

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

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

**SUPPLEMENT TO THE EIGHTH REPORT OF FTI CONSULTING CANADA INC., AS
MONITOR**

December 7, 2017

**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., CORBEIL ÉLECTRIQUE INC., S.L.H. TRANSPORT 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

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

A. INTRODUCTION

1. On December 6, 2017, the Monitor filed its Eighth Report to the Court (the “**Eighth Report**”) in these CCAA Proceedings in relation to motions by the Applicants, returnable December 8, 2017, for among other things, the granting of the Claims Procedure Order and Omnibus Approval and Vesting Order. Capitalized terms used herein and not otherwise defined in this Supplement to the Eighth Report (the “**Supplement**”) have the meanings given to them in the Eighth Report.
2. The purpose of this Supplement is to provide:

- (a) additional information to the Court on an amended motion by the Applicants, which is also returnable on December 8, 2017, for an order (the “**Middleby Approval and Vesting Order**”) approving the sale transaction contemplated pursuant to the agreement of purchase and sale (the “**Middleby APA**”) dated December 6, 2017 between Sears Canada, The Middleby Corporation (“**Middleby**”) and Viking Range, LLC (an affiliate of Middleby), and vesting in Viking Range, LLC all of Sears Canada’s right, title and interest in the Viking Trademarks (as defined below) free and clear of claims and encumbrances;
- (b) an update on certain matters relating to the scheduling of a potential motion of Pension Representative Counsel following the ordered wind-up of the Sears Canada Pension Plan; and
- (c) a report on the Sears Canada Entities’ receipts and disbursements for the three week period ending December 2, 2017.

B. MIDDLEBY APPROVAL AND VESTING ORDER

- 3. On September 27, 2017, Sears Canada issued a notice of disclaimer (the “**Disclaimer**”) in respect of the surviving provisions of an expired trademark licence agreement, including a right of first refusal (“**ROFR**”) held by Middleby in respect of certain trademarks related to the “Viking” trademark and brand (the “**Viking Trademarks**”).
- 4. On October 4, 2017, the Applicants brought a motion (the “**Viking Motion**”) to approve an agreement of purchase and sale (the “**CT APA**”) between Sears Canada, and Canadian Tire Corporation, Limited (“**CT**”) pursuant to which Sears Canada was proposing to sell its right, title and interest in the Viking Trademarks to CT.
- 5. Middleby objected to both the Disclaimer and the Viking Motion.
- 6. On November 7, 2017, in connection with its opposition to the Viking Motion, Middleby made a motion to the Court to require Sears Canada to honour its obligation to provide Middleby with its ROFR.

7. On November 9, 2017, Mr. Justice Hainey issued an endorsement directing Sears Canada to provide Middleby with an unredacted copy of the CT APA.
8. On November 14, 2017, Middleby confirmed its intention to exercise its ROFR and on November 24, 2017, Mr. Justice Hainey granted Middleby's motion permitting the exercise of the ROFR.
9. On December 6, 2017, as a result of the exercise of the ROFR, Sears Canada, Viking Range, LLC and Middleby entered into the Middleby APA with respect to the Viking Trademarks, a redacted copy of which was attached to the affidavit of Billy Wong, Chief Financial Officer of Sears Canada, sworn on December 6, 2017 and filed with the Court in connection with the Applicants' motion for the Middleby Approval and Vesting Order.
10. The Affidavit of Billy Wong, sworn December 6, 2017, contains a summary of the material terms of the Middleby APA, which is not repeated herein.
11. The Third Report of the Monitor provided its recommendation that the transaction contemplated by the CT APA be approved and Appendix "A" to this Supplement contains the relevant excerpts. The transaction contemplated by the Middleby APA is on the same economic terms as the transaction that was contemplated pursuant to the CT APA and the transaction documents are substantially in the same form, with only necessary and non-material amendments.
12. The Monitor notes that the Middleby APA provides that the Deposit will not be increased from the amount submitted by Middleby with its initial bid in the SISP. As a result the Deposit is in an amount equal to approximately 3.5% of the Purchase Price under the Middleby APA. The Monitor is comfortable that the Deposit amount is reasonable in the circumstances.
13. The Middleby Approval and Vesting Order is a condition to closing the transaction contemplated in the Middleby APA. For the reasons set out in the Third Report of the Monitor, the Monitor believes that the Middleby APA is the highest or otherwise best offer for the Viking Trademarks and as such, the Monitor supports the Applicants' motion for the Middleby Approval and Vesting Order.

C. PENSION MATTERS

14. As set out in paragraphs 44–47 of the Eighth Report, the Superintendent issued the Pension Notice advising that it will make an order for the wind up of the Sears Canada Pension Plan, effective October 1, 2017, unless the Pension Administrator or Sears Canada requests a hearing with the Financial Services Tribunal prior to the expiration of the Request Deadline (which counsel to Sears Canada has advised as being December 14, 2017 in respect of Sears Canada).
15. Following the issuance of the Pension Notice, Pension Representative Counsel confirmed that it will withdraw its motion seeking an order to wind-up the Sears Canada Pension Plan should the Request Deadline expire without any request for a hearing having been made.
16. If any order to wind-up the Sears Canada Pension Plan is made by the Superintendent, the Monitor expects that Pension Representative Counsel, together with any other interested parties, will as a consequence be seeking to schedule a motion for a determination that the deemed trust that arises under the *Pension Benefits Act* (Ontario) upon wind-up has priority over other creditors. The Monitor will continue to consult with stakeholders to ensure that any interested parties are appropriately consulted on the scheduling of such motion.

D. RECEIPTS AND DISBURSEMENTS FOR THE THREE-WEEK PERIOD ENDING DECEMBER 2, 2017

17. The Sears Canada Entities' actual net cash inflow on a consolidated basis for the three-week period ended December 2, 2017 was approximately \$30.4 million, compared to a forecast net cash outflow of \$17.2 million resulting in a positive variance of approximately \$47.6 million as indicated in the table below:

VARIANCE REPORT	Actual	Forecast	Variance
(CAD in Millions)	For the 3 Week Period Ending December 2, 2017		
Receipts	77.2	22.8	54.4
Operating Disbursements			
Payroll and Employee Related Costs	(15.0)	(16.2)	1.2
Merchandise Vendors	(8.0)	(9.5)	1.5
Non-Merchandise Vendors	(16.3)	(14.0)	(2.3)
Rent and Property Taxes	(8.1)	(12.4)	4.3
Sales Taxes	(9.6)	(0.5)	(9.1)
Recovery of Expenses from Agent	17.2	21.6	(4.4)
Capital Expenditures	-	(0.2)	0.2
Total Operating Disbursements	(39.8)	(31.2)	(8.6)
Net Operating Cash Inflows / (Outflows)	37.4	(8.4)	45.8
Professional Fees	(4.5)	(8.5)	4.0
DIP Fees and Interest Paid	(2.5)	(0.3)	(2.2)
Net Cash Inflows / (Outflows)	30.4	(17.2)	47.6
Cash			
Beginning Balance	78.4	59.2	19.2
Net Cash Inflows / (Outflows)	30.4	(17.2)	47.6
DIP Draws / (Repayments)	(23.3)	-	(23.3)
Ending Balance	85.5	42.0	43.5

18. Explanations for the key variances are as follows:

- (a) the positive variance of \$54.4 million in receipts consists primarily of a timing variance due to the earlier-than-forecast sale of the Corbeil Business and a permanent variance associated with the collection of sales taxes in respect of the merchandise liquidation sales which were not contemplated in the Forecast. The positive variance with respect to sales taxes will be offset by the payment of these taxes following the Company's monthly sales tax reporting and remitting procedures at the end of the month;
- (b) the positive variance in Payroll and Employee Related Costs of \$1.2 million consists primarily of a positive timing variance in respect of the remittance of payroll withholding taxes which is expected to reverse in the next week;

- (c) the positive variance in Merchandise Vendor disbursements of \$1.5 million consists of a permanent variance due to the cancellation of certain merchandise purchase orders;
 - (d) the negative variance in Non-Merchandise Vendor disbursements of \$2.3 million consists primarily of a timing difference which is expected to reverse in future forecast periods;
 - (e) the positive variance in Rent and Property Taxes of \$4.3 million primarily reverses negative timing differences in prior reporting periods;
 - (f) the negative variance in Sales Taxes of \$9.1 million is a permanent difference and represents the payment of sales taxes collected in respect of the merchandise liquidation sales in the previous month as noted in the explanation regarding the positive variance in receipts above;
 - (g) the negative variance in Recovery of Expenses from Agent of approximately \$4.4 million consists primarily of timing differences associated with the reimbursement of expenses from the Agent in respect of the Second Liquidation Process which are expected to reverse in future forecast periods;
 - (h) the positive variance in Professional Fees of \$4.0 million is primarily a timing difference that is expected to reverse in future forecast periods;
 - (i) the negative variance in DIP Fees and Interest Paid of \$2.2 million is a timing difference due to the earlier-than-forecast payment of the exit fee associated with the final repayment of the DIP Term credit facilities; and
 - (j) the variance in DIP Draws / (Repayments) of \$23.3 million is a timing variance which reflects the earlier-than-forecast closing of the sale of the Corbeil Business and the repayment of the DIP Term credit facilities from the sale proceeds. The DIP Lenders have been repaid in full.
19. The Initial Order allowed the Sears Canada Entities to continue to utilize their existing Cash Management System as described in the First Wong Affidavit and the Pre-Filing

Report. After the commencement of the CCAA Proceedings, the Sears Canada Entities have continued to utilize their Cash Management System in a manner consistent with past practice.

E. RECOMMENDATION

The Monitor supports the relief sought by the Applicants and recommends that the Middleby Approval and Vesting Order be made.

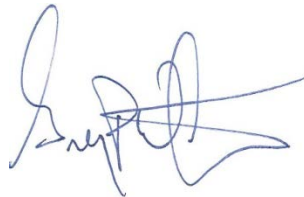
The Monitor respectfully submits to the Court this, its Supplement to the Eighth Report.

Dated this 7th day of December, 2017.

FTI Consulting Canada Inc.
In its capacity as Monitor of
Sears Canada Inc. and the other corporations in the Sears Canada Group



Paul Bishop
Senior Managing Director



Greg Watson
Senior Managing Director

Appendix “A”
(see attached)

Extracts from the Third Report of the Monitor dated October 2, 2017

[...]

Viking Brand

108. Sears Canada is the owner of certain trademarks related to the Viking appliance brand.
109. Bids received for the Viking appliance brand were reviewed in detail by the Applicants, the Special Committee, the Monitor and their respective legal and financial advisors, as applicable.
110. The highest or otherwise best transaction generated from the SISP for these assets was an offer from Canadian Tire Corporation, Limited (“**Canadian Tire**”). The terms of this transaction are contained in an Asset Purchase Agreement dated September 29, 2017 (the “**Viking APA**”).
111. As described in the Applicants’ motion materials, the assets that are the subject of this transaction are also the subject of a right of first negotiation and a right of first refusal (the “**Viking ROFR**”) in favour of The Middleby Corporation (“**Middleby**”). The Viking ROFR was among the surviving provisions of an expired License Agreement made December 19, 2002, between Sears Canada and Viking Range Corporation (as predecessor to Middleby) (the “**Viking License Agreement**”).
112. A disclaimer notice in respect of the surviving provisions of the Viking License Agreement, including the Viking ROFR, was delivered to Middleby by the Applicants on September 27, 2017. The Monitor approved the disclaimer of the Viking ROFR. In the Monitor’s view, the disclaimer of the Viking ROFR is appropriate in the circumstances as:
 - (a) it will allow the Applicants to maximize the value of these assets;

- (b) the disclaimer does not cause significant financial hardship to Middleby as Middleby's rights to utilize the licensed trademarks has already been terminated; and
- (c) Middleby elected to participate in the SISP bidding process and was provided a full opportunity both at the Binding Bid Deadline and through subsequent rounds of negotiations to put its best bid forward in that process, which ultimately was not the highest or otherwise best bid.

113. The material terms of the Viking APA are as follows:¹

- (d) Deposit: Canadian Tire has provided a cash deposit equal to 10% of the cash purchased price initially offered by Canadian Tire at the Binding Bid Deadline.
- (e) Purchased Assets: The right, title and interest in and to all of Sears Canada's trademarks exclusively related to the "Viking" trademark and brand, including the applications and registrations identified in Schedule 2.1 of the Viking APA as (i) VIKING (Registration No. TMDA47453); (ii) VIKING & DESIGN (Registration No. TMA5999901); (iii) VIKING & Design (Application No. 1731943); and (iv) Representation of a Single-Masted Viking Galley (Registration No. UCA41844), as well as all Documents that are in the Seller's possession, if any.
- (f) Assumption of Liabilities: As of Closing, Canadian Tire will assume and pay, discharge and perform, as the case may be, from and after Closing and liabilities of the Seller with respect to the Purchased Assets to the extent such obligations and liabilities consist of liabilities and obligations that arise in respect of and relate to the period on and after Closing.
- (g) Representations and Warranties: The representations and warranties are generally consistent with customary representations of a transaction of this type. As well,

¹ Capitalized terms used in this section and not otherwise defined have the meanings given to them in the Viking APA. The summary provided in this section is for general information purposes only. In the case of any inconsistency between this summary and the terms of the Viking APA, the Viking APA governs.

Sears Canada represents and warrants that the Viking License Agreement as well as any subsequent renewals of the Viking License Agreement or similar arrangements have been terminated, expired, or disclaimed. The transaction is entered into on an 'as is, where is' basis.

- (h) Covenants: Sears Canada covenants between the date of the Viking APA and Closing to, among other things, use commercially reasonable efforts to preserve and not abandon the Purchased Assets.
- (i) Conditions: Conditions of Closing are customary for a transaction of this type and include the granting of the Approval and Vesting Order substantially in the form attached as a schedule to the Viking APA. The Approval and Vesting Order must also be a final order at the time of closing. In addition, Sears Canada is required to have commenced the disclaimer process regarding the surviving provisions of the Viking License Agreement, including the Viking ROFR, and such disclaimer must have become effective either by the passage of time without objection by Middleby or by court order.
- (j) Outside Date: The Viking APA may be terminated by either Canadian Tire or Sears Canada (with the consent of the Monitor and the DIP Lenders) if the Closing has not occurred on or before December 4, 2017 (subject to the parties agreeing in writing to such other date (with the consent of the DIP Lenders and Monitor, in the case of Sears Canada)).

[...]

J. SALE APPROVAL MOTIONS

159. Section 36(1) of the CCAA states:

36(1) Restriction on disposition of business assets - A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under

federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

160. Section 36(3) of the CCAA states:

(3) Factors to be considered - In deciding whether to grant the authorization, the court is to consider, among other things,

(a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

(b) whether the monitor approved the process leading to the proposed sale or disposition;

(c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;

(d) the extent to which the creditors were consulted;

(e) the effects of the proposed sale or disposition on the creditors and other interested parties; and

(f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

161. In the Monitor's view, the process considerations under Section 36 of the CCAA should be evaluated in the current circumstances for the SISP and all of the above transactions as a whole. Where unique considerations apply to any individual transaction, those considerations are also noted below.

162. Capitalized terms used in this section of the Third Report and not otherwise defined are as defined in the SISP.

Reasonableness of the Process

163. The SISP was approved by the Court on July 13, 2017.

164. As noted in the Caiger Affidavit, the Sale Advisor contacted 145 potentially interested parties regarding their interest in participating in the SISP. These parties were identified in part based upon the Sale Advisor's experience in the market as well as prior expressions of interest received by Sears Canada. In addition, the Monitor notes that the

SISP was the subject of significant media attention, thereby further increasing the notice to all *bona fide* interested parties about the ongoing SISP.

165. The Monitor engaged in discussions with representatives of Sears Canada prior to the Binding Bid Deadline to obtain information on the pre-filing marketing processes for Sears Canada's businesses and assets, including the real estate portfolio of Sears Canada. The Monitor has noted only very limited circumstances where offers were not obtained for assets where these initial discussions indicated value may exist.
166. The SISP in this case was an expedited one-stage process. The Monitor notes that often a sale process for a business the size of the Applicants would involve a two stage marketing process, where preliminary non-binding expressions of interest are sought followed by a request for binding offers after an extended due diligence period. However, the timeline for the SISP in this case was reasonable and necessary in the circumstances in view of:
 - (a) the continuing operating losses of the Applicants during the CCAA Proceedings, which resulted in material ongoing draws under the DIP ABL Credit Agreement;
 - (b) the milestones established by the DIP Lenders, who were funding the operating losses of the Applicants pursuant to the DIP Credit Agreements;
 - (c) the need to determine on an expedited basis whether a going concern solution could be implemented so that, in the absence of such a going concern solution, the inventory of the business could be liquidated for maximum value during the busy holiday retail season; and
 - (d) the fact that certain of the Applicants' assets, including its leases, may decrease in value over time.
167. The Monitor participated in all stages of the SISP and is satisfied that the SISP was carried out in accordance with the SISP Order, that the opportunity to acquire assets offered under the SISP was widely known and that the process that resulted in the transactions for which approval is sought on the Applicants' October 4th motions was fair

and reasonable. In the Monitor's view, the Applicants' marketing efforts during the SISP were appropriate in the circumstances.

168. The Monitor notes that in certain cases the Applicants continued to negotiate transactions with bidders whose bids were not fully compliant with all requirements of the SISP. In such circumstances, the Monitor supported the decision to continue such negotiations as (i) such negotiations had the potential to maximize value for creditors; (ii) in the case of the Stranzl Group Proposal, the proposed transaction provides an opportunity to preserve a going concern while not impairing the Applicants' ability to generate value from the other transactions identified through the SISP; and (iii) no other participants in the SISP were unfairly prejudiced by the decision to continue to consider such non-compliant offers.

Monitor Approval of the Process

169. The Monitor approved the process set out in the SISP that led to the sales and dispositions for which the Applicants now seek Court approval.

Comparison to Sale in Bankruptcy

170. In a bankruptcy scenario, many of the assets that the Applicants seek to sell at this time would have decreased, or no, value.
171. In a bankruptcy process, the going concern businesses of SLH and Corbeil would likely reduce or cease operations, resulting in a loss of significant value from the going concern transactions that are currently available for these assets.
172. A bankruptcy process would also likely result in the liquidation of all remaining assets of Sears Canada. The high probability of such a liquidation, and the absence of a going concern alternative, would reduce the likelihood that the Applicants would be able to generate maximum value from lease transactions.

Consultations with Creditors

173. During the weeks that followed the Binding Bid Deadline, the Monitor facilitated discussions with the Applicants, the DIP Lenders, FSCO and its advisors and Employee

Representative Counsel and Pension and Retiree Representative Counsel and their advisors to provide information contemplated by the SISP and the Suspension Term Sheet.

174. On September 6, 2017, the Sale Advisor and counsel to the Applicants met and consulted with the Monitor, the Monitor's counsel, and the legal and financial advisors to the DIP Lenders for the purpose of determining whether to continue negotiations with a select number of bidders and to take such steps as were necessary to finalize and consummate successful bids in the context of the SISP. Legal counsel and the financial advisors to FSCO also attended this meeting and received information on the SISP as required by the Suspension Term Sheet.
175. As required by the Suspension Term Sheet, the Monitor ensured that the Applicants provided to FSCO and its advisors the same information in respect of SISP updates as were provided to the DIP Lenders' Restricted Process Observers (as defined in the SISP).
176. The Monitor also made arrangements for meetings and conference calls with FSCO and its advisors and with Pension and Retiree Representative Counsel and Employee Representative Counsel and their financial advisors where each group was provided with SISP updates.
177. The DIP Lenders have been consulted on a regular basis throughout the SISP and have received ongoing updates on the status of bids in the SISP and access to information regarding updated transaction documentation for various transactions that were and continue to be the subject of negotiation through their direct access to the electronic data room established by the Applicants to hold bid documentation. The Monitor understands that the DIP Lenders have consented to all transactions presented for court approval on October 4, 2017, including the forms of transaction agreements proposed.
178. Prior to the Monitor providing its consents to the proposed transactions for which approval is sought on October 4th, the Monitor ensured that the DIP Lenders, FSCO and Employee and Pension and Retiree Representative Counsel were provided an opportunity to comment on transactions being put forward and the process generally.

179. In the past two weeks, the following stakeholder discussions, among others, took place:
- (a) September 22, 2017: the Monitor and its counsel participated in a conference call with counsel to the Applicants, the Sale Advisor, the Pension and Retiree Representative Counsel and Employee Representative Counsel and their financial advisors, Ernst & Young Inc. to discuss, among other things, the anticipated ranges of proceeds from potential transactions under consideration;
 - (b) September 22, 2017: the Monitor and its counsel participated in a conference call with counsel to the Applicants, the Sale Advisor and FSCO. This discussion covered similar topics to the Pension and Retiree Representative Counsel and Employee Representative Counsel discussions earlier that morning;
 - (c) September 27, 2017: the Monitor and its counsel participated in an in-person meeting with counsel to the Applicants, the Sale Advisor and FSCO and its advisors to discuss potential recoveries from various transaction opportunities;
 - (d) September 27, 2017: the Monitor and its counsel participated in a conference call with counsel to the Applicants, the Sale Advisor, the Pension and Retiree Representative Counsel and Employee Representative Counsel and their financial advisors, Ernst & Young Inc. to discuss potential recoveries from various transaction opportunities; and
 - (e) September 28, 2017: the Monitor and its counsel participated in a conference call with counsel to FSCO.
180. In addition to the above discussions, the Monitor is aware that *ad hoc* discussions have taken place between counsel to the Applicants or the Monitor and counsel to the above groups as well as discussions and exchanges of information between the Monitor, the Sale Advisor and the financial advisors to the above groups.
181. Finally, the Monitor was advised that:

- (a) a meeting took place between representatives of the Stranzl Group, counsel to the Applicants and representatives of the Minister of Finance in the morning of September 29, 2017; and
- (b) discussions are taking place between Employee Representative Counsel and counsel to the Stranzl Group.

182. The Monitor recognizes the importance of communication and participation of various groups of stakeholders in these proceedings and will ensure that circumstances continue to exist for stakeholders to obtain appropriate information in the circumstances, while respecting the need to ensure confidentiality to maintain the integrity of the SISP.

Effect of the Transactions on Creditors and Other Interested Parties

183. The proposed transactions maximize value from all executable options available at this time while at the same time recognizing and protecting to the extent possible the interests of those stakeholders, such as active employees, who would benefit from a potential going concern solution by taking steps to the extent possible to seek to preserve assets and operations that would be necessary for a going concern solution at this time.

184. The proposed real estate transactions also preserve the rights of construction lien claimants to assert any priority rights that they may have to sale proceeds available under these transactions.

185. The proposed real estate transactions also protect the rights of Sears Canada to, if necessary, liquidate inventory and other assets at the locations that are the subject of the proposed real estate transactions in an orderly and value maximizing manner.

186. The proposed going concern transactions for Corbeil and SLH will preserve employment and contractual arrangements for a material portion of the employees and other stakeholders in those businesses.

187. The proposed transactions do not engage the provisions of the SISP Order relating to rights of first refusal as none of the transactions for which approval is sought relate to properties subject to any such rights of first refusal.

Fairness of the Consideration

188. In each case, the transactions brought for approval on the Applicants' October 4th motions represent the highest and best executable offer obtained through the SISP for the asset being sold.
189. The Monitor notes that certain of the assets that are subject to the October 4th sale approval motions, particularly the real estate assets, are subject to material use restrictions, potentially limiting the universe of potential buyers other than going concern bidders or other parties operating similar businesses.
190. Appraisals are not available for a large majority of the assets that the Applicants are seeking approval to sell on October 4th. However, where appraisals are available, the purchase prices offered are within reasonable proximity to appraised value.²

Monitor's Recommendation

191. The transactions for which the Applicants seek approval at this time are the highest and best offers obtained for each of the subject assets. The Monitor supports the Applicants' requests for approval of these transactions.
192. The Monitor notes the significant efforts that have been made over the past months to solicit offers and enter into transactions for the Applicants' assets and businesses. Each of these negotiations is subject to its own dynamics and complexities. The Applicants require certainty with respect to their go-forward plans through the very important holiday retail season. In addition, the Applicants continue to require liquidity to be injected to cover overhead costs and delaying sale transactions could lead to erosion of recoveries to creditors as a result of increases to such overhead costs. For all of these reasons, the Monitor supports moving forward with the transactions for which the Applicants seek approval on their October 4th motions.

² The Monitor notes that appraised value is in many cases not indicative of true realizable value in the current context due to the assumptions that are often included in such appraisals regarding, among other things, the future use of the property.

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Proceeding commenced at TORONTO

**SUPPLEMENT TO THE EIGHTH REPORT TO THE
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IN ITS CAPACITY AS MONITOR**

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