necessary to defer responding to these contingent claims

until the litigation approach is determined and the effect of same on D&O Claims and Indemnity Claims is fully understood;

- (h) No stakeholder is prejudiced by the proposed extension as: (i) additional time will allow the Monitor to receive information necessary to the Monitor's consideration of those claims and deliver Notices of Revision or Disallowance, as required; and (ii) to the extent distributions are available to the relevant claimants, no distributions are expected to be made to creditors in connection with any claims during the period of the extension;
- (i) By the Extended NORD Issuance Date, the Monitor anticipates that more information will be available to it to assess the D&O Claims and Indemnity Claims;

Third Fee Approval

- (j) The Monitor's Twenty-Fourth Report and the fee affidavits appended thereto in connection with this motion include detailed information on the fees and disbursements of the Monitor and NRFC during the Approval Periods;
- (k) The Monitor believes that the Monitor's and its counsel's fees and disbursements are reasonable in the circumstances and have been validly incurred in accordance with the provisions of the orders issued in these CCAA proceedings;

Other Grounds

- (l) The provisions of the CCAA, including section 11 thereof, and the inherent and equitable jurisdiction of this Court;
- (m) Rules 1.04, 1.05, 2.03, 3.02, 16 and 37 of the *Rules of Civil Procedure*, R.R.O 1990;
and

(n) Such further and other grounds as counsel may advise and this Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF
THE MOTION:**

(a) The Twenty-Fourth Report of the Monitor; and

(b) Such further and other materials as counsel may advise and this Court may permit.

September 13, 2018

NORTON ROSE FULBRIGHT CANADA LLP

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

Orestes Pasparakis, LSO#: 36851T

Tel: +1 416.216.4815

Virginie Gauthier, LSO#: 41097D

Tel: +1 416.216.4853

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

virginie.gauthier@nortonrosefulbright.com

alan.merskey@nortonrosefulbright.com

evan.cobb@nortonrosefulbright.com

Lawyers to the Monitor, FTI Consulting Canada Inc.

TO: THE SERVICE LIST

Schedule "A"
(Third Fee Approval and NORD Extension Order)

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

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

THE HONOURABLE)	THURSDAY, THE 20 th
)	
JUSTICE HAINEY)	DAY OF SEPTEMBER, 2018

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
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LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC.,
168886 CANADA INC., AND 3339611 CANADA INC.

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

THIRD FEE APPROVAL AND NORD EXTENSION ORDER

THIS MOTION, made by FTI Consulting Canada Inc., in its capacity as Court-appointed Monitor (the “**Monitor**”) pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), for an Order: (i) extending to December 18, 2018 the deadline for the Monitor to issue Notices of Revision or Disallowance in respect of D&O Claims and indemnity claims filed by Directors and Officers pursuant to the Claims Procedure Order dated December 8, 2017 and the Employee and Retiree Claims Procedure Order dated February 22, 2018 (collectively, the “**Claims Procedure Orders**”); (ii) approving the fees and disbursements of the Monitor and its counsel, Norton Rose Fulbright Canada LLP (“**NRFC**”); and, (iii) certain other relief, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of the Monitor and the Twenty-Fourth Report of the Monitor dated September 13, 2018 (the “**Twenty-Fourth Report**”), filed, and on hearing the submissions of counsel for the Monitor, and such other counsel as were present, no one else appearing although duly served as appears from the Affidavit of Service of ● sworn ●, 2018, filed,

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Twenty-Fourth Report is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that each capitalized term used and not defined herein shall have the meaning ascribed to such term in the Claims Procedure Orders.

FURTHER NORD EXTENSION

3. **THIS COURT ORDERS** that the deadline for the Monitor to issue Notices of Revision or Disallowance in respect of D&O Claims and indemnity claims filed by Directors and Officers pursuant to the Claims Procedure Orders based upon claimed indemnity obligations of the Applicants to such Directors and Officers, shall be further extended until and including December 18, 2018.

APPROVAL OF FEES

4. **THIS COURT ORDERS** that: (i) the fees and disbursements of the Monitor for the period from April 1, 2018 to and including August 31, 2018 totalling \$4,325,239.66 (including applicable taxes); and (ii) the fees and disbursements of NRFC, in its capacity as legal counsel to the Monitor from March 19, 2018 to and including August 12, 2018 totaling \$3,602,315.96 (including

applicable taxes), be and are hereby approved.

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

**THIRD FEE APPROVAL AND
NORD EXTENSION ORDER**

NORTON ROSE FULBRIGHT CANADA LLP
Royal Bank Plaza, South Tower
200 Bay Street, Suite 3800, P.O. Box 84
Toronto, Ontario M5J 2Z4

Orestes Pasparakis, LSO#: 36851T
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evan.cobb@nortonrosefulbright.com

Lawyers to the Monitor, FTI Consulting Canada Inc.

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

**ONTARIO
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Proceeding commenced at TORONTO

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