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

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

# TWENTY-SIXTH REPORT OF FTI CONSULTING CANADA INC., AS MONITOR

**OCTOBER 11, 2018**

## Contents

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

***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-SIXTH 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**". A copy of

the Initial Order is attached as **Appendix "A"** to this twenty-sixth report of the Monitor (the "**Twenty Sixth Report**").

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**"), including a stay of the exercise of certain rights by third parties who have agreements with owners, operators, managers or landlords of commercial shopping centres or other commercial properties in which there was located a store, office or warehouse owned or operated by the Applicants; and

   (c) scheduled a comeback motion for July 13, 2017 (the "**Comeback Motion**").

3. The Stay Period has been extended a number of times. Most recently, the Stay Period was extended until December 18, 2018 by an order granted by the Honourable Mr. Justice Hainey on July 24, 2018.

4. Following the Comeback Motion, the Court extended the Stay Period. Among other things, 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 was also issued.

5. On July 13, 2017, the Court appointed Ursel Phillips Fellows Hopkinson LLP, in its capacity as representative counsel (the "**Employee Representative Counsel**") to represent the interests of the approximately 22,000 active and former Employees pursuant to an employee representative counsel order (the "**Employee Representative Counsel Order**").

6. 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 complete.

7. 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 complete.

8. 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 non-employment and pension-related creditors against the Sears Canada Entities and their Officers and Directors.

9. The liquidation of assets at Sears Canada's retail locations is now complete, all retail locations are closed, and leases in respect of such locations have been disclaimed or surrendered back to the landlord. The major assets of the Sears Canada Entities that remain to be realized upon are the Applicants' remaining owned real estate assets.

10. In connection with the CCAA Proceedings, the Monitor has provided twenty-five reports and sixteen 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/ (the "**Monitor's Website**").

## B. PURPOSE

11. The purpose of this Twenty-Sixth Report is to provide the Court with information regarding:

    (a) a motion (the "**TCP Lift Stay Motion**") by The Children's Place (Canada), LP ("**TCP**") and a motion (the "**GAP Lift Stay Motion**" and together with the TCP Lift Stay Motion, the "**Co-Tenancy Lift Stay Motions**") by GAP (Canada) Inc. and Old Navy (Canada), Inc. (together, "**GAP**") for orders, among other things:

(i) declaring that the stay of proceedings (the "**Co-Tenancy Stay**") provided in paragraph 15 of the Initial Order, and as extended by subsequent orders made in these CCAA Proceedings, is no longer of any force or effect in accordance with its terms as against TCP and GAP respectively, and as a result, TCP and GAP, as co-tenants of the Applicants in a number of commercial shopping centres and commercial properties (the "**Co-Tenants**"), are entitled to exercise any rights that they may have against their landlords arising from failure of any of the Applicants to operate in such commercial shopping centres or other commercial properties (collectively, the "**Co-Tenancy Rights**");

(ii) in the alternative to the above, permanently vacating and/or lifting the Co-Tenancy Stay as against the Co-Tenants;

(iii) declaring that the Co-Tenancy Stay did not suspend or otherwise delay the running of any waiting period with respect to the exercise of Co-Tenancy Rights; and

(iv) the costs of the Co-Tenancy Lift Stay Motions, if opposed;

(b) further developments in connection with the Moving Landlords' Motion since the service of the First Supplement to the Twenty-Fifth Report on September 19, 2018 (the "**First Supplement**") and the adjournment of that motion on September 20, 2018 to October 16, 2018; and

(c) an update regarding Employee Representative Counsel's upcoming motion (the "**ERC Receivership Motion**") for the appointment of a receiver over limited property of certain Applicants, in order to allow former employees of those Applicants access to funds available to them pursuant to the Wage Earner Protection Program (the "**WEPP**").

## C. TERMS OF REFERENCE

12. In preparing this Twenty-Sixth Report, the Monitor has relied upon discussions and correspondence with, among others, the senior management ("**Management**") of, and advisors to, the Sears Canada Entities (collectively, the "**Information**").

13. The Monitor has prepared this Twenty-Sixth Report in connection with the Co-Tenancy Lift Stay Motions, the Moving Landlords' Motion and the ERC Receivership Motion. The Twenty-Sixth Report should not be relied on for any other purpose.

14. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars.

15. Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Prior Reports filed as part of the CCAA Proceedings, the Claims Procedure Order and the Employee Representative Counsel Order.

## D. DISCUSSION REGARDING CO-TENANCY LIFT STAY MOTIONS

16. At the commencement of the CCAA Proceedings, the Applicants operated 148 owned and leased stores, distribution centres and warehouses including leases or similar arrangements with over 130 landlords.

17. Paragraph 15 of the Initial Order reads as follows:

> 15. THIS COURT ORDERS that during the Stay Period, no Person having any agreements or arrangements with the owners, operators, managers or landlords of commercial shopping centres or other commercial properties (including retail, office and industrial (warehouse) properties) in which there is located a store, office or warehouse owned or operated by the Sears Canada Entities shall take any Proceedings or exercise any rights or remedies under such agreements or arrangements that may arise upon and/or as a result of the making of this Order, the insolvency of, or declarations of insolvency by, any or all of the Sears Canada Entities, or as a result of any steps taken by the Sears Canada Entities pursuant to this Order and, without limiting the generality of the foregoing, no Person shall terminate, accelerate, suspend, modify, determine or cancel any such arrangement or agreement or be entitled to exercise any rights or remedies in connection therewith.

18. On a plain reading, paragraph 15 of the Initial Order, only stays Co-Tenancy Rights in a commercial shopping centre or other commercial property so long as the Applicants own or operate a store, office or warehouse at the applicable location.

19. All stores or warehouses in any commercial shopping centre or other commercial property owned or operated by the Applicants have been closed permanently. The Applicants no longer have any retail operations.

20. Accordingly, the Monitor is unaware of any reason to disagree with the Co-Tenants' position that the Co-Tenancy Stay has expired on its terms.

21. The Monitor is aware that the Moving Landlords oppose the Co-Tenancy Lift Stay Motions. Included as **Appendix "B"** hereto is a copy of a letter dated September 27, 2018 from counsel for the Moving Landlords in this regard.

22. In brief, the Moving Landlords assert that they will incur prejudice by damage claims in the event the stay is lifted and that the stay should not be lifted unless and until a Plan of Arrangement is presented to the Court by the Applicants.

23. The Monitor is aware that the Co-Tenants may assert claims against, among others, the Moving Landlords. The Monitor has advised the Moving Landlords of its view that this does not in turn give rise to claims against the Applicants, although the Monitor understands that the Moving Landlords dispute this view. The Monitor has further advised the Moving Landlords that the Monitor has no details as to their putative Co-Tenancy claims against the Applicants so as to consider and evaluate the effect of such claims. The Moving Landlords have advised that such information should be inferred from the Co-Tenancy Lift Stay Motion materials. Copies of the Monitor's correspondence of October 3, 2018, and the Moving Landlord's response on October 4, 2018, are attached as **Appendices "C"** and **"D"** hereto. The Monitor notes that even if such Co-Tenancy claims against the Applicants did exist, the continuation or lifting of the stay does not affect the existence of those claims.

24. The Monitor is not aware of any other landlord of a mall where a TCP or GAP store is located who intends to take a position on the motions despite being served with the Co-Tenancy Lift Stay Motion materials.

25. It is the Monitor's view that this motion can be determined on the basis of the wording of the Initial Order, the facts set out above and on the Co-Tenancy Lift Stay Motions.

## E. THE MONITOR'S POSITION

26. Given the Monitor's view that the Co-Tenancy Lift Stay Motions do not impact the Applicants, the Monitor does not take a position on the Co-Tenancy Lift Stay Motions beyond the comments made in the preceding section.

## F. UPDATE REGARDING THE MOVING LANDLORDS' MOTION

27. As set out in the First Supplement, the Monitor prepared and delivered responses to questions raised on the Twenty-Fifth Report by the Moving Landlords.

28. On September 20, 2018, the Court adjourned the Moving Landlords' Motion at their request. The Moving Landlords' Motion was rescheduled to October 16, 2018.

29. On September 27, 2018, the Moving Landlords delivered questions on the Monitor's prior responses. On October 3, 2018, the Monitor delivered responses to the questions on its prior responses. A copy of the Moving Landlords' email of September 27, 2018 is attached as **Appendix "E"** hereto. A copy of the Monitor's further responses is attached at **Appendix "F"** hereto.

30. In their email of September 27, 2018, the Moving Landlords requested the Monitor to accede to their motion to vary the Claims Procedure Order, on the basis that it was now closer in time to the hearing of the deemed trust motion to be heard by the Court on November 1, 2018.

31. The Monitor, in its email of October 3, 2018, attached above at Appendix "C", responded that further delay was not appropriate.

32. The Moving Landlords responded by email on October 4, 2018 reiterating their position. A copy of that email is attached above at Appendix "D".

33. The view of the Monitor remains as expressed in the Twenty-Fifth Report; it is necessary to address the Moving Landlords claims as one of the largest outstanding issues affecting the estate. The fact that the Moving Landlords' Motion has now moved closer in time to the hearing of the deemed trust motion does not change that conclusion.

## G. UPDATE REGARDING WEPP AND THE ERC RECEIVERSHIP MOTION

34. The Monitor, Employee Representative Counsel and representatives of Sears Canada Inc. have had a number of conversations with representatives of Service Canada and the Department of Employment and Social Development with respect to the Applicants' former employees' access to payments available through the WEPP and the proposed amendments (the "**Amendments**") to the *Wage Earner Protection Program Act,* S.C. 2005, c. 47, s. 1 that were announced in the last Federal budget. Those amendments provide for an increase in the maximum amount that an employee can recover pursuant to the WEPP from approximately $3900 to $6400.

35. Further to those discussions, and in light of the November 1, 2018 hearing of the Employee Representative Counsel's motion to lift the stay of proceedings to pursue an application for a bankruptcy order (the "**Bankruptcy Application**") in respect of certain of the Applicants, Employee Representative Counsel has advised the Monitor of their intention to bring a motion to this Court (the "**Receivership Motion**"), prior to the hearing of the Bankruptcy Application, for the appointment of FTI Consulting Canada Inc. ("**FTI**") as receiver for limited purposes pursuant to Section 243(1) of the Bankruptcy and Insolvency Act (a "**Section 243 Receiver**").

36. The Monitor understands that in order for employees to have access to payments under the WEPP, certain triggering events must have occurred; those events include the appointment of a Section 243 Receiver, or the issuance of a bankruptcy order. Given that the Bankruptcy Application is intertwined with other motions in the CCAA Proceedings that are expected to be contested and potentially appealed, Employee Representative Counsel believes it appropriate to have the option of relying on a Section 243 Receiver in

order to give former employees of the Applicants access to the WEPP, either when the Amendments have come into effect, or at such other earlier time as Employee Representative Counsel in consultation with the Monitor may determine having regards to the circumstances of the case and the timing of the Amendments.

37. As such, the Receivership Motion contemplates that the appointment of the Section 243 Receiver would not become effective until service on the Service List of a certificate advising of the date on which the appointment of the Section 243 Receiver will begin.

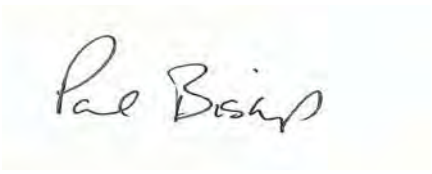
38. The Section 243 Receiver would be appointed over limited assets of those Applicants who are former employers and its role would consist mostly of facilitating employees' claims against the WEPP.

39. The Monitor understands that Employee Representative Counsel will be serving the Receivership Motion materials before the end of the week ending October 12, 2018.

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

Dated this 11th day of October, 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"**
**INITIAL ORDER**

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

*ONTARIO*

**SUPERIOR COURT OF JUSTICE**

**COMMERCIAL LIST**

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| THE HONOURABLE MR. | ) | THURSDAY, THE 22ND |
| | ) | |
| JUSTICE HAINEY | ) | DAY OF JUNE, 2017 |

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS CANADA INC., CORBEIL ÉLECTRIQUE INC., S.L.H. TRANSPORT INC., THE CUT INC., SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611 CANADA INC.
(each, an "**Applicant**", and collectively, the "**Applicants**")

## INITIAL ORDER

**THIS APPLICATION**, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the affidavit of Billy Wong sworn June 22, 2017, and the Exhibits thereto (collectively, the "**Wong Affidavit**"), and the pre-filing report dated June 22, 2017 of FTI Consulting Canada Inc. ("**FTI**"), in its capacity as the proposed Monitor of the Applicants (the "**Pre-Filing Report**"), and on hearing the submissions of counsel to the Applicants and Sears Connect LP (the "**Partnership**", and collectively with the Applicants, the "**Sears Canada**

**Entities**"), counsel to the Board of Directors (the "**Board of Directors**") of Sears Canada Inc. ("**SCI**") and the Special Committee of the Board of Directors (the "**Special Committee**") of SCI, counsel to FTI, counsel to Wells Fargo Capital Finance Corporation Canada (the "**DIP ABL Agent**"), as administrative agent under the DIP ABL Credit Agreement (as defined herein), and counsel to GACP Finance Co., LLC (the "**DIP Term Agent**"), as administrative agent under the DIP Term Credit Agreement (as defined herein), Koskie Minsky LLP as counsel for Store Catalogue Retiree Group, counsel for the Financial Services Commission of Ontario, and on reading the consent of FTI to act as the Monitor.

**SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

**APPLICATION**

2. **THIS COURT ORDERS AND DECLARES** that the Applicants are companies to which the CCAA applies. Although not an Applicant, the Partnership shall enjoy the benefits of the protections and authorizations provided by this Order.

**PLAN OF ARRANGEMENT**

3. **THIS COURT ORDERS** that the Applicants, individually or collectively, shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**").

**POSSESSION OF PROPERTY AND OPERATIONS**

4. **THIS COURT ORDERS** that the Sears Canada Entities shall remain in possession and control of their respective current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). For greater certainty, the "Property" includes all inventory, assets, undertakings and property of the Sears Canada Entities in the possession or control of the Hometown Dealers (as defined in the Wong Affidavit) and all inventory, assets, undertakings and property of the Sears Canada

Entities in the possession or control of the Corbeil Franchisees (as defined in the Wong Affidavit). Subject to further Order of this Court, the Sears Canada Entities shall continue to carry on business in a manner consistent with the preservation of the value of their business (the "**Business**") and Property. The Sears Canada Entities shall each be authorized and empowered to continue to retain and employ the employees, independent contractors, advisors, consultants, agents, experts, accountants, counsel and such other persons (collectively, "**Assistants**") currently retained or employed by them, with liberty, subject to the terms of the Definitive Documents (as defined herein) to retain such further Assistants, as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. **THIS COURT ORDERS** that the Sears Canada Entities shall be entitled to continue to utilize the central cash management services currently in place as described in the Wong Affidavit, or, with the consent of the Monitor, the DIP ABL Agent on behalf of the DIP ABL Lenders (as defined herein) and the DIP Term Agent on behalf of the DIP Term Lenders (as defined herein), replace it with another substantially similar central cash management services (the "**Cash Management System**") and that any present or future bank or other institution providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Sears Canada Entities of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Sears Canada Entities, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System; provided, however, that no bank or other institution providing such Cash Management System shall be obliged to extend any overdraft credit, on an aggregate net basis, directly or indirectly in connection therewith and further provided that, to the extent any overdraft occurs, on an aggregate net basis, the Sears Canada Entities shall make arrangements to repay such overdraft forthwith.

6. **THIS COURT ORDERS** that the Sears Canada Entities, subject to availability under, and in accordance with the terms of the DIP Facilities (as defined herein) and the Definitive Documents, and subject to further Order of this Court, shall be entitled but not required to pay the following expenses whether incurred prior to, on or after this Order to the extent that such expenses are incurred and payable by the Sears Canada Entities:

(a) all outstanding and future wages, salaries, commissions, employee and retiree benefits (including, without limitation, medical, dental, life insurance and similar benefit plans or arrangements), pension benefits or contributions, vacation pay, expenses, and director fees and expenses, payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements (but not including termination or severance payments), and all other payroll, pension and benefits processing and servicing expenses;

(b) all outstanding and future amounts owing to or in respect of Persons working as independent contractors in connection with the Business;

(c) all outstanding or future amounts owing in respect of customer rebates, refunds, discounts or other amounts on account of similar customer programs or obligations;

(d) all outstanding or future amounts related to honouring customer obligations, whether existing before or after the date of this Order, including customer financing, product warranties, pre-payments, deposits, gift cards, Sears Club programs (including redemptions of Sears Club points) and other customer loyalty programs, offers and benefits, in each case incurred in the ordinary course of business and consistent with existing policies and procedures;

(e) the fees and disbursements of any Assistants retained or employed by the Sears Canada Entities at their standard rates and charges; and

(f) with the consent of the Monitor, amounts owing for goods or services actually supplied to the Sears Canada Entities prior to the date of this Order by:

(i) logistics or supply chain providers, including customs brokers and freight forwarders, fuel providers, repair, maintenance and parts providers, and security and armoured truck carriers, and including amounts payable in respect of customs and duties for goods;

(ii) providers of information, internet, and other technology, including e-commerce providers and related services;

(iii) providers of credit, debit and gift card processing related services; and

(iv) other third party suppliers up to a maximum aggregate amount of $25 million, if, in the opinion of the Sears Canada Entities, the supplier is critical to the business and ongoing operations of the Sears Canada Entities.

7. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein and subject to the terms of the Definitive Documents, the Sears Canada Entities shall be entitled but not required to pay all reasonable expenses incurred by them in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order and any other Order of this Court, which expenses shall include, without limitation:

(a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors' and officers' insurance), maintenance (including environmental remediation) and security services; and

(b) payment for goods or services actually supplied to the Sears Canada Entities following the date of this Order.

8. **THIS COURT ORDERS** that the Sears Canada Entities shall remit, in accordance with legal requirements, or pay:

(a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from the Sears Canada Entities' employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;

(b) all goods and services taxes, harmonized sales taxes or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Sears Canada Entities in connection with the sale of goods and services by the Sears Canada Entities, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order;

(c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business, workers' compensation or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Sears Canada Entities; and

(d) taxes under the *Income Tax Act* (Canada) or other relevant taxing statutes to the extent that such taxing statutes give rise to statutory deemed trust amounts in favour of the Crown in right of Canada or any Province thereof or any political subdivision thereof or any other taxation authority.

9. **THIS COURT ORDERS** that, except as specifically permitted herein, the Sears Canada Entities are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by any one of the Sears Canada Entities to any of their creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of the Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business or pursuant to this Order or any further Order of this Court.

**RESTRUCTURING**

10. **THIS COURT ORDERS** that the Sears Canada Entities shall, subject to such requirements as are imposed by the CCAA, and subject to the terms of the Definitive Documents, have the right to:

(a) permanently or temporarily cease, downsize or shut down any of their Business or operations, and to dispose of redundant or non-material assets not exceeding $2 million in any one transaction or $5 million in the aggregate in any series of related transactions, provided that, with respect to leased premises, the Sears Canada Entities may, subject to the requirements of the CCAA and paragraphs 11 to 13 herein, vacate, abandon or quit the whole (but not part of) and may permanently (but not temporarily) cease, downsize or shut down any of their Business or operations in respect of any leased premises;

(b) terminate the employment of such of its employees or temporarily lay off such of its employees as the relevant Sears Canada Entity deems appropriate; and

(c) pursue all avenues of refinancing, restructuring, selling and reorganizing the Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing, restructuring, sale or reorganization,

all of the foregoing to permit the Sears Canada Entities to proceed with an orderly restructuring of the Sears Canada Entities and/or the Business (the "**Restructuring**").

**REAL PROPERTY LEASES**

11. **THIS COURT ORDERS** that until a real property lease is disclaimed or resiliated in accordance with the CCAA, the Sears Canada Entities shall pay, without duplication, all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under its lease, but for greater certainty, excluding accelerated rent or penalties, fees or other charges arising as a result of the insolvency of any or all of the Sears Canada Entities or the making of this Initial Order) or as otherwise may be negotiated between the applicable Sears Canada Entity and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

12. **THIS COURT ORDERS** that the Sears Canada Entities shall provide each of the relevant landlords with notice of the relevant Sears Canada Entity's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the entitlement of a Sears Canada Entity to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the relevant Sears Canada Entity, or by further Order of this Court upon application by the Sears Canada Entities on at least two (2) days' notice to such landlord and any such secured creditors. If any of the Sears Canada Entities disclaims or resiliates the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer or resiliation of the lease shall be without prejudice to the relevant Sears Canada Entity's claim to the fixtures in dispute.

13. **THIS COURT ORDERS** that if a notice of disclaimer or resiliation is delivered pursuant to Section 32 of the CCAA by any of the Sears Canada Entities, then: (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the relevant Sears Canada Entity and the Monitor 24 hours' prior written notice; and (b) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the relevant Sears Canada Entity in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

**NO PROCEEDINGS AGAINST THE SEARS CANADA ENTITIES, THE BUSINESS OR THE PROPERTY**

14. **THIS COURT ORDERS** that until and including July 22, 2017, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the

Sears Canada Entities or the Monitor or their respective employees and representatives acting in such capacities, or affecting the Business or the Property, except with the written consent of the Sears Canada Entities and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Sears Canada Entities or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

**NO EXERCISE OF RIGHTS OR REMEDIES**

15. **THIS COURT ORDERS** that during the Stay Period, no Person having any agreements or arrangements with the owners, operators, managers or landlords of commercial shopping centres or other commercial properties (including retail, office and industrial (warehouse) properties) in which there is located a store, office or warehouse owned or operated by the Sears Canada Entities shall take any Proceedings or exercise any rights or remedies under such agreements or arrangements that may arise upon and/or as a result of the making of this Order, the insolvency of, or declarations of insolvency by, any or all of the Sears Canada Entities, or as a result of any steps taken by the Sears Canada Entities pursuant to this Order and, without limiting the generality of the foregoing, no Person shall terminate, accelerate, suspend, modify, determine or cancel any such arrangement or agreement or be entitled to exercise any rights or remedies in connection therewith.

16. **THIS COURT ORDERS** that during the Stay Period, no Person having any agreements or arrangements with the Hometown Dealers or the Corbeil Franchisees shall take any Proceedings or exercise any rights or remedies under such agreements or arrangements that may arise upon and/or as a result of the making of this Order, the insolvency of, or declarations of insolvency by, any or all of the Sears Canada Entities, or as a result of any steps taken by the Sears Canada Entities pursuant to this Order and, without limiting the generality of the foregoing, no Person shall terminate, accelerate, suspend, modify, determine or cancel any such arrangement or agreement or be entitled to exercise any rights or remedies in connection therewith.

17. **THIS COURT ORDERS** that during the Stay Period all rights and remedies, of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Sears Canada Entities or the Monitor or their respective employees and representatives acting in

such capacities, or affecting the Business or the Property, are hereby stayed and suspended, except with the written consent of the Sears Canada Entities and the Monitor, or leave of this Court, provided that nothing in this Order shall: (a) empower the Sears Canada Entities to carry on any business that the Sears Canada Entities are not lawfully entitled to carry on; (b) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA; (c) prevent the filing of any registration to preserve or perfect a security interest; or (d) prevent the registration of a claim for lien.

**NO INTERFERENCE WITH RIGHTS**

18. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, lease, sublease, licence or permit in favour of or held by the Sears Canada Entities, except with the written consent of the Sears Canada Entities and the Monitor, or leave of this Court. Without limiting the foregoing, no right, option, remedy, and/or exemption in favour of the relevant Sears Canada Entity shall be or shall be deemed to be negated, suspended, waived and/or terminated as a result of this Order.

**CONTINUATION OF SERVICES**

19. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Sears Canada Entities or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all trademark license and other intellectual property, computer software, communication and other data services, centralized banking services, payroll and benefit services, insurance, warranty services, transportation services, freight services, security and armoured truck carrier services, utility, customs clearing, warehouse and logistics services or other services to the Business or the Sears Canada Entities are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply or license of such goods, services, trademarks and other intellectual property as may be required by the Sears Canada Entities, and that the Sears Canada Entities shall be entitled to the continued use of the trademarks and other intellectual property currently licensed to, used or owned by the Sears Canada Entities, premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by

the Sears Canada Entities in accordance with normal payment practices of the Sears Canada Entities or such other practices as may be agreed upon by the supplier or service provider and each of the Sears Canada Entities and the Monitor, or as may be ordered by this Court.

**NON-DEROGATION OF RIGHTS**

20. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Sears Canada Entities. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

**KEY EMPLOYEE RETENTION PLAN**

21. **THIS COURT ORDERS** that the Key Employee Retention Plan (the "**KERP**"), as described in the Wong Affidavit, is hereby approved and the Sears Canada Entities are authorized to make payments contemplated thereunder in accordance with the terms and conditions of the KERP.

22. **THIS COURT ORDERS** that the key employees referred to in the KERP (the "**Key Employees**") shall be entitled to the benefit of and are hereby granted the following charges on the Property, which charges shall not exceed: (a) an aggregate amount of $4.6 million (the "**KERP Priority Charge**") to secure the first $4.6 million payable to the Key Employees under the KERP; and (b) an aggregate amount of $4.6 million (the "**KERP Subordinated Charge**") to secure any other payments to the Key Employees under the KERP. The KERP Priority Charge and the KERP Subordinated Charge shall have the priority set out in paragraphs 46, 47 and 49 hereof.

**APPROVAL OF FINANCIAL ADVISOR AGREEMENT**

23. **THIS COURT ORDERS** that the agreement dated May 15, 2017 engaging BMO Nesbitt Burns Inc. (the "**Financial Advisor**") as financial advisor to SCI and attached as Confidential Appendix C to the Pre-Filing Report (the "**Financial Advisor Agreement**"), and the retention of the Financial Advisor under the terms thereof, is hereby ratified and approved

and SCI is authorized and directed *nunc pro tunc* to make the payments contemplated thereunder in accordance with the terms and conditions of the Financial Advisor Agreement.

24. **THIS COURT ORDERS** that the Financial Advisor shall be entitled to the benefit of and is hereby granted a charge (the "**FA Charge**") on the Property, which charge shall not exceed an aggregate amount of $3.3 million, as security for the fees and disbursements payable under the Financial Advisor Agreement, both before and after the making of this Order in respect of these proceedings. The FA Charge shall have the priority set out in paragraphs 46, 47 and 49 hereof.

**PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

25. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Sears Canada Entities with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Sears Canada Entities whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Sears Canada Entities, if one is filed, is sanctioned by this Court or is refused by the creditors of the Sears Canada Entities or this Court.

**DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE**

26. **THIS COURT ORDERS** that the Sears Canada Entities shall jointly and severally indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Sears Canada Entities after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

27. **THIS COURT ORDERS** that the directors and officers of the Sears Canada Entities shall be entitled to the benefit of and are hereby granted the following charges on the Property, which charges shall not exceed: (a) an aggregate amount of $44 million (the "**Directors'**

**Priority Charge**"); and (b) an aggregate amount of $19.5 million (the "**Directors' Subordinated Charge**"), respectively, and in each case, as security for the indemnity provided in paragraph 26 of this Order. The Directors' Priority Charge and the Directors' Subordinated Charge shall have the priority set out in paragraphs 46, 47 and 49 hereof.

28. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary: (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Priority Charge and the Directors' Subordinated Charge; and (b) the Sears Canada Entities' directors and officers shall only be entitled to the benefit of the Directors' Priority Charge and the Directors' Subordinated Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 26 of this Order.

**APPOINTMENT OF MONITOR**

29. **THIS COURT ORDERS** that FTI is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the Business and financial affairs of the Sears Canada Entities with the powers and obligations set out in the CCAA or set forth herein and that the Sears Canada Entities and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Sears Canada Entities pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

30. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

(a) monitor the Sears Canada Entities' receipts and disbursements;

(b) liaise with the Sears Canada Entities and the Assistants and, if determined by the Monitor to be necessary, the Hometown Dealers and Corbeil Franchisees, with respect to all matters relating to the Property, the Business, the Restructuring and such other matters as may be relevant to the proceedings herein;

(c) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, the Restructuring and such other matters as may be relevant to the proceedings herein;

(d) assist the Sears Canada Entities, to the extent required by the Sears Canada Entities, in their dissemination of financial and other information to the DIP ABL Agent, the DIP ABL Lenders, the DIP Term Agent, the DIP Term Lenders and each of their respective counsel and financial advisors, pursuant to and in accordance with the Definitive Documents;

(e) advise the Sears Canada Entities in their preparation of the Sears Canada Entities' cash flow statements and any reporting required by the Definitive Documents, which information shall be reviewed with the Monitor and delivered to the DIP ABL Agent, the DIP ABL Lenders, the DIP Term Agent, the DIP Term Lenders and each of their respective counsel and financial advisors, pursuant to and in accordance with the Definitive Documents;

(f) advise the Sears Canada Entities in their development of the Plan and any amendments to the Plan;

(g) assist the Sears Canada Entities, to the extent required by the Sears Canada Entities, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;

(h) have full and complete access to the Property (including any Property in the possession of the Hometown Dealers and the Corbeil Franchisees), including the premises, books, records, data, including data in electronic form, and other financial documents of the Sears Canada Entities, to the extent that is necessary to adequately assess the Business and the Sears Canada Entities' financial affairs or to perform its duties arising under this Order;

(i) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;

(j) assist the Sears Canada Entities, to the extent required by the Sears Canada Entities, with any matters relating to any foreign proceeding commenced in relation to any of the Sears Canada Entities, including retaining independent legal counsel, agents, experts, accountants, or such other persons as the Monitor deems necessary or desirable respecting the exercise of this power; and

(k) perform such other duties as are required by this Order or by this Court from time to time.

31. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

32. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the Ontario *Environmental Protection Act*, the *Ontario Water Resources Act*, or the Ontario *Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

33. **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Sears Canada Entities, the DIP ABL Agent, the DIP ABL Lenders, the DIP Term Agent and the DIP Term Lenders with information provided by the Sears Canada Entities in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor

shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Sears Canada Entities is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Sears Canada Entities may agree.

34. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

35. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, counsel to the Sears Canada Entities and counsel to the Board of Directors and the Special Committee shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, whether incurred prior to or subsequent to the date of this Order, by the Sears Canada Entities as part of the costs of these proceedings. The Sears Canada Entities are hereby authorized and directed to pay the accounts of the Monitor, counsel to the Monitor, counsel to the Sears Canada Entities and counsel to the Board of Directors and the Special Committee on a weekly basis and, in addition, the Sears Canada Entities are hereby authorized to pay to the Monitor, counsel to the Monitor, counsel to the Sears Canada Entities and counsel to the Board of Directors and the Special Committee, retainers in the aggregate amount of $700,000, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

36. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

37. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, counsel to the Sears Canada Entities and counsel to the Board of Directors and the Special Committee shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of $5 million, as security for their professional fees and disbursements incurred at their respective standard rates and charges, both

before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 46, 47 and 49 hereof.

**DIP FINANCING**

38. **THIS COURT ORDERS** that the Sears Canada Entities are hereby authorized and empowered to obtain and borrow or guarantee, as applicable, on a joint and several basis, under:

(a) the Senior Secured Superpriority Debtor-in-Possession Amended and Restated Credit Agreement dated as of June 22, 2017 and attached to the Wong Affidavit as Exhibit K, among the Sears Canada Entities, the DIP ABL Agent and the lenders from time to time party thereto (the "**DIP ABL Lenders**") (as may be amended, restated, supplemented and/or modified, subject to approval of this Court in respect of any amendment that the Monitor determines to be material, the "**DIP ABL Credit Agreement**"), in order to finance the Sears Canada Entities' working capital requirements and other general corporate purposes and capital expenditures, all in accordance with the Definitive Documents, provided that borrowings under DIP ABL Credit Agreement shall not exceed $300 million unless permitted by further Order of this Court (the "**DIP ABL Credit Facility**"); and

(b) the Senior Secured, Superpriority Debtor-in-Possession Credit Agreement dated as of June 22, 2017 and attached to the Wong Affidavit as Exhibit K, among the Sears Canada Entities, the DIP Term Agent and the lenders from time to time party thereto (the "**DIP Term Lenders**") (as may be amended, restated, supplemented and/or modified, subject to approval of this Court in respect of any amendment that the Monitor determines to be material, the "**DIP Term Credit Agreement**"), in order to finance the Sears Canada Entities' working capital requirements and other general corporate purposes and capital expenditures, all in accordance with the Definitive Documents, provided that borrowings under the DIP Term Credit Agreement shall not exceed $150 million unless permitted by further Order of this Court (the "**DIP Term Credit Facility**", and together with the DIP ABL Credit Facility, the "**DIP Facilities**").

39. **THIS COURT ORDERS** that the DIP Facilities shall be on the terms and subject to the conditions set forth in the DIP ABL Credit Agreement, the DIP Term Credit Agreement and the other Definitive Documents.

40. **THIS COURT ORDERS** that the Sears Canada Entities are hereby authorized and empowered to execute and deliver the DIP ABL Credit Agreement, the DIP Term Credit Agreement and such mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, and including any schedules (as amended and updated from time to time) thereto, the "**Definitive Documents**"), as are contemplated by the DIP ABL Credit Agreement and the DIP Term Credit Agreement or as may be reasonably required by the DIP ABL Agent on behalf of the DIP ABL Lenders and the DIP Term Agent on behalf of the DIP Term Lenders pursuant to the terms thereof, as applicable, and the Sears Canada Entities are hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP ABL Agent, the DIP ABL Lenders, the DIP Term Agent and the DIP Term Lenders under and pursuant to the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

41. **THIS COURT ORDERS** that the DIP ABL Agent and the DIP ABL Lenders shall be entitled to the benefit of and are hereby granted a charge (the "**DIP ABL Lenders' Charge**") on the Property as security for any and all Obligations (as defined in the DIP ABL Credit Agreement) other than the Prepetition Obligations (as defined in the DIP ABL Credit Agreement) (including on account of principal, interest, fees, expenses and other liabilities, and the aggregate of all such obligations, the "**DIP ABL Obligations**"), which DIP ABL Lenders' Charge shall be in the aggregate amount of the DIP ABL Obligations outstanding at any given time under the DIP ABL Credit Agreement. The DIP ABL Lenders' Charge shall not secure an obligation that exists before this Order is made. The DIP ABL Lenders' Charge shall have the priority set out in paragraphs 46, 47 and 49 hereof.

42. **THIS COURT ORDERS** that the DIP Term Agent and the DIP Term Lenders shall be entitled to the benefit of and are hereby granted a charge (the "**DIP Term Lenders' Charge**") on the Property as security for any and all Obligations (as defined in DIP Term Credit Agreement) (including on account of principal, interest, fees, expenses and other liabilities, and the aggregate of all such obligations, the "**DIP Term Obligations**"), which DIP Term Lenders' Charge shall

be in the aggregate amount of the DIP Term Obligations outstanding at any given time under the DIP Term Credit Agreement. The DIP Term Lenders' Charge shall not secure an obligation that exists before this Order is made. The DIP Term Lenders' Charge shall have the priority set out in paragraphs 46, 47 and 49 hereof.

43. **THIS COURT ORDERS** that SCI's reimbursement obligation with respect to the letters of credit outstanding under the Wells Fargo Credit Agreement (as defined in the Wong Affidavit) prior to the date of this Order and which are drawn upon on or after the date of this Order shall be deemed to form part of the DIP ABL Credit Facility and shall be included as DIP ABL Obligations for the purposes of determining the amount of the DIP ABL Lenders' Charge.

44. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

(a) the DIP ABL Agent on behalf of the DIP ABL Lenders, as applicable, may take such steps from time to time as they may deem necessary or appropriate to file, register, record or perfect the DIP ABL Lenders' Charge, the DIP ABL Credit Agreement or any of the other Definitive Documents;

(b) the DIP Term Agent on behalf of the DIP Term Lenders, as applicable, may take such steps from time to time as they may deem necessary or appropriate to file, register, record or perfect the DIP Term Lenders' Charge, the DIP Term Credit Agreement or any of the other Definitive Documents;

(c) upon the occurrence of an event of default under the DIP ABL Credit Agreement, the other related Definitive Documents or the DIP ABL Lenders' Charge, the DIP ABL Agent and the DIP ABL Lenders, as applicable, may, subject to the provisions of the DIP ABL Credit Agreement with respect to the giving of notice or otherwise, and in accordance with the DIP ABL Credit Agreement, the other related Definitive Documents and the DIP ABL Lenders' Charge, as applicable, cease making advances to the Sears Canada Entities, make demand, accelerate payment and give other notices; provided that, the DIP ABL Agent and the DIP ABL Lenders must apply to this Court on seven (7) days' prior written notice (which may include the service of materials in connection with such an application to this Court) to the Sears Canada Entities, the DIP Term Agent, the DIP Term Lenders and the Monitor, to enforce

against or exercise any other rights and remedies with respect to the Sears Canada Entities or any of the Property (including to set off and/or consolidate any amounts owing by the DIP ABL Agent and the DIP ABL Lenders to the Sears Canada Entities against the obligations of the Sears Canada Entities to the DIP ABL Agent and the DIP ABL Lenders under the DIP ABL Credit Agreement, the other related Definitive Documents or the DIP ABL Lenders' Charge), to appoint a receiver, receiver and manager or interim receiver, or to seek a bankruptcy order against the Sears Canada Entities and to appoint a trustee in bankruptcy of the Sears Canada Entities;

(d) upon the occurrence of an event of default under the DIP Term Credit Agreement, the other related Definitive Documents or the DIP Term Lenders' Charge, the DIP Term Agent and the DIP Term Lenders, as applicable, may, subject to the provisions of the DIP Term Credit Agreement with respect to the giving of notice or otherwise, and in accordance with the DIP Term Credit Agreement, the other related Definitive Documents and the DIP Term Lenders' Charge, as applicable, cease making advances to the Sears Canada Entities, make demand, accelerate payment and give other notices; provided that, the DIP Term Agent and the DIP Term Lenders must apply to this Court on seven (7) days' prior written notice (which may include the service of materials in connection with such an application to this Court) to the Sears Canada Entities, the DIP ABL Agent, the DIP ABL Lenders and the Monitor, to enforce against or exercise any other rights and remedies with respect to the Sears Canada Entities or any of the Property (including to set off and/or consolidate any amounts owing by the DIP Term Agent and the DIP Term Lenders to the Sears Canada Entities against the obligations of the Sears Canada Entities to the DIP Term Agent and the DIP Term Lenders under the DIP Term Credit Agreement, the other related Definitive Documents or the DIP Term Lenders' Charge), to appoint a receiver, receiver and manager or interim receiver, or to seek a bankruptcy order against the Sears Canada Entities and to appoint a trustee in bankruptcy of the Sears Canada Entities; and

(e) the foregoing rights and remedies of the DIP ABL Agent, the DIP ABL Lenders, the DIP Term Agent and the DIP Term Lenders shall be enforceable against any trustee

in bankruptcy, interim receiver, receiver or receiver and manager of the Sears Canada Entities or the Property.

45. **THIS COURT ORDERS AND DECLARES** that the DIP ABL Agent, the DIP ABL Lenders, the DIP Term Agent and the DIP Term Lenders shall be treated as unaffected in any plan of arrangement or compromise filed by the Sears Canada Entities or any of them under the CCAA, or any proposal filed by the Sears Canada Entities or any of them under the *Bankruptcy and Insolvency Act* of Canada (the "**BIA**"), with respect to any advances made under the DIP ABL Credit Agreement, the DIP Term Credit Agreement and the other Definitive Documents.

**VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

46. **THIS COURT ORDERS** that the priorities of the Administration Charge, the FA Charge, the DIP ABL Lenders' Charge, the DIP Term Lenders' Charge, the Directors' Priority Charge, the Directors' Subordinated Charge, the KERP Priority Charge and the KERP Subordinated Charge (collectively, the "**Charges**"), as among them, with respect to ABL Priority Collateral (as defined in the Intercreditor Agreement dated March 20, 2017 and attached as Exhibit J to the Wong Affidavit) shall be as follows:

First – Administration Charge, to the maximum amount of $5 million, and the FA Charge, to the maximum amount of $3.3 million, on a *pari passu* basis;

Second – KERP Priority Charge, to the maximum amount of $4.6 million;

Third – Directors' Priority Charge, to the maximum amount of $44 million;

Fourth – DIP ABL Lenders' Charge, to the maximum amount of the quantum of the DIP ABL Obligations at the relevant time;

Fifth – the DIP Term Lenders' Charge, to the maximum amount of the quantum of the DIP Term Obligations at the relevant time;

Sixth – KERP Subordinated Charge, to the maximum amount of $4.6 million; and

Seventh – the Directors' Subordinated Charge, to the maximum amount of $19.5 million.

47. **THIS COURT ORDERS** that the priorities of the Charges as among them, with respect to all Property other than the ABL Priority Collateral shall be as follows:

First – Administration Charge, to the maximum amount of $5 million, and the FA Charge, to the maximum amount of $3.3 million, on a *pari passu* basis;

Second – KERP Priority Charge, to the maximum amount of $4.6 million;

Third – Directors' Priority Charge, to the maximum amount of $44 million;

Fourth – DIP Term Lenders' Charge, to the maximum amount of the quantum of the DIP Term Obligations at the relevant time;

Fifth – DIP ABL Lenders' Charge, to the maximum amount of the quantum of the DIP ABL Obligations at the relevant time;

Sixth – KERP Subordinated Charge, to the maximum amount of $4.6 million; and

Seventh – the Directors' Subordinated Charge, to the maximum amount of $19.5 million.

48. **THIS COURT ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

49. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property, and such Charges shall rank in priority to all other security interests, trusts (including constructive trusts), liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (including without limitation any deemed trust that may be created under the Ontario *Pension Benefits Act*) (collectively, "**Encumbrances**") other than (a) any Person with a properly perfected purchase money security interest under the *Personal Property Security Act* (Ontario) or such other applicable provincial legislation that has not been served with notice of this Order; and (b) statutory super-priority deemed trusts and liens for unpaid employee source deductions.

50. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Sears Canada Entities shall not grant any Encumbrances over any of the Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Sears Canada Entities also obtain the prior written consent of the Monitor, the DIP ABL Agent on behalf of the DIP ABL Lenders, the DIP Term Agent on behalf of the DIP Term Lenders and the other beneficiaries of affected Charges, or further Order of this Court.

51. **THIS COURT ORDERS** that the Charges, the DIP ABL Credit Agreement, the DIP Term Credit Agreement, and the other Definitive Documents shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") thereunder shall not otherwise be limited or impaired in any way by: (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") that binds the Sears Canada Entities, and notwithstanding any provision to the contrary in any Agreement:

(i) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the DIP ABL Credit Agreement, the DIP Term Credit Agreement or the other Definitive Documents shall create or be deemed to constitute a breach by the Sears Canada Entities of any Agreement to which it is a party;

(ii) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Sears Canada Entities entering into the DIP ABL Credit Agreement and the DIP Term Credit Agreement, the creation of the Charges, or the execution, delivery or performance of the other Definitive Documents; and

(iii) the payments made by the Sears Canada Entities pursuant to this Order, the DIP ABL Credit Agreement, the DIP Term Credit Agreement or the other Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

52. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the relevant Sears Canada Entity's interest in such real property leases.

53. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order, the L/C Collateral Account (as defined in the DIP ABL Credit Agreement) shall be deemed to be subject to a lien, security, charge and security interest in favour of the DIP ABL Agent solely for the reimbursement obligation of SCI related to the letters of credit issued under the Wells Fargo Credit Agreement which remain undrawn from and after the Comeback Motion (as defined herein). The Charges as they may attach to the L/C Collateral Account, including by operation of law or otherwise: (a) shall rank junior in priority to the lien, security, charge and security interest in favour of the DIP ABL Agent in respect of the L/C Collateral Account; and (b) shall attach to the L/C Collateral Account only to the extent of the rights, if any, of any Sears Canada Entity to the return of any cash from the L/C Collateral Account in accordance with the DIP ABL Credit Agreement.

**CORPORATE MATTERS**

54. **THIS COURT ORDERS** that SCI be and is hereby relieved of any obligation to call and hold an annual meeting of its shareholders until further Order of this Court.

55. **THIS COURT ORDERS** that SCI be and is hereby relieved of any obligation to appoint any new directors until further Order of this Court.

**SERVICE AND NOTICE**

56. **THIS COURT ORDERS** that the Monitor shall: (a) without delay, publish in The Globe and Mail (National Edition) and La Presse a notice containing the information prescribed under the CCAA; and (b) within five days after the date of this Order, (i) make this Order publicly available in the manner prescribed under the CCAA, (ii) send or cause to be sent, in the prescribed manner, a notice to every known creditor who has a claim against the Sears Canada Entities of more than $1,000 (excluding individual employees, former employees with pension and/or retirement savings plan entitlements, and retirees and other beneficiaries who have entitlements under any pension or retirement savings plans), and (iii) prepare a list showing the

names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder, provided that the Monitor shall not make the claims, names and addresses of the individuals who are creditors publicly available.

57. **THIS COURT ORDERS** that the Monitor shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in this proceeding (the "**Service List**"). The Monitor shall post the Service List, as may be updated from time to time, on the Monitor's Website (as defined herein) as part of the public materials to be made available thereon in relation to this proceeding. Notwithstanding the foregoing, the Monitor shall have no liability in respect of the accuracy of or the timeliness of making any changes to the Service List.

58. **THIS COURT ORDERS** that any employee of any of the Sears Canada Entities that receives a notice of termination from any of the Sears Canada Entities shall be deemed to have received such notice of termination by no more than the seventh day following the date such notice of termination is delivered, if such notice of termination is sent by ordinary mail, courier or registered mail.

59. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/) shall be valid and effective service. Subject to Rule 17.05, this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: cfcanada.fticonsulting.com/searscanada (the "**Monitor's Website**").

60. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Sears Canada Entities and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Sears Canada Entities' creditors or other

interested parties at their respective addresses as last shown on the records of the Sears Canada Entities and that any such service or distribution by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

61. **THIS COURT ORDERS** that the Applicants, the Monitor, the Financial Advisor, the DIP Term Agent on behalf of the DIP Term Lenders and the DIP ABL Agent on behalf of the DIP ABL Lenders, and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Applicants' creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the Electronic Commerce Protection Regulations, Reg. 81000-2-175 (SOR/DORS).

**COMEBACK MOTION**

62. **THIS COURT ORDERS** that the comeback motion shall be heard on July 13, 2017 (the "**Comeback Motion**").

**GENERAL**

63. **THIS COURT ORDERS** that the Sears Canada Entities or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

64. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Sears Canada Entities, the Business or the Property.

65. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Sears Canada Entities, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to

the Sears Canada Entities and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Sears Canada Entities and the Monitor and their respective agents in carrying out the terms of this Order.

66. **THIS COURT ORDERS** that each of the Applicants and the Monitor be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada, including acting as the foreign representative of the Applicants to apply to the United States Bankruptcy Court for relief pursuant to Chapter 15 of the *United States Bankruptcy Code*, 11 U.S.C. §§ 101-1515, as amended, and to act as foreign representative in respect of any such proceedings and any ancillary relief in respect thereto, and to take such other steps as may be authorized by the Court.

67. **THIS COURT ORDERS** that any interested party (including the Sears Canada Entities and the Monitor) may apply to this Court to vary or amend this Order at the Comeback Motion on not less than seven (7) calendar days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

68. **THIS COURT ORDERS** that Confidential Appendix B and Confidential Appendix C to the Pre-Filing Report shall be and are hereby sealed, kept confidential and shall not form part of the public record pending further Order of this Court.

69. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

C. Irwin
Registrar

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

JUN 22 2017

PER / PAR:

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS CANADA INC., CORBEIL ÉLECTRIQUE INC., S.L.H. TRANSPORT INC., THE CUT INC., SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611 CANADA INC. (collectively, the "Applicants")

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

*ONTARIO*
**SUPERIOR COURT OF JUSTICE**
(Commercial List)

Proceeding commenced at Toronto

**INITIAL ORDER**

**OSLER, HOSKIN & HARCOURT LLP**
Box 50, 1 First Canadian Place
Toronto, Canada M5X 1B8

Marc Wasserman (LSUC #: 44066M)
Tel: 416.862.4908

Jeremy Dacks (LSUC #: 41851R)
Tel: 416.862.4923

Michael De Lellis (LSUC #: 48038U)
Tel: 416.862.5997

Lawyers for the Applicants

**APPENDIX "B"**
**Letter dated September 27, 2018 from counsel for the Moving Landlords**

Blaney McMurtry LLP | Lawyers
2 Queen Street East | Suite 1500
Toronto, Ontario M5C 3G5
T 416-593-1221
W Blaney.com

David T Ullmann
D: 416-596-4289 F: 416-594-2437
dullmann@blaney.com

September 27, 2018

***BY EMAIL***

Mr. Alan Merskey
Norton Rose Fulbright Canada LLP
Royal Bank Plaza, South Tower, Suite 3800
200 Bay Street
Toronto, ON, M5J 2Z4

Dear Mr. Merskey,

**Re: Sears and Co-Tenancy Issues**

We are writing to you in connection with the pending motion for the lifting of the co-tenancy stay brought forward by The Children's Place (the **"TCP"**) and the GAP (the **"GAP"**). As you know, we have received instructions from our client to oppose this motion. Having reviewed the materials filed by TCP and the GAP we wish to advise the Monitor of the following in the hopes that you will consider this in preparation of the report, which we understand that it is filing in connection with this motion.

As you are aware, we have filed twenty-six (26) proofs of claim in connection with the Sears matter on behalf of our various clients. In twenty-four (24) of those claims our clients have asserted that they are entitled to a claim against Sears in connection with the co-tenancy losses, which they will suffer as a result of Sears premature departure of the premises due to its insolvency. The motions from TCP and the GAP demonstrate the basis for those losses, if their theory of the case is accepted by the Court.

We also confirm that we had previously advised you that it is our intention to seek, in the negotiations of any Plan of Arrangement that Sears seek a permanent stay of the co-tenancy claims as against the Sears' Landlords. Our clients' support of any Plan of Arrangement from Sears would be predicated on reaching a satisfactory resolution of the co-tenancy issue in such a Plan. While we are aware that the Monitor contests the value of the various claims made by our client, we remind you that those claims on their face total in excess of $600,000,000. Therefore, we believe that the agreement of our clients to any Plan of Arrangement is a material issue, which Sears would have to consider.

We also confirm as per your responses to the questions to our other motion that the Monitor has advised that it has provided no value for co-tenancy claims in the formulaic solution that is reached with other landlords. Therefore, I can only speculate that other landlords may be equally interested in seeing some resolution to this co-tenancy issue

as part of any Plan of Arrangement. To the best of our knowledge, the settlement does not prevent them from doing so.

As you are aware, it was this co-tenancy issue, among others, which has resulted in large part in our clients being unable to reach a resolution with the proposed formula, which the Monitor put forward as a way to resolve landlord claims generally. As you are also aware, while not all of our clients have provided an itemized claim, we can advise by way of example, our client, Primaris, estimates that (assuming the claims of the co-tenants, such as the GAP and others, are enforceable) the total co-tenancy loss it will suffer in respect of the seven (7) properties where this is an issue, is between $11,200,000 and $18,300,000 per year, as a result of set-off from these co-tenants.. We reasonably expect similar losses to be suffered by our other clients. A Plan which addresses the co-tenancy issue could materially reduce or eliminate this claim, to the benefit of all creditors.

As such, in our view, lifting the co-tenancy stay and allowing for co-tenants to assert these claims against the landlords of Sears would be directly contrary to the intention of the Initial Order, which implied that claims of this nature would be dealt with in the restructuring of Sears. That restructuring is certainly not complete at this time and the basis which led to the stay being granted has not been addressed. At the very least, this motion is premature until such time as a Plan of Arrangement has been put forward by Sears and the necessary negotiations related thereto have taken place, and the roll of the co-tenancy issue and the claims connected thereto have been addressed in such a Plan. There is no prejudice to the co-tenants in continuing the stay until this is resolved. It is presumably for this reason that the Order granting the stay has been unchallenged for more than a year at this point.

Thank you,

Yours very truly,

**Blaney McMurtry LLP**

David T Ullmann
DTU/ab

c.c.: John Wolf

**APPENDIX "C"**
**Monitor's Correspondence to Moving Landlord dated October 3, 2018**

**From:** Merskey, Alan
**Sent:** October-03-18 4:39 PM
**To:** David T. Ullmann (dullmann@blaney.com); John C. Wolf (jwolf@blaney.com); DSmith@blg.com; Alan B. Dryer (adryer@shermanbrown.com)
**Cc:** Pasparakis, Orestes; Cobb, Evan; Gauthier, Virginie
**Subject:** RE: Sears Canada Inc.: The Children's Place Motion to Lift Co-Tenancy Stay
**Attachments:** Sears.pdf; 2018-09-27 - LT Alan Merskey re cotenancy issues.pdf

David,

We are writing in response to your email of October 2 (below), your email of September 27 requesting additional answers from the Monitor in connection with your motion to delay adjudication of your claims, and your letter of September 27, 2018 (attached), seeking the Monitor's support to indefinitely delay the co-tenancy motion scheduled for October 16, 2018.

In summary, the Monitor is not prepared to accede to further delay, as proposed by your various communications. The Monitor remains of the view that the matters raised by your claims must be resolved for the better administration of the estate and in the interest of all stakeholders.

The answers to your additional questions are attached, without accepting their relevance. With respect to your proposal that your motion to delay be delayed again, you state that:

> We wish to point out that given that this Motion is to be heard on October 16, 2018, it is even less sensible now than it had originally been that it proceed at all at this point. We point out that given that the relief that we are seeking is to delay the adjudication of the claims only until such time as Justice Hainey rules on the Deemed Trust Motion, we are likely dealing with a relatively small window of time. Indeed, it is entirely possible that Justice Hainey could rule on the Deemed Trust Motion before he rules on our motion, given they are to be heard only 2 weeks apart.

The Monitor notes that the Moving Landlords first raised their intention to bring their motion to delay on July 24, 2018. The Monitor's view is that it would be inappropriate to reward the Moving Landlords' delay with further delay. Ultimately the Monitor's position is that the original reasons for opposing the Moving Landlords' motion to delay remain applicable.

With respect to your letter of September 27 and your email of October 2, both relating to the co-tenancy issues you have stated variously that:

1. The co-tenancy motion should be deferred until a plan of arrangement;
2. Your clients will suffer losses in connection with claims by the co-tenant if the stay is determined to have expired or to be lifted.
3. Those losses give rise to claims against Sears by the Moving Landlords;
4. Those claims of the Moving Landlords should therefore be delayed;
5. Those claims of the Moving Landlords would, if valid, be material objections to any Plan of Arrangement;
6. There is no prejudice to the co-tenants in continuing the stay; and
7. You will provide your final position on the co-tenancy motion once you have the Monitor's position with respect to the foregoing.

The Monitor has some difficulty discerning the commonality of all of these points, aside from a unifying theme of delay.

The Monitor notes that the co-tenants circulated a schedule on August 21, 2018. That motion contemplated service of responding evidence before September 21, 2018, before service of any Monitor's report. You did not ask for any changes. As you are aware, the usual practice, absent motions in which the Monitor is an active participant, is for the Monitor to deliver the report last, to provide its perspective on all of the information before the court.

For your assistance however, the Monitor can advise, using the same numbering as above:

1. The Monitor has been provided with no basis to consider this new delay request, subject to the comments below.
2. The Monitor has very little knowledge of the losses that might be suffered by the Moving Landlords from co-tenancy claims, given their record;
3. The existence of claims against the Moving Landlords does not in fact or law necessarily give rise to claims against Sears by the Moving Landlords for breaches of contracts to which Sears is not a party. The Monitor has repeatedly expressed this position to you and repeatedly suggested its willingness to have it determined in test claims before Justice Farley;
4. The Monitor has consistently advised of its views regarding the proposed delay of the Moving Landlord claims;
5. The effect of the Moving Landlord claims "if valid" on a plan is all the more reason to have them addressed now;
6. Given that the Moving Landlords have not given the co-tenants notice of this request to delay, the Monitor has no knowledge as to the prejudice they might assert. The Monitor has copied their counsel on this email to provide such notice.
7. See note above. In the absence of any factual record or legal argument proposed by the Moving Landlords, the Monitor's view of the co-tenancy motion is essentially that it does not oppose it. It is up to the co-tenants to establish the factual or legal basis for the relief they seek. At present, the Monitor is not aware of any facts to contradict their claims that the co-tenancy stay has expired.

Best regards

**Alan Merskey**
Partner

Norton Rose Fulbright Canada LLP / S.E.N.C.R.L., s.r.l.
Royal Bank Plaza, South Tower, Suite 3800
200 Bay Street, P.O. Box 84, Toronto, ON M5J 2Z4 Canada
T: +1 416.216.4805 | F: +1 416.216.3930
alan.merskey@nortonrosefulbright.com

**NORTON ROSE FULBRIGHT**

---

**From:** David T. Ullmann [mailto:DUllmann@blaney.com]
**Sent:** October-02-18 12:36 PM
**To:** Smith, Douglas O.
**Cc:** Merskey, Alan; John C. Wolf
**Subject:** RE: Sears Canada Inc.: The Children's Place Motion to Lift Co-Tenancy Stay

Hello Doug,

We sent a letter with our position to the Monitor on Thursday. Assuming they consider and respond to that position in their report and include our letter in their report, we do not intend to file any further materials. We have not heard from the monitor in response to our letter as yet but I know many people were away this past weekend which may explain the delay.

BTW, I have not been corresponding with Mr. Dryer on any of this on the assumption you have been keeping him in the loop and that his position is not materially different than yours (other than the specifics of the leases and the amount of his client's claims, of course). If that is not the case, please let me know. I have not heard anything from him.

Regards,

David

David T. Ullmann
Partner
dullmann@blaney.com
416-596-4289 | 416-594-2437

**From:** Smith, Douglas O. [mailto:DSmith@blg.com]
**Sent:** October 1, 2018 3:40 PM
**To:** David T. Ullmann
**Subject:** RE: Sears Canada Inc.: The Children's Place Motion to Lift Co-Tenancy Stay

Hi David. Any further intel on this? Can I assume that you will not be filing material or cross-examining?

Best,



**Douglas O. Smith**
**Lawyer**
T 416.367.6015 | F 416.367.6749 | DSmith@blg.com
Bay Adelaide Centre, East Tower, 22 Adelaide St W, Toronto, ON, Canada M5H 4E3

**APPENDIX "D"**
**Moving Landlords' Email dated October 4, 2018**

**From:** David T. Ullmann <DUllmann@blaney.com>
**Sent:** October-04-18 10:13 AM
**To:** Merskey, Alan; John C. Wolf; DSmith@blg.com; Alan B. Dryer (adryer@shermanbrown.com)
**Cc:** Pasparakis, Orestes; Cobb, Evan; Gauthier, Virginie
**Subject:** RE: Sears Canada Inc.: The Children's Place Motion to Lift Co-Tenancy Stay

Alan,

Thank you for your email. There is no inconsistency in our position and the unifying theme is saving costs to the estate, not delay.

No delay is sought in terms of the co-tenancy motion. The motion will proceed on October 16th. If there has been any delay in raising that issue, it has been on the part of the co-tenants and not the Moving Landlords. The fact that we oppose their motion and seek to maintain the status quo is not a request for a delay, it is a question of interpretation of the intent and effect of the Order, which the motion will determine. The prejudice to be suffered to our clients is prima facie and manifest, as set out in the example I provided you in our letter, or by interpolation from the evidence provided by the two co-tenants (assuming the validity of their claims, which is not admitted). As to prejudice allegedly suffered by the co-tenants, I believe if you review their record, they have made their position on that known. Given the foregoing, I do not know why the Monitor feels it does not have that information, as you suggest below.

If it is your intention to make submissions with respect to lifting the co-tenancy stay on the theory that it is of no impact to the estate because the claims by landlords against Sears for co-tenancy damages are improper, the Monitor would be asking the court to rely solely upon your unproven theory that this type of claim (which is, incidentally a claim which the Monitor accepted as valid and was materially paid for by the Debtor in Target) is invalid and which you know we contest. I do not think the Monitor should prejudge this issue or dismiss it so casually on the basis of your view of the law, especially in this instance when it is not in keeping with prior practice. If that is the basis of your position on the co-tenancy claims against Sears, that question should be put squarely before the court by the Monitor on its own motion. The motion brought by the co-tenants does not seek to decide that issue.

As to your insistence that our motion to vary the claims bar should proceed, I am quite surprised that is the Monitor's position, given the limited remaining difference of time which we are seeking. There is no version of the future that I am aware of where Sears will file a plan of arrangement before the Deemed Trust motion is decided by Justice Hainey or settled. We asked you for such a timeline in our questions and the Monitor admitted there is none. It is almost impossible to imagine, given the schedule put forward by Farley J, that were the Monitor to concede to my client's request or the court were to grant it, that my client's claims will remain unresolved prior to any plan being put forward by Sears. It is also not conceded that even if that were to occur, our clients outstanding claims would prevent such a plan from being tabled or passed. Therefore, there remains no urgency which supports your resistance to my reasonable request. On the other hand, we reiterate that it is quite possible that if there is a clear result from the Deemed Trust motion, that it may never be necessary to adjudicate our claims, saving costs to both sides. I really believe we are being asked to argue over a delta of weeks at this point, which cannot seriously be considered a material length of time when compared against the length of this file and its likely future.

Finally, I find it shocking that you have expressly admitted in your email just now that you will not counsel your client to do the sensible thing, which is to agree to our proposal on the claims issue, because you do not want to "reward" what you have decided was inappropriate conduct (which we deny was the case in any event). This statement by you is an acknowledgment that but for the your self-anointed mandate to teach us a lesson, your client would do what we are requesting. I look forward to you making that submission to the Court.

I will review your client's answer to our questions and respond to that separately, if necessary, but I will wait until the end of the week for you to reconsider your position, to save any further costs before I spend any further time on that motion.

Regards,

David

David T. Ullmann
Partner

dullmann@blaney.com
416-596-4289 | 416-594-2437

---

**From:** Merskey, Alan [mailto:alan.merskey@nortonrosefulbright.com]
**Sent:** October 3, 2018 4:39 PM
**To:** David T. Ullmann; John C. Wolf; DSmith@blg.com; Alan B. Dryer (adryer@shermanbrown.com)
**Cc:** Pasparakis, Orestes; Cobb, Evan; Gauthier, Virginie
**Subject:** RE: Sears Canada Inc.: The Children's Place Motion to Lift Co-Tenancy Stay

David,

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Best regards

**Alan Merskey**
Partner

Norton Rose Fulbright Canada LLP / S.E.N.C.R.L., s.r.l.
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200 Bay Street, P.O. Box 84, Toronto, ON M5J 2Z4 Canada
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alan.merskey@nortonrosefulbright.com

**NORTON ROSE FULBRIGHT**

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**From:** David T. Ullmann [mailto:DUllmann@blaney.com]
**Sent:** October-02-18 12:36 PM
**To:** Smith, Douglas O.
**Cc:** Merskey, Alan; John C. Wolf
**Subject:** RE: Sears Canada Inc.: The Children's Place Motion to Lift Co-Tenancy Stay

Hello Doug,

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BTW, I have not been corresponding with Mr. Dryer on any of this on the assumption you have been keeping him in the loop and that his position is not materially different than yours (other than the specifics of the leases and the amount of his client's claims, of course). If that is not the case, please let me know. I have not heard anything from him.

Regards,

David

David T. Ullmann
Partner

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**Sent:** October 1, 2018 3:40 PM
**To:** David T. Ullmann
**Subject:** RE: Sears Canada Inc.: The Children's Place Motion to Lift Co-Tenancy Stay

Hi David. Any further intel on this? Can I assume that you will not be filing material or cross-examining?

Best,

BLG
Borden Ladner Gervais

**Douglas O. Smith**
**Lawyer**
T 416.367.6015 | F 416.367.6749 | DSmith@blg.com
Bay Adelaide Centre, East Tower, 22 Adelaide St W, Toronto, ON, Canada M5H 4E3

**APPENDIX “E”**
**A copy of the Moving Landlords’ email dated September 27, 2018**

**From:** David T. Ullmann <DUllmann@blaney.com>
**Sent:** September-27-18 6:07 PM
**To:** Merskey, Alan; Pasparakis, Orestes
**Cc:** John C. Wolf; Gauthier, Virginie; Cobb, Evan; Jessica Wuthmann; Taylor, Stephen
**Subject:** Motion to Vary Claims Procedure Order - follow up questions
**Attachments:** Follow-up questions for the Monitorv3.pdf

Alan, et al.

Enclosed, kindly find our follow-up questions based on the responses which the Monitor provided to our original list of questions. We look forward to the reply.

We wish to point out that given that this Motion is to be heard on October 16, 2018, it is even less sensible now than it had originally been that it proceed at all at this point. We point out that given that the relief that we are seeking is to delay the adjudication of the claims only until such time as Justice Hainey rules on the Deemed Trust Motion, we are likely dealing with a relatively small window of time. Indeed, it is entirely possible that Justice Hainey could rule on the Deemed Trust Motion before he rules on our motion, given they are to be heard only 2 weeks apart. We strongly encourage you to have your client reconsider its position and instead exercise its discretion and accept the limited delay in the claims process we are requesting in our amended Notice of Motion.

Finally, we remain available, as we have been throughout, to have a meeting with the Monitor to discuss the outstanding issues with respect to the treatment of Landlord Claims with a view to attempting to reach a resolution, which could be satisfactory to our clients. Should you wish to schedule such a meeting, we will make ourselves available on October 1st or 3rd, 2018.

Regards,

David

David T. Ullmann
Partner
dullmann@blaney.com
416-596-4289 | 416-594-2437

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**From:** Merskey, Alan [mailto:alan.merskey@nortonrosefulbright.com]
**Sent:** September 19, 2018 12:47 PM
**To:** David T. Ullmann; Pasparakis, Orestes
**Cc:** John C. Wolf; Gauthier, Virginie; Cobb, Evan; Jessica Wuthmann; Taylor, Stephen
**Subject:** RE: Motion Thursday vs Meeting re formula

David, John

Attached are the Monitor's answers to your questions. In accordance with your request, the answer to question #7 is attached separately, although the Monitor does not agree in so doing that the contents are confidential.

Best regards

**Alan Merskey**
Partner

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**NORTON ROSE FULBRIGHT**

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**From:** David T. Ullmann [mailto:DUllmann@blaney.com]
**Sent:** September-18-18 10:30 AM
**To:** Pasparakis, Orestes
**Cc:** Merskey, Alan; John C. Wolf; Gauthier, Virginie; Cobb, Evan; Jessica Wuthmann
**Subject:** RE: Motion Thursday vs Meeting re formula

Please see our questions attached.

The questions are all directly relevant to the failure for the Monitor to prove prejudice, to balance prejudice, and the question as to whether or not the Monitor is selectively prosecuting the Moving Landlords for an improper and collateral purpose, as our Notice of Motion asserts or to prove that a delay in dealing with the Moving Landlords is in any real way an impediment to a distribution in the Sears estate, which you have asserted to be the case.

There is no practical way for these responses to be provided in a time which makes them useful for Thursday's hearing. It was the Monitor's choice to demand written questions rather than consent to an examination in person.

I respectfully request the courtesy of you agreeing to an adjournment. There is zero urgency to this matter and your failure to grant an adjournment in this circumstance can only be viewed as further attempt to extract a settlement through leverage. Given that both myself, and some of my clients, are effectively offline until Thursday morning, all the leverage in the world is not going to matter at this point.

Regards,

David Ullmann

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**From:** David T. Ullmann
**Sent:** September 17, 2018 4:19 PM
**To:** Pasparakis, Orestes
**Cc:** 'Merskey, Alan'; John C. Wolf
**Subject:** Motion Thursday vs Meeting re formula

Without Prejudice

Orestes,

Thank you for the informal chat after our meeting and your without prejudice suggestion. As I mulled it over while returning to the office, I came to the following suggestion.

At this point, I expect the motion on Thursday is heading for an adjournment anyway. I know you will contest that, but that is what I think will happen. Here is what I suggest instead of fighting that out and you rushing to answer my questions, which I will not even be able to look at until 9pm on Wednesday night (and to which I will not have had the right to ask for clarification or further questions, as I am entitled). Let's agree to adjourn the motion for two weeks. During those two weeks, we will take you up on your offer to have a discussion about the landlord formula and why you believe it is a better

outcome for our clients than what is being sought on the motion. Perhaps you may be able to further accommodate us in a manner which does not require any further give to the other landlords (because of the nature of what is given might not applying factually to all, for example) I don't know. Perhaps we can reach a resolution in that forum. If not, all you have lost is the two weeks it takes to get back into court, which is really not material in the grand scheme of this file at this point, especially since we have the Farley process already in place if I don't succeed at the motion. I will also allow for you to hold off on answering our questions (which I will provide tomorrow regardless) until after we have had our meeting and considered the information from that meeting with our clients.

I think this might lead to a more cost efficient resolution to our issues.

Let me know if you are prepared to recommend this to your clients and I will do the same on my end.

Regards,

David

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**Follow-Up Questions for the Monitor**

The following questions/requests for clarification or further information arise from a review of the Monitor's responses ("**Responses**") to the preliminary questions of the Moving Landlords ("**Preliminary Questions**") provided on September 19, 2018. As the questions below are akin to an examination, we expect the answers to be provided by the Monitor personally, and not provided or written by counsel to the Monitor, and they will be relied on as such evidence directly from the Monitor. Please identify the individual from the Monitor who provides the responses. If there is more than one person responding, please identify the person doing so on a question by question basis.

1. In regards to the Monitor's answer to question 1 of the Preliminary Questions, does the list of the individuals who had institutional knowledge which you have provided include all employees with institutional knowledge of the Moving Landlords' disputed claims prior to the commencement of the CCAA? If not, please list all Sears' employees, including those who worked with Sears prior to liquidation, who have institutional knowledge of the Moving Landlords' disputed claims at issue. As previously requested, please ensure that the list of employees is provided on a premises by premises basis.

2. In regards to the Monitor's response to question 9 of the Preliminary Questions, please produce the Settlement Agreement or agree to strike reference to it from your materials and to cease making any reference to the existence of such a settlement in any submissions before the court.

3. In response to the Monitor's response to question 10 of the Preliminary Questions, please produce the Settlement Agreement or agree to strike reference to them from your materials and to cease making any reference to the existence of such a settlement in any submissions before the court.

4. In the Monitor's response to question 12 of the Preliminary Questions, the Monitor states that environmental claims of the other landlords are currently not settled. In that regard, please advise,

    a. How many landlords have outstanding environmental claims?

    b. How much are these claims worth?

    c. Why are these claims outstanding? Why are these environmental claims not included in the Settlement Agreement?

    d. What is the schedule in place to resolve these claims?

5. In response to question 11, please produce all correspondence between the Monitor and the landlords who have refused the settlement.

6. In response to question 11, please advise when those matters are scheduled to be heard by the Claims Officer.

7. In response to question 11, please explain the factors being considered in the Monitor in determining "a time period or manner satisfactory to the Monitor".

8. In response to question 15, please explain how the Monitor is, "in general terms" understanding that the stakeholders support the settlement with the other landlords if those stakeholders have not seen the settlement?

9. In the Monitor's response to question 12 of the Preliminary Questions, the Monitor states that D & O claims of the other landlords are currently not settled. In that regard, please advise,

    a. How many landlords have outstanding D & O claims?

    b. How much are these claims worth?

    c. Why are these claims outstanding? Why are these D & O claims not included in the Settlement Agreement?

    d. What is the schedule in place to resolve these claims?

    e. are there outstanding D&O claims filed by other creditors other than the landlords of Sears?

10. Please provide the specific number of landlords who have agreed to the settlement formula.

11. In response to question 13, please provide the value of the 11 claims asserted by counter-parties to operating agreements ("**OA Claims**"). Please advise as to the schedule for the resolution of those claims and when those disputed claims are scheduled to be put before the Claims Officer.

12. In response to question 12, confirm whether or not any indemnity claims have been filed by the D&Os against Sears.

13. In response to question 12, please advise whether or not the D&O indemnity claims have been allowed by the relevant insurers

14. In response to question 12, please advise as to the impact, if any, of any indemnity claims made by the D&Os on any possible distribution of the Sears proceeds to creditors and whether or not the Monitor would have to holdback funds in respect of those claims until resolved.

15. In response to question 12, please advise if a Plan of Arrangement can be settled without a resolution to the D&O claims, given that it is not uncommon for D&O claims to be valued and compromised in such a Plan

16. In regards to the Monitor's answer to question number 14 of the Preliminary Questions, please provide details of the 1 disputed claim that may need to be referred to the Claims Officer.

17. In response to the Monitor's answer to question 16, please explain the "time limited deferral request from the parties to the other claim", how long the deferral is, why is it l more likely that claim will be withdrawn, and how it differs materially from the statement in the Moving Landlord's record that settlement of the claims will be more likely once the deemed trust issues is resolved?

18. Has any other party received a "time limited deferral"? If so, please provide the details.

19. Please further explain the Monitor's answer to question number 30 of the Preliminary Questions.

20. Please confirm that the Monitor has no basis to anticipate any significant hold back from the proceeds otherwise payable in any dividend, other than with respect to the Moving Landlord's disputed claim?

21. Question 33 and 34 of the Preliminary Questions refer to the deemed trust motion served in August 2017 (as per the Monitor's Report). It appears the Monitor responded with information with respect to August 2018. Please adjust the earlier responses accordingly.

**APPENDIX "F"**
**Monitor's Response to Moving Landlords September 27, 2018 questions**

October 3, 2018

**Follow-Up Questions for the Monitor**

The following questions/requests for clarification or further information arise from a review of the Monitor's responses ("Responses") to the preliminary questions of the Moving Landlords ("Preliminary Questions") provided on September 19, 2018. As the questions below are akin to an examination, we expect the answers to be provided by the Monitor personally, and not provided or written by counsel to the Monitor, and they will be relied on as such evidence directly from the Monitor. Please identify the individual from the Monitor who provides the responses. If there is more than one person responding, please identify the person doing so on a question by question basis. *The purported restriction is improper and inapplicable. The Monitor repeats and relies upon its prior position in this regard*.

1 In regards to the Monitor's answer to question 1 of the Preliminary Questions, does the list of the individuals who had institutional knowledge which you have provided include all employees with institutional knowledge of the Moving Landlords' disputed claims prior to the commencement of the CCAA? If not, please list all Sears' employees, including those who worked with Sears prior to liquidation, who have institutional knowledge of the Moving Landlords' disputed claims at issue. As previously requested, please ensure that the list of employees is provided on a premises by premises basis.

***Answer***: *The list provided includes the names of the people who are or were until recently employed by Sears Canada Inc. ("**SCI**") at head office and had knowledge of matters pertaining to SCI's former leased locations. There may have been individual store level employees with personal knowledge of individual leasing matters, insofar as there were location specific issues. The Monitor is not aware as to which store level employees had what knowledge of what locations or the extent of that knowledge.*

2 In regards to the Monitor's response to question 9 of the Preliminary Questions, please produce the Settlement Agreement or agree to strike reference to it from your materials and to cease making any reference to the existence of such a settlement in any submissions before the court.

***Answer***: *The Monitor maintains its position. The Monitor is bound by confidentiality provisions that prevent the production of this document. You personally have direct knowledge of the terms of the settlement agreement it having been shared with you by the Monitor.*

3 In response to the Monitor's response to question 10 of the Preliminary Questions, please produce the Settlement Agreement or agree to strike reference to them from your materials and to cease making any reference to the existence of such a settlement in any submissions before the court.

***Answer***: *See answer to question 2 above.*

4 In the Monitor's response to question 12 of the Preliminary Questions, the Monitor states that environmental claims of the other landlords are currently not settled. In that regard, please advise,

(a) How many landlords have outstanding environmental claims?

***Answer***: *There are 8 landlords with outstanding environmental claims.*

(b) How much are these claims worth?

***Answer**: The total face value of these environmental claims approximates $39.7 million.*

(c) Why are these claims outstanding? Why are these environmental claims not included in the Settlement Agreement?

***Answer**: These claims are being resolved in the context of the claims process. These claims are all in respect of actual environmental damages that have been documented by the claimant and of which Sears has some knowledge.*

(d) What is the schedule in place to resolve these claims?

***Answer**: The resolution of these claims is ongoing. While there is no set timetable, parties involved in the resolution of these claims are actively working on such resolution.*

5 In response to question 11, please produce all correspondence between the Monitor and the landlords who have refused the settlement.

***Answer**: Other than the claims of the Moving Parties, there is only one claim for which a landlord declined to enter into the settlement agreement. The same landlord agreed to enter into the settlement agreement in respect of its other properties. The correspondence between the Monitor and such landlord is not relevant to the issue on your motion.*

6 In response to question 11, please advise when those matters are scheduled to be heard by the Claims Officer.

***Answer**: Settlement discussions are ongoing. The claim, which is in an amount of $5 million will be referred to the claims officer if those discussions do not result in a settlement in the near term.*

7 In response to question 11, please explain the factors being considered in the Monitor in determining "a time period or manner satisfactory to the Monitor".

***Answer**: See answer to question 6 above.*

8 In response to question 15, please explain how the Monitor is, "in general terms" understanding that the stakeholders support the settlement with the other landlords if those stakeholders have not seen the settlement?

***Answer**: Counsel to such stakeholders have confirmed same to the Monitor based upon a description of the general terms to such stakeholders.*

9 In the Monitor's response to question 12 of the Preliminary Questions, the Monitor states that D & 0 claims of the other landlords are currently not settled. In that regard, please advise,

(a) How many landlords have outstanding D & 0 claims?

***Answer**: There are 62 landlords with outstanding D&O Claims.*

(b) How much are these claims worth?

***Answer**: The total face value of these claims is $19.5 billion however all are unquantified, contingent and duplicative claims that have not been valued by the Monitor.*

(c) Why are these claims outstanding? Why are these D & 0 claims not included in the Settlement Agreement?

***Answer**: As a member of the Litigation Committee, you are aware that the valuation of those claims is directly linked to the work of the Litigation Investigator, and that those claims have not been valued pending the Litigation Investigator's recommendation on litigation to be pursued by creditors of the estate, and as outlined to the court in the 21st and 24th report.*

(d) What is the schedule in place to resolve these claims?

***Answer**: Please refer to answer 9C. above. Also, please note that the deadline for submission of Notices of Revision or Disallowance on all D&O Claims has been extended until and including December 18, 2018 pursuant to an Order of the Court made on September 20, 2018.*

(e) Are there outstanding D&O claims filed by other creditors other than the landlords of Sears?

***Answer**: Yes. The pension parties and employees have all filed claims.*

10 Please provide the specific number of landlords who have agreed to the settlement formula.

***Answer**: There are 57 landlords who have agreed to the settlement formula.*

11 In response to question 13, please provide the value of the 11 claims asserted by counter-parties to operating agreements ("OA Claims"). Please advise as to the schedule for the resolution of those claims and when those disputed claims are scheduled to be put before the Claims Officer.

***Answer**: While OA Claims are not generally relevant, the Monitor notes that, aside from the $1.2 billion claim referred to in answer 16 of the prior responses to your question and the Moving Landlords Claim, the total value of the claims for which a Notice of Dispute regarding an operating agreement has been received is $9.5 million.*

12 In response to question 12, confirm whether or not any indemnity claims have been filed by the D&Os against Sears.

***Answer**: Yes. The Monitor has previously reported on this fact.*

13 In response to question 12, please advise whether or not the D&O indemnity claims have been allowed by the relevant insurers.

***Answer**: This is not relevant to the issues on your motion, although it has been reported on by the D&Os to the service list of which you are a member.*

14 In response to question 12, please advise as to the impact, if any, of any indemnity claims made by the D&Os on any possible distribution of the Sears proceeds to creditors and whether or not the Monitor would have to holdback funds in respect of those claims until resolved.

***Answer**: Unduly speculative. The indemnity claims will be addressed in the context of the Litigation Investigator's recommendation.*

15 In response to question 12, please advise if a Plan of Arrangement can be settled without a resolution to the D&O claims, given that it is not uncommon for D&O claims to be valued and compromised in such a Plan.

***Answer**: Speculative, hypothetical and argument. There are a number of variables that could affect the treatment of D&O claims under a plan, including releases. There are no such variables affecting the treatment of the Moving Landlord claims.*

16 In regards to the Monitor's answer to question number 14 of the Preliminary Questions, please provide details of the 1 disputed claim that may need to be referred to the Claims Officer.

***Answer**: The claim relates to a landlord's expectations on the sale price of a mall in which a Sears store was previously located.*

17 In response to the Monitor's answer to question 16, please explain the "time limited deferral request from the parties to the other claim", how long the deferral is, why is it I more likely that claim will be withdrawn, and how it differs materially from the statement in the Moving Landlord's record that settlement of the claims will be more likely once the deemed trust issues is resolved?

***Answer**: The claim relates to a dispute between two commercial parties in which Sears is indirectly involved. The Monitor understands that the parties have reached an agreement in principle, which would result in, among other things, those parties' claims against Sears being withdrawn. The resolution of those claims (or of any other disputed claim in the estate other than the Pension Claims themselves), is not predicated on the resolution of the deemed trust issues.*

*18* Has any other party received a "time limited deferral"? If so, please provide the details.

***Answer**: There are no other agreements to defer the resolution of disputed claims.*

*19* Please further explain the Monitor's answer to question *number 30 of the Preliminary Questions.*

***Answer***: The answer to question 30 is self-explanatory.

20 Please confirm that the Monitor has no basis to anticipate any significant hold back from the proceeds otherwise payable in any dividend, other than with respect to the Moving Landlord's disputed claim?

***Answer**: The Monitor is working diligently to resolve outstanding disputed claims filed against the Applicants with a view to allow the Applicants to present a plan of compromise or arrangement to their creditors with only appropriate reserves in place.*

21 Question 33 and 34 of the Preliminary Questions refer to the deemed trust motion served in August 2017 (as per the Monitor's Report). It appears the Monitor responded with information with respect to August 2018. Please adjust the earlier responses accordingly.

***Answer**: The prior question was ambiguous. The prior response correctly reflects the service of a deemed trust motion in August 2018, and reflected information not yet before the court at that time. To the extent the Moving Landlords wish to rely upon information regarding fees dating back to 2017, that historical information is available in prior Monitor reports.*

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

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