

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

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

THIRTY-SECOND REPORT OF FTI CONSULTING CANADA INC., AS MONITOR

SEPTEMBER 13, 2019

Contents

Section	Page
A. INTRODUCTION.....	2
B. PURPOSE	6
C. TERMS OF REFERENCE.....	6
D. UPDATE ON THE CCAA PROCEEDINGS AND THE ACTIVITIES OF THE SEARS CANADA ENTITIES AND THE MONITOR	7
E. RECEIPTS AND DISBURSEMENTS FOR THE TWENTY-ONE WEEK PERIOD ENDING SEPTEMBER 7, 2019.....	17
F. REVISED CASH FLOW FORECAST FOR THE PERIOD ENDING MARCH 31, 2020..	21
G. STAY EXTENSION	24

**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

**THIRTY-SECOND 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.

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. On February 26, 2019, the Court issued an Order (the “**NORD Extension Order**”) further extending the deadline for the Monitor to file Notices of Revision or Disallowances (“**NORDs**”) in respect of D&O Claims and claims filed by the Directors and Officers based upon claimed indemnity obligations of the Sears Canada Entities to such Directors and Officers in each case pursuant to the Claims Procedure Orders until a further Order of this Court.
15. The only remaining material asset of the Sears Canada Entities, other than possible litigation-related assets, that has not been sold is a real property asset located in Barrie, Ontario.
16. The Stay Period was most recently extended to September 30, 2019 by Order of the Court granted on April 24, 2019.

17. In connection with the CCAA Proceedings, the Monitor has provided thirty one reports and twenty-two 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

18. The purpose of this thirty-second report of the Monitor (the “**Thirty-Second 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-First Report to the Court dated April 17, 2019 (the “**Thirty-First Report**”);
 - (b) the Monitor’s request for an order (the “**Stay Extension Order**”) extending the Stay Period (as defined in the Initial Order) to March 31, 2020, and providing a corresponding extension of the application period for the Employee Hardship Fund; and
 - (c) the Monitor’s comments and recommendations in connection with the foregoing.

C. TERMS OF REFERENCE

19. In preparing this Thirty-Second Report, the Monitor has relied upon audited and unaudited financial information of the Sears Canada Entities, the Sears Canada Entities’ books and records, certain financial information and forecasts prepared by the Sears Canada Entities, and discussions and correspondence with, among others, the senior management (“**Management**”) of, and advisors to, the Sears Canada Entities (collectively, the “**Information**”).
20. Except as otherwise described in this Thirty-Second 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 Thirty-Second Report in a manner that would comply with the procedures described in the *Chartered Professional Accountants of Canada Handbook*.
- 21. Future-oriented financial information reported in or relied on in preparing this Thirty-Second Report is based on Management's assumptions regarding future events. Actual results will vary from these forecasts and such variations may be material.
 - 22. The Monitor has prepared this Thirty-Second Report in connection with its request for the Stay Extension Order. The Thirty-Second Report should not be relied on for any other purpose.
 - 23. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars.
 - 24. 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**
- 25. Set out below is a summary of material developments since the date of the Thirty-First Report.

Claims Process

26. 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.
27. 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.
28. In total, eight disputed claims have been referred to the Claims Officer so far, all of which, with the exception of one D&O Claim¹, have now been finally determined by the Claims Officer, or consensually resolved.
29. There are approximately 18² claims against the Sears Canada Entities that have not yet been resolved, and 95 unresolved D&O Claims. 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) environmental claims, including duplicative claims filed by various parties in respect of Sears Canada’s former full-line store located at the North Hill Centre shopping mall in Calgary (the “**North Hill Calgary Claims**”), (iii) certain landlord claims; (iv) claims related to the 2013 Dividend Litigation, and (v) certain employee-related claims.
30. The resolution of the North Hill Calgary Claims is interrelated with the appeal proceedings in respect of an Environmental Protection Order (“**EPO**”) in front of the Alberta Environmental Appeals Board.
31. The appeal proceedings for the EPO are scheduled for December 3-5 in Calgary. The Applicants’ primary issue in the appeal proceedings are the parameters of the EPO and remediation plan to be established pursuant and responsive to the EPO. The Applicants

¹ This claim includes three separate claims that are proceeding as one.

² This number does not include the Landlord Claims of 22 Moving Landlords represented by Blaney McMurtry LLP which have been resolved pursuant to a settlement agreement dated December 3, 2018, and in respect of which the Moving Landlords are taking the position that the amounts of each Moving Landlord’s Landlord Claims remains to be resolved.

and the Monitor are in active discussions with the Director of Alberta Environment and Parks on the terms of the EPO and the scope of the remediation plan in an effort to establish its final terms prior to the hearing. The remainder of the proceedings before the Alberta Environmental Appeals Board involve appeals by the other parties, to the EPO, Concord North Hill GP (“**Concord**”) and Suncor Energy Inc. (“**Suncor**”). Concord is the current landowner/developer. Suncor is a prior operator of a gas bar on the contaminated property. Each of Concord and Suncor appeal their status as parties to the EPO.

32. Additionally, Concord and Suncor have alleged that the recent Supreme Court of Canada decision in *Orphan Well Association v. Grant Thornton Ltd* (“**Redwater**”) has the effect of precluding the distribution of funds that would otherwise be required for the conduct of the EPO. The Monitor and the Applicants disagree. The Monitor anticipates, however, that as a result of this allegation it will be bringing motions:
 - (a) First, if necessary, to set a reserve amount for the EPO activities, to allow for a distribution from the estate; and
 - (b) Second, if the allegation is maintained, for the Court’s direction as to whether such reserve need in fact be retained as a result of the Redwater decision.

33. As described in Prior Reports, the Mediation, with the assistance of Regional Senior Justice Morawetz, initially resulted in agreements with landlords representing 77% of all claims filed by landlords, excluding environmental and D&O Claims. In addition, on December 3, 2018, the Monitor entered into a settlement agreement with landlords (collectively, the “**Moving Landlords**”) representing the remainder of landlord claims that were unresolved as at that time (excluding environmental and D&O Claims). However, the Moving Landlords subsequently took the position that the quantum of each Moving Landlord’s claim remained to be agreed. Following a hearing on May 7, 2019, the Court directed that certain information be provided to the Moving Landlords regarding the Monitor’s calculation of the Moving Landlords’ claims under the December 3rd settlement agreement. The Monitor has provided the relevant information

to the Moving Landlords. As of the date of this report, the Moving Landlords have not responded.

Real Estate Sale Process

34. At the time of the Monitor's Thirty-First Report, the only remaining unsold real property asset of Sears Canada was the Barrie full-line store (Barrie, ON).
35. Pursuant to an agreement dated July 15, 2007, RioCan Holdings Inc. ("**RioCan**") was granted an option to purchase the Barrie full-line store and surrounding lands in certain circumstances (the "**Barrie Purchase Option**"). On January 13, 2019, the Monitor received a notice from RioCan that it had exercised the Barrie Purchase Option. RioCan and Sears Canada proceeded with a number of the steps contemplated by the Barrie Purchase Option during the first half of 2019. However, a transaction was not completed pursuant to the Barrie Purchase Option. RioCan and Sears Canada entered into an agreement dated July 18, 2019 that, among other things, terminated the Barrie Purchase Option. Sears Canada, with the assistance of CBRE Limited, has now commenced a marketing process for the Barrie full-line store property.

Pension Support Agreement

36. 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. Following discussions among the parties to the PSA, an amendment to the pension support agreement was entered into on March 20, 2019 (the "**PSA Amendment Agreement**") extending the outside date to September 30, 2019. The parties to the PSA agreed to the amendment to allow the Monitor to complete certain outstanding matters prior to the Meeting Date and the Sanction Hearing. A copy of the PSA Amendment Agreement was attached as an Appendix to the Monitor's Thirty-First Report. The parties to the PSA have now agreed to a further amendment to the PSA to provide a revised outside date of January 31, 2020, which will be set out in a second PSA Amending Agreement. The further extension will provide additional time for certain

outstanding matters, including matters related to the North Hill Calgary Claims, to be further advanced prior to the Meeting Date and the Sanction Hearing.

Filing of the Plan and Adjournment of the Meetings

37. 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.
38. A detailed description of the Plan is included in the Twenty-Ninth Report of the Monitor dated February 6, 2019 and the Supplement thereto.
39. 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.
40. 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.
41. As at the date of this Thirty-Second Report, a new date for the adjourned Meetings has not yet been selected. The Monitor continues to work diligently towards the resolution of certain pending matters before announcing a new date for the Meetings. The primary matter that remains to be resolved is the North Hill Calgary Claims. The quantum and priority of that claim may affect the ability of Sears Canada to satisfy the distributable asset value threshold established in the PSA. Given the current uncertainty about the value and priority of the North Hill Calgary Claims and the potential impact of those claims on the ability of Sears Canada to satisfy the conditions of the PSA, the Monitor

believes it is appropriate at this time to continue to defer the Meetings to a date to be determined.

Employee Matters

42. As of the date of this Thirty-Second Report, the Applicants have five remaining employees. Those employees who remain have moved to part-time arrangements.
43. To date, the Monitor has received 98 applications for assistance from the Employee Hardship Fund, of which 72 have been approved. So far, approximately \$163,000 has been paid out of the Employee Hardship Fund. The time period for applications to the Employee Hardship Fund currently expires on September 30, 2019.
44. 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.
45. In accordance with the mechanism contemplated in the Receivership Order, on January 3, 2019, the Monitor served the Receivership Certificate on the Service List thereby triggering the effectiveness of the receivership.
46. 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**").
47. In accordance with the WEPPA guidelines, the Receiver has submitted information to Service Canada with respect to 15,580 former employees of the Sears Canada Entities holding an eligible wage claim for WEPPA purposes. Furthermore, the Receiver notified all eligible employees by letter or email and provided them with information on how to apply for their Wage Earners Protection Program (the "**WEPP**") payment with Service Canada.

48. To date, Service Canada has made payments in the amount of \$44.2 million to former employees of the Sears Canada Entities in connection with the WEPP.
49. On April 24, 2019, Employee Representative Counsel sought an order for directions with respect to approximately \$850,000 (the “**Surplus Funds**”) available for refund resulting from the termination of insurance coverage provided by Sun Life Assurance Company of Canada for the benefit of employees of Sears Canada and certain of its subsidiaries. Employee Representative Counsel proposed that these amounts be made available to former employee beneficiaries on a pro rata basis. On June 13, 2019, the Court directed that the Surplus Funds be distributed to participating employees pro rata based upon their premiums paid under the insurance arrangement (the “**Surplus Funds Order**”). Since the date of the Surplus Funds Order, the Monitor has worked with Sears and Employee Representative Counsel to identify eligible participating employees and to develop and agree to a methodology for allocating and distributing the Surplus Funds. The Monitor expects to issue the payments contemplated under the Surplus Funds Order prior to the end of this year.

Directors and Governance

50. On December 3, 2018, the Court issued an Order approving the Governance Protocol which, among other things, authorized the Monitor to take all steps set out in the Governance Protocol with respect to the remaining matters to be finalized in these proceedings namely:
 - (a) the resolution of claims filed pursuant to the Claims Procedure Orders;
 - (b) the disposition of the remaining owned real estate assets;
 - (c) the distribution of proceeds of the estates of the Sears Canada Entities; and
 - (d) the pursuit of litigation as recommended by the Monitor and the Litigation Investigator, in accordance with its mandate under the Litigation Investigator Order.

51. Pursuant to the Governance Protocol, the Monitor is overseeing the wind-down of the Sears Canada Entities.

Litigation Matters

52. In the Eleventh Report of the Monitor dated January 15, 2018, the Monitor identified certain Transactions of Interest to be further investigated to determine if remedies should be pursued by the Monitor in connection with such transactions pursuant to section 36.1 of the CCAA.
53. 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 also arising from the 2013 Dividend (collectively, the “**2013 Dividend Litigation**”), to be commenced or continued.
54. Together with the Litigation Trustee, the Monitor is pursuing the Estate 2013 Dividend Litigation.
55. 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 action comprising the Estate 2013 Dividend Litigation as well as the Dealer Class Action and the claim by the Pension Plan Administrator are proceeding on the Commercial List of the Ontario Superior Court of Justice under the case management of Justice McEwen. Materials in connection with the Estate 2013 Dividend Litigation are posted on the Monitor’s Website.
56. On May 23, 2019, the United States Bankruptcy Court granted an Order in the proceedings of Sears Holdings Corporation, among others, under Chapter 11 of the United States Bankruptcy Code lifting the automatic stay in those proceedings for the purpose of joining Sears Holdings Corporation as a defendant in the Estate 2013 Dividend Litigation, as well as the claim by the Pension Plan Administrator and for the

purpose of allowing the 2013 Dividend Litigation to proceed as against Sears Holdings Corporation in the Ontario court. Each of the Litigation Trustee, the Monitor and the Pension Plan Administrator have updated their respective statements of claim in the 2013 Dividend Litigation to include Sears Holdings Corporation as a defendant.

57. A timetable for the 2013 Dividend Litigation, now including Sears Holdings Corporation, was approved by the Court in an endorsement dated July 12, 2019 (the “**Litigation Timetable Endorsement**”). A copy of the Litigation Timetable Endorsement is attached hereto as **Appendix “A”**. Set out below are key dates in the litigation timetable:
- (a) Examinations for discovery: November 22, 2019 – December 16, 2019;
 - (b) Mediation phase one: February 4-7, 2020 and February 10-11, 2020;
 - (c) Mediation phase two: April 6-7, 2020; and
 - (d) Joint trial: May 19, 2020 – July 10, 2020.
58. The Monitor notes that separate arrangements have been made with respect to the Dealer Class Action matter.
59. The former director defendants in the 2013 Dividend Litigation initially received funding for defence costs through a 2015-2016 directors and officers insurance policy issued to Sears Holdings Corporation for the benefit of directors of Sears Canada. The Monitor has been advised that the primary layer of coverage under this 2015-2016 policy is now exhausted and that the first excess insurer under this policy has denied coverage, asserting that a different policy period should respond.
60. The question of the appropriate insurance policies to respond to this matter is the subject of an Application by the former director defendants in the Ontario court. The Monitor has been informed that this insurance coverage question may also become the subject of a parallel proceeding advanced by the insurer under the first excess layer of the 2015-2016 insurance policy in the courts of Illinois. Jurisdictional matters in connection with this Application are scheduled to be heard by the Ontario court on September 25, 2019 and, if

it is determined that the Ontario court has jurisdiction to hear this Application, the Application is scheduled to be heard on October 18, 2019.

61. In connection with the insurance coverage issue described above, the former director defendants have scheduled a motion in the Ontario court, which is to be heard on September 19, 2019 seeking: (i) an order varying or amending the litigation timetable approved by the Court such that all further steps in the timetable be suspended; or (ii) an order directing Sears Canada, through the Monitor, to provide interim funding of defence costs to the former director defendants by means of a non-recourse loan that would be repaid out of any reimbursement of defence costs made from one or more insurers in the future. The Monitor, among others, oppose the relief sought by the former director defendants.
62. The Monitor will continue to post information regarding the 2013 Dividend Litigation to the Monitor's website.

Other Activities of the Monitor

63. The Monitor 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 sale of the remaining real estate asset;
 - (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 numerous meetings and teleconferences with stakeholders, their counsel, and advisors;
- (g) worked with the Sears Canada Entities to assist in certain refunds and the return of deposits held by counterparties;
- (h) responded to requests by former employees for financial assistance under the Employee Hardship Fund and the WEPP;
- (i) continued to operate and monitor its telephone hotline and email account for stakeholder inquiries and to respond to such inquiries; and
- (j) continued its work in connection with the claims processes contemplated pursuant to the Claims Procedure Orders.

E. RECEIPTS AND DISBURSEMENTS FOR THE TWENTY-ONE WEEK PERIOD ENDING SEPTEMBER 7, 2019

64. The Sears Canada Entities' actual net cash inflow on a consolidated basis for the twenty-one week period ended September 7, 2019 was approximately \$7.8 million, compared to a forecast net cash outflow of \$12.2 million, resulting in a positive variance of approximately \$20.0 million as indicated in the table below:

VARIANCE REPORT			
	Actual	Forecast	Variance
(CAD in Millions)			
Receipts	14.8	-	14.8
Operating Disbursements			
Payroll and Employee Related Costs	(0.5)	(0.5)	-
Owned Real Property	(0.2)	(0.2)	-
Non-Merchandise Vendors	(1.5)	(7.6)	6.1
Rent and Property Taxes	(0.1)	(0.2)	0.1
Total Operating Disbursements	(2.3)	(8.5)	6.2
Net Operating Cash Inflows / (Outflows)	12.5	(8.5)	21.0
Professional Fees	(4.7)	(3.7)	(1.0)
Net Cash Inflows / (Outflows)	7.8	(12.2)	20.0
Cash			
Beginning Balance	197.3	197.3	-
Net Cash Inflows / (Outflows)	7.8	(12.2)	20.0
Ending Balance	205.1	185.1	20.0

65. Explanations for the key variances are as follows:

- (a) The positive variance in Receipts of \$14.8 million is a positive permanent variance consisting primarily of:
 - (i) The receipt of tax refunds totalling approximately \$9.9 million which had not been included in the cash flow forecast due to uncertainty with respect to the timing of the refunds;
 - (ii) The recovery of approximately \$4.0 million of cash held as reserves by the Court, primarily relating to the settlement of construction liens, which were not included in the forecast pending resolution of construction lien matters; and
 - (iii) Accrued interest on cash balances and refunds from various vendors of approximately \$0.9 million;

- (b) the positive variance in Non-Merchandise Vendor disbursements of \$6.1 million is a timing variance that is expected to reverse in future forecast periods and consists primarily of amounts owing in respect of post-filing warranty claims for which the form of payment is contemplated in the proposed Plan of Arrangement;
 - (c) the positive variance in Rent and Property Taxes of approximately \$0.1 million is a permanent variance due to the downsizing of the Sears Canada headquarters; and
 - (d) the negative variance in professional fees reflects a combination of a negative timing variance resulting from the funding of certain professional fees associated with the Estate 2013 Dividend Litigation which will be recovered from future distributions to Opt-In creditors, as contemplated in the proposed Plan of Arrangement, offset by positive, permanent variances in respect of other forecast professional fees for on-going CCAA-related matters.
66. The Sears Canada Entities' cumulative receipts and disbursements since the commencement of the CCAA Proceedings through the week ended September 7, 2019 are reflected in the table below:

CUMULATIVE RECEIPTS AND DISBURSEMENTS	
(CAD in Millions)	
For the 116 Week Period Ending September 7, 2019	
Receipts	1,361.6
Operating Disbursements	
Payroll and Employee Related Costs	(268.1)
Merchandise Vendors	(289.4)
Owned Real Property	(0.2)
Non-Merchandise Vendors	(178.2)
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	(851.7)
Net Operating Cash Inflows / (Outflows)	509.9
Professional Fees	(93.3)
Repayments of Existing Credit Facilities	(283.3)
DIP Fees and Interest Paid	(19.7)
Net Cash Inflows / (Outflows)	113.6
Cash	
Beginning Balance	126.5
Net Cash Inflows / (Outflows)	113.6
DIP Draws / (Repayments)	(32.0)
Others incl. FX Valuation	(3.0)
Ending Balance	205.1

67. 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 have 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 to consolidate funds in the remaining operating accounts.

F. REVISED CASH FLOW FORECAST FOR THE PERIOD ENDING MARCH 31, 2020

68. A revised cash flow forecast for the period September 8, 2019 until March 31, 2020 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: September 8, 2019 - March 31, 2020
Total Receipts ^[2]	-
Operating Disbursements	
Payroll and Employee Related Costs ^[3]	(193)
Owned Real Property - Carrying Costs	(188)
Non-Merchandise Vendors ^[4]	(6,441)
Rent and Property Taxes ^[5]	(66)
IT and Data Storage Costs ^[6]	(25)
Total Operating Disbursements	(6,912)
Net Operating Cash Inflows / (Outflows)	(6,912)
Professional Fees ^[7]	(4,718)
Net Cash Inflows / (Outflows)	(11,630)
Cash	
Beginning Balance	205,059
Net Cash Inflows / (Outflows)	(11,630)
Ending Cash Balance	193,428

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 Total Receipts does not reflect any proceeds from the sale of any owned real estate property.

[3] Forecast Payroll and Employee Related Costs are based on recent payroll amounts and reflect future forecasted headcount reductions.

[4] Forecast Non-Merchandise Vendor disbursements primarily relate to the payment of post-filing warranties and environmental remediation costs.

[5] Forecast Rent and Property Taxes includes lease payments and property tax payments in respect of leased and owned real property.

[6] 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.

[7] 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.

69. Pursuant to section 23(1)(b) of the CCAA³ and in accordance with the Canadian Association of Insolvency and Restructuring Professionals Standard of Practice 09-1, the Monitor hereby reports to the Court as follows:

- (a) the Monitor has reviewed the Revised Cash Flow Forecast, which was prepared by Management 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) the review consisted of inquiries, analytical procedures and discussion related to information provided by certain members of Management and employees of the Sears Canada Entities. 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 and the preparation and presentation of the Revised Cash Flow Forecast;
- (c) based on that review, and as at the date of this Thirty-Second 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

³ Section 23(1)(b) of the CCAA requires the Monitor to review the Sears Canada Entities’ cash-flow statements as to its reasonableness and file a report with the court on the Monitor’s findings.

- (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 Thirty-Second Report, or relied upon by the Monitor in preparing this Thirty-Second Report.
70. 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.
71. 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.
72. 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.
73. 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.
74. The Revised Cash Flow Forecast shows total net operating cash outflows of approximately \$6.9 million, before professional fees of approximately \$4.7 million, such that net cash outflows for the period are forecasted to be approximately \$11.6 million, excluding any proceeds that may be generated from the sale of the Barrie store real property.

75. Aside from professional fees, forecast disbursements consists primarily of disbursements in respect of post-Filing Warranty claims and costs associated with environmental remediation efforts.
76. 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 \$4.7 million is primarily comprised of forecast fees to the end of the forecast period and approximately \$0.1 million of accrued but unpaid fees as of the date of this Thirty-Second Report.
77. The Revised Cash Flow Forecast does not include any estimated professional fees disbursements associated with respect to the Estate 2013 Dividend Litigation.

G. STAY EXTENSION

78. The Stay Period currently expires on September 30, 2019.
79. The Monitor is requesting an extension of the Stay Period until and including March 31, 2020.
80. 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 prior to 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 advance the Estate 2013 Dividend Litigation based upon the current approved litigation timetable and to monetize remaining assets.
81. The Applicants have sufficient liquidity to fund these proceedings during the proposed extension of the Stay Period.
82. 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.

83. 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 March 31, 2020 is appropriate.

The Monitor respectfully submits to the Court this, its Thirty-Second Report.

Dated this 13th day of September, 2019.

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

A handwritten signature in blue ink that reads "Paul Bishop". The signature is written in a cursive style and is set against a light green rectangular background.

Paul Bishop
Senior Managing Director

A handwritten signature in blue ink that reads "Greg Watson". The signature is written in a cursive style and is positioned to the right of the signature of Paul Bishop.

Greg Watson
Senior Managing Director

APPENDIX "A"
(see attached)

Court File Number: CV-18-0061(2/4-00CL

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Sears Canada Inc
Plaintiff(s)

AND

ESL Investments Inc
Defendant(s)

Case Management Yes No by Judge: McGowan

Counsel	Telephone No:	Facsimile No:

- Order Direction for Registrar (No formal order need be taken out)
 Above action transferred to the Commercial List at Toronto (No formal order need be taken out)

- Adjourned to: _____
 Time Table approved (as follows):

An order shall go re: the conspiracy claim issue as per the Endorsement attached as Schedule A.
The Trial schedule is also approved as per Schedule B attached - in all actions.

12 July 19
Date

McGowan
Judge's Signature

Additional Pages _____

M Schedule A *M*

ENDORSEMENT

1. The Litigation Trustee shall deliver an Amended Statement of Claim by July 19, 2019, which, if the Litigation Trustee continues to advance a conspiracy claim, shall include the following additional particulars in respect of the conspiracy claim:
 - (a) the agreement between or amongst the defendants to conspire, including particulars as to the parties to the agreement, the individuals involved, the terms of the agreement, the mode of the agreement and shall reasonably describe the time or time period and place of the agreement; and
 - (b) the specific overt acts alleged to have been done by each of the alleged conspirators in pursuit and furtherance of the conspiracy, including the individuals involved, the nature of the acts, and shall reasonably describe the time or time period and place of the acts.
2. The defendants, other than SHC, shall deliver the remaining Statements of Defence by July 29, 2019.
3. Any further motion to strike portions of the Litigation Trustee's Amended Statement of Claim or demand further particulars arising from the Litigation Trustee's Amended Statement of Claim shall be raised at a 9:30 before Justice McEwen who will decide whether to schedule to motion or otherwise address it.

M Schedule B M

Court File No. CV-18-00611214-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

SEARS CANADA INC., by its Court-appointed Litigation Trustee, J.
DOUGLAS CUNNINGHAM, Q.C.

Plaintiff

and

ESL INVESTMENTS INC., ESL PARTNERS, LP, SPE I PARTNERS, LP, SPE
MASTER I, LP, ESL INSTITUTIONAL PARTNERS, LP,
EDWARD S. LAMPERT, EPHRAIM J. BIRD, DOUGLAS CAMPBELL,
WILLIAM CROWLEY, WILLIAM HARKER, R. RAJA KHANNA, JAMES
MCBURNEY, DEBORAH ROSATI and DONALD ROSS

Defendants

Court File No. CV-18-00611217-00CL

B E T W E E N:

MORNEAU SHEPELL LTD. in its capacity as administrator of the
Sears Canada Inc. Registered Pension Plan

Plaintiff

and

ESL INVESTMENTS INC., ESL PARTNERS, LP, SPE I PARTNERS, LP,
SPE MASTER I, LP, ESL INSTITUTIONAL PARTNERS, LP,
EDWARD S. LAMPERT, WILLIAM HARKER, WILLIAM CROWLEY, DONALD
CAMPBELL ROSS, EPHRAIM J. BIRD, DEBORAH E. ROSATI,
R. RAJA KHANNA, JAMES MCBURNEY and DOUGLAS CAMPBELL

Defendants

Court File No. CV-18-00611219-00CL

B E T W E E N:

FTI CONSULTING CANADA INC.,
in its capacity as Court-appointed monitor in proceedings
pursuant to the *Companies' Creditors Arrangement Act*, RSC 1985, c. c-36

Plaintiff

and

ESL INVESTMENTS INC., ESL PARTNERS, LP, SPE I PARTNERS, LP, SPE MASTER I, LP, ESL
INSTITUTIONAL PARTNERS, LP, EDWARD S. LAMPERT, WILLIAM R. HARKER
and WILLIAM C. CROWLEY

Defendants

Court File No. CV-19-617792-00CL

B E T W E E N:

1291079 ONTARIO LIMITED

Plaintiff

and

SEARS CANADA INC., SEARS HOLDING CORPORATION, ESL INVESTMENTS
INC., WILLIAM C. CROWLEY, WILLIAM R. HARKER, DONALD CAMPBELL
ROSS, EPHRAIM J. BIRD, DEBORAH E. ROSATI, R. RAJA KHANNA, JAMES
MCBURNEY and DOUGLAS CAMPBELL

Defendants

TRIAL SCHEDULE

PROPOSED TIMETABLE	
Productions (except SHC)	July 2, 2019
Replies by Monitor and Morneau	July 10, 2019
Defences	<p>Non-SHC Parties' Defences to 129 Action and Litigation Trustee Action: within one week of the release of decisions on the motions to strike in the Litigation Trustee Action if the motion is dismissed or one week after the plaintiff's amended statement of claim if the motion is allowed with leave to amend (per the Endorsement of McEwen J., dated May 27, 2019 July 12, 2019)</p> <p>SHC: September 16, 2019</p>
All Remaining Replies¹	September 26, 2019
Productions (SHC)	October 15, 2019
Motions relating to the scope of production	<p>Notices of motion and joint motion record: August 23, 2019</p> <p>Moving parties' factums: August 30, 2019</p> <p>Responding parties' factums: September 6, 2019</p> <p>Hearing of the motions: September 12, 2019</p> <p>If ordered, documents to be produced by: October 15, 2019</p>
Examinations for discovery (to commence)²	November 22, 2019
Examinations for discovery (completed by)	December 16, 2019
Answer all undertakings and provide positions on under advisements and refusals	January 10, 2020
Notices of motion for refusals and answers	January 20, 2020

¹ Any party wishing to move for summary judgment will so move by this date. Such a motion, if brought, will not otherwise impact this schedule. For greater clarity, it is the plaintiffs' position that motions for summary judgment are not appropriate and, in any event, that the commercial list protocol for summary judgment is applicable.

² Parties to confer and agree upon timing, location, procedure, and appropriate representatives for examinations for discovery prior to September 15, 2019.

PROPOSED TIMETABLE	
Moving parties' factums on motions for refusals and answers	January 20, 2020
Responding parties' factums on motions for refusals and answers	January 27, 2020
Hearing of motions for refusals and answers	February 3, 2020
Mediation phase one³	February 4-7 and 10-11, 2020
Further answers	February 14, 2020
Plaintiffs' expert reports	February 21, 2020
Plaintiffs' affidavits (fact witnesses)⁴	February 28, 2020
Defendants' responding expert reports	March 23, 2020
Defendants' affidavits (fact witnesses)	March 30, 2020
Mediation phase two⁵	April 6-7 and 14-16 , 2020
Reply expert reports (if any)	April 22, 2020
Reply affidavits	April 29, 2020
Joint trial	May 19, 2020 – July 10, 2020
Part 2 of class trial	To be set in accordance with the class action litigation plan.

³ Dates to be held by counsel. The length of mediation to be determined in conjunction with the chosen mediator.

⁴ Dates for delivery of fact witness affidavits are without prejudice to any position which may be taken by any party on trial procedure, including whether to have some or all witnesses' examination in chief conducted by way of affidavit. The parties acknowledge having no agreement on the appropriate trial procedure which shall be further discussed and determined by December 20, 2020.

⁵ Dates to be held by counsel. The length of mediation to be determined in conjunction with the chosen mediator.

SEARS CANADA INC., by its Court-appointed Litigation Trustee, J. DOUGLAS CUNNINGHAM, Q.C. Plaintiff	-and-	ESL INVESTMENTS INC. et al. Defendants	Court File No. CV-18-00611214-00CL
FTI CONSULTING CANADA INC., in its capacity as Court- appointed monitor in proceedings pursuant to the <i>Companies'</i> <i>Creditors Arrangement Act</i> , RSC 1985, c. c-36 Plaintiff	-and-	ESL INVESTMENTS INC. et al. Defendants	Court File No. CV-18-00611219-00CL
MORNEAU SHEPELL LTD. in its capacity as administrator of the Sears Canada Inc. Registered Pension Plan Plaintiff	-and-	ESL INVESTMENTS INC. et al. Defendants	Court File No. CV-18-00611217-00CL
1291079 ONTARIO LIMITED Plaintiff	-and-	SEARS CANADA INC. et al. Defendants	Court File No. cv-19-617792-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
TRIAL SCHEDULE

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Lawyers for the ESL Parties

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

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

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Monitor