

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

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

**TWENTY-FIRST REPORT OF FTI CONSULTING CANADA INC., AS MONITOR**

**JULY 20, 2018**

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

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

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

APPLICANTS

**TWENTY FIRST 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;
  - (c) authorized the Sears Canada Entities to enter into the DIP Credit Agreements and access funds available under the facilities provided under these agreements; and
  - (d) scheduled a comeback motion for July 13, 2017 (the “**Comeback Motion**”).
3. Following the Comeback Motion, the Court extended the Stay Period to October 4, 2017. In addition, the following orders were issued:
- (a) the amended and restated Initial Order;
  - (b) 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**”);
  - (c) 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**”);
  - (d) an order authorizing the eventual suspension of special payments under the Sears Canada 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

- (e) an order approving a sale and investor solicitation process (the “**SISP**”) 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, which liquidation process is now completed.
- 5. On October 13, 2017, the Court issued, among other orders, an order (a) approving an agreement and a process (the “**Second Liquidation Process**”) for the liquidation of the inventory and FF&E at all remaining Sears Canada retail locations, which liquidation commenced shortly thereafter and is now completed.
- 6. 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; and (ii) an Omnibus Approval and Vesting Order (the “**Omnibus Approval and Vesting Order**”) authorizing the Applicants to complete sales of residual assets (“**Residual Assets**”) not exceeding \$5 million in any one transaction without seeking further Court approval, and vesting those residual assets in the applicable purchaser free and clear of the claims and encumbrances against those assets.
- 7. The Claims Procedure Order also directed the Monitor to assess in detail, with reasonably sufficient particulars and analysis, the validity and quantum of all intercompany claims, and to serve on the Service List and file with the Court a report detailing the work performed (the “**Intercompany Claims Report**”). The Monitor served the Intercompany Claims Report on the Service List on April 2, 2018 and filed it with the Court.
- 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 and/or any creditors of the Sears Canada Entities may have against any parties.
10. On May 9, 2018, the Court issued an Order approving a process for a mediation among stakeholders with the goal of achieving a potential resolution of significant claim and distribution matters (the “**Mediation**”) as a preliminary step toward a global resolution of material estate matters, potentially through a plan of compromise or arrangement. As discussed further below, the mediation was commenced on June 13-14, 2018 with Regional Senior Justice Morawetz as mediator.
11. The liquidation of assets at Sears Canada’s retail locations is now completed, all retail locations are closed, and leases in respect of such locations have been disclaimed or surrendered back to the landlord. The monetization of Residual Assets is now substantially complete. The major assets of the Sears Canada Entities that remain to be realized upon are the Applicants’ remaining owned real estate assets, as described in paragraph 34 through 46 below .
12. Since the date of the Comeback Motion, the stay period has been extended a number of times and currently expires on July 31, 2018.
13. As discussed in greater detail below, at this time the following is a list of the most significant matters that remain to be resolved in these proceedings:
  - (a) resolution of claims filed pursuant to the Claims Procedure Orders, including certain material litigation claims and landlord claims;
  - (b) resolution of priority disputes and claim issues relating to the wind-up deficiency in the defined benefit component of the Sears Canada Pension Plan;

- (c) negotiation and completion of sale transactions or alternative steps for the remaining real estate owned by Sears Canada;
  - (d) determination of an appropriate path, and a funding plan to advance any litigation that the Litigation Investigator recommends to be pursued for the benefit of the Sears Canada Entities or their creditors;
  - (e) access to the WEPP (as defined below) for former employees of the Sears Canada Entities;
  - (f) resolving outstanding governance issues for Sears Canada that will be the subject of a future motion, as described below; and
  - (g) determination and implementation of an appropriate process to distribute proceeds to creditors of the Sears Canada Entities.
14. In connection with the CCAA Proceedings, the Monitor has provided twenty reports and twelve 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 available on the Monitor’s website at [cfcanada.fticonsulting.com/searscanada/](http://cfcanada.fticonsulting.com/searscanada/) (the “**Monitor's Website**”).

**B. PURPOSE**

15. The purpose of this twenty-first report of the Monitor (the “**Twenty-First Report**”) is to provide the Court with information regarding:
- (a) developments in the CCAA Proceedings since the date of the Monitor’s Eighteenth Report to the Court dated May 7, 2018 (the “**Eighteenth Report**”);
  - (b) the Applicants’ request for an order (the “**Stay Extension Order**”) extending the Stay Period to December 18, 2018 and extending the Application Period set out in the Employee Hardship Fund Term Sheet to December 18, 2018;

- (c) the Applicants' request for an order (the "**NORD Extension Order**") extending 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 and the E&R Claims Procedure Order; and
- (d) the Monitor's comments and recommendations in connection with the foregoing.

### C. TERMS OF REFERENCE

16. In preparing this Twenty-First 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**").
17. Except as otherwise described in this Twenty-First 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 Twenty-First Report in a manner that would comply with the procedures described in the *Chartered Professional Accountants of Canada Handbook*.
18. Future-oriented financial information reported in or relied on in preparing this Twenty-First Report is based on Management's assumptions regarding future events. Actual results will vary from these forecasts and such variations may be material.



19. The Monitor has prepared this Twenty-First Report in connection with the Applicants' motions for the Stay Extension Order and the NORD Extension Order. The Twenty-First Report should not be relied on for any other purpose.
20. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars.
21. 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, Executive Vice-President and Chief Operating Officer of Sears Canada; (iii) the affidavits of Mr. Philip Mohtadi, General Counsel and Corporate Secretary of Sears Canada; and (iv) the Prior Reports.

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

22. A comprehensive update on the status of the CCAA Proceedings was provided in the Seventeenth Report and the Eighteenth Report. Set out below is a summary of material developments since the date of the Seventeenth Report and the Eighteenth Report.

*Claims Process*

23. As noted in the Seventeenth Report, in connection with the Claims Procedure Order, the Monitor has received in excess of 2,000 proofs of claim in amounts totalling not less than \$36 billion<sup>1</sup>. This amount includes a significant number of claims where the claimant has filed multiple claims for the same amount under different claim types (e.g. Pre-Filing, Post-Filing, Restructuring and D&O) or against multiple Sears Canada Entities.
24. The Monitor, in consultation with the Sears Canada Entities, has conducted a review of the vast majority of claims filed and, where appropriate, has issued (or will be issuing

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<sup>1</sup> The amounts noted in this sentence do not include Claims of Employees and Retirees filed, or deemed filed, pursuant to the E&R Claims Procedure Order.

prior to the July 31, 2018 deadline mandated by the Claims Procedure Orders) Notices of Revision or Disallowance in respect of such claims.

25. In reviewing claims, the Monitor has ensured that the level of review was proportionate to the quantum of the claim asserted and the expected recoveries on such claims.
26. To date, the Monitor has received:
  - (a) 36 Notices of Dispute from construction contractors in connection with Construction Claims under the Claims Procedure Order;
  - (b) 14 Notices of Dispute from employees or former employees pursuant to the E&R Claims Procedure Order;
  - (c) 910 requests for correction of information received from employees, former employees and retirees pursuant to the E&R Claims Procedure Order; and
  - (d) 11 Notices of Dispute from other claimants in response to Notices of Revision or Disallowance delivered pursuant to the Claims Procedure Order.
27. In addition, the Monitor, with the assistance of its counsel, has engaged with stakeholders who filed material claims against the Applicants with a view to resolving the valuation of these claims in an efficient and cost-effective manner.
28. To the extent that disputes cannot be resolved in the near term, the Monitor will be referring disputed claims to the Honourable Mr. James Farley, Q.C., one of the two claims officers appointed pursuant to the Claims Procedure Order. The Monitor anticipates that the first disputes would be heard in early September.
29. A claimant receiving a Notice of Revision or Disallowance has 30 days to dispute that determination through a Notice of Dispute of Revision or Disallowance.
30. The Monitor has agreed, in accordance with the Claims Procedure Order, to extend the date for landlords to file Notices of Dispute of Revision or Disallowance to July 31, 2018, regardless of the date on which a Notice of Revision or Disallowance was

delivered to a landlord. This extension was provided as the Monitor and the landlords have been engaged in without prejudice discussions regarding the resolution of certain preliminary claim and proceeds allocation issues.

#### *Construction Lien Matters*

31. As described in the Monitor's Eighteenth Report, the Claims Procedure Order established a specific procedure for the filing of claims of Construction Contractors and Construction Sub-Contractors.
32. To the extent a dispute has arisen in connection with claims of Construction Contractors and Construction Sub-Contractors who registered liens against owned or leased properties that were either sold, surrendered or assigned for cash proceeds to which such liens attached or for which reserves were established, the Monitor, in consultation with Sears Canada, prepared a reconciliation of such claims, and has worked with counsel to the Construction Contractors (on their own behalf and on behalf of their Construction Sub-Contractors) to resolve any disputes regarding that reconciliation.
33. As of the date of this Twenty-First Report, the Monitor has obtained two orders approving the payment of approximately \$3.9 million to Construction Contractors (on their own behalf and on behalf of their Construction Sub-Contractors) in full and final settlement of 23 secured claims of Construction Contractors (as well as the claims of their Construction Sub-Contractors). The process of reconciling and resolving further secured claims is ongoing and additional requests for approval of payments of secured claims will be brought forward as these matters are reconciled and resolved.

#### *Real Estate Sale Process*

34. At the time of the Monitor's Seventeenth Report, Sears Canada continued to own the following real estate assets:
  - (a) Upper Canada Mall full-line store (Newmarket, ON);
  - (b) Distribution center (Belleville, ON);

- (c) Fleur de Lys full-line store (Quebec City, QC);
  - (d) Windsor full-line store (Windsor, ON);
  - (e) Peterborough full-line store (Peterborough, ON);
  - (f) Barrie full-line store (Barrie, ON);
  - (g) Trois-Rivières full-line store (Trois-Rivières, QC);
  - (h) Place Vertu liquidation store (Montréal, QC);
  - (i) Lévis full-line store (Lévis, QC);
  - (j) Charlottetown store (Charlottetown, PEI);
  - (k) Chicoutimi residual land (Chicoutimi, QC);
  - (l) Edmonton residual land (Edmonton, AB); and
  - (m) Sainte-Agathe-des-Monts residual land (Sainte-Agathe-des-Monts, QC),
- (collectively, the “**Remaining Real Estate Assets**”).

35. On February 7, 2018, BMO delivered an updated sale process letter (the “**Updated Sale Process Letter**”) soliciting bids for all of the Remaining Real Estate Assets other than the assets located in Charlottetown, Edmonton, Chicoutimi and Sainte-Agathe-des-Monts (which properties are listed by CBRE Limited and are discussed below). The Updated Sale Process Letter provided a bid deadline of March 7, 2018 at 5:00 p.m. (Eastern).
36. On March 7, 2018, BMO and the Monitor received a number of competing offers on the Remaining Real Estate Assets that were the subject of the Updated Sale Process Letter. BMO and the Sears Canada Entities have engaged in negotiations with potential purchasers in respect of those assets. Following consultation with the Monitor and the Owned Real Estate Consultation Parties and the negotiation of final purchase agreements, the Sears Canada Entities returned to court for approval of transactions for the sale of:

- (a) Fleur de Lys full-line store (Quebec City, QC);
  - (b) Trois-Rivières full-line store (Trois-Rivières, QC);
  - (c) Place Vertu liquidation store (Montréal, QC); and
  - (d) Lévis full-line store (Lévis, QC).
37. The sales of these assets have now been approved by the Court and were completed during June and July.
38. As also described in the Seventeenth Report of the Monitor, a separate sale process has been commenced for the real property located in Charlottetown, Edmonton, Chicoutimi and Sainte-Agathe-des-Monts. These locations are being marketed under an Exclusive Sales Listing Agreement with CBRE Limited pursuant to which CBRE Limited acts as sale advisor. The Monitor remains optimistic that transactions for these real estate assets will be completed in the near term, subject to court approval where required.
39. On June 13, 2018, Sears Canada entered into an agreement of purchase and sale with 1979353 Ontario Inc. (the “**Newmarket Sale**”) for the Upper Canada Mall full-line store in Newmarket, Ontario (the “**Newmarket Store**”). On June 14, 2018, the Monitor received from 1979353 Ontario Inc. the required deposit in respect of the Newmarket Sale.
40. Oxford Properties Retail Holdings II Inc. and CPPIB Upper Canada Mall Inc. (the “**Mall Owners**”) held a right of first refusal and an option to purchase in relation to the Newmarket Store. The right of first refusal could be exercised up to June 29, 2018. The option to purchase could be exercised up to July 24, 2018.
41. The Newmarket Sale was conditional upon: (i) the right of first refusal having validly expired or having been waived; and (ii) the Mall Owner not having given notice of the exercise of the option to purchase.
42. The Mall Owners advised on June 29, 2018 that they were exercising the option to purchase.

43. The terms of the option to purchase provide that the exercise price for the option is based upon a specific definition of current value of the property less set-offs for amounts owing by Sears Canada to the Mall Owners.
44. The option agreement provides that following exercise of the option to purchase, the current value of the property is to be determined by:
  - (a) agreement among the parties within seven days;
  - (b) if no agreement is reached, appraisals by an appraiser for each of Sears Canada and the Mall Owner, separately.
  - (c) if the foregoing appraisals are not within a 5% value range, arbitration.
45. Following exercise of the option to purchase, Sears Canada and the Mall Owners were unable to agree on the current value of the Newmarket Store and therefore are now engaged in an appraisal process as contemplated under the option to purchase.
46. Under the option to purchase, once the current value has been determined, a secondary issue of purchase price adjustments must be considered. The option agreement states, in part, as follows: “At the Closing, the purchase price shall be subject to the adjustments as described in Section 13(b) hereof and all amounts due by Sears to the co-owners or by the co-owners to Sears in respect of Upper Canada Mall and the Sears Lands shall be settled and set-off or paid in full.” The proposed adjustments described in this paragraph have the effect of reducing the cash purchase price for this asset by allowing the proposed purchaser to effectively recover amounts owing to it by creating a set off through the purchase transaction. The Monitor has concerns about the exercise of set-off in this manner in the context of an insolvency proceeding and further direction from the court may be required in this regard.

#### *Employee Matters*

47. As of the date of this Twenty-First Report, the Applicants have 29 remaining employees including 19 employees at Sears Canada’s current headquarter offices in Toronto, and 10 employees located at, or overseeing, the Remaining Real Estate Assets.

48. The Monitor, with the assistance of the remaining Sears Canada senior management, regularly reviews staffing requirements and expects that the number of employees will continue to decrease as claims are resolved and real estate assets sold. The Monitor is working with senior management to determine those employees whose services will be needed for the longer term and an appropriate employment and remuneration structure for those individuals.
49. To date, the Monitor has received 79 applications for assistance from the Employee Hardship Fund, of which 58 have been approved. So far, approximately \$131,875.00 has been paid out of the Employee Hardship Fund. The time period for applications to the Employee Hardship Fund currently expires on July 31, 2018. The Monitor believes the application period for the Employee Hardship Fund should be extended in a manner consistent with the proposed extension of the Stay Period.
50. The Monitor, the Sears Canada Entities and Employee Representative Counsel continue discussions with representatives of the Federal Government in connection with the timing and availability of the *Wage Earning Protection Program* (“**WEPP**”) to the former employees of the Sears Canada Entities who qualify for the assistance provided under that program. The Monitor, the Sears Canada Entities and Employee Representative Counsel are working together to ensure that qualifying employees receive the most favourable treatment available to them under the WEPP in the circumstances as a result of potential increases in the maximum amount available to qualifying employees under the WEPP that may be implemented in the near future.

#### *Directors and Governance*

51. On July 13, 2018, Employee Representative Counsel served a motion (the “**ERC Director Motion**”) seeking an order removing the directors of Sears Canada and expanding the powers of the Monitor to oversee the remaining operations, management and wind-down of the Sears Canada Entities.
52. This Motion is scheduled to be heard on August 27, 2018 and a schedule has been agreed upon for delivery of materials and examinations.

53. The Monitor will serve a separate report in connection with that Motion closer to the date of the hearing.
54. At this time, the Monitor understands the Motion is expected to be opposed.

#### *Litigation Matters*

55. 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.
56. The Monitor understands a number of meetings of the Creditors' Committee (as defined in the Litigation Investigator Order) and the Litigation Investigator have occurred. Discussions at those meetings are the subject of confidentiality obligations of all parties in attendance.
57. The Monitor continues to consider appropriate next steps in connection with litigation matters. The Monitor believes any such next steps should be coordinated with the Litigation Investigator following a final determination of the potential rights and claims of the Sears Canada Entities or any creditors of the Sears Canada Entities that should be pursued. The Monitor understands these matters remain under consideration by the Litigation Investigator and the Creditors' Committee appointed pursuant to the Litigation Investigator Order.

#### *Mediation Process*

58. As described in the Eighteenth Report, during the week of March 26, 2018, the Monitor and the Sears Canada Entities met with counsel representing clients with significant claims in the estate including landlords, Employee Representative Counsel, Pension Representative Counsel, the Superintendent, the Plan Administrator, the Hometown Dealers, and their respective advisors to discuss ways to bring about a timely and efficient conclusion to these CCAA Proceedings. During the course of these discussions, it became clear that there was support for considering the potential resolution of



significant estate matters in the context of the Mediation, and completion of the distributions to the creditors of the Sears Canada Entities through a possible plan of compromise or arrangement pursuant to the CCAA.

59. The goal of the Mediation is to achieve consensus on preliminary proceeds allocation issues necessary to allow the Sears Canada Entities, in consultation with the Monitor, to pursue a proposed CCAA plan for the purpose of dividing and distributing estate proceeds as efficiently and quickly as possible.
60. The Monitor expects recoveries from the sales of the Sears Canada assets will be very low relative to the claims filed against Sears Canada. Accordingly, an efficient and expedited distribution process is in the best interests of all stakeholders.
61. The Mediation process was approved by the Court on May 9, 2018.
62. The Mediation commenced on June 13, 2018 and June 14, 2018. The Mediation process has not been terminated at this time and discussions among stakeholders regarding the subject matter of the Mediation are ongoing.
63. Absent an outcome that allows a proposed CCAA plan to proceed quickly and without material objection, the Monitor believes the Applicants will need to move to an expedited alternative process, such as bankruptcy, to salvage remaining recoveries for creditors. However, the Monitor does not believe such steps are necessary at this stage as, in the Monitor's view, dialogue is continuing among stakeholders in a constructive manner and the Monitor believes a reasonable opportunity for an agreed upon resolution remains at this time. The Monitor's view may change if the matters that are the subject of the Mediation are not resolved in the very near term.
64. The Monitor notes that the communications at the Mediation remain confidential.

#### *Sears Canada Trademark License*

65. Sears Canada and Sears Holdings Corp. (as successor to Sears, Roebuck and Co.) ("**Sears US**") are parties to a trademark license agreement dated January 26, 1987 (as amended from time to time, the "**TM License Agreement**"). A copy of the TM License

Agreement and amendments was attached as Exhibit “B” to the Affidavit of Billy Wong, sworn June 22, 2017.

66. The TM License Agreement provided Sears Canada an exclusive royalty free right to use various trademarks owned by Sears US in Canada in relation to goods and services in the field of merchandising.
67. The license is personal to Sears Canada and shall not be assigned, transferred, conveyed or pledged by Sears Canada.
68. The TM License Agreement states that in the event Sears Canada does not make bona fide use of any licensed trade mark, Sears US may terminate the license with respect to such licensed trade mark.
69. As noted earlier in this report, the retail operations of Sears Canada have been terminated. Therefore, the trademarks licensed under the TM License Agreement are no longer used for merchandising purposes in Canada.
70. Sears US has proposed a consensual termination of the TM License Agreement, subject only to Sears Canada’s right to continued use of the licensed trademarks for specified corporate purposes and in connection with these or any other insolvency proceedings of the Sears Canada Entities.
71. Sears Canada, in consultation with the Monitor, has determined that it no longer has a need to use the trademarks licensed under the TM License Agreement. The Monitor, in consultation with Sears Canada, has engaged with Sears US on the terms of a consensual termination of the TM License Agreement. The Monitor does not believe that the termination of the TM License Agreement will affect any claims that may exist against Sears US, including in connection with the Transactions of Interest previously reported upon. Such claims and rights are expressly preserved in the proposed form of termination agreement between Sears Canada and Sears US. Subject to entry into the proposed form of termination agreement, the Monitor has no objection to the termination of the TM License Agreement. The Monitor understands that Sears US and Sears

Canada intend to enter into that termination agreement 20 days following the date of this Twenty-First Report.

*Other Activities of the Monitor*

72. The Monitor's principal activities since the Eighteenth Report, in addition to the items noted above, included the following:
- (a) monitored the Sears Canada Entities' receipts and disbursements;
  - (b) maintained the current 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 Assets, including engaging with BMO, CBRE and stakeholders regarding same;
  - (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) attended board meetings and teleconferences;
  - (h) planned and worked with the Sears Canada Entities to facilitate an orderly wind-down of their operations;
  - (i) responded to requests by former employees for financial assistance under the Employee Hardship Fund;
  - (j) continued to operate and monitor its telephone hotline and email account for stakeholder inquiries and to respond to such inquiries;

- (k) continued its extensive work in connection with the claims processes contemplated pursuant to the Claims Procedure Orders;
- (l) worked with senior management to determine appropriate and efficient current and future staffing levels;
- (m) responded to information requests by stakeholders and their advisors;
- (n) responded to requests for information directed to the Monitor by counsel to the Mall Owners and worked with Sears Canada management and counsel to address information requests directed to the Company by counsel to the Mall Owners in connection with the Newmarket Sale; and
- (o) participated in multiple court attendances and prepared responding materials in connection with a motion by the Mall Owners regarding the Newmarket Sale that was subsequently withdrawn.

**E. RECEIPTS AND DISBURSEMENTS FOR THE ELEVEN-WEEK PERIOD ENDING JULY 14, 2018**

73. The Sears Canada Entities' actual net cash inflow on a consolidated basis for the eleven-week period ended July 14, 2018 was approximately \$8.5 million, compared to a forecast net cash outflow of \$21.1 million presented in the Monitor's Eighteenth Report dated May 7, 2018, resulting in a positive variance of approximately \$29.6 million as indicated in the table below:

<b>VARIANCE REPORT</b>		<b>Actual</b>	<b>Forecast</b>	<b>Variance</b>
(CAD in Millions)		<b>For the 11 Week Period Ending July 14, 2018</b>		
<b>Receipts</b>		<b>20.0</b>	-	<b>20.0</b>
<b>Operating Disbursements</b>				
Payroll and Employee Related Costs		(1.9)	(1.8)	(0.1)
Merchandise Vendors		0.9	-	0.9
Non-Merchandise Vendors		(1.3)	(3.9)	2.6
Rent and Property Taxes		(5.1)	(1.1)	(4.0)
Sales Taxes		3.8	-	3.8
IT Costs		(1.7)	(4.5)	2.8
<b>Total Operating Disbursements</b>		<b>(5.3)</b>	<b>(11.3)</b>	<b>6.0</b>
<b>Net Operating Cash Inflows / (Outflows)</b>		<b>14.7</b>	<b>(11.3)</b>	<b>26.0</b>
Professional Fees		(6.2)	(9.8)	3.6
<b>Net Cash Inflows / (Outflows)</b>		<b>8.5</b>	<b>(21.1)</b>	<b>29.6</b>
<b>Cash</b>				
Beginning Balance		126.2	126.2	-
Net Cash Inflows / (Outflows)		8.5	(21.1)	29.6
<b>Ending Balance</b>		<b>134.7</b>	<b>105.1</b>	<b>29.6</b>

74. Explanations for the key variances are as follows:

- (a) the positive variance in Receipts of \$20.0 million consists of:
  - (i) a positive permanent difference of \$21.8 million primarily related to proceeds from the sale of owned real property which were not included in the forecast due to uncertainty around the timing and amount of these sale proceeds; and
  - (ii) a negative permanent difference of \$1.8 million associated with break fees paid and funds transferred in trust that may need to be paid to would-be purchasers in respect of two owned real property sale transactions where a right of first refusal or option pursuant to an underlying operating or other agreement with Sears Canada Inc. has been exercised;

- (b) the positive variance in Merchandise Vendor disbursements of \$0.9 million consists of a permanent difference due to refunds and collections received from vendors which were not included in the forecast due to uncertainty of the amounts and timing of these refunds;
- (c) the positive variance in Non-Merchandise Vendor disbursements of \$2.6 million is a permanent difference due to a combination of refunds received from vendors and lower-than-forecast non-merchandise payments;
- (d) the negative variance in Rent and Property Taxes of \$4.0 million consists of a negative permanent difference of \$3.4 million primarily due to the payment of post-filing rent and property tax obligations that were identified as part of the post-filing claims reconciliation not included in the forecast and the payment of post-filing rent to certain landlords that was not included in the forecast based on the assumption that proceeds from the letters of credit drawn by the landlords would be applied against all post-filing obligations, including rent amounts. There is also a negative timing difference of \$0.6 million between actual and forecast property tax payment schedules which is expected to reverse in future forecast periods;
- (e) the positive variance in Sales Taxes of \$3.8 million is a permanent variance consisting primarily of sales tax refunds received that were not included in the forecast due to uncertainty of the amounts and timing of these refunds;
- (f) the positive variance in IT Costs of \$2.8 million consists of a permanent difference of \$2.4 million due to lower-than-forecast post-filing IT payments based on earlier than forecast disclaimer of contracts and reconciliation of the claim amounts, and a timing difference of \$0.4 million that is expected to reverse in future forecast periods; and
- (g) the positive variance in Professional Fees of \$3.6 million is primarily a timing difference that is expected to reverse in future forecast periods as outstanding

invoices are paid. The Monitor has and will continue to request that all professional firms submit invoices on a regular and frequent basis.

75. The Sears Canada Group's cumulative receipts and disbursements since the commencement of the CCAA proceedings through the week ended July 14, 2018 are reflected in the table below:

<b>CUMULATIVE RECEIPTS AND DISBURSEMENTS</b>	
(CAD in Millions)	
<b>For the 56 Week Period Ending July 14, 2018</b>	
<b>Receipts</b>	<b>1,267.0</b>
<b>Operating Disbursements</b>	
Payroll and Employee Related Costs	(265.3)
Merchandise Vendors	(291.0)
Non-Merchandise Vendors	(176.4)
Rent and Property Taxes	(90.0)
Sales Taxes	(67.9)
Pension	(14.7)
IT Costs	(27.2)
Recovery of Expenses from Agent	83.6
Capital Expenditures	(0.8)
<b>Total Operating Disbursements</b>	<b>(849.7)</b>
<b>Net Operating Cash Inflows / (Outflows)</b>	<b>417.3</b>
Professional Fees	(71.2)
Repayments of Existing Credit Facilities	(283.3)
DIP Fees and Interest Paid	(19.7)
<b>Net Cash Inflows / (Outflows)</b>	<b>43.1</b>
<b>Cash</b>	
Beginning Balance	126.5
Net Cash Inflows / (Outflows)	43.1
DIP Draws / (Repayments)	(32.0)
Others incl. FX Valuation	(2.9)
<b>Ending Balance</b>	<b>134.7</b>

76. The Initial Order allowed the Sears Canada Group to continue to use their existing Cash Management System as described in the First Wong Affidavit and the pre-filing report of the Monitor. After the commencement of the CCAA Proceedings, the Sears Canada

Group has continued to use its Cash Management System in a manner consistent with past practice.

**F. REVISED CASH FLOW FORECAST FOR THE PERIOD ENDING DECEMBER 22, 2018**

77. A revised cash flow forecast for the period until December 22, 2018 has been prepared and is attached to hereto as **Appendix “A”** (the “**Revised Cash Flow Forecast**”).
78. Pursuant to section 23(1)(b) of the CCAA<sup>2</sup> 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 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 provided by Management 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 Twenty-First 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;

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<sup>2</sup> 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.



- (ii) the Probable Assumptions are not suitably supported or consistent with the plans of the Sears Canada Entities or do not provide a reasonable basis for the Revised Cash Flow Forecast, given the Hypothetical Assumptions; or
  - (iii) the Revised Cash Flow Forecast does not reflect the Probable and Hypothetical Assumptions; and
- (d) since the Revised Cash Flow Forecast is based on assumptions regarding future events, actual results will vary from the forecast even if the Hypothetical Assumptions occur. Those variations may be material. Accordingly, the Monitor expresses no assurance as to whether the Revised Cash Flow Forecast will be achieved. The Monitor also expresses no opinion or other form of assurance with respect to the accuracy of any financial information presented in this Twenty-First Report, or relied upon by the Monitor in preparing this Twenty-First Report.

79. 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, which may occur if the Mediation process fails to achieve an agreed upon resolution within an acceptable time period, 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.

80. The Monitor notes that the Revised Cash Flow Forecast also includes forecasted professional fees in connection with potential claims relating to the Transactions of Interest.

81. The Revised Cash Flow Forecast also assumes fees relating to the board of directors, legal counsel to the board of directors, Employee Representative Counsel, Pension Representative Counsel and their respective financial advisors remain consistent with prior periods. However, this assumption may cease to be valid as these proceedings continue to progress, including following the hearing of the ERC Director Motion.

82. 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.
83. 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.
84. The Revised Cash Flow Forecast shows total net operating cash inflows of approximately \$0.6 million, before professional fees of approximately \$12.9 million, such that net cash outflows for the period are forecasted to be \$12.3 million, excluding any proceeds that may be generated from additional sales of owned real estate assets.
85. The professional fee forecast has been prepared based on fee estimates provided by each of the professional firms included therein. The total forecast professional fee disbursements of \$12.9 million include approximately \$3.6 million of accrued but unpaid fees as described in Paragraph 74(g) of this report and forecast fees of \$9.3 million to the end of the forecast period.

**G. STAY EXTENSION**

86. The Stay Period currently expires on July 31, 2018.
87. The Applicants are requesting an extension of the Stay Period to December 18, 2018. The Monitor believes the requested extension of the Stay Period is reasonable in the circumstances as it is consistent with the Monitor's view of the likely time period necessary to achieve an agreed resolution of all material issues in the proceeding and to file a plan of compromise or arrangement of the Applicants. Further, the proposed longer extension of the Stay Period limits court attendances and costs associated with further extensions that would otherwise be necessary in the interim.
88. During the proposed extended Stay Period, the Monitor will continue to facilitate discussions among stakeholders on a resolution for these proceedings, continue to resolve claims that have been filed in the claims processes, and continue to oversee steps to monetize Sears Canada's remaining owned real property. For all of these

purposes, the continued stability of the stay of proceedings granted in the Initial Order is required.

89. The Monitor believes it will be appropriate to re-evaluate progress toward a global resolution and report to the court on that progress before the completion of the proposed extension of the Stay Period. The Monitor intends to do so not later than September 28, 2018. Following that reporting, stakeholders and the Monitor will be able to determine whether the proposed global resolution remains viable or if an alternative approach, such as a bankruptcy process should be pursued.
90. The Sears Canada Entities no longer have any operations and currently hold cash balances of approximately \$135 million.
91. The Revised Cash Flow Forecast demonstrates that, subject to the underlying assumptions, the Applicants will have sufficient liquidity to fund these proceedings during the proposed extension of the Stay Period.
92. The Monitor believes that the Applicants have acted and continue to act in good faith and with due diligence and that circumstances exist that make an extension of the Stay Period appropriate.

#### **H. NORD EXTENSION ORDER**

93. Pursuant to the Claims Procedure Order and the E&R Claims Procedure Order, 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 disallowed of such revision or disallowance 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.<sup>3</sup>
94. The Monitor notes that a large proportion of the D&O Claims (as defined in the E&R Claims Procedure Order and the Claims Procedure Order) filed relate to contingent

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<sup>3</sup> The application for such extension was contemplated by the Claims Procedure Order to be made by the Monitor. However, for efficiency in the current case this application has been made by the Applicants as part of their motion to extend the Stay Period.


litigation matters and that corresponding indemnity claims filed by Directors and Officers (as defined in the E&R Claims Procedure Order and the Claims Procedure Order) against the Sears Canada Entities similarly relate to contingent litigation outcomes. As a result, the Monitor is not able to assess the validity of these claims or deliver Notices of Revision or Disallowance in respect of these contingent claims at this time.

95. Based upon the foregoing, the Monitor believes an extension of the period to deliver Notices of Revision or Disallowance in connection with any D&O Claims or indemnity claims filed by Directors or Officers is appropriate. The Monitor proposes an extension to October 1, 2018, at which point the Monitor expects to have more information about the contingent matters that are the subject of many of the D&O Claims and Director or Officer indemnity claims.
96. No stakeholder is prejudiced by the proposed extension as (i) the extension will assist in allowing the Monitor time to consider these claims and to deliver a Notice of Revision or Disallowance, if required, to each applicable claimant; 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.

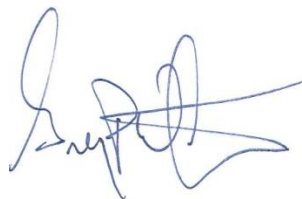
The Monitor respectfully submits to the Court this, its Twenty-First Report.

Dated this 20th day of July, 2018.

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



Paul Bishop  
Senior Managing Director



Greg Watson  
Senior Managing Director

## Appendix “A”

**Sears Canada Group**

**CCAA Cash Flow Forecast**

(CAD in thousands)

Week Ending (Saturday)	21-Jul-18	28-Jul-18	4-Aug-18	11-Aug-18	18-Aug-18	25-Aug-18	1-Sep-18	8-Sep-18	15-Sep-18	22-Sep-18	29-Sep-18	6-Oct-18	13-Oct-18	20-Oct-18	27-Oct-18	3-Nov-18	10-Nov-18	17-Nov-18	24-Nov-18	1-Dec-18	8-Dec-18	15-Dec-18	22-Dec-18	Total	
<b>Total Receipts<sup>(2)</sup></b>	9,194	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	9,194	
<b>Operating Disbursements</b>																									
Payroll and Employee Related Costs <sup>(1)</sup>	-	(388)	-	(12)	-	(935)	-	(12)	-	(12)	(218)	(12)	-	(12)	(218)	(12)	-	(12)	(218)	(12)	-	(12)	(218)	(218)	(2,302)
Owned Real Property - Carrying Costs / Non-Merchandise Vendors <sup>(4)</sup>	(282)	(357)	(181)	(181)	(181)	(181)	(221)	(146)	(146)	(146)	(221)	(165)	(165)	(165)	(240)	(152)	(152)	(152)	(152)	(237)	(162)	(162)	(162)	(162)	(4,306)
Rent and Property Taxes <sup>(5)</sup>	(179)	-	(41)	-	(41)	-	(157)	-	(41)	(137)	(160)	(402)	-	(41)	(42)	(41)	(0)	(179)	-	(115)	-	(41)	-	-	(1,618)
IT Costs <sup>(6)</sup>	-	-	(384)	-	-	-	-	(4)	-	-	-	(4)	-	-	-	(4)	-	-	-	-	-	(4)	-	-	(400)
<b>Total Operating Disbursements</b>	<b>(461)</b>	<b>(745)</b>	<b>(607)</b>	<b>(193)</b>	<b>(222)</b>	<b>(1,116)</b>	<b>(378)</b>	<b>(162)</b>	<b>(187)</b>	<b>(295)</b>	<b>(599)</b>	<b>(583)</b>	<b>(165)</b>	<b>(218)</b>	<b>(500)</b>	<b>(209)</b>	<b>(152)</b>	<b>(343)</b>	<b>(370)</b>	<b>(363)</b>	<b>(166)</b>	<b>(215)</b>	<b>(379)</b>	<b>(8,627)</b>	
<b>Net Operating Cash Inflows / (Outflows)</b>	<b>8,734</b>	<b>(745)</b>	<b>(607)</b>	<b>(193)</b>	<b>(222)</b>	<b>(1,116)</b>	<b>(378)</b>	<b>(162)</b>	<b>(187)</b>	<b>(295)</b>	<b>(599)</b>	<b>(583)</b>	<b>(165)</b>	<b>(218)</b>	<b>(500)</b>	<b>(209)</b>	<b>(152)</b>	<b>(343)</b>	<b>(370)</b>	<b>(363)</b>	<b>(166)</b>	<b>(215)</b>	<b>(379)</b>	<b>567</b>	
Professional Fees <sup>(7)</sup>	(3,602)	(932)	(398)	(398)	(398)	(1,006)	(327)	(327)	(327)	(327)	(1,047)	(275)	(275)	(275)	(770)	(226)	(226)	(226)	(720)	(202)	(202)	(202)	(202)	(202)	(12,892)
<b>Net Cash Inflows / (Outflows)</b>	<b>5,132</b>	<b>(1,677)</b>	<b>(1,005)</b>	<b>(592)</b>	<b>(621)</b>	<b>(2,122)</b>	<b>(704)</b>	<b>(488)</b>	<b>(514)</b>	<b>(622)</b>	<b>(1,646)</b>	<b>(858)</b>	<b>(440)</b>	<b>(493)</b>	<b>(1,270)</b>	<b>(435)</b>	<b>(378)</b>	<b>(569)</b>	<b>(1,090)</b>	<b>(566)</b>	<b>(368)</b>	<b>(417)</b>	<b>(582)</b>	<b>(12,324)</b>	
<b>Cash</b>																									
Beginning Balance	134,670	139,802	138,125	137,120	136,528	135,908	133,785	133,081	132,593	132,079	131,457	129,812	128,953	128,513	128,020	126,750	126,315	125,936	125,368	124,278	123,712	123,344	122,927	122,927	134,670
Net Cash Inflows / (Outflows)	5,132	(1,677)	(1,005)	(592)	(621)	(2,122)	(704)	(488)	(514)	(622)	(1,646)	(858)	(440)	(493)	(1,270)	(435)	(378)	(569)	(1,090)	(566)	(368)	(417)	(582)	(582)	(12,324)
<b>Ending Cash Balance</b>	<b>139,802</b>	<b>138,125</b>	<b>137,120</b>	<b>136,528</b>	<b>135,908</b>	<b>133,785</b>	<b>133,081</b>	<b>132,593</b>	<b>132,079</b>	<b>131,457</b>	<b>129,812</b>	<b>128,953</b>	<b>128,513</b>	<b>128,020</b>	<b>126,750</b>	<b>126,315</b>	<b>125,936</b>	<b>125,368</b>	<b>124,278</b>	<b>123,712</b>	<b>123,344</b>	<b>122,927</b>	<b>122,346</b>	<b>122,346</b>	

**Notes:**

- [1] The purpose of this cash flow forecast is to estimate the liquidity requirements of the Sears Canada Group during the forecast period.
- [2] Forecast Total Receipts reflect the return of funds relating to cash collateralized letters of credit that were held by the DIP lender until expiry of all letters of credit. The forecast does not include the proceeds from the sale of any owned real estate properties.
- [3] Forecast Payroll and Employee Related Costs are based on recent payroll amounts and reflect future forecasted headcount reductions.
- [4] Forecast Owned Real Property - Carrying Costs / Non-Merchandise Vendor disbursements include all operating costs associated with the owned properties excluding common area maintenance and property taxes.
- [5] Forecast Rent and Property Taxes includes lease, common-area maintenance, and property tax payments in respect of leased and owned real property.
- [6] Forecast IT Costs reflect disbursements made to certain IT-related vendors based on existing terms and conditions of the contract.
- [7] Forecast Professional Fees include legal and financial advisor fees associated with the CCAA proceedings. The fee forecasts have been provided by the professional firms as reflected below.

Professional Firm	Outstanding		Forecast		Total Fees
	Fees	Fees	Fees	Fees	
Legal Counsel to Applicants	1,256	940	-	-	2,196
Investment Bank	-	200	-	-	200
Legal Counsel to Directors	118	125	-	-	243
Financial Advisor to Directors	2	13	-	-	15
Monitor	382	2,700	-	-	3,082
Legal Counsel to Monitor	1,135	1,994	-	-	3,128
Counsel to the Retiree Group	394	1,200	-	-	1,594
Counsel to Active Employee Group	314	600	-	-	914
Litigation Investigator	-	250	-	-	250
Claims Officer	-	200	-	-	200
Subtotal	3,602	8,221	-	-	11,823
Sales Tax	-	1,069	-	-	1,069
<b>Total Professional Fee Disbursements</b>	<b>3,602</b>	<b>9,290</b>	<b>-</b>	<b>-</b>	<b>12,892</b>

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., *et al.*

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at TORONTO

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

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