

**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 PAYLESS  
SHOESOURCE CANADA INC. AND PAYLESS SHOESOURCE CANADA GP INC.**

(the "Applicants")

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**FACTUM OF THE APPLICANTS  
(Meetings Order)**

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September 17, 2019

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## INDEX

	<u>Page</u>
PART I - OVERVIEW.....	1
PART II - FACTS .....	4
PART III - ISSUES.....	8
PART IV - LAW .....	9
PART V - RELIEF SOUGHT .....	15
SCHEDULE "A" LIST OF AUTHORITIES.....	A-1
SCHEDULE "B" RELEVANT STATUTES.....	B-1

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**FACTUM OF THE APPLICANTS  
(Meetings Order)**

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**PART I - OVERVIEW**

1. This factum is filed in support of the motion of Payless ShoeSource Canada Inc. and Payless ShoeSource Canada GP Inc. (the "**Applicants**", and with Payless ShoeSource Canada LP, the "**Payless Canada Entities**") for an order (the "**Meetings Order**"), among other things, accepting the filing of a Plan of Compromise and Arrangement in respect of the Payless Canada Entities dated September 17, 2019 (the "**CCAA Plan**"), and authorizing the Payless Canada Entities to hold two (2) meetings of their Affected Creditors (the "**Creditors' Meetings**") to consider and vote on resolutions to approve the CCAA Plan.<sup>1</sup>

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<sup>1</sup> Capitalized terms not defined herein have the meanings ascribed to such terms in the Affidavit of Adrian Frankum, sworn September 10, 2019, attached at Tab 2 of the Payless Canada Entities' Motion Record dated September 10, 2019 (the "**Frankum Affidavit**") or the Affidavit of Stephen Marotta, sworn September 17, 2019 (the "**Marotta Affidavit**").

2. Payless Holdings LLC, through its subsidiaries and related parties (collectively, “**Payless**”), was the largest specialty family footwear retailer in the Western Hemisphere, which offered a wide range of shoes and accessory items at affordable prices. The Payless Canada Entities comprised the Canadian operating arm of the Payless global business and, as at February 19, 2019 (the “**Filing Date**”), sold Payless footwear and merchandise throughout Canada from over 240 retail stores across 10 provinces.<sup>2</sup>

3. On February 18, 2019, the U.S. Debtors (including the Payless Canada Entities) commenced insolvency proceedings (the “**U.S. Proceedings**”) by filing voluntary petitions for relief under chapter 11 of the United States Bankruptcy Code. The U.S. Proceedings are pending before the United States Bankruptcy Court for the Eastern District of Missouri (the “**U.S. Bankruptcy Court**”).<sup>3</sup>

4. The Applicants sought and obtained the Initial Order under the *Companies’ Creditors Arrangement Act*<sup>4</sup> (the “**CCAA**”) on the Filing Date. The Initial Order’s protections extend to Payless ShoeSource Canada LP as the operating entity of the Payless Canada Entities. The Initial Order, among other things, granted an initial stay of proceedings in favour of the Payless Canada Entities up to and including March 21, 2019 (the “**Stay Period**”) and appointed FTI Consulting Canada Inc. as monitor in these CCAA Proceedings (in such capacity, the “**Monitor**”). The Stay Period has been extended three times, most recently to December 20, 2019.

5. The proposed Meetings Order authorizes the Payless Canada Entities to, among other things:

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<sup>2</sup> Frankum Affidavit at para 6, Tab 2 of the Motion Record.

<sup>3</sup> Frankum Affidavit at para 7, Tab 2 of the Motion Record.

<sup>4</sup> *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended [“**CCAA**”].

- a) establish two (2) classes of affected creditors for the purpose of considering and voting on the CCAA Plan: (i) the General Unsecured Creditor class; and (ii) the Landlord class;<sup>5</sup>
- b) call, hold and conduct (i) a meeting of the General Unsecured Creditors and (ii) a meeting of the Landlords to consider and vote on a resolution to approve the CCAA Plan in accordance with the procedures set out in the proposed Meetings Order; and
- c) set the date for the hearing of the Payless Canada Entities' motion for an order to sanction the CCAA Plan (the "**Sanction Order**") should the CCAA Plan be approved for filing and approved by the required majorities of affected creditors at the Creditors' Meetings.

6. To facilitate distributions under the CCAA Plan, should the CCAA Plan be approved by the Required Majorities and sanctioned by the Court, the Meetings Order also provides the procedures for the reconciliation of Claims against the Payless Canada Entities. The Claims Procedure Order previously granted by this Court dealt with the calling of Claims, but not the reconciliation of Claims.

7. The parallel plans in the U.S. Proceedings and these CCAA Proceedings are the product of extensive negotiations. Outside of the CCAA Plan, it is unlikely that distributions would be available for unsecured creditors of the Payless Canada Entities. If approved, sanctioned and implemented, the CCAA Plan will facilitate distributions to the Affected Creditors in an amount commensurate with the distributions to U.S. general unsecured creditors. The Payless Canada Entities submit that granting the Meetings Order is in the best interests of their stakeholders.

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<sup>5</sup> Frankum Affidavit at para 28, Tab 2 of the Motion Record.

## PART II - FACTS

### BACKGROUND

8. The background facts are set out in the Frankum Affidavit, the Marotta Affidavit and the Fifth Report.

### THE CCAA PLAN

9. The CCAA Plan provides for a recovery to General Unsecured Creditors of approximately 3.2% of their Proven Claims and a distribution to Proven Landlord Claims to a maximum of \$3,840.00 per Lease (provided that if there are multiple Landlords per Lease, only one payment of \$3,840.00 shall be made).<sup>6</sup> The CCAA Plan is being put forward by the Payless Canada Entities in the expectation that all Persons with an economic interest in the Payless Canada Entities will derive a greater benefit from the implementation of the CCAA Plan than would result from a bankruptcy.<sup>7</sup>

10. The Payless Canada Entities and certain of their stakeholders, including the Monitor and the Supporting Term Loan Lenders, are continuing to consider the technical transaction steps required to implement the CCAA Plan and the most efficient way to distribute funds in respect of the Term Loan Claims outside of the CCAA Plan. These steps are not expected to impact recoveries to Affected Creditors, but will be necessary to quantify the Reserves and quantify and determine the mechanics in respect of the distributions to the Term Loan Claims outside of the CCAA Plan (as the Term Loan Claims are Unaffected Claims under the CCAA Plan).<sup>8</sup> Additional information will be provided to Affected Creditors in advance of the Creditors' Meeting in the Plan Supplement.<sup>9</sup>

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<sup>6</sup> Marotta Affidavit at para 6.

<sup>7</sup> Marotta Affidavit at para 17.

<sup>8</sup> Marotta Affidavit at para 28.

<sup>9</sup> Marotta Affidavit at para 6.

Treatment of Affected Creditors under the CCAA Plan

11. After significant negotiation among the U.S. Debtors, the Payless Canada Entities, and their stakeholders (including the Monitor, the Term Loan Lenders and the UCC), the parties have fixed the amount for distribution to the unsecured creditors of the Payless Canada Entities at US\$900,000, being referred to as the “**Canadian GUC Amount**”) which will be converted to Canadian dollars in the amount of \$1,183,500 (using the exchange rate of 1.315).<sup>10</sup> The Canadian GUC Amount is intended to provide a recovery to Canadian unsecured creditors that is commensurate with the expected recovery for the Class 5B General Unsecured Creditors under the U.S. Plan.<sup>11</sup>

12. The CCAA Plan provides for two (2) classes: (i) the General Unsecured Creditor class and (ii) the Landlord class.<sup>12</sup>

13. Each General Unsecured Creditor with a Proven Claim will receive a distribution in an amount equal to its *pro rata* share of the General Unsecured Pool.<sup>13</sup>

14. The CCAA Plan classifies Landlords in a separate class for voting purposes and provides that each Landlord will receive the lesser of:

- a) \$3,840.00 per Lease (provided that if there are multiple Landlords per Lease, only one payment of \$3,840.00 shall be made); or

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<sup>10</sup> Marotta Affidavit at para 9.

<sup>11</sup> Marotta Affidavit at para 10.

<sup>12</sup> Frankum Affidavit at para 28, Tab 2 of the Motion Record.

<sup>13</sup> Marotta Affidavit at para 19.

- b) the amount asserted in the Landlord's Notice of Dispute of Claim Statement or Proof of Claim, or, if no Notice of Dispute of Claim Statement or Proof of Claim was filed, then the amount in the Landlord's Claim Statement.<sup>14</sup>

15. Because of the difficulty in reconciling Landlord Claims, the CCAA Plan proposes a fixed recovery per Landlord Claim. If the Payless Canada Entities were required to reconcile each Landlord claim, including undertaking an analysis of the Lease provisions and the Landlord's efforts to mitigate damages, much (or all) of the recovery that would otherwise be available for distribution would be redirected to professional fees. The fixed recovery per Landlord Claim means the Payless Canada Entities will be able to undertake a much more limited review of such Claims and return more value to unsecured creditors.<sup>15</sup>

#### Other Provisions of the CCAA Plan

16. The CCAA Plan creates the Administrative Reserve, the Directors' Claim Reserve, the Priority Claim Reserve and the Post-Filing Claim Reserve.<sup>16</sup> The amount of the Reserves will be set out in the Plan Supplement.<sup>17</sup>

17. As is customary for proceedings of this size and nature, the CCAA Plan contains broad releases of the Payless Canada Entities, the Term Loan Agent, the Term Loan Lenders and the Monitor and their respective directors, officers, agents, professionals and certain other parties. Subject to provisions in the CCAA Plan pertaining to insurance, the Directors from any Claims which have been preserved in accordance with the Claims Procedure Order that cannot be compromised due to the provisions of section 5.1(2) of the CCAA. To the extent not released, the

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<sup>14</sup> Frankum Affidavit at para 30, Tab 2 of the Motion Record; Marotta Affidavit at para 20.

<sup>15</sup> Marotta Affidavit at para 21.

<sup>16</sup> Marotta Affidavit at para 25.

<sup>17</sup> Marotta Affidavit at para 26.

proposed Sanction Order will limit recovery for such claims against the Directors to available insurance.<sup>18</sup>

18. Among other things, the CCAA Plan is conditional upon the U.S. Plan becoming effective and the Monitor receiving written confirmation from the Supporting Term Loan Lenders that the Supporting Term Loan Lenders are satisfied with (i) the treatment of the Post-Filing Intercompany Loans, (ii) the form and substance of the Plan Supplement, and (iii) all variations and modifications of, and amendments and supplements to the Plan, the Plan Supplement and the Sanction Order, to and including the Implementation Date.<sup>19</sup> Distributions to General Unsecured Creditors and Landlords are conditional upon, among other things, the receipt of a Comfort Letter.<sup>20</sup>

#### **MEETINGS ORDER**

19. The proposed Meetings Order is designed to facilitate voting on the CCAA Plan and a Sanction Motion if a positive vote of the requisite majorities is obtained. The proposed Meetings Order, among other things:

- a) accepts the CCAA Plan for filing purposes;
- b) authorizes the Payless Canada Entities to convene the meetings of two (2) classes of Creditors (i) the General Unsecured Creditors and (ii) the Landlords, to consider and vote on the CCAA Plan. The Payless Canada Entities propose that the Creditors' Meetings will be held at the offices of Cassels Brock & Blackwell LLP, counsel to the Payless Canada Entities, on October 23, 2019. The meeting of the

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<sup>18</sup> Marotta Affidavit at para 27.

<sup>19</sup> Marotta Affidavit at para 30.

<sup>20</sup> Marotta Affidavit at para 23.

General Unsecured Creditors will take place at 10:00 a.m. (Toronto time) and the meeting of the Landlords will take place thereafter at 10:15 a.m. (Toronto time);<sup>21</sup>

- c) provides notification and voting procedures for the General Unsecured Creditors and Landlords;<sup>22</sup>
- d) provides a process for amendments or modifications to be made to the CCAA Plan, including the filing of the Plan Supplement;
- e) outlines the procedures for conducting and voting at the Creditors' Meetings, including provisions establishing deadlines for receipt of Proxies from the General Unsecured Creditors and Landlords;<sup>23</sup>
- f) requires the Monitor, no later than three (3) Business Days prior to the Creditors' Meetings, to serve a report regarding the CCAA Plan on the Service List and post a copy of such report on the Monitor's Website;<sup>24</sup>
- g) requires the Monitor to provide a report, as soon as practicable after the Creditors' Meetings with regard to, among other things, the results of the votes;<sup>25</sup> and
- h) schedules a Sanction Motion to be heard on October 29, 2019 if a positive vote of the Required Majorities is obtained.<sup>26</sup>

### **PART III - ISSUES**

20. The key issues on this Motion are:

- a) Should the CCAA Plan be accepted for filing?

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<sup>21</sup> Frankum Affidavit at para 35, Tab 2 of the Motion Record.

<sup>22</sup> Frankum Affidavit at paras 36 and 40, Tab 2 of the Motion Record.

<sup>23</sup> Frankum Affidavit at paras 38, 39 and 40, Tab 2 of the Motion Record.

<sup>24</sup> Frankum Affidavit at para 37, Tab 2 of the Motion Record.

<sup>25</sup> Frankum Affidavit at para 42, Tab 2 of the Motion Record.

<sup>26</sup> Frankum Affidavit at para 43, Tab 2 of the Motion Record.

- b) Is the proposed classification of creditors appropriate?
- c) Should the claims resolution process be approved?

## PART IV - LAW

### A. The CCAA Plan should be Accepted for Filing

21. Section 4 of the CCAA expressly contemplates the calling of meetings of the unsecured creditors of a company to consider and vote on a plan compromising the claims of those creditors:

#### 4. Compromise with unsecured creditors

Where a compromise or an arrangement is proposed between a debtor company and its unsecured creditors or any class of them, the court may, on the application in a summary way of the company, of any such creditor or of the trustee in bankruptcy or liquidator of the company, order a meeting of the creditors or class of creditors, and, if the court so determines, of the shareholders of the company, to be summoned in such manner as the court directs.<sup>27</sup>

22. The threshold to be satisfied in order to file a plan and call a meeting of creditors is low.<sup>28</sup>

The “Court should only decline to give preliminary approval and refuse to order a meeting if it was of the view that there was no hope that the plan would be approved by the creditors or, if it was approved by the creditors, it would not, for some other reason be approved by the Court.”<sup>29</sup>

23. Sanction of a plan rests on well-established criteria:

- a) there must be strict compliance with all statutory requirements;
- b) all material filed and procedures carried out must be examined to determine if anything has been done which is not authorized by the CCAA; and
- c) the plan must be fair and reasonable.<sup>30</sup>

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<sup>27</sup> CCAA s. 4.

<sup>28</sup> *Re Federal Gypsum Co.*, 2007 NSSC 384 at para 12, BOA Tab 1.

<sup>29</sup> *ScoZinc Ltd., Re*, 2009 NSSC 163 at para 7, BOA Tab 2; See also in *Re Target Canada Co.*, 2016 ONSC 316 [“**Target**”], at paras 66-71, BOA Tab 3.

<sup>30</sup> *Target* at para 70-71, BOA Tab 3.

24. If a plan is so flawed that it cannot meet these criteria, the Court should not exercise its discretion to order a meeting.<sup>31</sup> However, an assessment of the fairness and reasonableness of a plan is not necessary at this stage and granting the Meetings Order should be viewed as a “procedural step” in the CCAA process.<sup>32</sup>

25. Releases in a plan of compromise are permissible and do not render a plan ineligible for sanction.<sup>33</sup> Releases are appropriately considered in connection with the sanction of a plan of compromise because they relate to the fairness and reasonableness of the plan.<sup>34</sup>

26. The Payless Canada Entities submit that the CCAA Plan surpasses this hurdle and that at this time, there is every reason to believe the CCAA Plan will succeed. Since all or substantially all of the Payless Canada Entities’ assets are subject to liens of the Term Loan Lenders (who will not be paid in full), the Canadian GUC Amount is a “gift”, which the Term Loan Lenders advise would not be available outside of the CCAA Plan.<sup>35</sup> The Payless Canada Entities submit further that the CCAA Plan complies with the statutory requirements of the CCAA and is consistent with the objectives thereof and should therefore be accepted for filing purposes.

## **B. The Classification of the Affected Creditors is Appropriate**

27. As described above, if the Meetings Order is granted, the Affected Creditors will be classified into two (2) classes for the purposes of voting on the CCAA Plan: (i) the General Unsecured Creditors class; and (ii) the Landlord class.<sup>36</sup>

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<sup>31</sup> *Target* at paras 67-69, BOA Tab 3.

<sup>32</sup> *Re Jaguar Mining Inc.*, 2014 ONSC 494, at para 48, BOA Tab 4.

<sup>33</sup> *ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp.*, 2008 ONCA 587 at paras 71-73 and 113, BOA Tab 5.

<sup>34</sup> *ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp.*, 2008 ONCA 587 at para 113, BOA Tab 5.

<sup>35</sup> Marotta Affidavit at para 17.

<sup>36</sup> Frankum Affidavit at para 28, Tab 2 of the Motion Record.

28. Section 22(1) of the CCAA provides that:

22(1) Company may establish classes

A debtor company may divide its creditors into classes for the purpose of a meeting to be held under section 4 or 5 in respect of a compromise or arrangement relating to the company and, if it does so, it is to apply to the court for approval of the division before the meeting is held.<sup>37</sup>

29. Section 22(2) of the CCAA sets out the factors that are to be taken into account in respect of dividing creditors into separate classes. Creditors may be included in the same class if their interests are sufficiently similar to give them a commonality of interest, taking into account, among other things: (i) the nature of the debts, liabilities or obligations giving rise to their claims and any security in respect of their claims; (ii) the remedies available to those creditors in the absence of the compromise or arrangement; and (iii) the extent to which those creditors would recover their claims by exercising those remedies.<sup>38</sup>

30. These criteria, which were added as part of the 2009 amendments to the CCAA, codify the factors considered in case law pre-dating these amendments.<sup>39</sup> In *Canadian Airlines, Paperny J.*, as she then was, summarized the principles applicable to the classification of creditors as follows:

In summary, the cases establish the following principles applicable to assessing commonality of interest:

1. Commonality of interest should be viewed on the basis of the non-fragmentation test, not on an identity of interest test.
2. The interests to be considered are the legal interests the creditor holds qua creditor in relationship to the debtor company, prior to and under the plan as well as on liquidation.
3. The commonality of these interests are to be viewed purposively, bearing in mind the object of the C.C.A.A., namely to facilitate reorganizations if at all possible.
4. In placing a broad and purposive interpretation on the C.C.A.A., the court should be careful to resist classification approaches which would potentially jeopardize potentially viable plans.

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<sup>37</sup> CCAA s. 22(1).

<sup>38</sup> CCAA s. 22(2).

<sup>39</sup> *Re SemCanada Crude Co.*, 2009 ABQB 490 at paras 44-45, BOA Tab 6.

5. Absent bad faith, the motivations of the creditors to approve or disapprove are irrelevant.

6. The requirement of creditors being able to consult together means being able to assess their legal entitlement as *creditors* before or after the plan in a similar manner.<sup>40</sup>

31. Classification is a fact-specific determination that must be evaluated in the unique circumstances of every case. The exercise must be approached with the flexible and remedial jurisdiction of the CCAA in mind.<sup>41</sup>

32. “Commonality of interest” does not mean “identity of interest”.<sup>42</sup> “Commonality of interest” is based on the principle that a class consists of those persons whose interests are not so dissimilar as to make it impossible for them to consult together with a view to their common interest.<sup>43</sup>

33. The Payless Canada Entities submit that the General Unsecured Creditors are appropriately included in the same class as each unsecured creditor holds a claim of a similar nature against the Payless Canada Entities. As such, each General Unsecured Creditor will receive similar treatment under the CCAA Plan, specifically, a distribution in an amount equal to its General Unsecured Pro Rata Share of the General Unsecured Pool.

34. By contrast, Landlords are separately classified under the CCAA Plan. The fixed recovery per Landlord Claim means the Payless Canada Entities will be able to undertake a much more limited review of such Claims and return more value to unsecured creditors.<sup>44</sup> The fact that the

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<sup>40</sup> *Re Canadian Airlines Corp.*, [2000] A.J. No. 1693 [“**Canadian Airlines**”] at para 31, BOA Tab 7.

<sup>41</sup> *Canadian Airlines* at para 18, BOA Tab 7.

<sup>42</sup> *Canadian Airlines* at para 20, citing *Re Norcen Energy Resources Ltd.* (1988), 72 C.B.R. (N.S.) 20 (Alta. Q.B.) and para 31, BOA Tab 7.

<sup>43</sup> *Canadian Airlines* at para 17, citing *Sovereign Life Assurance Co. v. Dodd*, [1892] 2 Q.B.573 (Eng. C.A.) and para 31, BOA Tab 7.

<sup>44</sup> Marotta Affidavit at para 21.

Claims of Landlords and General Unsecured Creditors are being treated differently (although equitably) under the CCAA Plan justifies the two separate classes.

35. In light of the above descriptions of the General Unsecured Creditor class and the Landlord class, the Payless Canada Entities submit that the classification of creditors in the CCAA Plan is appropriate.

**C. The Claims Resolution Process should be Approved**

36. On April 24, 2019, the Court granted the Claims Procedure Order to allow the Payless Canada Entities to conduct a claims process in parallel to the process conducted in the U.S. Proceedings. The Claims Procedure Order provides that any Claimant who failed to file a Notice of Dispute of Claim Statement by the applicable bar date would have its Claim determined in the amount set out in the Claim Statement. The Claims Procedure Order also provides that any further claims determination procedures will be subject to an Order of this Court.<sup>45</sup>

37. To that end, the Meetings Order contains procedures for the reconciliation of Claims to allow the Payless Canada Entities to make distributions to creditors. The proposed claims resolution process is intended to be streamlined and efficient in order to minimize the professional costs of the claims review.<sup>46</sup> Specifically:

- a) The Payless Canada Entities, in consultation with the Monitor, may deem a Claim accepted for distribution purposes.<sup>47</sup> This procedure will be particularly relevant to Landlord Claims, which are contemplated to receive a fixed distribution per lease under the CCAA Plan.

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<sup>45</sup> Frankum Affidavit at para 45, Tab 2 of the Motion Record.

<sup>46</sup> Frankum Affidavit at para 46, Tab 2 of the Motion Record.

<sup>47</sup> Frankum Affidavit at para 48, Tab 2 of the Motion Record.

- b) The Payless Canada Entities, in consultation with the Monitor, will work consensually to resolve the Notices of Dispute of Claims Statement.<sup>48</sup>
- c) With respect to the Proofs of Claim that were received, the Payless Canada Entities may determine to revise or reject a Proof of Claim by sending a Notice of Revision or Disallowance (as defined in the Meetings Order) to the Claimant. If the Claimant wishes to challenge the Notice of Revision or Disallowance, the Claimant must file a Notice of Dispute with the Monitor by no later than 15 days after the delivery of the Notice of Revision or Disallowance.<sup>49</sup>
- d) In the event that the parties cannot reach a resolution with respect to a Notice of Dispute of Claim Statement or a Notice of Dispute, the Payless Canada Entities may refer such dispute to the Court or to a claims officer, subject to further order of the Court.<sup>50</sup>

38. The Court stated in *Toys R Us*, “[t]he overriding concern of the court is to ensure that any claims procedure process is both fair and reasonable.”<sup>51</sup> In approving a claims procedure much like the procedure set out in the Claims Procedure Order, the Court in *Toys R Us* noted that “experience shows that the vast majority of claims are usually dealt with consensually.”<sup>52</sup>

39. The proposed claims resolution procedures fit squarely within this test. The procedures are designed to encourage consensual resolution and efficiency in light of the potential distributions to creditors. Under the circumstances, the proposed procedures are fair and reasonable.

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<sup>48</sup> Frankum Affidavit at para 49, Tab 2 of the Motion Record.

<sup>49</sup> Frankum Affidavit at para 50, Tab 2 of the Motion Record.

<sup>50</sup> Frankum Affidavit at para 51, Tab 2 of the Motion Record.

<sup>51</sup> *Re Toys “R” Us (Canada Ltd.)*, 2018 ONSC 609 [“**Toys R Us**”] at para 14, BOA Tab 8.

<sup>52</sup> *Toys R Us* at para 10, BOA Tab 8.

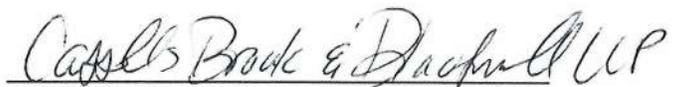
**D. This Court should exercise its Discretion to Grant the Meetings Order**

40. The Meetings Order as a whole provides for adequate notice to the General Unsecured Creditors and the Landlords for voting purposes. The provisions of the Meetings Order, including those regarding voting and conduct at the Creditors' Meetings, are fair and appropriate in the circumstances and, as recommended by the Monitor, the Court should exercise its discretion under section 4 of the CCAA to approve such Meetings Order.

**PART V - RELIEF SOUGHT**

41. The Payless Canada Entities request that this Court exercise its discretion and grant the proposed Meetings Order.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED this 17th day of September, 2019.**

  
Cassels Brock & Blackwell LLP

*Lawyers for the Payless Canada Entities*

**SCHEDULE "A"**  
**LIST OF AUTHORITIES**

1. *Re Federal Gypsum Co.*, 2007 NSSC 384.
2. *ScoZinc Ltd., Re*, 2009 NSSC 163.
3. *Re Target Canada Co.*, 2016 ONSC 316.
4. *Re Jaguar Mining Inc.*, 2014 ONSC 494 (Ont. SCJ [Comm List]).
5. *ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp.*, 2008 ONCA 587.
6. *Re SemCanada Crude Co.*, 2009 ABQB 490.
7. *Re Canadian Airlines Corp.*, [2000] A.J. No. 1693.
8. *Re Toys "R" Us (Canada Ltd.)*, 2018 ONSC 609.

**SCHEDULE "B"**  
**RELEVANT STATUTES**

**Companies' Creditors Arrangement Act, RSC 1985, c C-36**

*Compromise with unsecured creditors*

**4** Where a compromise or an arrangement is proposed between a debtor company and its unsecured creditors or any class of them, the court may, on the application in a summary way of the company, of any such creditor or of the trustee in bankruptcy or liquidator of the company, order a meeting of the creditors or class of creditors, and, if the court so determines, of the shareholders of the company, to be summoned in such manner as the court directs.

*Company may establish classes*

**22 (1)** A debtor company may divide its creditors into classes for the purpose of a meeting to be held under section 4 or 5 in respect of a compromise or arrangement relating to the company and, if it does so, it is to apply to the court for approval of the division before the meeting is held.

*Factors*

**(2)** For the purpose of subsection (1), creditors may be included in the same class if their interests or rights are sufficiently similar to give them a commonality of interest, taking into account

- (a)** the nature of the debts, liabilities or obligations giving rise to their claims;
- (b)** the nature and rank of any security in respect of their claims;
- (c)** the remedies available to the creditors in the absence of the compromise or arrangement being sanctioned, and the extent to which the creditors would recover their claims by exercising those remedies; and
- (d)** any further criteria, consistent with those set out in paragraphs (a) to (c), that are prescribed.

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

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

PROCEEDING COMMENCED AT TORONTO

**FACTUM OF THE APPLICANTS  
(Meetings Order)**

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