

**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 SECTION 243 OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C., 1985, c. B-3, 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.

**MOTION RECORD
(Returnable October 16, 2018)**

October 12, 2018

**URSEL PHILLIPS FELLOWS
HOPKINSON LLP**
555 Richmond Street West, Suite 1200
Toronto ON M5V 3B1

Susan Ursel (LSUC# 26024G)
Tel: (416) 969-3515
Fax: (416) 968-0325
sursel@upfhlaw.ca

Katy O'Rourke (LSUC# 66420K)
Tel: (416) 969-3507
Fax: (416) 968-0325
korourke@upfhlaw.ca

Employee Representative Counsel

TO: THE SERVICE LIST

**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 SECTION 243 OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C., 1985, c. B-3, 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.

**(Motion re. Receivership)
(returnable October 16, 2018)**

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TAB 1

**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 SECTION 243 OF THE *BANKRUPTCY
AND INSOLVENCY ACT*, R.S.C., 1985, c. B-3, 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

**NOTICE OF MOTION
(Receivership Order
Returnable October 16, 2018)**

Ursel Phillips Fellows Hopkinson LLP, in its capacity as representative counsel (the "**Employee Representative Counsel**") to certain non-unionized active employees and certain former employees (collectively, the "**Employees**") of Sears Canada Inc. ("**SCI**") and certain of its affiliates (together, the "**Applicants**"), including former employees of the Applicant entities named in **Schedule "A"** to the Affidavit of Karen Ensslen attached at **Tab 2** of the Motion Record (collectively, the "**Former Employers**"), in their proceeding (the "**CCAA Proceeding**") under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") will bring a motion before a Judge of the of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") on October 16, 2018, at 10:00 a.m. or as soon after that time as the matter may be heard at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR an Order substantially in the form attached at **Tab 3** of the Motion Record, *inter alia*:

- (a) abridging the time for and validating the service of this Notice of Motion and the Motion Record and dispensing with further service thereof;
- (b) lifting the stay of proceedings (the "**Stay**") granted by this Court under the Initial Order in these proceedings dated June 22, 2018 (the "**Initial Order**"), solely with respect to the Former Employers and the Limited Receivership Property (as defined below) and solely to allow the appointment of FTI Consulting Canada Inc. as receiver from and after the Receivership Effective Date (as defined below), without security (in such capacity, the "**Receiver**"), over the Limited Receivership Property, and for the Receiver to act in respect of the Limited Receivership Property in accordance with the provisions of the draft Order attached at **Tab 3** of the Motion Record;
- (c) allowing the appointment of the Receiver, effective two (2) business days following service on the Service List (as defined in the Initial Order) of the certificate attached as **Schedule "A"** to the draft Order attached at **Tab 3** of the Motion Record (the "**Receivership Effective Date**"), without security, of the Limited Receivership Property pursuant to the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3, as amended (the "**BIA**") on the terms set out in the draft Order attached at **Tab 3** of the Motion Record;
- (d) relieving the Receiver from compliance with the provisions of Sections 245(1), 245(2) and 246 of BIA;
- (e) relieving the Receiver from liability or obligation as a result of its appointment or the carrying out the provisions of the draft Order at **Tab 3** of the Motion Record and from any obligations under sections 81.4(5) or 81.6(3) of the BIA; and

- (f) such further and other relief as counsel may request and this Court deems just.

2 **THE GROUNDS FOR THE MOTION ARE:**

- (a) On June 22, 2017, the Applicants were granted protection under the CCAA pursuant to the Initial Order. The Initial Order, among other things, appointed FTI Consulting Canada Inc. to act as monitor (in such capacity, the "**Monitor**") in the CCAA Proceeding and granted the Stay until July 22, 2017. The Court has since extended the Stay a number of times and most recently, until and including December 18, 2018;
- (b) SCI sold goods and services through its department stores, its "Sears Home" stores, its "Sears Hometown" dealer network, its outlet stores, and via its online e-commerce platform. Corbeil Électrique Inc. ("**Corbeil**") sold specialty appliances through a franchise model and S.L.H. Transport Inc. ("**SLH**") provided transportation and distribution solutions to over 300 commercial customers, unrelated to the remaining Applicants and formerly provided transportation solutions to the Applicants.
- (c) The Applicants' sales and distribution network included 161 owned and leased stores, distribution centres and warehouses. On or around June 22, 2017, the Applicants (specifically the Former Employers) employed approximately 17,000 people;
- (d) On July 13, 2017, the Court appointed 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**"). The Employee Representative Counsel Order also appointed five individuals as representatives of the Employees to act

in the overall best interests of the Employees, and to advise and where appropriate instruct Employee Representative Counsel;

- (e) On June 22, 2017, the Applicants announced the closing of 20 full-line locations, plus 15 "Sears Home" Stores, 10 "Sears Outlet" and 14 "Sears Hometown" locations as well as a corresponding reduction in its workforce of approximately 2,900 employees. After continuous store closures and layoffs, the Applicants closed their last remaining stores on January 14, 2018;
- (f) On October 4, 2017, this Court approved the sale of substantially all of the property and assets used in connection with the business carried on by Corbeil and SLH (together, the "**Sale Transactions**"). Pursuant to the Sale Transactions, many of the employees engaged in the Corbeil and SLH business were transferred to the purchasers or their nominees and the remainder were terminated;
- (g) The *Wage Earner Protection Program Act*, S.C. 2005, c. 47, s. 1 ("**WEPPA**") entitles eligible individuals to receive certain payments from the government in respect of wages and severance pay and termination pay in certain circumstances where such individual's former employer is subject to a bankruptcy or receivership;
- (h) The active employees of the Applicants have been paid their wages, including vacation pay;
- (i) The Applicants continue to employ approximately eight (8) employees, whose wages will receive the protection of security under section 81.4 of the BIA;
- (j) Employee Representative Counsel is entitled to the benefit of the Administration Charge (as defined in the Initial Order) as security for its professional fees and disbursements incurred;

- (k) The Employees are currently not eligible to receive payments under WEPPA because the Applicants are not subject to bankruptcy or receivership proceedings;
- (l) The trust accounts of the Former Employers (the “**Limited Receivership Property**”) contain only limited amounts;
- (m) The appointment of the Receiver on the Receivership Effective Date over the Limited Receivership Property would not result in any disruptions to the CCAA Proceeding, or cause any material prejudice to other stakeholders of the Applicants;
- (n) It is just and convenient in the circumstances that the Receiver be appointed over the Limited Receivership Property on the Receivership Effective Date pursuant to section 243(1) of the BIA on the terms set out in the draft Order attached at **Tab 3** of the Motion Record;
- (o) Given that FTI Consulting Canada Inc. has been appointed the Monitor of the Applicants and is subject to reporting obligations under the CCAA and Initial Order, no party will be prejudiced by an order relieving the Receiver from compliance with Sections 245(1), 245(2) and 246 of the BIA;
- (p) The Monitor supports this motion and it is not opposed by the relevant agencies of the Department of Employment and Social Development Canada;
- (q) The provisions of the CCAA and this Court's equitable and statutory jurisdiction thereunder;
- (r) Section 243(1) and 243(2) of the BIA;
- (s) The provisions of WEPPA;

- (t) Rules 2.03, 3.02, 16 and 37 of the *Ontario Rules of Civil Procedure*, R.R.O. 1990, Rec. 194, as amended; and
- (u) Such further and other grounds as counsel may advise and this Court permit.

3 THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE MOTION:

- (a) The affidavit of Karen Ensslen sworn October 11, 2018;
- (b) The consent of FTI Consulting Canada Inc. to act as receiver over the Limited Receivership Property in the within proceedings;
- (c) The draft Receivership Order;
- (d) Such further and other materials as counsel may advise and this Honourable Court may permit.

October 12, 2018

Ursel Phillips Fellows Hopkinson LLP
555 Richmond Street West, Suite 1200
Toronto, Ontario M5V 3B1

Susan Ursel, LSO#: 26024G
sursel@upflaw.ca

Katy O'Rourke, LSO#: 66420K
korourke@upflaw.ca

Employee Representative Counsel

TO: The attached Service List

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

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

AND IN THE MATTER OF SECTION 243 OF THE BANKRUPTCY AND INSOLVENCY
ACT, R.S.C., 1985, c. B-3, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS
CANADA INC., et al.

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

Proceeding commenced at TORONTO

**NOTICE OF MOTION
(Receivership Order
Returnable October 16, 2018)**

Ursel Phillips Fellows Hopkinson LLP
555 Richmond Street West, Suite 1200
Toronto, Ontario M5V 3B1

Susan Ursel, LSO#: 26024G
sursel@upflaw.ca

Katy O'Rourke, LSO#: 66420K
korourke@upflaw.ca

Employee Representative Counsel

Tab 2

**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

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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.

AFFIDAVIT OF KAREN ENSSLEN

I, Karen Ensslen, of the City of Toronto, Province of Ontario, SOLEMNLY AFFIRM AS
FOLLOWS:

1 I am an associate at Ursel Phillips Fellows Hopkinson LLP, in its capacity as
representative counsel (the "**Employee Representative Counsel**") to certain non-unionized
active employees and certain former employees (collectively, the "**Employees**") of Sears
Canada Inc. ("**SCI**") and certain of its affiliates (together, the "**Applicants**"), including former
employees of the Applicant entities named in **Exhibit "A"** hereto (collectively, the "**Former
Employers**"), in their proceeding (the "**CCAA Proceeding**") under the *Companies' Creditors
Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"). As such, I have personal

knowledge of the matters to which I depose in this Affidavit. Where I do not possess personal knowledge, I have stated the source of my information and in all such cases believe it to be true.

2 This Affidavit is sworn in support of a motion made by the Employee Representative Counsel for an Order (the "**Receivership Order**"), *inter alia*: i) appointing FTI Consulting Canada Inc. as receiver, without security (in such capacity, the "**Receiver**"), of the Limited Receivership Property (as defined below), effective two (2) business days following service on the Service List (as defined in the Initial Order) of the receivership certificate attached as **Schedule "A"** to the draft Order attached at **Tab 3** of the Motion Record (the "**Receivership Effective Date**") pursuant to the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3, as amended (the "**BIA**"); and ii) lifting the stay of proceedings in the CCAA Proceedings (the "**Stay**") for the limited purpose of allowing the appointment of the Receiver.

Background

3 On June 22, 2017, the Applicants were granted protection under the CCAA pursuant to an initial order (the "**Initial Order**") of the Ontario Superior Court of Justice (Commercial List) (the "**Court**"). The Initial Order, among other things, appointed FTI Consulting Canada Inc. to act as monitor in the CCAA Proceeding (in such capacity, the "**Monitor**") and granted the Stay until July 22, 2017. The Court has since extended the Stay a number of times and most recently, until and including December 18, 2018.

4 As disclosed in the Monitor's Pre-Filing Report dated June 22, 2017, SCI sold goods and services through its department stores, its "Sears Home" stores, its "Sears Hometown" dealer network, its outlet stores, and via its online e-commerce platform. Corbeil Électrique Inc. ("**Corbeil**") sold specialty appliances through a franchise model and S.L.H. Transport Inc. ("**SLH**") provided transportation and distribution solutions to over 300 commercial customers,

unrelated to the remaining Applicants and formerly provided transportation solutions to the Applicants.

5 The Applicants' sales and distribution network included 161 owned and leased stores, distribution centres and warehouses. On or around June 22, 2017, the Applicants (specifically the Former Employers) employed approximately 17,000 people. A copy of the Monitor's Pre-Filing Report without schedules is attached as **Exhibit "B"** hereto.

6 On June 22, 2017, SCI issued a press release announcing the closing of 20 full-line locations, plus 15 "Sears Home" Stores, 10 "Sears Outlet" and 14 "Sears Hometown" locations as well as a corresponding reduction in its workforce of approximately 2,900 employees. A copy of the press release is attached as **Exhibit "C"** hereto.

7 On July 13, 2017, the Court appointed 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**"). The Employee Representative Counsel Order also appointed five individuals as representatives of the Employees (the "**Employee Representatives**") to act in the overall best interests of the Employees, and to advise and where appropriate instruct Employee Representative Counsel. A copy of the Employee Representative Counsel Order is attached as **Exhibit "D"** hereto.

8 On October 4, 2017, this Court made, *inter alia*, two orders (the "**Approval and Vesting Orders**") approving the sale of substantially all of the property and assets used in connection with the business carried on by Corbeil and SLH (together, the "**Sale Transactions**"). Pursuant to the Sale Transactions, many of the employees engaged in the Corbeil and SLH business were transferred to the purchasers or their nominees and the remainder were terminated. Copies of the Approval and Vesting Orders are attached as **Exhibit "E"** hereto.

9 Following the completion of the Sale Transactions, pursuant to the requirements of the underlying asset purchase agreements with respect to post-closing matters, Corbeil and SLH caused their names to be changed to 9370-2751 Quebec Inc. and 191020 Canada Inc. respectively.

10 On October 19, 2017, SCI issued a press release (the "**October 19 Press Release**") announcing the liquidation of 82 additional stores including 74 department Stores and 8 "Sears Home" stores. A copy of the October 19 Press Release is attached as **Exhibit "F"** hereto.

11 According to a news article in the *Globe and Mail* dated January 14, 2018, the Applicants closed their last remaining stores on January 14, 2018. A copy of the news article is attached as **Exhibit "G"** hereto.

12 Even though the businesses of the Applicants were sold or shut down nearly 9 months ago, the Employees have not received any compensation yet on their claims against the Applicants.

13 There are a number of matters that remain to be resolved before any distribution can be made to creditors of the Applicants, including distribution to Employees. There is no indication as to how much time will be required to resolve these matters and for distributions to be made.

14 Although certain Employee claims continue to be adjudicated, those claims that are capable of calculation and allowance pursuant to the methodologies set out in the employee and retiree claims procedure order issued by this Court on February 22, 2018 are not less than \$192,361,000. According to the Monitor's 13th Report dated February 18, 2018, expected recoveries for unsecured creditors, including Employees, are between 0% to 10% of their

accepted claim value. A copy of the Monitor's 13th Report, without schedules, is attached as **Exhibit "H"** hereto.

Appointment of a Receiver of the Limited Receivership Property

15 Pursuant to the Wage Earner Protection Program under the *Wage Earner Protection Program Act*, S.C. 2005, c. 47, s. 1 (the "**WEPPA**"), individuals may be eligible to receive certain payments from the government in respect of wages and severance payments owed to them by employers who are bankrupt or subject to a receivership. The Employees are currently not eligible to receive any such payments as the Former Employers are not subject to bankruptcy or receivership proceedings.

16 Employee Representative Counsel is asking for the Receiver to be appointed pursuant to section 243(1) of the BIA, which provides the following:

243(1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

(a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;

(b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or

(c) take any other action that the court considers advisable.

17 I understand that the Applicants have paid their existing employees their wages, including vacation pay. However, the Applicants continue to employ approximately 8

employees, who will have claims for any amounts that remain outstanding as of the date of the appointment of the Receiver, which wages would receive the protection of security under section 81.4 of the BIA. Those employees therefore stand as secured creditors up to the amount of two thousand dollars (\$2000) per person in respect of the receivership, and it is in part on that basis that Employee Representative Counsel invokes the appointment of a receiver under s. 243(1) of the BIA.

18 In addition, Employee Representative Counsel requests the appointment of the Receiver on its own behalf as a secured creditor. The Employee Representative Counsel Order, which is attached as **Exhibit D**, provides that Employee Representative Counsel shall be entitled to the benefit of the Administration Charge (as defined in the Initial Order), as security for its professional fees and disbursements incurred. Therefore, Employee Representative Counsel as a secured creditor properly brings this motion for the appointment of the Receiver under section 243(1) of the BIA.

19 I have been advised by the Monitor and verily believe that each of the Former Employers has a bank account, as listed in **Exhibit "I"** hereto, which contain limited amounts therein.

20 Employee Representative Counsel, in consultation with the Employee Representatives, is of the view that it would be just and convenient to allow for the appointment of the Receiver under section 243(1) of the BIA over the accounts of the Former Employers and the amounts contained therein, as listed in **Exhibit "I"** hereto (the "**Limited Receivership Property**"), effective two (2) business days following service on the Service List (as defined in the Initial Order) of the certificate attached as **Schedule "A"** to the draft Order attached at **Tab 3** of this Motion Record.

Timing of the Appointment of the Receiver

21 On February 27, 2018, Minister of Finance, the Honourable William Francis Morneau, P.C., M.P. tabled the 2018 Federal Budget (the "**Budget**"). The Budget included an item in respect of proposed legislative amendments to WEPPA. Specifically, the Budget stated that the Government of Canada will propose legislative amendments to WEPPA to increase the maximum payment under the Wage Earner Protection Program to seven weeks of Employment Insurance Insurable earnings from four. As of now, that is an increase from \$3976.92 to \$6959.62. Excerpts of the Budget are attached as **Exhibit "J"** hereto.

22 The proposed legislative amendments to WEPPA have not yet been tabled in Parliament. In order to ensure that Employees have access to the greatest possible benefit under the proposed amendments to WEPPA, Employee Representative Counsel has waited to file a motion seeking a receivership.

23 Permitting a Receiver to be appointed two (2) business days following service on the Service List of a receivership certificate would provide a degree of control over the timing of the appointment of the Receiver until such time that Employee Representative Counsel and the Monitor have better insight into the timing of the legislative amendments. The requested relief would also permit the Employees to access the Wage Earner Protection Program and receive funds from that program up to the maximum amounts set out in WEPPA at the most appropriate and/or beneficial time.

24 Further, Employee Representative Counsel, in consultation with the Employee Representatives, is of the view that appointing the Receiver over the Limited Receivership Property would not result in any disruptions to the CCAA Proceeding, or cause any material prejudice to other stakeholders of the Applicants.

25 Employee Representative Counsel, the Monitor, representatives of the Former Employers and counsel have had a number of meetings and discussions with representatives of Service Canada and the Federal Labour Program regarding the need to allow Employees access to WEPPA and to appoint a receiver in order to do so, including discussions in respect of the timing of the appointment of the Receiver.

26 I understand that the Monitor supports this motion and that it is not opposed by Service Canada or the Federal Labour Program.

Relieving the Receiver from Reporting Obligation under the CCAA

27 Employee Representative Counsel is of the view that no party will be prejudiced by an order relieving the Receiver from compliance with Sections 245(1), 245(2) and 246 of the BIA, given that FTI Consulting Canada Inc. has been appointed the Monitor of the Applicants and is subject to reporting obligations under the CCAA and Initial Order.

Lifting the Stay of Proceedings

28 Pursuant to the Initial Order, no proceedings or enforcement process in any court shall be commenced in respect of the Applicants except with the written consent of the Applicants, or with leave of the Court.

29 Employee Representative Counsel, in consultation with the Employee Representatives, is of the view that lifting the Stay solely with respect to the Former Employers and the Limited Receivership Property and solely to allow the appointment of the Receiver to act in respect of the Limited Receivership Property would be just and convenient, as it would not result in any disruptions to the CCAA Proceeding and such lifting of the Stay is necessary for the appointment of the Receiver.

Notice

30 I understand that in addition to providing notice to the parties included on the Service List for this CCAA Proceeding of the Employee Representative Counsel's motion seeking the Receivership Order, Employee Representative Counsel will also be providing notice of the requested Receivership Order to the Superintendent in Bankruptcy, Service Canada and the Labour Program.

31 I further understand that there are no parties with security over the assets of the Applicants other than beneficiaries of charges ordered by this Court, who will also be provided notice of the requested Receivership Order.

Relief Requested

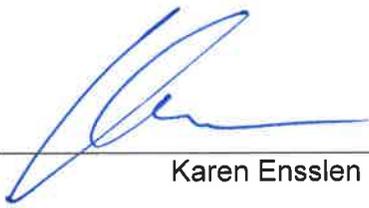
32 Accordingly, I request that this Court grant the requested Order, *inter alia*, lifting the Stay and appointing FTI Consulting Canada Inc. as Receiver.

AFFIRMED BEFORE ME at the City of Toronto, on
October 11, 2018



A Commissioner for taking Affidavits (or as may be)

Alec Stromdahl LSO: 75284U



Karen Ensslen

Tab A

This is Exhibit "A" referred to
in the Affidavit of Karen Ensslen
Affirmed this 11th day of October, 2018.



A COMMISSIONER FOR TAKING AFFIDAVITS

Alec Stramdohl LSO: 752840

Exhibit "A"
Former Employers

1. Sears Canada Inc.
2. 191020 Canada Inc.
3. 9370-2751 Québec Inc.
4. 168886 Canada Inc.
5. Sears Contact Services Inc.

Tab B

This is Exhibit "B" referred to
in the Affidavit of Karen Ensslen
Affirmed this 11th day of October, 2018.



A COMMISSIONER FOR TAKING AFFIDAVITS

Court File No. _____

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

**PRE-FILING REPORT OF FTI CONSULTING CANADA INC., AS PROPOSED
MONITOR**

June 22, 2017

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Court File No.

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

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

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

APPLICANTS

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

A. INTRODUCTION

1. FTI Consulting Canada Inc. (“**FTI**” or the “**Proposed Monitor**”) understands that Sears Canada Inc. (“**Sears Canada**”) and a number of its operating subsidiaries (collectively with Sears Canada, the “**Sears Canada Group**”) intend to make an application (the “**Initial Application**”) under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) for an initial order (the “**Proposed Initial Order**”) granting certain relief, including, *inter alia*, a stay of proceedings against the Sears Canada Group and Sears Connect LP (“**Sears Connect**”) until July 22, 2017, and appointing FTI as the monitor (the “**Monitor**”). The proceedings to be commenced by the Sears Canada Group will be referred to herein as the “**CCAA Proceedings**”.

2. The purpose of this pre-filing report of the Monitor to the Court (the “**Pre-Filing Report**”) is to inform the Court of the following:
- (a) FTI’s qualifications to act as Monitor, if appointed;
 - (b) the activities of FTI and its counsel, Norton Rose Fulbright Canada LLP (“**NRFC**”), to date, including the opinion prepared by NRFC (the “**NRFC Security Opinion**”) in respect of the validity and enforceability of security held by Wells Fargo Capital Finance Corporation Canada (“**Wells Fargo**”) and GACP Finance Co., LLC (“**GACP**”);
 - (c) an overview of the Sears Canada Group’s business and affairs, the events leading up to the CCAA Proceedings and the Sears Canada Group’s restructuring efforts to date;
 - (d) FTI’s comments regarding the Sears Canada Group’s cash management system;
 - (e) FTI’s comments regarding certain intercompany funding transactions;
 - (f) FTI’s comments regarding the Sears Canada Group’s proposed stakeholder communication plan (the “**Communication Plan**”);
 - (g) FTI’s comments regarding the Sears Canada Group’s proposed treatment of certain pre-filing payables in the Proposed Initial Order;
 - (h) FTI’s comments regarding the proposed extension of the stay of proceedings to Sears Connect and other third parties;
 - (i) FTI’s comments regarding the Sears Canada Group’s consolidated cash flow projections of its receipts and disbursements to September 16, 2017 (the “**Cash Flow Forecast**”) and the reasonableness thereof, in accordance with section 23(1)(b) of the CCAA;
 - (j) FTI’s comments regarding the Sears Canada Group’s request for the approval of a \$300 million debtor-in-possession (“**DIP**”) revolving credit facility (the “**DIP**”

ABL Facility”), and a DIP term loan facility in an amount equal to the U.S. dollar equivalent of \$150 million (the “**DIP Term Loan Facility**”, and together with the DIP ABL Facility, the “**DIP Facility**”), and corresponding charges in respect thereof (namely a “**ABL DIP Lenders’ Charge**” and a “**Term DIP Lenders’ Charge**” and collectively, the “**DIP Lenders’ Charges**”).

- (k) FTI’s comments regarding Sears Canada’s key employee retention plan (the “**KERP**”), and the Sears Canada Group’s request for a charge in favour of the beneficiaries of the KERP (the “**KERP Charge**”);
- (l) FTI’s comments regarding the Sears Canada Group’s proposed administration charge (the “**Administration Charge**”), proposed directors’ and officers’ charge (the “**Directors’ Charge**”) and proposed financial advisor charge (the “**FA Charge**”, and together with the Administration Charge, the Directors’ Charge, the KERP Charge, the FA Charge, and the DIP Lenders’ Charges, the “**Proposed CCAA Charges**”);
- (m) FTI’s comments regarding the Sears Canada Group’s request for approval of the engagement letter of BMO Nesbitt Burns Inc. (“**BMO Capital Markets**”) as investment banker and financial advisor to the Sears Canada Group;
- (n) a discussion of the Sears Canada Group’s intended next steps in the CCAA Proceedings; and
- (o) FTI’s conclusions and recommendation with respect to the proposed CCAA Proceedings and certain of the relief sought in the Proposed Initial Order.

B. TERMS OF REFERENCE

3. In preparing this Pre-Filing Report, the Proposed Monitor has relied upon audited and unaudited financial information of the Sears Canada Group, the Sears Canada Group’s books and records, certain financial information and forecasts prepared by the Sears Canada Group, and discussions with various parties, including senior management (“**Management**”) of, and advisors to, Sears Canada (collectively, the “**Information**”).

4. Except as otherwise described in this Pre-Filing Report:
 - (a) the Proposed Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants of Canada Handbook; and
 - (b) the Proposed Monitor has not examined or reviewed the financial forecasts or projections referred to in this Pre-Filing Report in a manner that would comply with the procedures described in the Chartered Professional Accountants of Canada Handbook.
5. Future-oriented financial information reported in or relied on in preparing this Pre-Filing Report is based on Management's assumptions regarding future events. Actual results will vary from these forecasts and such variations may be material.
6. The Proposed Monitor has prepared this Pre-Filing Report in connection with the Initial Application. The Pre-Filing Report should not be relied on for any other purpose.
7. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars.
8. Capitalized terms not otherwise defined herein have the meanings ascribed to them in the affidavit of Mr. Billy Wong, the Chief Financial Officer of Sears Canada filed in support of the Initial Application (the "**Wong Affidavit**").

C. FTI'S QUALIFICATIONS TO ACT AS MONITOR

9. On November 22, 2016, Sears Canada engaged FTI to assist it in understanding its options and to prepare, on a contingency basis, for the possibility of insolvency proceedings in which FTI would act as Monitor (subject to Court approval). Greg Watson and Paul Bishop, each a trustee within the meaning of subsection 2(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, lead the FTI team with carriage of this matter.

10. Since becoming engaged by Sears Canada, FTI has acquired knowledge of the business and operations of the Sears Canada Group, including its personnel, stakeholders and the key issues in the proposed CCAA Proceedings. As a result, FTI is in a position to immediately act as Monitor in the CCAA Proceedings if appointed by this Court.
11. Neither FTI nor any of its representatives or affiliates has been, at any time in the past two years:
 - (a) a director, officer or employee of any member of the Sears Canada Group;
 - (b) related to any member of the Sears Canada Group, or to any director or officer of any member of the Sears Canada Group; or
 - (c) the auditor, accountant or legal counsel, or a partner or an employee of the auditor, accountant or legal counsel, of any member of the Sears Canada Group.
12. At no time has FTI had any involvement with any member of the Sears Canada Group other than in its current role as Proposed Monitor.
13. FTI has consented to act as Monitor should this Court grant the Sears Canada Group's request for the Proposed Initial Order. A copy of FTI's consent to act as Monitor is attached as Exhibit "L" to the Wong Affidavit.

D. FTI'S INVOLVEMENT TO DATE AND THE NRFC SECURITY OPINION

Proposed Monitor's Activities

14. The Proposed Monitor has been extensively involved in a number of activities leading up to the filing date, including:
 - (a) participating in discussions with Management, counsel to the Sears Canada Group and the Directors and Officers (as defined below), and BMO Capital Markets. These discussions have been carried out in connection with the business and affairs of the Sears Canada Group generally, as well as the Initial Application;
 - (b) reviewing and commenting on the Sears Canada Group's Cash Flow Forecast;

- (c) reviewing and considering various documentation and information in connection with the Sears Canada Group's business, operations and the CCAA Proceedings, including but not limited to:
 - (i) the Sears Canada Group's cash management system;
 - (ii) the DIP Facility;
 - (iii) the Communication Plan;
 - (iv) the proposed store closures and related employee terminations;
 - (v) the proposed inventory liquidation process;
 - (vi) the KERP; and
 - (vii) the quantum, nature and ranking of the Proposed CCAA Charges;
- (d) engaging with NRFC as its legal counsel to consider issues with respect to the foregoing, and instructing NRFC to perform security reviews in order to deliver the NRFC Security Opinion; and
- (e) preparing this Pre-Filing Report.

NRFC Security Opinion

15. As counsel to the Proposed Monitor, NRFC reviewed the security granted by Sears Canada and its subsidiary Corbeil Électrique Inc. ("**Corbeil**") to Wells Fargo and GACP pursuant to two credit agreements:
- (a) the credit agreement dated September 10, 2010 among Sears Canada, as borrower, Wells Fargo as administrative agent and co-collateral agent, GE Canada Finance Holding Company as co-collateral agent and documentation agent, CIBC Asset-Based Lending Inc. ("**CIBC**") and Bank of Montreal ("**BMO**") as co-syndication agents, Wells Fargo, GE Capital Markets (Canada) Limited, GE Capital Markets, Inc., CIBC and BMO as joint lead-arrangers and bookrunners and the banks and financial institutions from time to time party thereto as lenders, as may be

amended, supplemented, or restated from time to time (the “**Wells Pre-Filing Credit Agreement**”); and

- (b) the credit agreement dated March 20, 2017 among Sears Canada, as borrower, GACP as administrative agent and syndication agent, KKR Capital Markets LLC and GACP as joint lead arrangers and TPG Speciality Lending, Inc. as documentation agent and the lenders from time to time party thereto, as lenders, as may be amended, supplemented, or restated from time to time (the “**GACP Pre-Filing Credit Agreement**”).

16. NRFC has advised the Proposed Monitor of its view that, subject to the assumptions and qualifications typically contained in security opinions of this nature, the security granted by Sears Canada and Corbeil in respect of the Wells Pre-Filing Credit Agreement and the GACP Pre-Filing Credit Agreement (the “**Pre-Filing Security**”) constitute good and valid security enforceable in accordance with their respective terms in the jurisdictions in which NRFC is qualified to practice law, namely British Columbia, Alberta, Ontario and Quebec (the “**Provinces**”). The NRFC Security Opinion also confirms that the Pre-Filing Security is registered in the personal and movable property security registries of the Provinces, and on title to Sears Canada’s owned properties in Belleville, Peterborough and Trois-Rivières.
17. NRFC has further advised the Proposed Monitor that the Pre-Filing Security appears to be registered in the personal property security registries of all other provinces and against title to Sears Canada’s owned properties in Prince Edward Island and Manitoba. If this Court grants the Proposed Initial Order, the Proposed Monitor intends to instruct NRFC to obtain opinions from agents in these other jurisdictions.

E. OVERVIEW OF THE SEARS CANADA GROUP’S BUSINESS AND AFFAIRS

18. The Wong Affidavit sets out detailed information with respect to the Sears Canada Group’s business and operations, as well as the causes of its ongoing financial distress. The information contained in this Pre-Filing Report is intended to provide context for, and to facilitate an understanding of, the issues addressed in this Pre-Filing Report and is not intended to be an exhaustive summary of all matters relating to the business of the

Sears Canada Group. The Proposed Monitor recommends that readers carefully review all of the materials filed by the Sears Canada Group in connection with the Initial Application, including the Wong Affidavit.

Sears Canada

19. Sears Canada operates from a head office located in Toronto, Ontario. Sears Canada has been a part of the Canadian retail landscape since the early 1950s and remains, including through its subsidiary Corbeil, one of Canada's largest retailers with a presence in all 10 provinces.
20. As of April 29, 2017, Sears Canada's sales, distribution and logistics network included:
 - (a) 161 owned and leased stores, distribution centres and warehouses, with the largest concentration of stores in Ontario, of which 16 are operated by Corbeil;
 - (b) a network of 62 "Sears Hometown" store dealers;
 - (c) 16 Corbeil franchisees; and
 - (d) 514 independently-operated direct-purchase pick-up counters and 191 counters imbedded in other Sears Canada locations.
21. The Sears Canada Group employs approximately 17,000 individuals across Canada, and 27 in the United States.
22. Sears Canada is a publicly traded company whose shares are, as of this date, listed on the Toronto Stock Exchange ("TSX") and NASDAQ.
23. Sears Canada's major shareholders are Fairholme Capital Management, LLC, ESL Investments, Inc. and Edward S. Lambert. ESL Investments, Inc. and Edward S. Lambert own their shares both directly and through Sears Holdings Corporation ("Sears US"), a US public company that operates Sears stores in the United States.
24. The business and operations of Sears Canada and Sears US are independent except for a number of commercial agreements described in the Wong Affidavit. According to the

information provided to the Proposed Monitor by Sears Canada, Sears Canada made payments totalling approximately \$2.8 million to Sears US in relation to these commercial agreements during the fiscal year ended January 28, 2017 (“**Fiscal 2016**”).

Business of the Sears Canada Group

25. The principal activities of the Sears Canada Group involve the sale of goods and services through its department stores, its “Sears Home” stores, its “Sears Hometown” dealer network, its outlet stores, its Corbeil appliance stores, and via its online e-commerce platform.
26. As described in further detail in the Wong Affidavit, the Sears Canada Group also carries on other business operations that are ancillary to its retail operations. These ancillary operations include transportation and logistics services, call centres, sales of mobile phones and telephone plans, and warranty and maintenance programs.

Sears Canada’s Debt Structure

27. Sears Canada’s debt structure consists principally of the Wells Pre-Filing Credit Agreement and the GACP Pre-Filing Credit Agreement.
28. The Wells Pre-Filing Credit Agreement provides for a senior secured revolving credit facility up to a maximum of \$300 million with a maturity date of May 28, 2019 (the “**Wells Revolving Credit Facility**”). Revolving advances and letters of credit are available under the Wells Revolving Credit Facility.
29. Availability under the Wells Revolving Credit Facility is determined by a borrowing base calculation on certain assets of Sears Canada and Corbeil less the amount of reserves, including a \$196 million reserve as of May 2017 in respect of a potential deficit in the defined benefit component (the “**DB Component**”) of Sears Canada’s pension plan (the “**Pension Plan**”) in the event of the wind-up of the DB Component of the Pension Plan.
30. Sears Canada has informed the Proposed Monitor that it does not have any remaining availability under the Wells Revolving Credit Facility. The principal outstanding under the Wells Pre-Filing Credit Agreement was approximately \$42 million as of June 19,

2017, additionally approximately \$128 million in letters of credit were outstanding as of the same date (the “**Existing LCs**”).

31. The GACP Pre-Filing Credit Agreement provides for a term loan credit facility with an initial term loan of the US dollar equivalent of \$125 million and a delayed draw term loan which cannot exceed the lesser of (i) the US dollar equivalent of \$175 million and (ii) a borrowing base of 50% of owned real property and 30% of leasehold real property, less the amount of reserves. The maturity date of the GACP Pre-Filing Credit Agreement is stated to be for a term of five years, subject to earlier termination in certain circumstances where the Wells Revolving Credit Facility is terminated or if certain circumstances arise that could trigger the termination of the Wells Revolving Credit Facility.
32. While the GACP Pre-Filing Credit Agreement provides for two tranches of term loans in the maximum aggregate amount of US \$93.9 million plus the US dollar equivalent of \$175 million (collectively, the “**GACP Pre-Filing Credit Facility**”), Sears Canada has so far only accessed the first tranche of US \$93.9 million.
33. The Proposed Monitor understands that Sears Canada did not draw on the second tranche as the amount that Sears Canada could expect to borrow under the second tranche was reduced to an amount of up to \$109.1 million minus fees. Sears Canada concluded that it was not prudent to encumber its remaining real estate assets for borrowings that were significantly less than the US dollar equivalent of \$175 million originally anticipated.
34. The rights and priorities of Wells Fargo and GACP on behalf of the lenders they represent are governed by an intercreditor agreement dated March 20, 2017 (the “**Intercreditor Agreement**”) between Wells Fargo and GACP and acknowledged by Sears Canada and Corbeil. A copy of the Intercreditor Agreement is attached as Exhibit “J” to the Wong Affidavit.
35. The Intercreditor Agreement provides that:
 - (a) the security of the lenders under the Wells Revolving Credit Facility on, among other things, credit card receivables, deposit accounts (other than specified accounts), securities accounts (other than specified securities accounts), inventory

and certain specified real property, ranks in priority to any security of the lenders under the GACP Pre-Filing Credit Facility; and

- (b) the security of the lenders under the GACP Pre-Filing Credit Facility on, among other things, equipment, furniture, fixtures and certain owned and leased real property (to the extent security over such real property is granted) ranks in priority to any security of the lenders under the Wells Revolving Credit Facility,

in each case for all obligations up to prescribed maximum amounts.¹

The Sears Canada Group's Financial Difficulties

36. As indicated in the Wong Affidavit, the Sears Canada Group has incurred consistent losses and experienced negative operating cash flow for the past several years.
37. The Sears Canada Group's 2016 revenues were nearly \$500 million less than its 2015 revenues due in part to the implementation of operational restructuring measures that resulted in decreased catalogue distribution, termination of existing revenue-generating licenses and store closures. The Sears Canada Group's audited financial statements for Fiscal 2016 show an operating loss of \$422.4 million and a net loss of \$321 million after interest, taxes, and other expenses.
38. The following chart shows Sears Canada Group's declining revenues and increasing losses from 2012 to the present:

<i>(in Millions)</i>	Fiscal 2012	Fiscal 2013	Fiscal 2014	Fiscal 2015	Fiscal 2016
Total Revenue	\$4,346.5	\$3,991.8	\$3,424.5	\$3,145.7	\$2,613.6
Adjusted EBITDA	\$73.5	\$35.7	\$(122.4)	\$(160.5)	\$(282.9)
Net Earnings (Loss)	\$101.2	\$446.5	\$(338.8)	\$(67.9)	\$(321)

¹ The foregoing is only a description of selected terms of the Intercreditor Agreement. Neither FTI nor NRFC have provided any opinion on the priority of any party's security interest over assets of any of the Applicants.

39. The Sears Canada Group's financial statements for the first fiscal quarter of 2017 (the "**Quarterly Statements**") indicate that the Sears Canada Group experienced a net loss of \$144.4 million, compared to a net loss of \$63.6 million for the same quarter last year.
40. The Quarterly Statements also indicated a decrease of 15.2% in revenues compared to the same quarter last year.
41. As at the date of the Quarterly Statements, the Sears Canada Group reported assets with a book value totalling approximately \$1.187 billion and liabilities of approximately \$1.108 billion.
42. As at the date of the Quarterly Statements, the Sears Canada Group's main assets were its inventory (with a book value of approximately \$658 million), its owned real properties and lease portfolio (with a book value of approximately \$233 million) and its accounts receivable (with a book value of approximately \$61 million).
43. As of June 19, 2017, the Sears Canada Group had approximately \$139 million of cash on hand.
44. As at the date of the Quarterly Statements, the Sears Canada Group's main liabilities for accounting purposes were its indebtedness pursuant to the Wells Revolving Credit Facility (approximately \$42 million outstanding as at June 19, 2017 plus approximately \$128 million of Existing LCs as at June 19, 2017), the GACP Pre-Filing Facility (approximately US \$93.9 million) and potential pension liability on wind-up of the DB Component of the Pension Plan, which could total nearly \$267 million.
45. As at June 19, 2017, Sears Canada Group also had outstanding accounts payable totaling approximately \$176 million.
46. The Quarterly Statements included a statement that cash on hand and forecast cash flows from operations were not expected to be sufficient to meet the Sears Canada Group's obligations coming due over the next 12 months.
47. Following the release of the Quarterly Statements, the Proposed Monitor understands that an increased number of suppliers have required accelerated payment terms or, in certain

cases, payment in full of outstanding invoices, prior to supplying additional merchandise or services to the Sears Canada Group.

Restructuring Efforts to Date

48. The Sears Canada Group has undertaken significant restructuring efforts over the past three years, which are set out in detail in the Wong Affidavit. The Proposed Monitor understands that the Sears Canada Group has:

- (a) implemented “Sears 2.0”, a program aimed at updating the products offered at Sears Canada stores, store layouts, and the Sears Canada brand generally;
- (b) created “Initium”, an e-commerce lab and innovation hub designed to generate novel digital business solutions, and which has led to the introduction of a new website and technology infrastructure platform;
- (c) the on-going repatriation of its call centre services from an overseas outsource provider to domestic in-house call centre services;
- (d) divested owned real estate assets, and engaged in sale and lease back transactions;
- (e) closed underperforming stores;
- (f) introduced a new off-price business, “The Cut @ Sears”;
- (g) rebranded the private Sears label; and
- (h) implemented other cost-reduction measures including headcount reductions and exiting unprofitable lines of business.

49. Despite these restructuring efforts, the Sears Canada Group has been unable to achieve profitability and now faces a liquidity crisis.

Events Leading up to the Proposed CCAA Proceedings

50. The specific events leading up to the proposed CCAA Proceedings are explained in the Wong Affidavit.

51. In short, Sears Canada has experienced significant and continuing losses, resulting in negative net cash outflows which have ranged from \$30 million to \$100 million per month over the past five months. In May 2017, the Sears Canada Group's cash on hand depleted at a rate of approximately \$20 million per week.
52. While Sears Canada's cash balances at June 19, 2017 aggregate approximately \$139 million, Sears Canada does not have access to sufficient additional liquidity under its existing credit facilities and, given the Sears Canada Group's continuing operating losses, will be unable to satisfy its liabilities in the near future.
53. Sears Canada is also facing challenges in respect of its Pension Plan. According to the latest valuation reports, the Pension Plan has a potential wind-up deficit of approximately \$267 million. In addition, special payments under the DB Component of the Pension Plan are forecast to be substantial in 2017 and 2018. The Wong Affidavit discusses these special payments in greater detail.

F. THE SEARS CANADA GROUP'S CASH MANAGEMENT SYSTEM

54. The Proposed Monitor has reviewed the description of the cash management system for the members of the Sears Canada Group set out in the Wong Affidavit and believes those descriptions to be accurate.
55. The chart below provides a summary of the Sears Canada Group's banking service providers:

Legal Entity	Financial Institution						
	RBC	BMO	CIBC	TD	HSBC	Scotia	National Bank
Sears Canada Inc.	R & D	R & D	R & D	R & D	D	R & D	R & D
S.L.H. Transport Inc.	R & D	-	-	-	-	-	-
168886 Canada Inc.	D	-	-	-	-	-	-
Corbell Electrique Inc.	R & D	-	-	-	-	-	-
Sears Canada Charitable Foundation	D	-	-	-	-	-	-
2497089 Ontario Inc.	R & D	-	-	-	-	-	-
Initium Logistic Services Inc.	R	-	-	-	-	-	-
Sears Contact Services Inc.	D	-	-	-	-	-	-
Sears Floor Covering Centres Inc.	R & D	-	-	-	-	-	-
The Cut Inc.	D	-	-	-	-	-	-

R = Receipts; D = Disbursements

56. This cash management system is critical to the ongoing management of the Sears Canada Group's business and affairs. Replacement of the cash management system would be

costly and time consuming. Accordingly, the Proposed Monitor supports the Sears Canada Group's request to continue to operate its existing cash management system throughout the CCAA Proceedings.

G. CERTAIN INTERCOMPANY FUNDING TRANSACTIONS

57. The Proposed Monitor has observed that, from time to time, funds are transferred either upstream or downstream amongst some members of the Sears Canada Group, particularly S.L.H. Transport Inc. ("SLH") and Corbeil.
58. The Proposed Monitor understands that, in the ordinary course, funds are transferred from Sears Canada to SLH to fund payroll and other overhead expenses. Corbeil funds its own operations primarily from its cash receipts; however, Sears Canada also provides funding to Corbeil on an as needed basis throughout the year. Any excess cash generated by Corbeil is periodically transferred from Corbeil to Sears Canada. The amounts transferred between Sears Canada, SLH and Corbeil are not immaterial.
59. Sears Canada has advised that the cash transfers to SLH are necessary to ensure the continued operation of SLH, which provides necessary services for the Sears Canada Group. For Corbeil, Management has advised that it may periodically sweep cash from Corbeil on an as needed basis to manage the liquidity of the Sears Canada Group as a whole.
60. The Proposed Monitor understands that the Sears Canada Group records these transactions as intercompany receivables/payables, and that the Sears Canada Group's books and records contain sufficient detail to accurately track such transactions. The Proposed Monitor further understands that such transactions are currently permitted under the Pre-Filing Credit Agreements and under the DIP Credit Agreements (as defined below).
61. If appointed Monitor, the Proposed Monitor intends to review and track intercompany transfers and will report to the Court on such transfers as appropriate.

H. COMMUNICATION PLAN

62. With the assistance of Longview Communications Inc., counsel to the Sears Canada Group and the Proposed Monitor, the Sears Canada Group has prepared a detailed Communication Plan to inform stakeholder groups of the CCAA Proceedings.
63. Individual, targeted communications are proposed to be sent to employees, pensioners, suppliers, landlords and other groups, which communications include frequently asked questions (the “FAQs”) explaining the general nature of the Initial Application and the CCAA Proceedings, the role of the Court and the Monitor, as well as the immediate implications of the Proposed Initial Order for each particular stakeholder group.
64. The Communication Plan is comprehensive and is consistent with the scope of other communication plans employed at the outset of similar scale CCAA proceedings.
65. The Communication Plan and Proposed Initial Order contemplate that the Monitor is to post materials in connection with the proposed CCAA Proceedings on the Monitor’s website at <http://cfcanada.fticonsulting.com/searscanada> (the “Monitor’s Website”). If appointed, the Monitor will also post English and French versions of the FAQs on the Monitor’s Website.
66. The Monitor, if appointed, will also make available a dedicated email address (searscanada@fticonsulting.com) and phone numbers (1.416.649.8113 or toll free 1.855.649.8113) to stakeholders who may have additional questions in respect of the CCAA Proceedings.

I. PAYMENT OF PRE-FILING AMOUNTS

67. The Proposed Initial Order provides the Sears Canada Group with the authority to pay certain expenses whether incurred prior to or following the commencement of the CCAA Proceedings. Specifically, the Sears Canada Group would retain the authority to pay, among other things:
- (a) outstanding wages, salaries and certain other employee-related payments;

- (b) fees and disbursements of Assistants (as such term is defined in the Proposed Initial Order) retained in respect of the CCAA Proceedings;
 - (c) outstanding and future amounts required to honour the Sears Canada Group's customer obligations, including the Loyalty Program (as defined in the Wong Affidavit); and
 - (d) outstanding and future amounts necessary to honour warranty service contracts and gift cards.
68. In addition, with the Proposed Monitor's consent, the Sears Canada Group would retain the authority to pay amounts owing to certain critical service providers if needed to ensure the uninterrupted operation of the Sears Canada Group's business. These suppliers may include logistics or supply chain providers (including transportation providers, freight forwarders, armored truck carriers, fuel providers, and maintenance and parts providers), providers of credit, debit, gift card or payment processing services, providers of information technology, internet technology, and other technology services and other third party suppliers.
69. The Proposed Monitor has reviewed the Sears Canada Group's accounts payable and believes that authorizing the payment of certain limited pre-filing amounts as contemplated in the Proposed Initial Order (with the oversight of the Monitor) is reasonable and necessary in the circumstances. The flexibility provided by these provisions is intended to enable the Sears Canada Group to help mitigate disruption to ordinary business operations during the CCAA Proceedings.
70. The involvement of the Monitor will also help ensure that all stakeholder interests are adequately represented when the payment of pre-filing amounts is being considered.
- J. EXTENSION OF STAY OF PROCEEDINGS TO SEARS CONNECT AND OTHERS**
71. Pursuant to the Proposed Initial Order, the Sears Canada Group is seeking a stay of all proceedings against Sears Canada and the other members of the Sears Canada Group until July 22, 2017 (the "**Stay of Proceedings**").

72. The Sears Canada Group is also seeking to extend the Stay of Proceedings and other provisions of the Proposed Initial Order to Sears Connect, which operates a wireless, phone and long distance business. For the reasons stated in the Wong Affidavit, the Proposed Monitor believes that it is appropriate to extend the Stay of Proceedings and other provisions of the Proposed Initial Order to Sears Connect.
73. In addition, the Sears Canada Group is seeking to extend the Stay of Proceedings to:
- (a) prevent parties to agreements with “Sears Hometown” store dealers or Corbeil franchisees, which operate an integral part of the Sears Canada Group’s network by selling the Sears Canada Group’s products, from exercising any rights against these dealers and franchisees that arise as a result of the commencement of the CCAA Proceedings or the insolvency of the Sears Canada Group; and
 - (b) protect landlords against legal action by other tenants at premises where Sears Canada’s stores are located, many of whom have lease agreements that provide remedies in the event that a Sears Canada store ceases operations. It has been accepted in recent retail restructuring proceedings that staying proceedings of this nature facilitates the *status quo* and relieves landlords of some of the immediate burden they may bear as a result of having their rights against the Sears Canada Group stayed.
74. The Proposed Monitor believes that the proposed extension of the Stay of Proceedings is essential for the preservation of the Sears Canada Group’s enterprise value and to allow for the orderly conduct of the CCAA Proceedings.

K. CASH FLOW FORECAST

75. The Cash Flow Forecast, together with Management’s report on the cash-flow statement as required by section 10(2)(b) of the CCAA, is attached as Appendix “A” to this Pre-Filing Report. The Cash Flow Forecast covers the 13-week period ending September 16, 2017.

76. The Cash Flow Forecast shows an operational cash outflow of \$25.7 million, a net cash outflow of \$311.8 million, a paydown of pre-filing indebtedness in the amount of \$248.0 million, and professional fees of \$25.4 million for that period. The Cash Flow Forecast is summarized below:

CAD \$ in millions	
Operating Receipts	\$ 528.0
Operating Disbursements	(553.7)
Operating Cash Inflows / (Outflows)	(25.7)
Professional Fees	(25.4)
Repayment of Existing Credit Facilities	(248.0)
DIP Fees and Interest	(12.7)
Net Cash Inflows / (Outflows)	(311.8)
Cash	
Beginning Balance	125.0
Net Cash Inflows / (Outflows)	(311.8)
DIP Draws / (Repayments)	216.9
Ending Balance	\$ 30.1

77. As shown in the Cash Flow Forecast, the Sears Canada Group will require additional funding for operations totalling approximately \$216.9 million during the period ending September 16, 2017. It is intended that additional operating financing will be available under the DIP Facility, described in greater detail below.
78. Pursuant to section 23(1)(b) of the CCAA² and in accordance with the Canadian Association of Insolvency and Restructuring Professionals Standard of Practice 09-1, the Proposed Monitor hereby reports to the Court as follows:
- (a) the Proposed Monitor has reviewed the Cash Flow Forecast, which was prepared by Management for the purpose described in notes to the Cash Flow Forecast

² Section 23(1)(b) of the CCAA requires the Monitor to review the Sears Canada Group's cash-flow statements as to its reasonableness and file a report with the court on the Monitor's findings.

(the “**Forecast Notes**”), using the Probable Assumptions and Hypothetical Assumptions set out therein;

- (b) the review consisted of inquiries, analytical procedures and discussion related to information provided by certain members of Management and employees of the Sears Canada Group. Since Hypothetical Assumptions need not be supported, the Proposed Monitor’s procedures with respect to the Hypothetical Assumptions were limited to evaluating whether the Hypothetical Assumptions were consistent with the purpose of the Cash Flow Forecast. The Proposed Monitor has also reviewed the support provided by Management for the Probable Assumptions and the preparation and presentation of the Cash Flow Forecast;
- (c) based on that review, and as at the date of this Pre-Filing Report, nothing has come to the attention of the Proposed Monitor that causes it to believe that:
 - (i) the Hypothetical Assumptions are inconsistent with the purpose of the Cash Flow Forecast;
 - (ii) the Probable Assumptions are not suitably supported or consistent with the plans of the Sears Canada Group or do not provide a reasonable basis for the Cash Flow Forecast, given the Hypothetical Assumptions; or
 - (iii) the Cash Flow Forecast does not reflect the Probable and Hypothetical Assumptions;
- (d) since the Cash Flow Forecast is based on assumptions regarding future events, actual results will vary from the forecast even if the Hypothetical Assumptions occur. Those variations may be material. Accordingly, the Proposed Monitor expresses no assurance as to whether the Cash Flow Forecast will be achieved. The Proposed Monitor also expresses no opinion or other form of assurance with respect to the accuracy of any financial information presented in this Pre-Filing Report, or relied upon by the Proposed Monitor in preparing this Pre-Filing Report; and

- (c) the Cash Flow Forecast has been prepared solely for the purpose described in the Forecast Notes. The Cash Flow Forecast should not be relied upon for any other purpose.

L. DIP FINANCING

The DIP Facility

79. Pursuant to the Proposed Initial Order the Sears Canada Group is seeking authorization from this Court to enter into:
- (a) a senior secured superpriority debtor-in-possession amended and restated credit agreement (the “**DIP ABL Credit Agreement**”) amongst, *inter alia*, Wells Fargo, as agent (the “**DIP ABL Agent**”) on behalf of the lenders named therein (the “**DIP ABL Lenders**”), Sears Canada, as borrower, and all other members of the Sears Canada Group as guarantors (the “**Guarantors**” and collectively with Sears Canada, the “**DIP Loan Parties**”), and
 - (b) a senior secured superpriority credit agreement (the “**DIP Term Loan Agreement**” and together with the DIP ABL Credit Agreement, the “**DIP Credit Agreements**”) amongst, *inter alia*, GACP, as agent (the “**DIP Term Loan Agent**” and together with the DIP ABL Agent, the “**DIP Agents**”) on behalf of the term lenders named therein (the “**DIP Term Loan Lenders**” and together with the DIP ABL Lenders, the “**DIP Lenders**”), and the DIP Loan Parties. Copies of the DIP Credit Agreements are attached as Exhibit “K” to the Wong Affidavit.

80. The terms of the DIP Facility are summarized in the table below. Unless otherwise defined herein, terms capitalized in the table have the meaning ascribed in the DIP Credit Agreements.

Maximum Amount:	<p>Maximum aggregate \$450 million senior secured priming and super-priority debtor in possession facilities, subject to separate borrowing bases.</p> <p>DIP Term Loan Facility in the maximum amount of the US dollar equivalent of \$150 million, and DIP ABL Facility in the maximum amount of \$300 million, including a letter of credit sub-facility (which includes the Existing LCs (as defined below)) in the maximum amount of \$150 million (in each case subject to the applicable borrowing base), subject to Availability Reserves.³</p>
Existing LCs:	<p>To the extent a draw is made on Existing LCs, the reimbursement obligation (the "Reimbursement Obligation") of Sears Canada that arises as a result of the draw will be deemed to be an advance under the DIP Facility thereby reducing the Availability thereunder.</p> <p>Sears Canada will be required to cash collateralize the Existing LCs that are not drawn and all such Existing LCs must be fully cash collateralized on or before July 28, 2017, either (i) through cash on hand or post-filing receipts or, (ii) after the Final Availability Date, through draws under the DIP ABL Facility.</p>
Availability:	<p>The DIP Term Loan Facility and the initial advance under the DIP ABL Facility shall be available when all the conditions precedent are met under the respective DIP Credit Agreement including, the comeback motion having been heard and the Initial Order being a final order in full force and effect (the "Final Availability Date").</p>
Repayment of Pre-Filing Obligations:	<p>Receipts from operations and other sales of property by Sears Canada post-filing will be utilized to repay the outstanding pre-filing obligations under the DIP ABL Credit Agreement and the GACP Pre-Filing Credit Agreement, in a manner consistent with the existing Intercreditor Agreement.</p>
Maturity Date:	<p>December 20, 2017, subject to earlier termination as a result of specified terminating events or Events of Default.</p>
Definitive Documentation:	<p>Substantially similar to the terms of the Wells Pre-Filing Credit Agreement and the GACP Pre-Filing Credit Agreement, with modifications to reflect the proposed CCAA Proceedings.</p>

³ The aggregate availability under the DIP Credit Agreements is subject to reductions for amounts that remain outstanding from the pre-filing period under the Wells Pre-Filing Credit Agreement and the GACP Pre-Filing Credit Agreement.

Security:	Super-priority first ranking perfected lien over all present and future real and personal property of the DIP Loan Parties, subject only to ordinary course of business permitted liens, the Administration Charge, the FA Charge, the Directors' Charge to a maximum amount of \$44 million and the KERP Charge to a maximum amount of \$4.6 million; provided, however, that as between the DIP ABL Lenders and the DIP Term Loan Lenders, the relative priorities shall be consistent with the existing Intercreditor Agreement.
Interest Rates:	<p>DIP Term Loan Facility: LIBOR + 11.0% (1.00% LIBOR floor) or USPR + 10.0% (4% USPR floor), which represents increases of 150 and 225 basis points, respectively, compared to the terms of the GACP Pre-Filing Credit Agreement.</p> <p>DIP ABL Facility: BA/LIBOR + 4.50% or PR/BR + 3.50%, which represents increases of 225 and 175 basis points, respectively, compared to the terms of the Wells Pre-Filing Credit Agreement.</p> <p>DIP ABL L/C Fees: (a) 4.50% per annum, in the case of a Standby L/C, and (b) 4.00% per annum, in the case of a Commercial L/C, which represents an increase of 225 basis points compared to the terms of the Wells Pre-Filing Credit Agreement.</p>
Fees:	<p>Structuring Fee: DIP ABL Facility: 1.25%.</p> <p>Unused Line Fee: DIP ABL Facility: 0.375%.</p> <p>Commitment Fee: DIP Term Loan Facility: 3.5%.</p> <p>Exit Fee: DIP Term Loan Facility: 1.5%.</p>
Milestones:	The DIP Credit Agreements contain certain milestones for the Sears Canada Group's restructuring process. The milestones contemplate the completion of a successful restructuring by October 25, 2017.
Reporting and Variance Trigger	<p>No variance testing requirements prior to September 1, 2017, unless Excess Availability falls below a specified threshold. After such period, variances will be tested for operating net cash flow and eligible inventory. The Permitted Variances are as follows:</p> <p>(i) operating net cash: \$25 million negative variance on a cumulative basis; and</p> <p>(ii) eligible inventory: eligible inventory cannot be less than 90% of the amount of eligible inventory reflected in the budget for each weekly testing period.</p>
Condition Precedent to Effectiveness of DIP Credit Agreements	Typical conditions precedent to the effectiveness of the DIP Credit Agreements.

A more detailed description of the DIP Credit Agreements is provided in the Wong Affidavit.

81. The Proposed Monitor and NRFC have reviewed the terms of the DIP Credit Agreements and participated in a number of discussions with the DIP Agents and their respective counsel. The DIP Credit Agreements are the result of substantial negotiations between the DIP Agents and the Loan Parties, their respective counsel and BMO Capital Markets.
82. The Proposed Monitor makes the following observations in respect of certain of the terms of the DIP Credit Agreement:

- (a) **Existing LCs:** As at June 19, 2017, Existing LCs totalling approximately \$128 million were outstanding, undrawn, under the Wells Revolving Credit Facility. The beneficiaries of the Existing LCs include merchandise suppliers, landlords and other vendors of the Sears Canada Group. The draw conditions under the Existing LCs vary.

The DIP ABL Credit Agreement provides that, (i) to the extent there is a draw on an Existing LC, Sears Canada's reimbursement obligations ("**Reimbursement Obligations**") arising as a result of such draw will, following the Comeback Hearing, constitute DIP obligations secured by the ABL DIP Lenders' Charge, and (ii) to the extent undrawn, the Existing LCs will be cash collateralized.

The Sears Canada Group has not identified any secured creditors that would be prejudiced by such steps as a result of any material degradation in their collateral position. Any creditor that may assert such prejudice will be permitted to raise any such issues at the Comeback Hearing. In the interim, no irreversible steps will be taken in respect of any such collateral. Based upon the Proposed Monitor's review of applicable security registry searches, it does not appear that any material secured creditors will be 'primed' by the DIP Lenders' Charges at this stage.

- (b) **Repayment of Pre-Filing Obligations:** the DIP Credit Agreements provide that no advances are to be made in order to repay pre-filing obligations under the Pre-Filing Credit Agreements. Rather, the pre-filing obligations are to be repaid over

the course of the proposed CCAA Proceedings using the Sears Canada Group's cash on hand and receipts from operations or divestitures.

- (c) **Timing of Initial Advance:** the DIP Credit Agreements are structured such that no cash advances will be available to the Sears Canada Group until after the Comeback Hearing.
- (d) **Fees and Interest Rates:** based on its experience and on information available to it, the Proposed Monitor is of the view that the interest rates and the fees provided in the DIP Credit Agreements are not outside the ranges for similarly situated DIP facilities; and
- (e) **DIP Lenders:** the proposed DIP Facility is provided by the two existing secured lender groups, and, as a result, neither lender group is 'primed' by the DIP Facility.

DIP Lenders' Charge

- 83. The Proposed Initial Order seeks the granting of the DIP Lenders' Charges with respect to the obligations under the DIP Credit Agreements and the other definitive documents in respect of the DIP Facility once they are entered into.
- 84. The Proposed Initial Order contemplates that the DIP Lenders' Charges (as well as the other Proposed CCAA Charges) are to have priority over all security interests, charges and claims, including deemed trusts, in the assets of the Sears Canada Group but not over holders of purchase money security interests ("PMSIs") and statutory super-priority deemed trusts and liens for unpaid employee source deductions.
- 85. The Proposed Monitor understands that counsel to the Sears Canada Group will be providing notice of the Proposed Initial Order and Comeback Hearing, upon issuance of the Proposed Initial Order (if issued). Notice would be provided to those parties who have registrations against the assets of the Sears Canada Group (other than PMSIs) and pension beneficiaries, either directly and through counsel if represented by counsel, with

a view to give those parties as much notice as reasonably possible of the Proposed Initial Order and the Comeback Hearing.

86. The Proposed Monitor and its counsel have engaged in discussions with Sears Canada and its counsel, as well as BMO Capital Markets and counsel for the DIP Agents, regarding the Sears Canada Group's funding requirements and the proposed DIP Facility.
87. The Proposed Monitor supports the Sears Canada Group's request for authority to enter into the DIP Credit Agreements. The DIP Facility is the only realistic source of financing available given Sears Canada's rapidly deteriorating financial situation, the DIP Lenders' positions in the debt structure and the rate of necessary consumption of existing cash on hand.
88. The Proposed Monitor understands that BMO Capital Markets also held discussions with another potential financier regarding the Sears Canada Group's DIP funding requirements. The Proposed Monitor understands that BMO Capital Markets' view was that given the rapidly deteriorating financial position of the Applicants, any non-current lender would likely be unable to conduct due diligence and provide committed DIP financing in the urgent timeframe required.
89. The Proposed Monitor has also considered the facts and circumstances giving rise to the CCAA Proceedings and section 11.2(4) of the CCAA. In particular:
 - (a) the term of the DIP Facility is sufficient to cover the duration of the Sears Canada Group's intended restructuring process at this time;
 - (b) aside from specific planned store closures, it is anticipated that the business of the Sears Canada Group will continue to operate as a going concern during the restructuring process and the financing to be provided is consistent with the forecast liquidity needs of the Sears Canada Group during that period;
 - (c) the DIP Facilities are provided by the two largest secured creditors of Sears Canada and Corbeil, who are supportive of the proposed restructuring process at this time;

- (d) the proposed restructuring process cannot move forward without the DIP Facility and, as a result, the DIP Facility enhances the prospects of a viable restructuring of the Sears Canada Group's business in the Proposed Monitor's view;
- (e) the DIP Facility is to be advanced based upon a borrowing base that is intended to ensure the amounts drawn are consistent with the nature and value of the Sears Canada Group's property; and
- (f) any creditor that believes it may be prejudiced by the DIP Facility will have an opportunity to raise any objections at the Comeback Hearing to be scheduled by the Court.

M. KERP AND KERP CHARGE

90. The Proposed Monitor was also involved in the development of the KERP, which is intended to create incentives for certain key employees to remain with the Sears Canada Group through the CCAA Proceedings to perform effectively, as measured by specific key performance indicators, and to achieve a going concern outcome for the business. In addition, the KERP incentivizes key employees to help facilitate a successful liquidation of the Closing Stores (as defined below) and an orderly exit from the premises. A summary of the terms of the KERP is attached as Confidential Appendix "B" to this Pre-Filing Report.
91. The KERP covers 159 employees (the "**KERP Participants**"), 43 of whom are employed as executives and senior management at Sears Canada's head office, and 116 of whom who are employed in various roles as store general managers, assistant store managers, operations managers, merchandising specialists, and loss prevention personnel at the Closing Stores. The Proposed Monitor understands that each of the KERP Participants performs a role critical to implementing the Sears Canada Group's restructuring goals and is unlikely to be replaced on a timely basis or at a reasonable cost.
92. The estimated maximum cost of the KERP is approximately \$9.2 million, of which approximately \$7.6 million relates to head office participants and approximately \$1.6 million corresponds to Closing Store managers. The Proposed Initial Order therefore

provides for a KERP Charge in the amount of \$9.2 million to secure the Sears Canada Group's obligations to the KERP Participants. The priority of the KERP Charge is proposed to be bifurcated with \$4.6 million ranking only behind the Administration Charge and the FA Charge, and the balance of \$4.6 million ranking behind the DIP Lenders' Charges.

Executives and Senior Management

93. The proposed payment structure of the KERP is intended to incentivize executives and members of senior management to achieve a going concern transaction and to remain in their employment until the earlier of:
- (a) the completion of a successful restructuring plan, whether through a recapitalization or a sale of all or part of the Sears Canada Group's business (a "**Successful Restructuring**");
 - (b) the termination of the CCAA Proceedings; or
 - (c) the termination of the individual's employment without cause.
94. The aggregate KERP entitlement varies between 25% and 100% of each executive and senior management's 2017 base salary, and is earned and payable in tranches:
- (a) **First Tranche:** a payment equal to 25% of the executive or senior manager's aggregate entitlement is earned and payable on the earlier of (i) a Successful Restructuring and (ii) 45 days after the commencement of the CCAA Proceedings, provided in each case that the employee remains employed at that time. To the extent that an employee, other than one of the eight senior executives mentioned below, is terminated without cause before one of the events described in (i) or (ii), that employee's First Tranche payment will be prorated for the number of days he or she was employed between the filing date and day 45 of the CCAA Proceedings.

In the case of nine senior executives of Sears Canada, payment of the First Tranche is earned and fully payable without pro-ration on the filing date and will

be paid on the earlier of (i) a Successful Restructuring, (ii) 45 days after the commencement of the CCAA Proceedings, or (iii) the termination of their employment without cause.

- (b) **Second Tranche:** a second payment equal to 25% of the executive or senior manager's aggregate entitlement is earned upon the earlier of (i) a Successful Restructuring, and (ii) 90 days after the commencement of the CCAA Proceedings, provided in each case that the employee remains employed at that time. To the extent an employee is terminated without cause before one of the events described in (i) and (ii), the Second Tranche payment will be prorated for the number of days he or she was employed between day 45 and day 90 after the filing date.
- (c) **Third Tranche**
- (i) **Interim Payment** (not applicable to eight senior executives (collectively, the "Senior Executives")): a payment equal to 25% of the executive or senior manager's aggregate entitlement is earned upon the earlier of (i) a Successful Restructuring, and (ii) 180 days after the commencement of the CCAA Proceedings, provided in each case that the employee remains employed at that time. To the extent an employee is terminated without cause before one of the events described in (i) and (ii), the Third Tranche payment will be prorated for the number of days he or she was employed between day 90 and day 180 after the filing date.
- (ii) **Final Payment:** (A) the remaining 25% of the executive or senior manager's (excluding the Senior Executives) aggregate entitlement is only earned upon (x) the completion of a Successful Restructuring, and (y) the successful completion of key performance indicators described in the KERP, provided in each case that the employee remains employed at that time; and (B) in respect the remaining 50% for the Senior Executives' entitlement is only earned upon a Successful Restructuring, the

achievement of which is to be determined by the Board of Directors, provided that the employee remains employed at that time.

Closing Store Managers

95. In the case of Closing Store managers, the proposed KERP is intended to incentivize the KERP Participants to remain employed by Sears Canada until their stores are closed.
96. KERP Participants at the store level will be entitled to 25% of their 2017 base salary, which will be earned upon the closure of the Closing Store provided a certain realization rate (liquidation proceeds minus expenses) is achieved. Realization rates will vary depending on the Closing Store.
97. The terms of the proposed KERP and the quantum of the KERP Charge are reasonable both in the circumstances and when compared to other key employee retention plans approved by this Court in the past. The Proposed Monitor accordingly supports the granting of the KERP Charge.

N. ADMINISTRATION CHARGE

98. The Proposed Initial Order provides for a \$5 million Administration Charge on the Sears Canada Group's assets to secure the fees and disbursements incurred in connection with services provided to the Sears Canada Group both before and after the commencement of the CCAA Proceedings. The Administration Charge will secure services provided to the Sears Canada Group by:
- (a) counsel to the Sears Canada Group;
 - (b) the Monitor and its counsel; and
 - (c) counsel to the board of directors (the "**Board of Directors**") and the special committee of the Board of Directors (the "**Special Committee**").
99. The Proposed Monitor has worked with these groups to estimate their fees and costs, and the quantum of the proposed Administration Charge.

100. Given the anticipated amount of time it will take to complete the CCAA Proceedings, the Proposed Monitor is of the view that the size and scope of the Administration Charge is reasonable in the circumstances. The Proposed Monitor therefore supports the Sears Canada Group's request that the Court approve the Administration Charge.

O. DIRECTORS' CHARGE

101. Sears Canada maintains a US \$50 million directors and officers liability insurance policy (the "**D&O Insurance Policy**"). The D&O Insurance Policy insures the directors and officers of the Sears Canada Group (the "**Directors and Officers**").
102. The Proposed Monitor has worked with Sears Canada to estimate the potential liabilities that the Directors and Officers may be exposed to in their capacities as directors and officers during the CCAA Proceedings.
103. The Proposed Initial Order provides for a \$63.5 million charge over the assets of the Sears Canada Group to secure the indemnity provided to the Directors and Officers in respect of liabilities they may be incurred after the filing date with respect to any failure to pay wages and source deductions, vacation pay, severance and termination amounts in certain provinces, other employee-related obligations and Sales Taxes (as defined in the Proposed Initial Order) (the "**Directors' Charge**"). The priority of the Directors' Charge is proposed to be bifurcated with \$44 million ranking only behind the Administration Charge, the FA Charge and a portion the KERP Charge, and the balance of \$19.5 million ranking behind the DIP Lenders' Charges and the remainder of the KERP Charge.
104. The continued support and service of the Directors and Officers will be critical during the CCAA Proceedings and will enable the Sears Canada Group to preserve value and maximize recoveries for stakeholders.
105. In arriving at the quantum for the Directors' Charge, the Proposed Monitor, Sears Canada and counsel to the Board of Directors and Special Committee, have taken into account (i) the scope and quantum of coverage provided by the D&O Insurance Policy; (ii) the Directors and Officers' potential statutory liabilities for wages, vacation pay, severance and termination, unremitted source deductions, sales and services taxes, and risks on

account of timing variances,⁴ in light of the jurisdictions in which the Sears Canada Group carries on business and the number of its employees in each jurisdiction; (iii) the internal controls in place at Sears Canada to ensure the payment or remittance in the normal course of amounts that could constitute Directors and Officers liabilities; and (iv) the terms of the DIP Facility and DIP Budget.

106. The Proposed Monitor has been informed that the Directors and Officers will not continue to serve unless the Directors' Charge is granted. Accordingly, the Proposed Monitor is of the view that the granting of the Directors' Charge is necessary in the circumstances and that the quantum and scope of the charge is both fair and reasonable. The Proposed Monitor is also of the view that the Directors' Charge is consistent with this Court's practice and the potential foreseeable scope of director and officer liabilities for unremitted or unpaid employee and tax amounts in this case.

P. APPROVAL OF THE ENGAGEMENT OF BMO CAPITAL MARKETS AND THE FA CHARGE

107. BMO Capital Markets has been actively involved in assisting the Sears Canada Group with its operational and strategic review, and has played a leading role in the restructuring efforts undertaken to date including securing the DIP Facility.
108. BMO Capital Markets has also played, and will continue to play, a significant role in driving deal negotiations with various stakeholders, and in any restructuring transactions.
109. The Proposed Monitor and its counsel have reviewed the BMO Capital Markets engagement letter (the "**Engagement Letter**"), including specifically the compensation arrangements between BMO Capital Markets and Sears Canada. A copy of the Engagement Letter is attached as Confidential Appendix "C" to this Pre-Filing Report.

⁴ While timing adjustments are not often included in the scope of directors' charges, the Proposed Monitor believes that a certain adjustment is reasonable and should be included in the Directors' Charge given the seasonal nature of the business and the unique cadence during the year of various components that contribute to potential post-filing liabilities that the Directors and Officers may be exposed to during the CCAA Proceedings.

110. The Engagement Letter provides for the payment of the fees described in the table below. Terms capitalized in the table have the meaning ascribed in the Engagement Letter.

Fee Type	Quantum	Credit Against Other Fees	Tail
Contingency Plan Fee	\$6.5 million	A 50% credit against the Financing Fee in certain circumstances	12 months post-termination
Financing Fee (Debt)	1.0% on the principal amount or commitment amount of any secured debt raised or amended.	A 50% credit against the Contingency Plan Fee in certain circumstances	12 months post-termination
Financing Fee (Equity)	2.5% on any equity privately issued.	A 50% credit against the Contingency Plan Fee in certain circumstances	12 months post-termination
Lease Negotiation Fee (for each material amendment, modification or waiver of a lease)	<p>\$75,000 per lease that is subject to such amendment modification or waiver. Increases to \$150,000 for each such lease upon completion of a Contingency Plan transaction.</p> <p>Minimum fee:</p> <p>(a) \$1.25 million if no Contingency Plan transaction completed.</p> <p>(b) \$2.5 million if a Contingency Plan transaction is completed.</p> <p>Maximum fee: \$5 million</p>	\$2.5 million of this fee will be credited against the Contingency Plan Fee.	12 months post-termination
Work Fee	\$100,000 per month	No	N/A
Engagement Fee	\$750,000 at commencement of engagement	No	N/A

111. The Engagement Letter also requires Sears Canada to seek an order granting BMO Capital Markets a charge for a portion of its potential fees and disbursements. Accordingly, the Sears Canada Group is seeking the FA Charge of \$3.3 million in favour of BMO Capital Markets, which is proposed to rank *pari passu* with the Administration Charge.
112. BMO Capital Markets is a well-known financial advisor and investment banker and has significant expertise in providing the services contemplated by the Engagement Letter in the context of Court-supervised restructuring proceedings.
113. The Proposed Monitor is of the view that the engagement of BMO Capital Markets by Sears Canada is beneficial to the Sears Canada Group and its stakeholders generally. BMO Capital Markets has already been providing assistance and advice to the Sears Canada Group and is familiar with the Sears Canada Group's business and assets.
114. The Proposed Monitor and its counsel have reviewed publicly available and confidential information in respect of the terms of engagement of financial advisors in past CCAA proceedings and is of the view that the amounts payable under the Engagement Letter are, while on the higher end of the range when aggregated in the context of a successful restructuring, not outside market parameters.
115. The quantum of the FA Charge is reasonable in light of the terms of the Engagement Letter.

Q. ANTICIPATED NEXT STEPS IN THE CCAA PROCEEDINGS

Sale Guidelines for Closing Stores

116. The Wong Affidavit contains information with respect to Sears Canada's decision to close 59 of its stores (20 department stores, 15 "Sears Home" stores, 10 outlet stores and 14 "Hometown" stores) (the "**Closing Stores**"). A list of the Closing Stores is attached as Exhibit "C" to the Wong Affidavit.
117. The Proposed Monitor understands that, if this Court grants the Proposed Initial Order, the Sears Canada Group intends to return at a later date to seek this Court's approval of a

formal liquidation process in respect of inventory at the Closing Stores, on notice to interested parties, including landlords.

Authority to Suspend Certain Pension and Retiree Benefit Payments

118. The Wong Affidavit also provides information with respect to Sears Canada's obligations to make special payments in respect of the DB Component of its Pension Plan and payments in respect of its post-retirement benefit plan ("PRB"), which offers life, health and dental benefits to certain retirees of the Sears Canada Group.
119. The Proposed Monitor understands that, if this Court grants the Proposed Initial Order, Sears Canada intends to return at a later date to seek this Court's approval to suspend these payments. Payments in respect of the DB Component of the Pension Plan and the PRB after June 30, 2017 are not included in the Cash Flow Forecast.

Approval of Sale and Investment Solicitation Process

120. The Proposed Monitor understands that the Sears Canada Group intends to return at a later date to seek this Court's approval of a comprehensive sale and investment solicitation process (the "SISP") to be conducted by BMO Capital Markets under the supervision of the Monitor (if appointed). The Proposed Monitor understands that the SISP will be designed to canvass interest in a range of potential transactions involving all or part of the assets or businesses of the Sears Canada Group.

R. RECOMMENDATIONS

121. For the reasons stated in this Pre-Filing Report, the Proposed Monitor believes that it is appropriate for the Sears Canada Group to be granted protection under the CCAA and respectfully recommends that the Court grant the Proposed Initial Order.

The Proposed Monitor respectfully submits to the Court this, its Pre-Filing Report.

Dated this 22nd day of June, 2017.

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



Paul Bishop
Senior Managing Director



Greg Watson
Senior Managing Director

TAB C

This is Exhibit "C" referred to
in the Affidavit of Karen Ensslen
Affirmed this 11th day of October, 2018.



A COMMISSIONER FOR TAKING AFFIDAVITS

PRESS RELEASES & MEDIA

Sears Canada Obtains Creditor Protection Under CCAA; Will Continue Executing its Reinvention

Jun 22, 2017

TORONTO, June 22, 2017 /CNW/ - Further to its announcement earlier today, Sears Canada Inc. ("Sears Canada" or the "Company") (TSX: SCC; NASDAQ: SRSC) and certain of its subsidiaries (the "Sears Canada Group") have been granted an order (the "Initial Order") from the Ontario Superior Court of Justice (Commercial List) (the "Court") under the *Companies' Creditors Arrangement Act* (the "CCAA").

Among other things, the Initial Order provides for a stay of proceedings in favour of the Sears Canada Group for an initial period of 30-days, subject to extension thereafter as the Court deems appropriate, and the appointment of FTI Consulting Canada Inc. as Monitor in the CCAA proceedings. The Initial Order also authorizes the Sears Canada Group to obtain debtor-in-possession financing in the aggregate principal amount of C\$450 million (the "DIP Financing"), with (i) the Company's existing ABL lenders, with Wells Fargo Capital Finance Corporation acting as administrative agent, and (ii) the Company's existing term loan lenders, with GACP Finance Co., LLC acting as administrative agent.

The DIP Financing is expected to provide the Sears Canada Group with sufficient liquidity to maintain business operations throughout the CCAA proceedings. The Sears Canada Group will work to complete its restructuring in a timely fashion and hopes to exit CCAA protection as soon as possible in 2017, better positioned to capitalize on the opportunities that exist in the Canadian retail marketplace.

The Company also announced the closing of 20 full-line locations, plus 15 "Sears Home" Stores, 10 "Sears Outlet" and 14 "Sears Hometown" locations as well as a corresponding planned reduction in its workforce of approximately 2,900 positions across its retail network and at its corporate head office in Toronto. A list of the stores that the Company anticipates closing is included with this announcement. The specific timing of the store closings has not yet been finalized. All other Sears Canada stores and the Sears e-commerce website, www.sears.ca, continue to be open for business.

The Initial Order does not apply to Sears Canada pension plan assets (i.e., the amounts that⁶⁰ have previously been contributed into the pension plan), which assets are held separate from the assets of the Sears Canada Group. Accordingly, monthly pension payments to beneficiaries from that pension plan are not affected by the Initial Order and will continue in accordance with the terms of the plan.

In order to assist the Company with this process, it has retained BMO Capital Markets, as financial advisor, and Osler, Hoskin & Harcourt LLP, as legal advisor. The Board of Directors and the Special Committee of the Board of Directors of the Company has retained Bennett Jones LLP, as legal advisor.

Sears Canada Reinvention Continues

Sears Canada has been engaged in a reinvention of the Company over the last 18 months. Sears Canada rebuilt its front and back-end technology platform, redefined its brand positioning, revamped its product assortment, and rebooted its customer experience and service standards. These changes led to the Company reporting an increase in same-store sales in its two most recently completed quarters. However, the continued liquidity pressures facing the Company as well as legacy components of its business are preventing it from making further progress in its brand reinvention efforts and from restructuring its legacy assets and businesses, which is why it sought creditor protection under the CCAA.

Investor Matters

As a result of the CCAA filing, the TSX and NASDAQ have suspended trading in the common shares of the Company and the TSX has initiated an expedited delisting review. As previously announced, the Company received a letter of non-compliance in respect of certain continued listing criteria from NASDAQ on June 13, 2017 and remains under review for continued listing.

There can be no certainty as to timing or likelihood that the common shares will recommence trading on the TSX, NASDAQ or any other exchange or market.

Mr. Shahir Guindi, a Director of the Corporation, has resigned his post due to time constraints in his schedule.

Additional Information

A copy of the CCAA Initial Order and other information will be available on the Monitor's website at <http://cfcanada.fticonsulting.com/searscanada>. Information regarding the CCAA process may also be obtained by calling the Monitor's hotline at 416-649-8113 or 1-855-649-8113 (toll free), or by email searscanada@fticonsulting.com

Stores to be Closed

[View News Release Full Screen](#)

Sears Full-Line	Hometown	Outlet	Sears Home
Medicine Hat, AB	Cold Lake, AB	Abbotsford Retail, BC	Calgary, AB
Grande Prairie, AB	St. Albert, AB	Winnipeg Garden City, MB	Edmonton Skyvie
Lloydminster, AB	Okotoks, AB	Halifax Outlet, NS	Ancaster, ON
Red Deer Relocation, AB	Spruce Grove, AB	Cornwall, ON	Woodbridge, ON
Kamloops Aberdeen Mall, BC	Ft. McMurray, AB	Chatham, ON	London, ON
Bathurst, NB	Leduc, AB	Cambridge, ON	Scarborough, ON
Saint John, NB	Sherwood Park, AB	Timmins, ON	Kingston, ON
Corner Brook, NL	Creston, BC	St. Eustache, QC	Ottawa East, ON
Truro Mall, NS	Sechelt, BC	Montreal Place Vertu, QC	Sudbury, ON
Dartmouth, NS	Grand Forks, BC	Sorel, QC	Windsor, ON
Brockville, ON	Orangeville, ON		Orillia, ON
Sault Ste. Marie, ON	Rimouski, QC		St. Bruno, QC
Hull, QC	Rouyn-Noranda, QC		Laval, QC
Chicoutimi, QC	Melville, SK		Quebec City, QC
St. Georges de Beauce, QC			Ste. Foy, QC
Alma, QC			
Drummondville, QC			
Regina, SK			
Moose Jaw, SK			
Prince Albert, SK			

About Sears Canada

Sears Canada Inc. is an independent Canadian digital and store-based retailer and technology company whose head office is based in Toronto. Sears Canada's unique brand format offers premium quality Sears Label products, designed and directly sourced by Sears

Canada, and of-the-moment fashion and home décor from designer labels in The Cut @ 62 Sears. Sears Canada also has a top ranked appliance and mattress business in Canada. Sears Canada is undergoing a reinvention, including new customer experiences at every touchpoint, a new e-commerce platform, new store concepts, and a new set of customer service principles designed to deliver WOW experiences to customers. Information can be found at sears.ca/reinvention. Sears Canada operates as a separate entity from its U.S.- based co-founder, now known as Sears Holdings Corp. based in Illinois. Sears Canada's shares trade on the TSX (SCC) and NASDAQ (SRSC).

Forward Looking Information

Certain matters set forth in this news release, including but not limited to statements with respect to the CCAA proceedings, the restructuring process, and the Sears Canada Group's ability to meet its obligations are forward looking. These forward-looking statements reflect management's current views and are based on certain assumptions, including assumptions as to future operating conditions and courses of action, restructuring alternatives, economic conditions, and other factors that management believes are appropriate. Such forward looking statements are subject to risks and uncertainties that may cause actual results to differ materially from those contained in these statements, including the risk that the restructuring may be protracted as well as those risks and uncertainties identified under the heading "Risks and Uncertainties" in Sears Canada's management's discussion and analysis for the 52-week period ended January 28, 2017 and for the 13-week period ended April 29, 2017. available at www.sedar.com. These forward-looking statements are made as at the date of this news release, and the Company assumes no obligation to update or revise them, either publicly or otherwise, to reflect new events, information or circumstances.

For more information regarding the Sears Canada Restructuring

Enquiries for the Monitor may be directed to:

FTI Consulting:

Telephone: 416.649.8113

Toll Free: 1 855-649-8113

Email: searscanada@fticonsulting.com

Web: <http://cfcanada.fticonsulting.com/searscanada>.

SOURCE Sears Canada Inc.

For further information: Media contacts for restructuring: Joel Shaffer, 416-649-8006, jshaffer@longviewcomms.ca; Peter Block, 416-649-8008, pblock@longviewcomms.ca

TAB D

This is Exhibit "D" referred to
in the Affidavit of Karen Ensslen
Affirmed this 11th day of October, 2018.



A COMMISSIONER FOR TAKING AFFIDAVITS

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

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



THE HONOURABLE MR.)

)

THURSDAY, THE 13TH

JUSTICE HAINES)

)

DAY OF JULY, 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**”)

EMPLOYEE REPRESENTATIVE COUNSEL 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 attached thereto (collectively, the “**Wong Affidavit**”), the pre-filing report dated June 22, 2017 of FTI Consulting Canada Inc., in its capacity as the proposed Monitor of the Applicants, and the affidavit of Ashley Schuitema sworn July 12, 2017, and on hearing the submissions of counsel for the Applicants and SearsConnect (the “**Partnership**”, and collectively with the Applicants,

- 2 -

the “**Sears Canada Entities**”), counsel to the Board of Directors of Sears Canada Inc. (“**SCI**”) and the Special Committee of the Board of Directors of SCI, counsel to the proposed Monitor, and on hearing from Employee Representative Counsel (as defined below), and those other parties present:

APPOINTMENT OF REPRESENTATIVE COUNSEL

1. **THIS COURT ORDERS** that Ursel Phillips Fellows Hopkinson LLP (the “**Employee Representative Counsel**”) is hereby appointed as employee representative counsel to represent the interests of the non-unionized Active Employees and Former Employees (each as defined below) of the Sears Canada Entities (collectively, the “**Employees**”) in these CCAA proceedings, other than with respect to (a) entitlements of Employees under the Sears Pension Plan and the Supplemental Plan (each as defined in the Wong Affidavit), and any other pension or retirement plan of the Sears Canada Entities; and (b) Employees’ other post-employment benefits entitlements (the “**Purpose**”). As used herein, “**Active Employees**” means all non-union employees of the Sears Canada Entities employed as of June 22, 2017, including such employees on authorized leaves of absence; “**Former Employees**” means all non-union employees of the Sears Canada Entities who (i) received notice of termination of employment dated June 22, 2017; or (ii) received notice of cessation of severance payments dated June 22, 2017; and “**Employees**” shall (x) exclude the senior management of the Sears Canada Entities; and (y) include any person claiming an interest under or on behalf of an Employee.

2. **THIS COURT ORDERS** that Paul Webber, Nancy Demeter, Sheena Wrigglesworth, Sara Sawyer and Barb Wilser (collectively, the “**Employee Representatives**”) are hereby appointed as representatives of all Employees (excluding the Opt-Out Individuals (as defined below), if any) in these CCAA proceedings, to act in the overall best interests of the Employees,

and to advise and where appropriate instruct the Employee Representative Counsel, in every case, solely for the Purpose. The Employee Representative Counsel may rely upon the advice, information and instructions received from the Employee Representatives in carrying out the mandate of the Employee Representative Counsel without further communications with or instructions from the Employees, except as may be recommended by the Employee Representative Counsel or ordered by this Court.

3. **THIS COURT ORDERS** that, with the exception of Opt-Out Individuals, (a) the Employee Representatives and the Employee Representative Counsel shall represent all Employees in these CCAA proceedings; (b) the Employees shall be bound by the actions of the Employee Representatives and the Employee Representative Counsel in these CCAA proceedings; and (c) the Employee Representatives shall be entitled, on the advice of counsel, to reach any settlement agreements, advocate on behalf of the Employees for the Purpose and compromise any rights, entitlements or claims of the Employees, subject to approval of this Court.

4. **THIS COURT ORDERS** that the Sears Canada Entities shall provide to the Employee Representative Counsel, subject to confidentiality arrangements satisfactory to the Sears Canada Entities and the Monitor, without charge, the following information, documents and data (the "**Information**") to only be used for the Purpose in the context of these CCAA proceedings,

- (a) the names, last known addresses and last known telephone numbers and e-mail addresses (if any) of the Employees (excluding Opt-Out Individuals, if any, who have opted out prior to delivery of the Information); and
- (b) upon request of the Employee Representative Counsel, such documents and data as may be reasonably relevant to matters relating to the issues affecting the

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Employees in these CCAA proceedings provided that such Information is to be only used for the Purpose;

and that, in so doing, the Sears Canada Entities are not required to obtain express consent from such Employees authorizing disclosure of the Information to the Employee Representative Counsel for the Purpose and, further, in accordance with section 7(3) of the *Personal Information Protection and Electronic Documents Act*, this Order shall be sufficient to authorize the disclosure of the Information for the Purpose, without the knowledge or consent of the individual Employees.

5. **THIS COURT ORDERS** that notice of the granting of this Order shall be provided by:
- (a) the Sears Canada Entities, with the assistance of the Monitor, delivering a letter from the Employee Representative Counsel explaining the terms of this Order, which shall include the Monitor's website address where a full copy of this Order can be reviewed, to be delivered forthwith to the Employees by ordinary mail to the physical address of each Employee as last shown in the books and records of the Sears Canada Entities, or by such other electronic means as is maintained by the Sears Canada Entities for the purposes of communicating directly with its non-unionized active and former employees, and further that a copy of this Order be posted on the Monitor's website; and
 - (b) the Sears Canada Entities, with the assistance of the Monitor, publishing (i) in *The Globe & Mail* (National Edition), an English notice substantially in the form attached as Schedule "A" hereto (the "**English Notice**") within 14 days of the date of this Order; and (ii) in *La Presse*, the English Notice and a French notice

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substantially in the form attached as Schedule "B" hereto within 14 days of the date of this Order.

6. **THIS COURT ORDERS** that any individual Employee who does not wish to be represented by the Employee Representatives and the Employee Representative Council in these CCAA proceedings shall, within 30 days of the date of the letter pursuant to paragraph 5 above, notify the Monitor, in writing, that he or she is opting out of representation by the Employee Representatives and the Employee Representative Council by delivering to the Monitor an English or French opt-out notice in the form attached as Schedule "C" hereto (each an "**Opt-Out Notice**"), and shall thereafter not be bound by the actions of the Employee Representatives or the Employee Representative Council and shall represent himself or herself or be represented by any counsel that he or she may retain exclusively at his or her own expense in these CCAA proceedings (any such persons who deliver an Opt-Out Notice in compliance with the terms of this paragraph, "**Opt-Out Individuals**"). The Monitor shall deliver copies of all Opt-Out Notices received to the Sears Canada Entities and the Employee Representative Council as soon as reasonably practicable.

7. **THIS COURT ORDERS** that the Employee Representative Council shall be given notice of all motions to which the Employees are entitled to receive notice in these CCAA proceedings and that it shall be entitled to represent those on whose behalf it is hereby appointed in all such proceedings.

8. **THIS COURT ORDERS** that Employee Representative Council may retain such actuarial, financial and other advisors and assistants (collectively, the "**Advisors**") as may be reasonably necessary in connection with its duties as Employee Representative Council in relation to the Purpose.

9. **THIS COURT ORDERS** that, subject to the terms of the letter agreement between SCI and the Employee Representative Counsel dated as of June 22, 2017 (the “**Employee Representative Counsel Letter**”), which Employee Representative Counsel Letter has been approved by the Monitor, the Employee Representative Counsel shall be paid its reasonable fees and disbursements (including disbursements relating to Advisors retained by the Employee Representative Counsel) by the Sears Canada Entities on a monthly basis, forthwith upon rendering its accounts to the Sears Canada Entities for fulfilling its mandate in accordance with this Order, and subject to such redactions to the invoices as are necessary to maintain solicitor-client privilege between the Employee Representative Counsel and the Employees. In the event of any disagreement with respect to such fees and disbursements, such disagreement may be remitted to this Court for determination.

10. **THIS COURT ORDERS** that the Employee Representative Counsel shall be entitled to benefit of the Administration Charge (as defined in the Initial Order in these CCAA proceedings issued by the Court on June 22, 2017, as amended), as security for its professional fees and disbursements incurred at its standard rates and charges, up to an aggregate maximum amount of \$75,000.

11. **THIS COURT ORDERS** that the payments made by the Sears Canada Entities pursuant to this Order do not and will not constitute preferences, fraudulent conveyances, transfers of undervalue, oppressive conduct or other challengeable or voidable transactions under any applicable laws.

12. **THIS COURT ORDERS** that the Employee Representative Counsel is hereby authorized to take all steps and do all acts necessary or desirable to carry out the terms of this Order.

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13. **THIS COURT ORDERS** that the Employee Representative Counsel shall be at liberty, and is hereby authorized, at any time, to apply to this Court for advice and directions in respect of its appointment or the fulfillment of its duties in carrying out the provisions of this Order or any variation of the powers and duties of the Employee Representative Counsel, which shall be brought on notice to the Sears Canada Entities, the Monitor, Wells Fargo Capital Finance Corporation Canada as administrative agent under the DIP Revolving Credit Agreement (as defined in the Wong Affidavit), GACP Finance Co., LLC as administrative agent under the DIP Term Credit Agreement (as defined in the Wong Affidavit), and other interested parties, unless this Court orders otherwise.

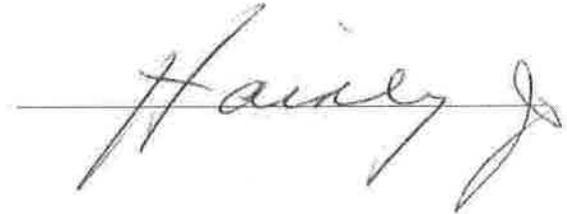
14. **THIS COURT ORDERS** that the Employee Representative Counsel and the Employee Representatives shall have no personal liability or obligations as a result of the performance of their duties in carrying out the provisions of this Order or any subsequent Orders in these CCAA proceedings, save and except for liability arising out of gross negligence or wilful misconduct.

15. **THIS COURT ORDERS** that no action or other proceeding may be commenced against the Employee Representative Counsel or the Employee Representatives in respect of the performance of their duties under this Order without leave of this Court on seven (7) days' notice to the Employee Representative Counsel or the Employee Representatives, as the case may be.

16. **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 Applicants, 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 Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to

- 8 -

give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order and in case, any which motion to be served within three (3) weeks of the date of this order.

A handwritten signature in cursive script, appearing to read "Hainey J.", written over a horizontal line.

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

JUL 13 2017

PER / PAR:

Handwritten initials "pl" in cursive script.

SCHEDULE "A"

ENGLISH NEWSPAPER NOTICE

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 referred to as the "Sears Canada Entities")

NOTICE TO CERTAIN NON-UNIONIZED ACTIVE AND FORMER EMPLOYEES

On June 22, 2017, the Sears Canada Entities commenced court-supervised restructuring proceedings under the Companies' Creditors Arrangement Act ("CCAA") pursuant to an Order (the "Initial Order") of the Ontario Superior Court of Justice (Commercial List) (the "Court"). FTI Consulting Canada Inc. has been appointed by the Court as monitor in the Applicants' CCAA proceedings (the "Monitor").

TAKE NOTICE THAT pursuant to an Order of the Court:

1. Ursel Phillips Fellows Hopkinson LLP ("Employee Representative Counsel") was appointed as employee representative counsel for the purpose of representing the interests of the non-unionized employees of the Sears Canada Entities who were employed as of June 22, 2017 (including those on authorized leaves of absence) and non-unionized former employees of the Sears Canada Entities who received notice of termination of employment dated June 22, 2017 or received notice of cessation of severance payments dated June 22, 2017 and of any person claiming an interest under or on behalf of such persons (collectively, the "Employees"), in relation to the CCAA proceedings or any other forum related to this purpose. Employee Representative Counsel represents the interests of the Employees other than with respect to their entitlements under the Sears Canada Inc. Registered Retirement Plan or any other pension or retirement plan provided by the Sears Canada Entities and of any individual with an entitlement to other post-employment benefits (including retiree health and dental benefits and retiree life insurance benefits). Employee Representative Counsel will also advise the representatives appointed by the Court (collectively, the "Employee Representatives") as representatives of all Employees.

For active employees, all regular inquiries about your ongoing employment should continue to be directed to you appropriate human resources representative.

2. For more information, visit the Employee Representative Counsel's website at <http://www.upfhlaw.ca/areas-of-practice/sears-canada-employees-and-former-employees>

IF YOU DO NOT WISH TO BE REPRESENTED by the Employee Representatives and the Employee Representative Counsel, you must, before ●, 2017, provide an Opt-Out Notice (a copy of which can be obtained from the Employee Representative Counsel's website) indicating that you wish to opt-out of such representation and send the completed Opt-Out Notice to:

- 2 -

FTI Consulting Canada Inc., in its capacity as Court-appointed Monitor of the Sears Canada Entities

TD Waterhouse Tower
79 Wellington Street West
Suite 2010, P.O. Box 104
Toronto, ON, M4K 1G8
Fax: 416-649-8101

Attention: Jim Robinson

Persons requiring further information should review the website established by the Monitor <http://cfcanada.fticonsulting.com/searscanada> or call the Monitor's Hotline at 1-855-649-8113.

SCHEDULE "B"

AVIS DANS LES JOURNAUX FRANÇAIS

SEARS CANADA INC., CORBEIL ÉLECTRIQUE INC., TRANSPORTS S.L.H. INC., THE CUT INC., SERVICES CLIENTÈLE SEARS INC., INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., CENTRE DE REVÊTEMENTS DE SOL SEARS 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. ET 3339611 CANADA INC. (collectivement appelées les « entités Sears Canada »)

AVIS À CERTAINS ANCIENS EMPLOYÉS ET EMPLOYÉS ACTIFS NON SYNDIQUÉS

Le 22 juin 2017, les entités Sears Canada ont amorcé un processus de restructuration supervisé par un tribunal en vertu de la *Loi sur les arrangements avec les créanciers des compagnies* (la « LACC ») aux termes d'une ordonnance (l'« ordonnance initiale ») de la Cour supérieure de justice de l'Ontario (rôle commercial) (la « Cour »). La Cour a nommé FTI Consulting Canada Inc. à titre de contrôleur aux fins de l'instance en vertu de la LACC intentée par les requérants (le « contrôleur »).

AVIS EST PAR LES PRÉSENTES DONNÉ qu'aux termes d'une ordonnance de la Cour :

1. Le cabinet Ursel Phillips Fellows Hopkinson LLP (les « conseillers juridiques des représentants des employés ») a été nommé à titre de conseiller juridique des employés dans le but de défendre les intérêts des employés non syndiqués des entités Sears Canada qui était à l'emploi de celles-ci en date du 22 juin 2017 (dont les employés en congé autorisé) et des anciens employés non syndiqués des entités Sears Canada qui ont reçu un avis de cessation d'emploi daté du 22 juin 2017 ou un avis de cessation lié à leur indemnité de départ daté du 22 juin 2017, ainsi que des personnes revendiquant un droit par l'intermédiaire de ces personnes ou pour celles-ci (collectivement, les « employés ») en lien avec l'instance en vertu de la LACC ou toute autre procédure portant sur cette question. Les conseillers juridiques des représentants des employés représentent les intérêts des employés, sauf en ce qui a trait à leurs droits aux termes du régime de retraite agréé de Sears Canada Inc. ou des autres régimes de retraite offerts par les entités Sears Canada, et des personnes physiques qui ont droit à d'autres avantages postérieurs à la retraite (dont l'assurance santé et dentaire et l'assurance-vie pour les retraités). Les conseillers juridiques des représentants des employés conseilleront aussi les représentants que la Cour a nommés (collectivement, les « représentants des employés ») en qualité de représentants de tous les employés.

Les employés actifs qui ont des questions courantes concernant leur emploi peuvent continuer à les adresser à leur représentant des ressources humaines.

2. Pour de plus amples renseignements, veuillez consulter le site Web des conseillers juridiques des représentants des employés à <http://www.upfhlaw.ca/areas-of-practice/sears-canada-employees-and-former-employees>.

SI VOUS NE SOUHAITEZ PAS ÊTRE REPRÉSENTÉ par les représentants des employés et les conseillers juridiques des représentants des employés, vous devez, avant le ● 2017, remettre un Avis de retrait (dont vous trouverez copie sur le site Web des conseillers juridiques des représentants des employés) sur lequel vous aurez indiqué que vous ne souhaitez pas être représenté, et faire parvenir cet Avis de retrait rempli à :

- 2 -

FTI Consulting Canada Inc., en sa qualité de contrôleur des entités Sears Canada nommé par la Cour
TD Waterhouse Tower
79 Wellington Street West
Suite 2010, P.O. Box 104
Toronto (Ontario) M4K 1G8
Télec. : 416 649-8101

À l'attention de Jim Robinson

Les personnes qui souhaitent obtenir de plus amples renseignements devraient consulter le site Web que le contrôleur a créé à <http://cfcanada.fticonsulting.com/searscanada>, ou composer le 1 855 649-8113 pour obtenir la ligne d'aide du contrôleur.

SCHEDULE "C"

FORM OF OPT-OUT NOTICE

To: **FTI CONSULTING CANADA INC.**, in its capacity as Court-appointed Monitor of the Sears Canada Entities
 TD Waterhouse Tower
 79 Wellington Street West
 Suite 2010, P.O. Box 104
 Toronto, ON, M4K 1G8
 Fax: 416-649-8101

Attention: Jim Robinson

I hereby provide written notice that I do not wish to be represented by Ursel Phillips Fellows Hopkinson LLP, employee representative counsel (the "Employee Representative Counsel") for the Active Employees and the Former Employees of Sears Canada Inc. and certain of its subsidiaries (collectively, the "Sears Canada Entities") in their proceedings under the *Companies' Creditors Arrangement Act* (Court File No. CV-17-11846-00CL) (the "CCAA Proceedings"). I understand that by opting out of representation if I wish to take part in the CCAA Proceedings I would need to do so as an independent party. I am responsible for retaining my own legal counsel should I choose to do so, and that I would be personally liable for the costs of my own legal representation.

I understand that a copy of this Opt-Out Form will be provided to the Employee Representative Counsel and to the Sears Canada Entities.

 Witness

 Signature

Name [please print]: _____

Address: _____

Telephone: _____

Note: To opt out, this form must be completed and received at the above address on or before _____, 2017.

ANNEXE "C"

AVIS DE RETRAIT

À : FTI CONSULTING CANADA INC., en sa qualité de contrôleur des entités
 Sears Canada nommé par la Cour
 TD Waterhouse Tower
 79 Wellington Street West
 Suite 2010, P.O. Box 104
 Toronto (Ontario) M4K 1G8
 Téléc. : 416 649-8101

À l'attention de Jim Robinson

Par les présentes, je vous avise que je ne souhaite pas être représenté par le cabinet Ursel Phillips Fellows Hopkinson LLP, conseillers juridiques des représentants des employés (les « conseillers juridiques des représentants des employés ») qui représentent les employés actifs et les anciens employés de Sears Canada Inc. et de certaines de ses filiales (collectivement, les « entités Sears Canada ») dans le cadre l'instance intentée en vertu de la *Loi sur les arrangements avec les créanciers des compagnies* (n° de dossier de la Cour : CV-17-11846-00CL) (l'« instance en vertu de la LACC »). Je comprends que si je refuse d'être ainsi représenté et que je souhaite prendre part à l'instance en vertu de la LACC, je devrai le faire à titre indépendant. Je devrai alors, le cas échéant, retenir les services de mes propres conseillers juridiques, et je serai personnellement responsable des frais de ma propre représentation juridique.

Je comprends qu'une copie du présent avis de retrait sera remise aux conseillers juridiques des représentants des employés et aux entités Sears Canada.

Témoin

Signature

Nom [en caractères d'imprimerie] : _____

Adresse : _____

Téléphone : _____

Note : Pour refuser les services de représentation, le présent formulaire doit être rempli et reçu à l'adresse qui précède au plus tard le _____ 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. (collectively, the "Applicants")

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

Proceeding commenced at Toronto

EMPLOYEE REPRESENTATIVE COUNSEL 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

TAB E

This is Exhibit "E" referred to
in the Affidavit of Karen Ensslen
Affirmed this 11th day of October, 2018.



A COMMISSIONER FOR TAKING AFFIDAVITS

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)	WEDNESDAY, THE 4 TH
)	
JUSTICE HAINEY)	DAY OF OCTOBER, 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**”)

**APPROVAL AND VESTING ORDER
(Corbeil Électrique Inc.)**

THIS MOTION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. c-36, as amended (the “**CCAA**”) for an order, *inter alia*, approving: (i) the sale transaction (the “**Transaction**”) contemplated by an Asset Purchase Agreement between Corbeil Électrique Inc. (the “**Seller**”) as Seller, Am-Cam Électroménagers Inc. (the “**Buyer**”) as Buyer, Distinctive Appliances Inc. (the “**Guarantor**”) as Guarantor and Sears Canada Inc. (“**Sears Canada**”) as intervenor, dated October 1, 2017 (the “**APA**”) and certain related relief, and (ii) vesting in and to the Buyer all right, title and interest of the Seller in and to the Purchased Assets (as defined in the APA), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of the Applicants, the Affidavit of Billy Wong sworn on October 1, 2017 including the exhibits thereto, and the Third Report of FTI Consulting Canada Inc., in its capacity as Monitor (the "**Monitor**"), filed, and on hearing the submissions of respective counsel for the Applicants, the Monitor, the Buyer, the DIP ABL Agent, the DIP Term Agent and such other counsel as were present, no one else appearing although duly served as appears from the Affidavits of Service of Ana Chalupa and Waleed Malik sworn October 2, 2017, filed:

SERVICE AND DEFINITIONS

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion Record herein is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. THIS COURT ORDERS that any capitalized term used and not defined herein shall have the meaning ascribed thereto in the Amended and Restated Initial Order in these proceedings dated June 22, 2017 (the "**Initial Order**"), or in the APA, as applicable.

APPROVAL OF THE APA

3. THIS COURT ORDERS AND DECLARES that the entering into of the Transaction by the Seller and Sears Canada (as intervenor) is hereby approved and ratified and that the execution of the APA by the Seller and Sears Canada (as intervenor), is hereby authorized, approved and ratified with such minor amendments as the Seller (with the consent of the Monitor after consultation with the DIP Lenders) and the Buyer may agree to in writing. The Seller is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Buyer and the Monitor shall be authorized to take such additional steps in furtherance of its responsibilities under the APA and this Order, and shall not incur any liability as a result thereof.
4. THIS COURT ORDERS AND DECLARES that on Closing, the Monitor shall hold back from the Purchase Price an amount of five million dollars (\$5,000,000) (the "**Holdback Amount**") in escrow, such amount to be held by the Monitor in trust and dealt with as follows: if the net amount based on the calculations set forth in Sections 3.5(a) to 3.5(e) of the APA is owed by the Seller to the Buyer (the "**Final Negative Adjustment**"), as determined by the Seller and the Buyer,

or the Independent Auditor, as the case may be, the Monitor, on behalf of the Seller, will wire transfer the amount from the Holdback Amount that is the lesser of (i) the amount of the Final Negative Adjustment, and (ii) the Holdback Amount, to the Buyer within two (2) Business Days after the Settlement Date.

5. THIS COURT ORDERS AND DECLARES that upon the delivery of a Monitor's certificate to the Buyer substantially in the form attached as Schedule "A" hereto (the "**Monitor's Certificate**"), all of the Seller's right, title and interest in and to the Purchased Assets, excluding any SCI IT Assets subject to the Information Technology Agreement, as amended, with Sears Roebuck and Co., shall vest absolutely in the Buyer, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise in respect of the Purchased Assets (collectively, the "**Claims**"), including, without limiting the generality of the foregoing:

- (a) any and all encumbrances or charges created by Order of this Court, including the Administration Charge, the FA Charge, the KERP Priority Charge, the Directors' Priority Charge, the DIP ABL Lenders' Charge, the DIP Term Lenders' Charge, the KERP Subordinated Charge and the Directors' Subordinated Charge (as such terms are defined in the Initial Order) and any other charges hereafter granted by this Court in these proceedings (collectively, the "**CCAA Charges**");
- (b) any and all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario), the *Register of Personal and Movable Real Rights* or any other personal property registry system; and

(all of which are collectively referred to as the "**Encumbrances**", which term shall not include the Permitted Encumbrances listed on Schedule "B" hereto), and, for greater certainty, this Court orders that all of the Claims and Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

6. THIS COURT ORDERS that upon the registration in the Canadian Intellectual Property Office of a certified copy of this Order, the applicable Registrar is hereby directed to transfer all of the Seller's right, title and interest in and to the Purchased Assets that consist of the Intellectual

Property (excluding as SCI Assets the intellectual property subject to the Trademark License Agreement, as amended, with Sears Roebuck and Co.) and applications and registration listed in Schedule "D" hereto, to the Buyer as described in the APA, free and clear of and from any and all Claims.

7. THIS COURT ORDERS that from and after the delivery of the Monitor's Certificate, all Claims and Encumbrances shall attach to the Purchase Price (except for the Holdback Amount as described in paragraph 5 above) (the "**Closing Purchase Price**"), with the same priority as they had with respect to the Purchased Assets immediately prior to the Closing Date of the Transaction, as if the Transaction had not been completed. Upon the Settlement Date (as defined in the APA), all Claims and Encumbrances shall attach to any amount of the Holdback Amount retained by the Seller (the "**Remaining Holdback Amount**", and together with the Closing Purchase Price, the "**Net Proceeds**"), with the same priority as they had with respect to the Purchased Assets immediately prior to the Closing Date of the Transaction, as if the Transaction had not been completed.

8. THIS COURT ORDERS that, to the extent that obligations remain owing by the Applicants under the DIP ABL Credit Agreement and/or the DIP Term Credit Agreement, the Monitor be and is hereby authorized and directed to distribute, on behalf of the Applicants: (i) on the day of filing the Monitor's Certificate or as soon as practicable thereafter, the Closing Purchase Price, and (ii) on the Settlement Date, the Remaining Holdback Amount, if any, in partial repayment of amounts then owing by the Applicants under the DIP ABL Credit Agreement or the DIP Term Credit Agreement, as applicable, in such amounts as agreed to by the DIP ABL Agent and the DIP Term Agent, as applicable, or if no such applicable agreement can be reached, on further Order of the Court (a "**Distribution**").

9. THIS COURT ORDERS that any Distribution made pursuant to this Order shall be and shall be deemed to be made free and clear of all Claims and Encumbrances.

10. THIS COURT ORDERS that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of any of the Applicants and

any bankruptcy order issued pursuant to any such applications; or

- (c) any assignment in bankruptcy made in respect of any of the Applicants;

any distribution permitted by paragraph 8 above shall be binding on any trustee in bankruptcy or receiver that may be appointed in respect of any of the Applicants and shall not be void or voidable by creditors of any of the Applicants, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

11. THIS COURT ORDERS that, if all obligations of the Applicants under the DIP ABL Credit Agreement or the DIP Term Credit Agreement have been satisfied in full the Monitor shall be entitled to retain the Net Proceeds or any remaining portion thereof on behalf of the Applicants to be dealt with by further Order of the Court.

12. THIS COURT ORDERS AND DIRECTS the Monitor to file with the Court a copy of the Monitor's Certificate, forthwith after delivery thereof in accordance with the terms of the APA.

GENERAL PROVISIONS

13. THIS COURT ORDERS that, pursuant to clause 7(3) of the Canada Personal Information Protection and Electronic Documents Act, the Seller or the Monitor shall be authorized and permitted to disclose and transfer to the Buyer all human resources and payroll information in the Seller's records pertaining to the Employees (as defined in the APA), including personal information of those Employees. The Buyer shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Seller.

14. THIS COURT ORDERS that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Seller and any bankruptcy order issued pursuant to any such applications; or

- (c) any assignment in bankruptcy made in respect of the Seller;

the vesting of the Purchased Assets in the Buyer pursuant to this Order shall be binding on any trustee in bankruptcy or receiver that may be appointed in respect of the Seller and shall not be void or voidable by creditors of the Seller, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

15. THIS COURT ORDERS THAT (i) on or after the Closing Date, Corbeil shall be permitted to execute and file articles of amendments or such other documents or instruments as may be required to change its corporate and business names in accordance with the APA, and such articles, documents or other instruments shall be deemed to have been duly authorized, valid and effective and shall be accepted by the applicable Governmental Authority without the requirement (if any) of obtaining director or shareholder approval pursuant to any federal or provincial legislation.

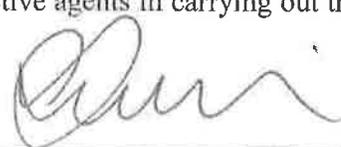
16. THIS COURT ORDERS that Confidential Appendix "C" to the Third Report of the Monitor and the schedules to and other financial information contained in the APA shall be and is hereby sealed, kept confidential and shall not form part of the public record pending further Order of this Court.

17. THIS COURT HEREBY REQUESTS the aid and recognition of any Court, tribunal, regulatory or administrative bodies, having jurisdiction in Canada or in the United States of America, to give effect to this Order and to assist the Applicants, 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 Applicants 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 Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

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

OCT 05 2017

PER / PAR: 


C. Irwin
Registrar

SCHEDULE "A"

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., 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**")

MONITOR'S CERTIFICATE**RECITALS**

A. All undefined terms in this Monitor's Certificate have the meanings ascribed to them in the Order of the Court dated October 9, 2017 (the "**Approval and Vesting Order**") approving the Asset Purchase Agreement between Corbeil Électrique Inc. (the "**Seller**") as Seller, Am-Cam Électroménagers Inc. (the "**Buyer**") as Buyer, Distinctive Appliances Inc. (the "**Guarantor**") as Guarantor and Sears Canada Inc. ("**Sears Canada**") as intervenor, a copy of which is attached as Exhibit "A" to the Affidavit of Billy Wong dated October 1, 2017.

B. Pursuant to the Approval and Vesting Order the Court approved the APA and provided for the vesting in the Buyer of the Seller's right, title and interest in and to the Purchased Assets (as defined in the APA), which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Monitor to the Buyer and the Seller of a certificate confirming (i) all conditions to Closing have been satisfied or waived by the Buyer and the Seller, as applicable; and (ii) the

cash portion of the Purchase Price and all applicable sales and transfer Taxes payable (each as defined in the APA) by the Buyer to the Seller have been received by the Monitor.

THE MONITOR CERTIFIES the following:

1. All conditions to Closing have been satisfied or waived by the Buyer and the Seller, as applicable; and
2. The cash portion of the Purchase Price and all applicable sales and transfer Taxes payable by the Buyer to the Seller have been received by the Monitor.

This Monitor's Certificate was delivered by the Monitor at _____ [TIME] on _____ [DATE].

FTI CONSULTING CANADA INC., in its capacity as Court-appointed Monitor of Sears Canada Inc., et al. and not in its personal or corporate capacity

Per: _____

Name:

Title:

SCHEDULE "B"
PERMITTED ENCUMBRANCES

"Permitted Encumbrances" means:

- (i) inchoate statutory liens for Taxes, assessments, governmental or utility charges or levies not due as at the Closing Date (including the Encumbrances of public utilities, workers, suppliers of materials, builders, contractors, architects and unpaid vendors of moveable property);
- (ii) rights of equipment lessors pursuant to Assumed Contracts and Personal Property Leases;
- (iii) any privilege in favour of any lessor, licensor or permitter for rent to become due or for other obligations or acts, the performance of which is required under any Assumed Contract;
- (iv) any rights of expropriation, access or use or any other similar rights conferred or reserved by Applicable Law;
- (v) any easements, servitudes or rights-of-way in favour of any Governmental Authority, any private or public utility, any railway company or any adjoining owner;
- (vi) the provisions of all by-laws, regulations, ordinances and similar instruments relating to development and zoning of the Leased Property;
- (vii) all Off-Title Compliance Matters;
- (viii) the Encumbrances which the Real Property Leases and/or any Leased Property are stated to be subject to or bound by pursuant to the terms of the Real Property Leases;
- (ix) any ground lease, emphyteutic lease, head lease or other lease which is superior to any Real Property Lease (each a "Head Lease"), any Encumbrances or other rights in favour of the applicable landlord contained in any Head Lease, and any Encumbrances which the Head Leases and/or leasehold interests created thereby are stated to be subject to or bound by pursuant to the terms of the applicable Head Lease;
- (x) all Encumbrances affecting a Landlord's freehold interest in any Leased Property; and
- (xi) all Encumbrances listed on Schedule 1.1(vvvv) of the APA.

**SCHEDULE "D"
INTELLECTUAL PROPERTY**

LEGEND:

P = Pending Mark (not registered yet)

R = Registered Mark

D = Design Feature in mark

Status	Design Feature	TRADEMARK	FRENCH / ENGLISH EQUIVALENT FILED / REGISTERED (if applicable)	REGISTRATION / APPLICATION NUMBER	FILING DATE	REG. DATE	OWNER OF THE MARK	NEXT DUE DATE (M/D/A)	DESIGN (if Applicable)	WARES AND/OR SERVICES COVERED BY MARK
R		CABINALTO		1,629,747 TMA950,959	6/05/2013	9/30/2016	CORBEIL ELECTRIQUE INC.	9/30/2031		GOODS Cl. 20: Kitchen Cabinets
R		CABIVIA		1,629,745 TMA950,962	6/05/2013	9/30/2016	CORBEIL ELECTRIQUE INC.	9/30/2031		GOODS Cl. 20: Kitchen Cabinets
R		CORBEIL APPLIANCES		0,813,296 TMA480,117	5/23/1996	8/11/1997	CORBEIL ELECTRIQUE INC.	8/11/2027		SERVICES CL.35: Retail business operation of home appliances, electronic devices and accessories, extended warranty service and after-sales service.
R	D	CORBEIL APPLIANCES & Dessin		0,826,026 TMA488,467	10/16/1996	1/28/1998	CORBEIL ELECTRIQUE INC.	1/28/2028		SERVICES CL.35: Retail business operation of home appliances, electronic devices and accessories, extended warranty service and after-sales service.

R	D	CORBEIL APPLIANCES THE ONLY TRUE APPLIANCE SPECIALIST! 1 AND DESIGN	Corbeil Electroménagers Le Seul Vrai Spécialiste De L'électroménager & Design	1,218,866 TMA694,137	6/2/20-04	8/15/2007	CORBEIL ELECTRIQUE INC.	8/15/2022		SERVICES CL.35 ET CL.36 : Operation of a retail business selling household electrical appliances, electronic accessories, extended warranty plans and customer service.
R		CORBEIL ÉLECTRIQUE		0,807,404 TMA476,453	3/19/1996	5/20/1997	CORBEIL ELECTRIQUE INC.	5/20/2027		SERVICES CL.35: Retail business operation of home appliances, electronic devices and accessories, extended warranty service and after-sales service.
R		CORBEIL ÉLECTROMÉNAGERS		0,813,295 TMA480,039	5/23/1996	8/11/1997	CORBEIL ELECTRIQUE INC.	8/11/2027		SERVICES CL.35: Retail business operation of home appliances, electronic devices and accessories, extended warranty service and after-sales service.
R	D	CORBEIL ÉLECTROMÉNAGERS & DESSIN		0,826,025 TMA488,468	10/16/1996	1/28/1998	CORBEIL ELECTRIQUE INC.	1/28/2028		SERVICES CL.35: Retail business operation of home appliances, electronic devices and accessories, extended warranty service and after-sales service.
R	D	CORBEIL ÉLECTROMÉNAGERS LE SEUL VRAI SPÉCIALISTE DE L'ÉLECTROMÉNAGER & DESIGN	Corbeil Appliances The Only True Appliance Specialist & Design	1,218,990 TMA696,621	6/2/2004	9/17/2007	CORBEIL ELECTRIQUE INC.	9/17/2022		SERVICES CL.35 ET CL.36: Operation of a retail business selling household electrical appliances, electronic accessories, extended warranty plans and customer service.

R	D	CORBEIL ELECTROMÉNAGERS LE SPÉCIALISTE DE L'ELECTROMENAGER! & DESIGN		1,093,722 TMA592,376	2/27/2001	10/16/2003	CORBEIL ELECTRIQUE INC.	10/16/2018		SERVICES CL.35: Commercial operation of retail sales of appliances, electronic devices and accessories; extended warranty service and customer service.
R	D	CORBEIL PROTECTION PLAN & DESIGN	Plan Protection Corbeil & Design	1,205,650 TMA702,230	2/3/2004	12/4/2007	CORBEIL ELECTRIQUE INC.	12/4/2022		SERVICES CL.36: Extended warranty plans for appliances.
R		CUCINORA		1,629,746 TMA950,961	6/05/2013	09/30/2016	CORBEIL ELECTRIQUE INC.	03/13/2032		GOODS CL.20: Kitchen Cabinets
R	D	ELLIPSE CORBEIL & DESIGN		1,733,698 TMA965,555	06/19/2015	03/13/2017	CORBEIL ELECTRIQUE INC.	09/30/2031		GOODS CL.11: refrigerators, freezers, range hoods
R	D	LE SEUL VRAI SPÉCIALISTE DE L'ELECTROMENAGER & DESIGN	The Only True Appliance Specialist & Design	1,205,649 TMA654,397	2/3/2004	12/6/2005	CORBEIL ELECTRIQUE INC.	12/6/2020		SERVICES CL.35 ET CL.36: Operation of a retail business selling household electrical appliances, electronic appliances and accessories, extended warranty plans and customer service
R	D	PLAN PROTECTION CORBEIL & DESIGN	Corbeil Protection Plan & Design	1,205,651 TMA706,588	2/3/2004	2/5/2008	CORBEIL ELECTRIQUE INC.	2/5/2023		SERVICES CL.36: Extended warranty plans for appliances.

R	D	THE ONLY TRUE APPLIANCE SPECIALIST & DESIGN	Le Seul Vrai Spécialiste De L'électroménager & Design	1,205,648 TMA670,580	2/3/2004	8/21/2006	CORBELL ELECTRIQUE INC.	8/21/2021		SERVICES CL.35 ET CL.36 : Operation of a retail business selling household electrical appliances, electronic accessories, extended warranty plans and customer service in connection with the aforementioned services
		BOUTIQUE CORBEIL H2O		1,207,951 TMA688667	02/24/2004	05/31/2007	CORBELL ELECTRIQUE INC.	05/31/2022		SERVICES CL.35 ET CL.42: Retail store services specializing in the sale of water coolers, water filtration systems and filters.

IN THE MATTER OF the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended

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

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

Applicants

Ontario
**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**
Proceeding commenced at Toronto

**ORDER
APPROVAL AND VESTING ORDER**
(Corbeil Électrique Inc.)

OSLER, HOSKIN & HARCOURT, LLP
P.O. Box 50, 1 First Canadian Place
Toronto, ON M5X 1B8

Marc Wasserman LSUC# 44066M
Tel: 416.862.4908

Jeremy Dacks LSUC# 41851R
Tel: 416.862.4923

Tracy Sandler LSUC# 32443N
Tel: 416.862.5890

Karin Sachar LSUC# 59944E
Tel: 416.862.5949
Fax: 416.862.6666

Lawyers for the Applicants

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.

)

WEDNESDAY, THE 4TH

JUSTICE HAINEY

)

DAY OF OCTOBER, 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**”)

APPROVAL AND VESTING ORDER
(S.L.H. Transport Inc.)

THIS MOTION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. c-36, as amended (the “**CCAA**”) for an order, inter alia, (i) approving the sale transaction (the “**Transaction**”) contemplated by an Asset Purchase Agreement between S.L.H. Transport Inc., Sears Canada Inc. and 168886 Canada Inc. (collectively, the “**Sellers**”), as vendors, and 8507597 Canada Inc. (the “**Purchaser**”), as purchaser, made as of September 29, 2017 (the “**APA**”) and certain related relief, and (ii) vesting in and to the Purchaser all right, title and interest of the Sellers in and to the Purchased Assets (as defined in the APA), was heard this day at 330 University Avenue, Toronto, Ontario.

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ON READING the Notice of Motion of the Applicants, the Affidavit of Billy Wong sworn on September 29, 2017 including the exhibits thereto, and the Third Report of FTI Consulting Canada Inc., in its capacity as Monitor (the “**Monitor**”), filed, and on hearing the submissions of respective counsel for the Applicants, the Monitor, the Purchaser, the DIP ABL Agent, the DIP Term Agent and such other counsel as were present, no one else appearing although duly served as appears from the Affidavits of Service of Waleed Malik and Francesca Del Rizzo sworn October 1 and 2, 2017, filed:

SERVICE AND DEFINITIONS

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion Record herein is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. THIS COURT ORDERS that any capitalized term used and not defined herein shall have the meaning ascribed thereto in the Amended and Restated Initial Order in these proceedings dated June 22, 2017 (the “**Initial Order**”), or in the APA, as applicable.

APPROVAL OF THE APA

3. THIS COURT ORDERS AND DECLARES that the entering into of the Transaction by the Sellers is hereby approved and ratified and that the execution of the APA by the Sellers is hereby authorized, approved and ratified with such minor amendments as the Sellers (with the consent of the Monitor after consultation with the DIP Lenders) and the Purchaser may agree to in writing. The Sellers are hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser and the Monitor shall be authorized to take such additional steps in furtherance of its responsibilities under the APA and this Order, and shall not incur any liability as a result thereof.
4. THIS COURT ORDERS AND DECLARES that upon the delivery of a Monitor’s certificate to the Purchaser substantially in the form attached as Schedule “A” hereto (the “**Monitor’s Certificate**”), all of the Sellers’ right, title and interest in and to the Purchased Assets, excluding any Intellectual Property subject to the Trademark License Agreement, as amended, with Sears Roebuck and Co., shall vest absolutely in the Purchaser, free and clear of and from any

- 3 -

and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise in respect of the Purchased Assets (collectively, the “**Claims**”), including, without limiting the generality of the foregoing:

- (a) the Administration Charge, the FA Charge, the KERP Priority Charge, the Directors’ Priority Charge, the DIP ABL Lenders’ Charge, the DIP Term Lenders’ Charge, the KERP Subordinated Charge and the Directors’ Subordinated Charge (as such terms are defined in the Initial Order) and any other charges hereafter granted by this Court in these proceedings (collectively, the “**CCAA Charges**”); and
- (b) all charges, security interests or claims evidenced by registrations pursuant to any personal property registry system;

(all of which are collectively referred to as the “**Encumbrances**”, which term shall not include the Permitted Encumbrances listed on Schedule “B” hereto), and, for greater certainty, this Court orders that all of the Claims and Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

5. THIS COURT ORDERS that from and after the delivery of the Monitor's Certificate, all Claims and Encumbrances shall attach to the net proceeds from the Transaction (the “**Net Proceeds**”), with the same priority as they had with respect to the Purchased Assets immediately prior to the Closing Date of the Transaction, as if the Transaction had not been completed.

6. THIS COURT ORDERS that, to the extent that obligations remain owing by the Applicants under the DIP ABL Credit Agreement and/or the DIP Term Credit Agreement, the Monitor be and is hereby authorized and directed to distribute, on behalf of the Applicants, on the day of filing the Monitor's Certificate or as soon as practicable thereafter, the Net Proceeds, in partial repayment of amounts then owing by the Applicants under the DIP ABL Credit Agreement or the DIP Term Credit Agreement, as applicable, in such amounts as agreed to by the DIP ABL Agent and DIP Term Agent, as applicable, or if no such applicable agreement can be reached, on further Order of the Court (a “**Distribution**”).

7. THIS COURT ORDERS that any Distribution made pursuant to this Order shall be and shall be deemed to be made free and clear of all Claims and Encumbrances.

8. THIS COURT ORDERS that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of any of the Applicants and any bankruptcy order issued pursuant to any such applications; or
- (c) any assignment in bankruptcy made in respect of any of the Applicants;

the distribution permitted by paragraph 6 above shall be binding on any trustee in bankruptcy or receiver that may be appointed in respect of any of the Applicants and shall not be void or voidable by creditors of any of the Applicants, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

9. THIS COURT ORDERS that, if all obligations of the Applicants under the DIP ABL Credit Agreement or the DIP Term Credit Agreement have been satisfied in full the Monitor shall be entitled to retain the Net Proceeds or any remaining portion thereof on behalf of the Applicants to be dealt with by further Order of the Court.

10. THIS COURT ORDERS AND DIRECTS the Monitor to file with the Court a copy of the Monitor's Certificate, forthwith after delivery thereof in accordance with the terms of the APA.

11. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Sellers or the Monitor are authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Sellers' records pertaining to the Employees (as defined in the APA), including personal information of those Employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Sellers.

12. THIS COURT ORDERS that subject to the terms of the APA nothing herein affects:
- (a) the rights and obligations of Sears Canada Inc. (“**Sears Canada**”) and a contractual joint venture comprised of Gordon Brothers Canada ULC, Merchant Retail Solutions ULC, Tiger Capital Group, LLC and GA Retail Canada ULC (the “**Agent**”) under the Amended and Restated Agency Agreement between Sears Canada and the Agent dated July 12, 2017 and amended and restated on July 14, 2017;
 - (b) the rights and obligations of Sears Canada and the Agent under the Amended and Restated Consulting Agreement between Sears Canada and the Agent dated July 12, 2017 and amended and restated on July 14, 2017; and
 - (c) the terms of the Liquidation Sale Approval Order granted July 18, 2017 including the Sale Guidelines attached as Schedule “A” thereto.

SEALING

13. THIS COURT ORDERS that Confidential Appendix “C” to the Third Report of the Monitor and the schedules to and other financial information contained in the APA shall be and is hereby sealed, kept confidential and shall not form part of the public record pending further Order of this Court.

GENERAL PROVISIONS

14. THIS COURT ORDERS that, notwithstanding:
- (a) the pendency of these proceedings;
 - (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of any of the Applicants and any bankruptcy order issued pursuant to any such applications; or
 - (c) any assignment in bankruptcy made in respect of any of the Applicants;

- 6 -

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy or receiver that may be appointed in respect of any of the Applicants and shall not be void or voidable by creditors of any of the Applicants, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

15. THIS COURT ORDERS that this Order shall have full force and effect in all provinces and territories in Canada.

16. THIS COURT HEREBY REQUESTS the aid and recognition of any Court, tribunal, regulatory or administrative bodies, having jurisdiction in Canada or in the United States of America, to give effect to this Order and to assist the Applicants, 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 Applicants 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 Applicants and the Monitor and their respective agents in carrying out the terms of this Order.



C. Irwin
Registrar

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

OCT 05 2017

PER / PAR: 

SCHEDULE "A"

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., 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**")

MONITOR'S CERTIFICATE

RECITALS

A. All undefined terms in this Monitor's Certificate have the meanings ascribed to them in the Order of the Court dated [REDACTED], 2017 (the "**Approval and Vesting Order**") approving the Asset Purchase Agreement between S.L.H. Transport Inc., Sears Canada Inc. and 168886 Canada Inc. (collectively, the "**Sellers**"), as vendors, and 8507597 Canada Inc. (the "**Purchaser**"), as purchaser, made as of September 29, 2017 (the "**APA**"), a copy of which is attached as Exhibit "A" to the Affidavit of Billy Wong sworn September 29, 2017.

B. Pursuant to the Approval and Vesting Order the Court approved the APA and provided for the vesting in the Purchaser of the Sellers' right, title and interest in and to the Purchased Assets (as defined in the APA), which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Monitor to the Purchaser and the Sellers of a certificate confirming (i) all

- 2 -

conditions to Closing have been satisfied or waived by the Purchaser and the Sellers, as applicable; and (ii) the cash portion of the Purchase Price and all applicable sales and transfer Taxes payable (each as defined in the APA) by the Purchaser to the Sellers have been received by the Monitor.

THE MONITOR CERTIFIES the following:

1. All conditions to Closing have been satisfied or waived by the Purchaser and the Sellers, as applicable; and
2. The cash portion of the Purchase Price and all applicable sales and transfer Taxes payable by the Purchaser to the Sellers have been received by the Monitor.

This Monitor's Certificate was delivered by the Monitor at _____ [TIME] on _____ [DATE].

FTI CONSULTING CANADA INC., in its capacity as Court-appointed Monitor of Sears Canada Inc., et al and not in its personal or corporate capacity

By: _____
Name:
Title:

SCHEDULE "B"**PERMITTED ENCUMBRANCES**

"Permitted Encumbrances" means, collectively, (a) any Encumbrances resulting from the Buyer's actions or omissions; and (b) all Security/Registrations in favour of ARI Financial Services Inc. in respect of the Assumed Contracts.

IN THE MATTER OF the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended

Court File No: CV-17-11846-00CL
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS CANADA INC., CORBEIL ÉLECTRIQUE INC., S.L.H. TRANSPORT INC., THE CUT INC., SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611 CANADA INC.

Applicants

Ontario
**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

ORDER
Approval and Vesting Order
(S.L.H. Transport Inc.)

OSLER, HOSKIN & HARCOURT, LLP
P.O. Box 50, 1 First Canadian Place
Toronto, ON M5X 1B8

Marc Wasserman LSUC# 44066M
Tel: 416.862.4908

Jeremy Dacks LSUC# 41851R
Tel: 416.862.4923

Tracy Sandler LSUC# 32443N
Tel: 416.862.5890

Karin Sachar LSUC# 59944E
Tel: 416.862.5949
Fax: 416.862.6666

Lawyers for the Applicants

TAB F

This is Exhibit "F" referred to
in the Affidavit of Karen Ensslen
Affirmed this 11th day of October, 2018.



A COMMISSIONER FOR TAKING AFFIDAVITS

PRESS RELEASES & MEDIA

Sears Canada Stores are Closing! Liquidation Sale Begins Thursday, October 19

Oct 19, 2017

Hilco Global, Gordon Brothers, Tiger Capital Group and Great American Group to Liquidate All Inventory at Closing Canadian Sears Department Stores and Home Stores

TORONTO, Oct. 19, 2017 /CNW/ - Sears Canada Inc. ("Sears Canada" or the "Company") announced today that a joint venture ("JV") group will be operating liquidation sales beginning this Thursday, October 19, 2017, at the remaining Sears Canada department stores and Home stores. This announcement comes after Sears Canada obtained an Order from the Ontario Superior Court of Justice on Tuesday October 17, 2017 to liquidate 82 Stores (74 Department Stores and 8 Sears Home). A full listing of closing locations can be found [here](#).

Beginning today, customers can take advantage of Deep Discounts of up to 50% off at department store locations and up to 30% off at Home locations during the store closing sales. Liquidation discounts will be available on all Sears own brands, including Kenmore, as well as brand name men's and women's apparel, children's wear, footwear, bed and bath, home décor, fitness and recreation, toys, furniture, mattresses, major appliances, hardware, luggage and more.

The JV group formed among Hilco Global (through its Canadian division, Merchant Retail Solutions, ULC), Gordon Brothers, Tiger Capital Group and Great American Group, has significant experience in Canada having operated several recent events for other retailers in Canada.

A spokesperson for the JV group said, "We encourage consumers to shop early to take advantage of the best selection of products and great savings available throughout the stores while supplies last." The JV Group indicated that selected fixtures, furnishings and equipment in the closing stores will also be for sale and that Sears Canada gift cards will be honoured throughout the sale.

Additional Information: Sears Canada and certain of its subsidiaries were granted an Initial Order and protection under the CCAA on June 22, 2017. Copies of the Company's motion

materials and other court documents are available on the Monitor's website: 107
<http://cfcanada.fticonsulting.com/searscanada>. Information regarding the CCAA process may also be obtained by calling the Monitor's hotline at 416-649-8113 or 1-855-649-8113 (toll free), or by email at searscanada@fticonsulting.com.

About Sears Canada: Sears Canada Inc. is an independent Canadian digital and store-based retailer and technology company whose head office is based in Toronto. Sears Canada operates as a separate entity from its U.S.- based co-founder, now known as Sears Holdings Corp., based in Illinois.

About Hilco Global - Merchant Retail Solutions, ULC: Merchant Retail Solutions, ULC is a Canadian division of Hilco Global (www.hilcoglobal.com) which provides a wide range of analytical, advisory, asset monetization, and capital investment services to help define and execute a retailer's strategic initiatives. The firm's activities fall into several principal categories including acquisitions; disposition of underperforming stores; retail company or division wind downs; event sales to convert unwanted assets into working capital; interim company, division or store management teams; loss prevention; and, the monetization of furniture, fixtures and equipment. Hilco Global, is one of the world's leading authorities on maximizing the value of business assets by delivering valuation, monetization and advisory solutions. Hilco Global operates twenty specialized business units around the world.

About Gordon Brothers: Since 1903, Gordon Brothers (www.gordonbrothers.com) has helped lenders, operating executives, advisors, and investors move forward through change. The firm brings a powerful combination of expertise and capital to clients, developing customized solutions on an integrated or standalone basis across four service areas: valuations, dispositions, operations, and investments. Whether to fuel growth or facilitate strategic consolidation, Gordon Brothers partners with companies in the retail, commercial, and industrial sectors to put assets to their highest and best use. Gordon Brothers conducts more than \$70 billion worth of dispositions and appraisals annually. Gordon Brothers is headquartered in Boston, with 25 offices across four continents.

About Tiger Capital Group, LLC: Tiger Capital Group and its affiliates provide asset valuation, advisory and disposition services to a broad range of retail, wholesale, and industrial clients. With over 40 years of experience and significant financial backing, Tiger offers a uniquely nimble combination of expertise, innovation and financial resources to drive results. Tiger's seasoned professionals help clients identify the underlying value of assets, monitor asset risk factors and, when needed, provide capital or convert assets to capital quickly and decisively. Tiger's collaborative, straight-forward approach is the foundation for its many long-term 'partner' relationships and decades of success. Tiger maintains domestic offices in New York, Los Angeles, Boston, Chicago, and San Francisco, and international offices in Sydney, Perth,

Melbourne and Brisbane, Australia. To learn more about Tiger, please visit www.TigerGroup.com.

About Great American Group: Great American Group, LLC is a leading provider of asset disposition, advisory and valuation services and a wholly-owned subsidiary of B. Riley Financial, Inc. (NASDAQ: RILY). Great American Group efficiently deploys resources with sector expertise to assist companies, lenders, capital providers, private equity investors and professional services firms in maximizing the value of their assets. To learn more about Great American Group, please visit www.greatamerican.com.

Forward Looking Information

Certain matters set forth in this news release, including but not limited to statements with respect to the CCAA application and proceedings, the restructuring and the sale and investment solicitation process, and the Sears Canada Group's ability to meet its obligations are forward looking. These forward-looking statements reflect management's current views and are based on certain assumptions, including assumptions as to future operating conditions and courses of action, restructuring alternatives, economic conditions, and other factors that management believes are appropriate. Such forward looking statements are subject to risks and uncertainties that may cause actual results to differ materially from those contained in these statements, including the risk that the restructuring may be protracted as well as those risks and uncertainties identified under the heading "Risks and Uncertainties" in Sears Canada's management's discussion and analysis for the 52-week period ended January 28, 2017, and for the 13-week period ended April 29, 2017, available at www.sedar.com. These forward-looking statements are made as at the date of this news release, and the Company assumes no obligation to update or revise them, either publicly or otherwise, to reflect new events, information or circumstances.

SOURCE Sears Canada Inc.

For further information: regarding the Store Closing Sales: Media Contact: Gary Epstein, EVP Chief Marketing Officer, Hilco Global, (847) 418-2712, gepstein@hilcoglobal.com; For more information regarding the Sears Canada Restructuring: Enquiries for the Monitor may be directed to: FTI Consulting: Telephone: 416.649.8113, Toll Free: 1 855-649-8113, Email: searscanada@fticonsulting.com, Web: <http://cfcanada.fticonsulting.com/searscanada>; Media Contact: Joel Shaffer, jshaffer@longviewcomms.ca; Peter Block, pblock@longviewcomms.ca

TAB G

This is Exhibit "G" referred to
in the Affidavit of Karen Ensslen
Affirmed this 11th day of October, 2018.



A COMMISSIONER FOR TAKING AFFIDAVITS



Sears Canada closes its final stores after months-long liquidation



A Sears store during the company's months-long liquidation of its Canadian stores.

NATHAN DENETTE/THE CANADIAN PRESS

THE CANADIAN PRESS
PUBLISHED JANUARY 14, 2018

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The chain's closure sparked a number of controversies.

Sears Canada planned to dole out millions of dollars in retention bonuses to head office staff, while grappling with a more than \$260-million shortfall in its pension plan.

The company originally wanted to pay a total \$7.6-million to 43 top employees, but revised that to a total of \$6.5-million to 36 employees after a backlash.

An Ontario judge approved the reduction, but some employees argued it was still too much money given the company was also facing a 19 per cent pension plan funding shortfall, meaning employees would likely see a similar cut to their benefits.

And a plan by executive chairman Brandon Stranzl that would see the company continue to operate was rebuffed in favour of liquidation, prompting further questions about whose interests were being prioritized.

Sears Canada's closure follows in the footsteps of other big-box retailers in Canada, including Target and Zellers.

 REPORT AN ERROR

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Competition Bureau investigating Sears Canada liquidation sale prices: monitor

Sears Canada creditor process biased toward sale: Stranzl

NEXT STORY

Gander is the place that symbolizes the true Canada-U.S. relationship

Doug Ford's powers are not limitless - thanks to a system he neither understands nor values

Long-time Luminato producer Naomi Campbell promoted to artistic director



This updated rule of retirement saving has you working longer, running out of money sooner



NDP Leader Jagmeet Singh's problems worsen before caucus meeting



TRENDING

1 Globe editorial: A bad law, a worse ruling and Doug Ford's tantrum to top them both

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TAB H

This is Exhibit "H" referred to
in the Affidavit of Karen Ensslen
Affirmed this 11th day of October, 2018.



A COMMISSIONER FOR TAKING AFFIDAVITS

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

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

THIRTEENTH REPORT OF FTI CONSULTING CANADA INC., AS MONITOR

February 18, 2018

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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

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

A. INTRODUCTION

1. On June 22, 2017, Sears Canada Inc. ("**Sears Canada**") and a number of its operating subsidiaries (collectively, with Sears Canada, the "**Applicants**") sought and obtained an initial order (as amended and restated on July 13, 2017, the "**Initial Order**"), under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"). The relief granted pursuant to the Initial Order was also extended to Sears Connect, a partnership forming part of the operations of the Applicants (and together with the Applicants, the "**Sears Canada Entities**"). The proceedings commenced under the CCAA by the Applicants are referred to herein as the "**CCAA Proceedings**".

2. Pursuant to the Initial Order, FTI Consulting Canada Inc. was appointed as Monitor of the Sears Canada Entities (the “**Monitor**”) in the CCAA Proceedings.
3. On July 13, 2017, the Court issued the following Orders:
 - (a) an Order setting out the terms of the appointment of Ursel Phillips Fellows Hopkinson LLP as representative counsel for the non-unionized active and former employees of the Sears Canada Entities (“**Employee Representative Counsel**”);
 - (b) an Order setting out the terms of the appointment of Koskie Minsky LLP as representative counsel to the non-unionized retirees and non-unionized active and former employees of the Sears Canada Entities with respect to pension and post-employment benefit matters (“**Pension Representative Counsel**”, and together with Employee Representative Counsel, “**Representative Counsel**”); and
 - (c) an Order (i) authorizing the eventual suspension of special payments under the defined benefit component (the “**DB Component**”) of the Sears Canada Inc. Registered Retirement Plan (the “**Sears Pension Plan**”); and (ii) approving the suspension of certain payments with respect to the Sears Canada Inc. Supplementary Retirement Plan (the “**Supplemental Plan**”) and to life insurance, medical and dental benefits provided to eligible retirees under the post-retirement benefit plan, all pursuant to a term sheet agreed to by the Ontario Superintendent of Financial Services, as Administrator of the Pension Benefits Guarantee Fund (the “**Superintendent**”), Representative Counsel, each of their respective representatives, and the Sears Canada Entities, all as effective October 1, 2017.
4. On December 8, 2017, the Court issued an Order (the “**General Claims Procedure Order**”) approving a claims process (the “**General Claims Process**”) for the identification, determination and adjudication of claims of creditors against the Sears Canada Entities and their current and former officers and directors (collectively, the “**Directors and Officers**”), except for certain claims, including all claims of Employees and Retirees that are now subject to the employee and retiree claims process (the “**Claims Process**”) described in this thirteenth report (the “**Thirteenth Report**”) of the Monitor.

The General Claims Procedure Order also expanded the mandates of Representative Counsel to permit them to assist in the establishment and implementation of the Claims Process.

5. In connection with the CCAA Proceedings, the Monitor has provided twelve reports and five 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

6. The purpose of this Thirteenth Report is to provide the Court with information regarding the Claims Process as well as the reasons for the Monitor’s support for the proposed Employee and Retiree Claims Procedure Order¹ (the “**Proposed Order**”).

C. TERMS OF REFERENCE

7. In preparing this Thirteenth Report, the Monitor has relied upon audited and unaudited financial information of the Sears Canada Entities, the Sears Canada Entities’ books and records, certain financial information and forecasts prepared by the Sears Canada Entities and discussions and correspondence with, among others, the senior management (“**Management**”) of, and advisors to, the Sears Canada Entities (collectively, the “**Information**”).
8. Except as otherwise described in this Thirteenth Report:
 - (a) the Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with

¹ A draft copy of the Proposed Order sought by the Applicants can be found at Tab 3 of the Applicants’ Motion Record.

Generally Accepted Assurance Standards pursuant to the *Chartered Professional Accountants of Canada Handbook*; and

- (b) the Monitor has not examined or reviewed the financial forecasts or projections referred to in this Thirteenth Report in a manner that would comply with the procedures described in the *Chartered Professional Accountants of Canada Handbook*.
9. Future-oriented financial information reported in or relied on in preparing this Thirteenth Report is based on Management's assumptions regarding future events. Actual results will vary from these forecasts and such variations may be material.
10. The Monitor has prepared this Thirteenth Report in connection with the Applicants' motion for the Proposed Order and should not be relied on for any other purpose.
11. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars.
12. Capitalized terms not otherwise defined herein have the meanings ascribed to them in the affidavits of Mr. Billy Wong, the Chief Financial Officer of Sears Canada, sworn on June 22, 2017, and Ms. Becky Penrice, Executive Vice President and Chief Operating Officer of Sears Canada, affirmed February 16, 2018 (the "**Penrice Affidavit**"), and the Prior Reports of the Monitor in these proceedings.

D. OVERVIEW

13. Approximately 40,000 current and former employees, pensioners and retirees (and persons claiming through them) may have claims against the Sears Canada Entities and their current and former directors and officers ("**Directors and Officers**") relating to the loss of employment, pension and other benefits.
14. Calculating individual claims related to the loss of employment and benefits would be complex, time-consuming and costly. In some cases, actuarial valuations would also be required. The determination of individual termination claims would require a detailed review of each employee's circumstances, including, among other factors, age, length of

service, level, whether the employee had signed a contract (and if so, the terms of the contract), and whether the employee has found other employment.

15. Individualized calculations for the claims of tens of thousands of retirees and employees across the country would involve the recovery from multiple locations, and review, of employment records spanning decades, the application of varying compensation and benefit programs that changed regularly over time, as well as varying forms of employment contracts and multiple applicable legal regimes. It is therefore simply not feasible given the time and resources available to the Monitor and the Applicants to calculate individual claims for each retiree and employee.
16. The Applicants and the Monitor are also cognisant of the fact that employees and retirees may not be in a position to accurately identify, calculate and value their claims as they may not have the benefit of actuarial and other advice, and other necessary information.
17. Historically, the Sears Canada Entities' cost for providing their retirees with group life insurance, medical and dental benefits was in excess of \$1 million per month. It should be noted that the cost of securing the same benefits on an individual basis is substantially higher.
18. For the reasons described in this Thirteenth Report, the Monitor believes that it is appropriate and in the interest of all stakeholders of the Sears Canada Entities to calculate the vast majority of employment-related claims using Court-approved methodologies (being the Termination Claims Methodology, the Retiree Benefit Claims Methodology, the Sears Pension Claim Methodology and Lifetime Discount Claims Methodology discussed below, collectively the "**Methodologies**") and to use a streamlined process for identifying and determining such claims.
19. The Claims Process, the Proposed Order and the Methodologies described in the Penrice Affidavit and included in the Proposed Order are the result of extensive discussions and negotiations involving the Sears Canada Entities and their counsel, the Monitor and its counsel, Representative Counsel, the Superintendent and its counsel, Morneau Shepell Ltd., administrator of the Sears Pension Plan (the "**Plan Administrator**") and its counsel,

Ernst & Young Inc. (“**EY**”) as financial advisor to the Employee Representatives and Pensioner Representatives (each as defined below), and The Segal Group, Inc. (“**Segal**”) as actuarial advisor to the Pensioner Representatives (collectively, the “**E&R Process Participants**”).

20. The Proposed Order provides, among other things, that:
- (a) the Monitor will provide Claimants² (including by way of an online claims portal) individual Termination Claim Statements and Retiree Benefit Claim Statements (together, the “**Claim Statements**”) identifying the Termination Claim or Retiree Benefit Claim of each Claimant, calculated in accordance with the applicable Methodology as well as the Claimant’s personal information (such as age, service and position) used in such calculation. As described in the Penrice Affidavit and in greater detail below, Claimants will have an opportunity to review and correct personal information if such information is inaccurate. The small number of Employees and Retirees who are not represented by Representative Counsel (being Unionized Employees, Opt-Out Employees, Senior Management Employees and Non-PRC Retirees (each as defined below)) will also have the opportunity to object to the methodology used to calculate their claims and provide an alternative methodology for consideration;
 - (b) only the Plan Administrator, Pension Representative Counsel and the Superintendent may file a Claim against the Sears Canada Entities or any Directors and/or Officers in respect of the wind-up deficit under the DB Component of the Sears Pension Plan (referred to in the Proposed Order as the “**Sears Pension Claim**”), to be calculated in accordance with the Sears Pension Claim Methodology;³

² Limited exceptions will apply and are discussed later in this Report.

³ The Proposed Order provides that the Applicants and Monitor shall attempt to resolve all duplicate Claims with the applicable Claimants, however, they are also entitled at any time to seek direction from the Court with respect to the process and procedures for resolving such duplicate Claims.

- (c) only Pension Representative Counsel may file a Claim against the Sears Canada Entities or any Directors and/or Officers in respect of the Supplemental Plan;⁴
 - (d) the claims of Employees and Retirees (i) with entitlements to a lifetime discount with respect to the purchase of merchandise at Sears Canada stores (referred to in the Proposed Order as the “**Lifetime Discount**”), and (ii) who have purchased any customer Warranties, will be deemed to have been properly filed by the Sears Canada Entities on behalf of such Claimants without any other formality; and
 - (e) any Employee or Retiree who believes he or she has a claim against the Sears Canada Entities that is different from the claims in (a), (b), (c) or (d) above and/or who believes he or she has a claim against the Directors and/or Officers (such claims being referred to in the Proposed Order as an “**Other Employee Claim**” or “**Other Retiree Claim**”, depending on the identity of the Claimant) will have the opportunity to submit such claim for determination by filing a Proof of Claim or D&O Proof of Claim, as applicable, with the Monitor by no later than April 9, 2018.
21. For the reasons described in this Thirteenth Report, the Monitor is of the view that the Claims Process constitutes a fair, reasonable and efficient process for the calculation of and determination of Employee and Retiree claims against the Sears Canada Entities. The Monitor believes that the Claims Process balances the interests of the Applicants’ stakeholders and represents an important step towards the identification and determination of significant claims against the Applicants and the Directors and Officers with a view to eventually making distributions to creditors.
22. The Claims Process is intended to identify, and in certain cases, calculate and determine, all Employee and Retiree Claims against the Applicants and the Directors and Officers. However, in the same manner as Claims determined under the General Claims Process,

⁴ There are currently three individuals not represented by Pension Representative Counsel who have entitlements under the Supplemental Plan. The Proposed Order provides that these individuals are permitted to also submit their own Supplemental Plan Claim should they so wish.

Claimants should be aware that the determination of Claims pursuant to the Claims Process will not result in the payment to Claimants of 100% of the value of proven claims.

23. Only once all of the Applicants' assets are monetized and the total value of all claims is determined, can the recoveries against the face value of proven claims be determined with certainty. Preliminary analyses prepared by the Monitor based on numerous estimates and assumptions, which could differ significantly from actual results, indicate that potential claim recoveries for general unsecured creditors from the monetization of the Applicants' assets⁵ could range from 0% to 10% of the face value of claims, depending on the priority treatment of certain claims.

E. DEVELOPMENT OF THE CLAIMS PROCESS

24. The Claims Process is the result of a collaborative process amongst the E&R Process Participants.
25. Representative Counsel and the employee and pensioner representatives (respectively, the "**Employee Representatives**" and "**Pensioner Representatives**") appointed by the Court, act on behalf of almost all Claimants with Employee Claims or Retiree Claims.
26. The only Employees or Retirees not represented by Representative Counsel are:
- (a) 8 Employees who opted-out of such representation (the "**Opt-Out Employees**");
 - (b) approximately 350 Employees who are represented by a union in connection with their employment with Sears Canada (the "**Unionized Employees**");
 - (c) a limited number of Employees who are or were members of senior management (at the level of vice-president and above) of a Sears Canada Entity (the "**Senior Management Employees**");

⁵ Excluding any potential recoveries from the pursuit of Monitor Claims (as defined in the Proposed Order).

- (d) a limited number of former Employees who were terminated prior to June 22, 2017 (the “**Filing Date**”) and had an outstanding action, claim or complaint as of such date; and
 - (e) Retirees (i) who were represented by a union⁶, (ii) who were members of senior management of a Sears Canada Entity; or (iii) who opted out of such representation (collectively, “**Non-PRC Retirees**”).
27. The terms of the Proposed Order were also discussed with the applicable union representatives and counsel to certain landlords in advance of the Proposed Order being distributed to the Service List.
28. In developing the Claims Process, the Sears Canada Entities, with the assistance of the Monitor and counsel:
- (a) reviewed the records of the Sears Canada Entities to identify those Employees who negotiated enhanced termination entitlements in their employment agreements;
 - (b) reviewed and considered the Sears Canada Entities’ employment policies and collective bargaining agreements, and the relevant practices and procedures of the Applicants;
 - (c) identified, and discussed with other E&R Process Participants, potential Employee Claims and Retiree Claims as well as proposed methodologies and approaches for the calculation and determination of those claims;
 - (d) provided Representative Counsel, the Plan Administrator, EY and Segal with substantial documentation and information concerning the Employees and Retirees;

⁶ The terms of the Proposed Order contemplates that, for the purpose of calculating any Retiree Benefit Claim, Pension Representative Counsel will represent these Retirees, unless the Retiree chooses to opt-out of such representation.

- (c) considered:
 - (i) aggregated demographic and other data with respect to Employees and Retirees available to the Applicants;
 - (ii) the nature and quantum of the potential Employee and Retiree Claims;
 - (iii) the strength of the legal basis of potential Employee and Retiree Claims;
 - (iv) the current circumstances of the Applicants, including the preliminary estimated distributions to creditors; and
 - (v) the limited resources anticipated to be available to the Applicants, including key personnel and information technology systems, to administer the Claims Process.
29. For their part, Representative Counsel, the Plan Administrator, and their respective advisors, also identified potential Employee and Retiree Claims and presented proposals and counter-proposals for the Claims Process and the Methodologies, which the Sears Canada Entities with the assistance of the Monitor and counsel carefully considered.
30. Discussions and negotiations among the E&R Process Participants took place over a period of nearly three months and culminated in an agreement on the guiding principles of the Claims Process and the Proposed Order, including the Methodologies.
31. In developing the Claims Process, the Sears Canada Entities, the Monitor and their respective counsel, considered the practical elements of implementing a claims process for Employee and Retiree Claims, including:
- (a) the number of potential Claimants, which is currently estimated at approximately 40,000 (comprised of approximately 22,000 Employees and 17,000 Retirees);
 - (b) the variety of legal frameworks, including across multiple Canadian jurisdictions, applicable to the claims that may be asserted;

- (c) the number of fact-specific determinations to be made and the availability (or, in some cases, lack thereof) of all data necessary to make such determinations;
- (d) the number of possible claim permutations given the different benefits offered and utilised, and the changing employment arrangements and policies used by the Sears Canada Entities over decades of operation;
- (e) the fact that most Employees and Retirees may require assistance in calculating their Employee and Retiree Claims;
- (f) the fact that leaving the task of calculating these amounts to individual Employees and Retirees would likely lead to non-standardized and divergent methods of calculating claims that would make fair and consistent treatments of such claims nearly impossible;
- (g) the need to contain the costs associated with such processes, including the time spent determining and adjudicating claims; and
- (h) the importance of a process that is fair and equitable to the Employees and Retirees and appropriately balances the interests of other creditors in the estate.

F. TYPES OF CLAIMANTS AND CLAIMS GOVERNED

32. The Proposed Order applies to the following Claimants:

- (a) *Employees*: (i) active and inactive union and non-union employees of any one of the Sears Canada Entities on or after the Filing Date, including employees of any one of the Sears Canada Entities who received notice of termination of employment dated on or after the Filing Date or who resigned or otherwise ceased employment on or after such date; and (ii) former employees of any one of the Sears Canada Entities, including any former employee who was terminated for cause at any time, any former employee who received notice on or after the Filing Date of the cessation of his or her termination or severance payments, and any former employee who has an outstanding action, claim or complaint as of the Filing Date. This group includes Employees represented by Employee

Representative Counsel (“**ERC Employees**”) as well as Opt-Out Employees, Senior Management Employees and Unionized Employees; and

- (b) *Retirees*: all persons with entitlements to or under (i) the Sears Pension Plan; (ii) the Supplemental Plan; (iii) other post-employment benefits, namely medical, dental or life insurance coverage (collectively, “**OPEBs**”); (iv) the Lifetime Discount (including, for this purpose, current and former Employees who qualify for the Lifetime Discount) or (v) any other pension or retirement plan of the Sears Canada Entities. This group includes both Retirees represented by Pension Representative Counsel (“**PRC Retirees**”) and Non-PRC Retirees.

33. The Proposed Order addresses the following types of claims:

- (a) *Termination Claims*: any right or claim of an Employee against any of the Sears Canada Entities in respect of the termination of the Employee’s employment whether under contract, common law, statute or otherwise, including for termination and severance pay and for damages for loss of employment-related perquisites and benefits (including employee purchase discounts) during their notice period;
- (b) *Warranty Claims*: any claim of a Retiree or Employee against any of the Sears Canada Entities with respect to customer Warranties;
- (c) *Other Employee Claims*: meaning any *other* right or claim of any Employee against any of the Sears Canada Entities or any right or claim of any Employee against any of the Directors and/or Officers, including in connection with any indebtedness, liability or obligation of any kind whatsoever of any such Sears Canada Entity and/or Director and Officer to such Employee arising before, on or after the Filing Date, for amounts owing to such Employee (and together with Termination Claims, and Warranty Claims, “**Employee Claims**”);
- (d) *Sears Pension Claims*: any claim against the Sears Canada Entities or their Directors and/or Officers with respect to the wind-up deficit under the DB Component of the Sears Pension Plan;

- (e) *Supplemental Plan Claims*: any claim against the Sears Canada Entities or their Directors and/or Officers with respect to entitlements of a Retiree under the Supplemental Plan;
- (f) *Retiree Benefit Claims*: any right or claim of a Retiree against any of the Sears Canada Entities with respect to the loss of OPEB entitlements;
- (g) *Lifetime Discount Claims*: any claim of a Retiree (including, for this purpose, current and former Employees who qualify for the Lifetime Discount) against the Sears Canada Entities with respect to a Lifetime Discount;
- (h) *Other Retiree Claims*: any other rights or claims of a Retiree against any of the Sears Canada Entities or any right or claim of any Retiree against any Directors and/or Officers, including in connection with any indebtedness, liability or obligation of any kind whatsoever of any such Sears Canada Entity or Directors and/or Officers to such Retiree, arising before, on or after the Filing Date, for amounts owing to such Retiree (collectively, with the Retiree Benefit Claims, Supplemental Plan Claims, Lifetime Discount Claims, Warranty Claims, and the Sears Pension Claims, the “**Retiree Claims**”); and
- (i) *D&O Claim*: any Sears Pension Claim, Supplemental Plan Claim, Other Employee Claim or Other Retiree Claim that is asserted against a Director or Officer under the Proposed Order (including any D&O Claim in respect of termination and severance pay, damages for loss of employment-related perquisites and benefits and damages for loss of OPEB entitlements).

G. METHODOLOGIES

34. The Penrice Affidavit sets out detailed information with respect to the Termination Claims Methodology, Retiree Benefit Claims Methodology, Lifetime Discount Claims Methodology, and the Sears Pension Claim Methodology. This Thirteenth Report provides a summary of the Methodologies and the Monitor’s recommendation thereon.

(a) Termination Claims Methodology

35. The Penrice Affidavit contains detailed information regarding the Sears Canada Entities' Employees, the Pre-2016 Sears Policies, the Post-2016 Sears Policies and the events that led to the relevant E&R Process Participants agreeing to the Termination Claims Methodology.
36. As described in the Penrice Affidavit, the terms of employment, the circumstances of termination of employment, the statutory regimes and the common law and contractual notice requirements for each Employee with a Termination Claim vary widely. In addition, Termination Claims will differ depending on several Employee-specific factors, including salary, length of service and the benefit programs in which the Employee participated.
37. As such, the Termination Claims Methodology provides that each Employee's Termination Claim will be determined by:
- (a) deeming each Employee's notice period to be the greater of the Employee's entitlement under (i) statute, (ii) Sears Canada policies in effect from time to time, and (iii) a common law severance formula (the "**Common Law Severance Formula**") developed by the Applicants, with the advice of counsel, and with input from, the Monitor, its counsel, Employee Representative Counsel and EY. The Common Law Severance Formula is attached as **Appendix "A"** to this Report. Notably, the Common Law Severance Formula adopts an averaging or smoothing approach. Given the variety of factors inherent in common law notices periods, and variability in damages ranges (including from province to province) the intention of the Common Law Severance Formula is to generate a result that is fair to employees while at the same time benefiting other creditors by eliminating potentially wide variations in notice periods;
 - (b) reducing the notice period as calculated above by the notice actually received by the Employee to arrive at the Employee's "**Severance Pay Period**";
 - (c) calculating the Employee's Termination Claim to be the aggregate of:

- (i) the Employee's base salary or average hourly rate (the "**Base Wages**") payable during the Severance Pay Period;
 - (ii) a percentage of Base Wages to compensate the Employee for any and all additional damages or other losses during the Severance Pay Period (the "**Benefits Gross-Up**"), including and as applicable (a) medical, dental and/or life insurance, (b) employer contributions to the defined contribution component of the Sears Canada Pension Plan during the Severance Pay Period, and (c) potential tax consequences associated with receiving a lump sum payment rather than periodic payments in the ordinary course; and
 - (iii) a claim in the amount of \$175 (the "**Associate Discount Amount**") for the loss of employee purchase discount and employee assistance program during the Severance Pay Period;
- (d) the quantum of the Benefits Gross-Up will vary depending on the benefits in which an Employee participated, if any, and the Employee's level. At the low end of the range, the Benefits Gross-Up is 3.1% and at the high end of the range, 13%. A list of the Benefits Gross-Up for each Employee level is included as **Appendix "B"** to this Report;
- (e) in the case of Senior Management Employees and approximately 25 senior employees represented by Employee Representative Counsel, calculating their claim in accordance with the greater (i) their employment agreement, or (ii) the Common Law Severance Formula;
- (f) in the case of Unionized Employees, calculating their Termination Claims in accordance with the greater of (i) the applicable collective bargaining agreement, and (ii) minimum statutory requirements;

- (g) deeming the Termination Claims of Employees who resigned⁷ or were terminated for cause, in each case, after the Filing Date, to be nil, subject to the right of these Employees to dispute that the resignation was voluntary or that cause existed; and
 - (h) deeming the Termination Claims of Employees whose severance payments ceased on the Filing Date to be the amount of severance payments that remained to be paid as of the Filing Date.
38. The Monitor believes that the Termination Claims Methodology is fair and reasonable for the following reasons:
- (a) it recognizes the impracticality of calculating over 22,000 claims on an individualized basis;
 - (b) the number of variables involved in the calculation of Termination Claims, information for some of which is not readily available to the Applicants or which individual Employee would need to provide, multiplied by the number of claims to be calculated, renders the analysis that would be required for an individualized approach impractical, cost-prohibitive and overly time-consuming. It would also require the assistance of significant personnel when very few employees remain employed by the Applicants;
 - (c) methodologies for calculating employee claims have been used in previous CCAA insolvency proceedings under this Court's jurisdiction, including the CCAA proceedings of Nortel Network Corporation and affiliates (Court File No. 09-CL-7950) ("**Nortel**") and the bankruptcy proceedings of Danier Leather (Court File No. 31-2084381) ("**Danier**");
 - (d) while the Termination Claims Methodology approximates the individual claims of employees, it does not unreasonably inflate or reduce them and the time and cost

⁷ A limited exception applies to Employees in Ontario with five or more years of service who resigned during their statutory notice period.

savings realized through this approach and against an individualized calculation-based method further mitigates this result;

- (e) time and cost savings are also realized through the use of the “negative notice” process discussed later in this Report;
- (f) counsel to the Monitor has advised that the Common Law Severance Formula generally approximates what a court would award to an employee who is terminated without cause, having regard to the typical common law factors (age, years of service and position held), if the terminated employee pursued their wrongful dismissal action to trial;
- (g) Employees have the opportunity to submit an Other Employee Claim to the extent they believe they have a Claim not otherwise provided for under the Termination Claims Methodology or the Proposed Order generally;
- (h) the Benefits Gross-Up and the Associate Discount Amount are appropriate because:
 - (i) counsel to the Monitor has advised that the gross-up, which ranges from 3.1% to 13%, is generally within the range used by employers when providing compensation in lieu of benefit continuation to employees;
 - (ii) where applicable, the gross-up is based on the Applicants’ estimated replacement cost for a comparable benefits package to the benefit plans in which Employees participated;
 - (iii) the quantum of the gross-up is correlated to the benefits in which an Employee participated; and
 - (iv) the Associate Discount Amount takes into consideration the elements that are generally considered to be relevant when calculating this type of amount, is consistent with precedent, and factors in the usage level of those benefits.

39. Based on the Termination Claims Methodology, the Applicants believe that the Termination Claims will total approximately \$187.7 million.

(b) Retiree Benefit Claims Methodology

40. The Penrice Affidavit provides a description of the post-employment benefits that the Sears Canada Entities offered to their Retirees.

41. According to the books and records of the Applicants, as of September 30, 2017, approximately 6,300 Retirees participated in dental and medical coverage and approximately 3,600 Retirees participated in life insurance.

42. The Retiree Benefit Claims Methodology is the result of a review of the applicable benefit plans and potential claims methodologies as discussed with the relevant E&R Process Participants. The Applicants proposed a number of different approaches for the calculation of lost OPEBs to E&R Process Participants. All approaches were based on the personal information (age and gender) of the Retirees as recorded in the books of Sears Canada and accounted for life expectancy estimates generated by Statistics Canada (“**Life Expectancy**”).

43. Pension Representative Counsel, Segal and EY provided a counter-proposal, and after review and consideration of the various elements and circumstances of this case, the Applicants, with the support of the Monitor, agreed on the Retiree Benefit Claims Methodology.

44. The Retiree Benefit Claims Methodology is described in detail in the Penrice Affidavit. In summary:

(a) the calculation of the loss of dental and medical insurance:

- (i) is based on an average replacement cost to purchase medical and dental insurance on an individual basis, plus an additional out of pocket amount to compensate for the fact that replacement insurance would only reimburse 80% of the costs whereas Sears Canada covered 100% of the costs;

- (ii) is based on an average replacement cost of insurance that is itself derived from rates offered by Sun Life and Manulife to provide Retirees with the coverage that is most similar to the coverage previously offered by Sears Canada to the Retiree;
 - (iii) assumes that the cost of procuring this benefit will increase by 6% per year throughout the Life Expectancy of the Retiree;
 - (iv) includes a discount of 2.34% to account for the present value of this claim; and
 - (v) includes a 10% tax gross-up to reflect the fact that Retirees may be required to pay taxes on the dividend they eventually receive in respect of their claims; and
- (b) the calculation of the loss of life insurance:
- (i) is based on the age, Life Expectancy and coverage amount of each Retiree as at October 1, 2017; and
 - (ii) includes a present value discount of 2.29%.
45. Based on the Retiree Benefit Claims Methodology, the Applicants estimate the Retiree Benefit Claims to total approximately \$421 million.
46. The Monitor is of the view that the Retiree Benefit Claims Methodology is reasonable and appropriate for the following reasons:
- (a) it is based on the personal information of each Retiree;
 - (b) in the case of dental and medical coverage, it recognizes that the cost of securing these benefits generally increase every year at a rate higher than inflation, takes into account ageing factors that result in higher costs due to the Retiree age demographic, and also reflects increased utilization of medical services;
 - (c) it applies a discount rate to each claim to estimate its present value;

- (d) it is reasonable to assume that the marginal tax rate of a Retiree on a larger lump sum payment may be higher in the year of receipt of a dividend than it would be in the case of periodic receipts of payments. However, given that not all Retirees may experience adverse tax consequences as a result of the dividend, a low marginal tax rate gross-up of 10% is appropriate;
- (e) in the Monitor's view, the circumstances of this case do not support the Applicants incurring the cost of hiring an actuarial firm to develop and apply a retiree benefit claims methodology nor could such an exercise be completed in the timeline that the circumstances mandate;⁸
- (f) in the Monitor's experience, there is a certain amount of variability amongst actuarial firms with respect to health and drug cost trend rates and assumptions. The Monitor considers the assumptions used in the Retiree Benefit Claims Methodology to be within the range of reasonable assumptions; the use of replacement cost as a basis for calculation of the loss of medical and dental coverage is appropriate because each individual Retiree will not be in a position to secure replacement insurance at the same rate that was available to Sears Canada for insuring a group of several thousand individuals;
- (g) Retirees have the opportunity to submit an Other Retiree Claim to the extent they believe they have a Claim not otherwise provided for under the Retiree Benefit Claims Methodology or the under Proposed Order generally; and
- (h) the Monitor is of the view that the Retirees are treated fairly pursuant to the Retiree Benefit Claims Methodology and that proceeding in this fashion is also in the interests of the other stakeholders of the Applicants.

⁸ The Monitor understands that the annual services offered by Aon to Sears Canada could cost as much as \$100,000 and that it can take Aon six months to prepare these types of actuarial reports. In addition, the Monitor understands that Aon was not prepared to provide further actuarial services without first being paid for the services it provided to Sears Canada prior to the Filing Date.

47. It is also important to note that the calculation of Retiree Benefit Claims is forward-looking in that it attempts to project the costs to individuals of securing the same benefits as those provided by Sears Canada. As such, comparing these calculations to Sears Canada's historical costs for providing such benefits may be misleading;

(d) Lifetime Discount Claims Methodology

48. The Lifetime Discount Claims Methodology provides that each Retiree (which definition under the Proposed Order includes Employees with entitlements to the Lifetime Discount) with an entitlement to the Lifetime Discount would be deemed to have a claim for the loss of his Lifetime Discount in the amount of \$840.
49. The proposed methodology for calculating the Lifetime Discount is based on information provided by Sears Canada and takes into consideration:
- (a) the average value of discount per transaction of the holder of a Lifetime Discount and the average number of transactions per month by holders of Lifetime Discount for the 12 month period between October 2016 and September 2017;
 - (b) the historic usage rate of the Lifetime Discount by Retirees during the same period; and
 - (c) the fact that Sears Canada had no obligation to ensure that a Retiree or Employee would always have access to a Sears Canada store.
50. Based on the Lifetime Discount Claims Methodology, the Applicants estimate Lifetime Discount Claims to total approximately \$13.77 million.
51. The Monitor believes that the Lifetime Discount Claims Methodology is appropriate for the following reasons:
- (a) precedent cases have recognized the existence of a claim for a lifetime discount;
 - (b) the amount proposed in this case was arrived at as a result of negotiations amongst the relevant E&R Process Participants; and

- (c) it takes into account relevant mitigating factors.

(d) Sears Pension Claim Methodology

52. The Penrice Affidavit describes the Sears Pension Claim Methodology in detail.
53. In summary:
- (a) the Proposed Order contemplates that only the Plan Administrator, Pension Representative Counsel and/or the Superintendent may file a proof of claim with respect to the DB Component of the Sears Canada Plan or the wind-up deficiency thereof;
 - (b) the Sears Pension Claim Methodology provides that any Sears Pension Claim will initially be calculated as an estimate (the “**Preliminary Wind-up Liability Estimate**”) using (i) statutory mortality assumptions applicable as of September 30, 2017 for the purposes of a hypothetical wind-up valuation and estimating the cost of purchasing all required annuities, (ii) demographic assumptions that Aon Hewitt Inc. (“**Aon**”) used for its last actuarial report in respect of Sears Canada, and (iii) economic assumptions projected by Aon for the purpose of calculating an hypothetical wind-up as at September 30 2017;
 - (c) any Sears Pension Claim will (i) reflect an increase of the projected deficit at September 30, 2017 of approximately \$7 million as a result of the liquidation of certain equity investments for less than 100% of their quoted value as at that date, (ii) include a 2% provision for adverse deviations (such as the ultimate cost of annuities and fees), and (iii) include a contingency reserve of 1.5% to account for the fact that the Plan Administrator has not been able to fully review and verify the data upon which the Preliminary Wind-Up Liability Estimate will be calculated.
54. The Plan Administrator has indicated to the Monitor that, using the Sears Pension Claim Methodology, their expectation is that their Sears Pension Claim would be in the range of approximately \$250-260 million.

55. The Monitor believes that the Sears Pension Claim Methodology is reasonable because:
- (a) it is based on economic assumptions that were used by Aon in its most recent actuarial valuation of the Wind-Up Deficit, rolled forward to September 30, 2017;
 - (b) includes a 3.5% cushion for the purpose of calculating an estimated Sears Pension Claim. Any final Sears Pension Claim will be calculated using actual information, when that information is available;
 - (c) it allows an initial estimated claim to be filed for the purpose of advancing the Claims Process and eventual distributions to creditors; and
 - (d) the Plan Administrator is responsible for estimating the funding status of the Sears Pension Plan and is therefore in the best position to quantify the amount of its wind-up deficiency; in any case a second opinion in respect of the deficit could not feasibly be sought in the circumstances given the costs and time required to obtain such an opinion.

H. CLAIMS PROCEDURE

56. If the Proposed Order is granted, the vast majority of Employee Claims and Retiree Claims—specifically all Termination Claims and Retiree Benefit Claims—will be addressed by way of a “negative notice” Claims Statement process. In summary, under the Claims Process:
- (a) Claims Packages will be provided to all Employees and Retirees with Termination Claims or Retiree Benefit Claims containing Claims Statements that will, as applicable to each recipient,
 - (i) detail and outline the Claims Process as it applies to the recipient Claimant;
 - (ii) set-out the recipient’s Termination Claim and/or Retiree Benefit Claim calculated in accordance with the applicable methodology using the

recipients' personal information as recorded in the Sears Canada Entities' books and records; and

- (iii) explain how the Supplemental Plan Claims, Sears Pension Claims, Lifetime Discount Claims or Warranty Claims they might have or be a beneficiary under will be submitted (or deemed submitted) on their behalf;
- (b) recipient Employees and Retirees will then have an opportunity to correct their personal information by making a Request for Correction, and, if they are outside the scope of representation of Representative Counsel, will also have the opportunity to propose an alternative methodology for valuing their Termination Claim or Retiree Benefit Claim, as applicable. Where the books and records of the Sears Canada Entities indicate a recipient Employee was either terminated for cause or resigned during the post-Filing Period, a Request for Correction will also enable them to challenge this assertion;
- (c) in the event that Employees and Retirees believe that they have an Other Employee Claim or Other Retiree Claim, including a D&O Claim, they would have the opportunity to file a proof of claim separately, as described further below;
- (d) in the case of Retirees and Employees whose only known claim is as a beneficiary in connection with (a) a Sears Pension Claim, which is to be submitted on their behalf by the Plan Administrator, Pension Representative Counsel and/or the Superintendent, and/or (b) a Supplemental Plan Claim, which is to be submitted on their behalf by Pension Representative Counsel, such Retirees and Employees will receive a letter advising them of that fact and of their ability to file any Other Retiree Claims and Other Employee Claims they may have by way of a separate proof of claim;
- (e) the Monitor, in consultation with the Sears Canada Entities, may accept or disallow changes to personal information, upon review of the change and

supporting documentation submitted, as well as any proposed alternative methodologies; and

- (f) there is a resolution process for addressing disputes with respect to personal information and alternatives to the methodologies proposed,

all as described further below.

(a) Notice to Employees and Retirees

57. The Proposed Order provides that the following steps would be taken to publicize and give notice of the Claims Process:

- (a) by no later than 5:00 pm (Toronto time) on March 5, 2018, the Monitor will provide copies of all individualized Claims Packages to Employees and Retirees, with the Monitor anticipating it will provide Claims Packages by email and regular mail as applicable beginning the week of February 26, 2018. Emails will only be sent to Employees with email addresses on file (of which there are approximately 18,000), and will request that Employees log into an online claims portal established by the Monitor to view their Claims Package and correct any personal information relating to their Termination Claim by making a Request for Correction.

If an Employee does not log into the portal within 7 days of receipt of the initial email a further follow-up email will be sent. If an Employee still has not logged in within 14 days, a hardcopy Claims Package will be sent by mail. Given these additional backstops, the Monitor believes that the use of email is appropriate in the circumstances and will facilitate the use of an online claims portal that will greatly assist in the efficient processing of large volumes of Claims. The propriety of the use of email in this Claims Process is further reinforced by the fact that, given the historic reliance by the Applicants on the “MySears” online employee portal, communication by email has become an accepted method of communication among the vast majority of Employees;

- (b) by no later than 5:00 pm (Toronto time) on March 5, 2018, the Monitor shall cause a Proof of Claim Package (again, containing the proof of claim forms necessary to assert any Other Retiree Claims or Other Employee Claims) to each Claimant that the Sears Canada Entities have advised the Monitor may have an outstanding action, claim or complaint as of the Filing Date, but who would not otherwise receive an individualized Claims Package in accordance with paragraph (a) above;
- (c) commencing the week of February 26, 2018, the Monitor shall publish the Notice to Claimants at least three times in *The Globe and Mail* (National Edition), the electronic edition of *La Presse*, and in such other publications and in such frequency as is determined by the Monitor in consultation with the Sears Canada Entities.
- (d) by no later than 5:00 pm (Toronto time) on February 27, 2018, (i) the Monitor shall cause the Notice to Claimants and blank copies of the Claims Packages (absent Claim Statements) to be posted to the Monitor’s Website; (ii) the Applicants shall cause the Notice to Claimants to be posted on the “my.sears.ca” online portal maintained for active and former employees; and (iii) Employee Representative Counsel and Pension Representative Counsel shall cause the Notice to Claimants and a copy of the applicable Claims Package to be posted on their respective websites.

(b) Bar Dates for Corrections/Challenges Regarding Termination Claims and Retiree Benefit Claims

58. The Applicants propose that any Retiree or Employee who wishes to correct the personal information set out in their Claims Package be required to make a Request for Correction—either by making the necessary corrections on the Monitor’s online Claims Portal, or by submitting a Request for Correction form to the Monitor, such that it is received on or before 5:00 p.m. on May 7, 2018 (the “**Request for Correction Bar Date**”). Any Employee whose individualized Termination Claim Statement (included in their Claims Package) indicates he or she either (i) was terminated for cause or (ii)

resigned after the Filing-Date (and whose Termination Claim under the Termination Claims Methodology will therefore be nil), and who disputes such assertion would also be required to make a Request for Correction by the Request for Correction Bar Date.

59. Where a Retiree or Employee is not represented by Representative Counsel, and therefore is able to propose an alternative methodology for valuing their Termination Claim or Retiree Benefit Claim, they will be required to do so by delivering a Notice of Proposed Revision to the Monitor such that it is received on or before 5:00 p.m. on May 7, 2018 (the “**Notice of Proposed Revision Bar Date**”). For Unionized Employees, only a Union Representative is permitted do so on such Employee’s behalf.
60. The Monitor and the Sears Canada Entities have established these bar dates by balancing the requirement to provide a reasonable period of time for Claimants to file their Requests for Correction and/or Notices of Proposed Revision with the need to contain the length and costs of the Claims Process. The proposed timelines are also in line with those provided in previous insolvency proceedings where a “negative notice” methodology-based mechanism was utilized to process the claims of employees and retirees, such as (a) the CCAA proceedings of Nortel in which claimants were provided 45 days in which to correct personal information or file other claims, and (b) the bankruptcy proceedings of Danier in which claimants were provided 30 days to correct personal information. These bar dates are also reflective of the fact that the Monitor will require the assistance of personnel from the Applicants in order to review and assess any Requests for Correction and/or Notices of Proposed Revision as well as various information technology systems, the significant ongoing costs of which are borne by the Applicants and reduce the asset realization proceeds available for distribution to creditors.
61. Any Claimant (or any person on behalf of a Claimant) who does not make a Request for Correction or submit a completed Notice of Proposed Revision by the applicable bar date shall be deemed to have accepted the calculation of the Retiree Benefit Claim or Termination Claim, as applicable, set out in their individualized Claims Statement and shall have no further right to dispute the same.

(c) Process and Bar Dates for Claims Requiring Proofs of Claim to be Filed

62. The Proposed Order provides for an individualized proof of claim procedure, similar to that utilized in the General Claims Process already approved by this Court, for the identification and determination of all Other Employee Claims and Other Retiree Claims (including D&O Claims) as well as any Sears Pension Claim and Supplemental Plan Claim. This individualized proof of claim process is therefore intended to address all Claims *other* than Termination Claims, Retiree Benefit Claims, Lifetime Discount Claims, and Warranty Claims.
63. Under this process, any Claimant seeking to assert an Other Employee Claim or Other Retiree Claim must file a Proof of Claim or D&O Proof of Claim, as applicable, so that it is received by the Monitor prior to 5:00 p.m. (Toronto time) on April 9, 2018 (the “**Proof of Claim Bar Date**”).
64. The Plan Administrator, Pension Representative Counsel and the Superintendent must file any Proofs of Claim or D&O Proofs of Claim with respect to any Sears Pension Claim by this date as well. Pension Representative Counsel will similarly have to file any omnibus Proof of Claims and/or D&O Proof of Claims in respect of any Supplemental Plan Claims by this date also.
65. The Monitor believes that the Proof of Claim Bar Date will provide sufficient time for Claimants, including the Plan Administrator, Representative Counsel or the Superintendent, to evaluate and submit any Other Employee Claims and/or Other Retiree Claims, as well as the Sears Pension Claims, and Supplemental Plan Claims. As with the Notice of Proposed Revision Bar Date and Request for Correction Bar Date, the Proof of Claim Bar Date was established with a view to balancing the requirement to provide a reasonable period of time for Claimants to file their Claims with the need to contain the length and costs of the Claims Process. It also reflects anticipated limitations in the ongoing availability of both the Applicants’ key staff and information technology systems needed to review Claims.
66. Further, while Claimants must provide as much supporting information with respect to a Proof of Claim or D&O Proof of Claim as possible, the Proposed Order permits parties

with the flexibility to provide additional evidence, documentation, reports or information on any hearing to resolve an issue raised in a Notice of Dispute (Proof or Claim) thereby facilitating the filing of Proofs of Claim and D&O Proofs of Claim by the milestone dates proposed.

67. Proofs of Claims in respect of customer Warranties of the Sears Canada Entities will not have to be filed by Employees or Retirees. Instead, the Claims Procedure Order will deem Proofs of Claim in respect of those Claims to have been properly submitted. The same approach was taken for customers with Warranty Claims under the General Claims Process, and the Monitor remains of the view that sending Proofs of Claim Packages to all Employees and Retirees who hold Warranties and requiring them to file Proofs of Claim when the Applicants already maintain detailed records of Warranties would be uneconomic and inefficient, particularly in light of the amounts at issue. As such, the Monitor believes it is appropriate that such Proofs of Claim be deemed to be filed.
68. Proofs of Claim for Employees and Retirees with Lifetime Discount Claims will similarly be deemed to have been properly submitted on their behalf by the Applicants.

(d) Adjudication of Requests for Correction and Notices of Proposed Revision

69. The Monitor in consultation with the Sears Canada Entities will review all Requests for Correction and Notices of Proposed Revision received on or before the applicable bar date and will be responsible for either (in the case of a Request for Correction) accepting or disallowing the corrections in part or in whole, or (in the case of a Notice of Proposed Revision) accepting, revising or rejecting the alternate methodology proposed.
70. If the Monitor intends to accept or disallow a correction, the Monitor will notify the Claimant by delivering either a Notice of Acceptance or a Notice of Disallowance (Personal Information). If a Claimant is entitled to object to the methodology used to calculate her Claim and has proposed alternative methodology in a Notice of Proposed Revision, the Monitor will accept, revise or reject the methodology and advise the Claimant accordingly.

71. Where a correction to personal information will affect a Claimant's Termination Claim or Retiree Benefit Claim, as applicable, the Monitor will provide them with a revised Claim Statement reflecting such Termination Claim or Retiree Benefit Claim amount.
72. Any Employee or Retiree who intends to dispute a Notice of Disallowance (Personal Information) must send written notice to the Monitor by completing a Notice of Dispute (Personal Information) that must be received by the Monitor within 30 days after the date on date on which the Claimant receives the Notice of Disallowance (Personal Information).
73. If a dispute raised in a Notice of Disallowance (Personal Information) is not settled or if an alternative methodology proposed in a Notice of Proposed Revision is not successfully agreed to or negotiated with the Claimant within a time period or manner satisfactory to the Monitor, in consultation with the Sears Canada Entities, the Monitor at its election shall refer the dispute to either a Claims Officer or the Court. Any Claimant who wishes to challenge the method of adjudication elected by the Monitor may apply to the Court to determine the appropriate method of adjudication.
74. Any Employee or Retiree who receives a Notice of Disallowance (Personal Information) and does not file a completed Notice of Dispute (Personal Information) with the Monitor by the applicable deadline shall be deemed to have accepted the personal information as set out in the Notice of Disallowance (Personal Information) and such Employee or Retiree shall have no further right to dispute same.

(e) Adjudication of Proofs of Claim

75. With respect to Other Employee Claims, Other Retiree Claims, Sears Pension Claims, and Supplemental Plan Claims the process will be very similar to that provided for general creditor claims under the General Claims Process. Under this process, the Monitor, in consultation with the Sears Canada Entities (and in the case of D&O Proofs of Claim, with the Directors and Officers named in respect of such D&O Claim, and such Directors' and Officers' counsel) will review all Proofs of Claim and D&O Proofs of Claim received on or before the Proof of Claim Bar Date and will be responsible for accepting, revising or rejecting such Claims.

76. If the Monitor intends to revise or reject a Claim, the Monitor will notify the Claimant by sending a Notice of Disallowance (Proof of Claim) setting out the reasons therefor by no later than July 31, 2018, or such later date as ordered by the Court. Given its estimated nature (as described above in paragraph 52), this deadline will not apply to any Sears Pension Claims.
77. Any Claimant that intends to dispute a Notice of Disallowance (Proof of Claim) must send written notice to the Monitor by completing a Notice of Dispute (Proof of Claim) that must be received by the Monitor within 30 days after the date on which the Claimant receives the Notice of Revision or Disallowance (Proof of Claim).
78. In the event a dispute raised in a Notice of Dispute (Proof of Claim) is not settled within a time period or in a manner satisfactory to the Monitor, in consultation with the Sears Canada Entities (or the applicable Directors and Officers in respect of a D&O Claim), the Monitor, at its election, shall refer the dispute raised to a Claims Officer or the Court. Any Claimant who wishes to challenge the method of adjudication elected by the Monitor may apply to the Court to determine the appropriate method of adjudication.
79. Any Claimant who receives a Notice of Disallowance (Proof of Claim) and does not file a completed Notice of Dispute (Proof of Claim) with the Monitor by the applicable deadline shall be deemed to have accepted the amount and determination as set out in the Notice of Disallowance (Proof of Claim) and such Claimant shall have no further right to dispute the same.

(f) *Claims Officers and Adjudication of Claims, Personal Information and Methodologies in Dispute*

80. The Claims Procedure contemplates that the Monitor may refer disputed Claims and disputes as to personal information and alternative proposed methodologies to a Claims Officer for resolution, which the Proposed Order contemplates would be the Honourable former Justices Dennis O'Connor, and James Farley, who have also been appointed for this role in the General Claims Process. The decision of a Claims Officer will be binding on all parties, subject to appeal rights to the Court.

81. The Claims Officers will review and determine the validity and amount of disputed Employee Claims and Retiree Claims, the accuracy of a Claimant's personal information or the validity of the methodology to be applied to a given Claim, all in accordance with the terms of the Proposed Order. The Claims Officers would also determine procedural matters that may arise in respect of their determination of these issues including the manner in which any evidence may be adduced.
82. Once a decision is rendered in respect of a disputed Claim, proposed methodology or piece of disputed personal information, the Monitor, the relevant Claimant, the Sears Canada Entities and the applicable Officers and Directors would each have 10 days to appeal the decision to the Court, failing which the decision of the Claims Officer will be binding on all parties.
83. Claims are frequently referred to Claims Officers in CCAA Proceedings to expedite the resolution of disputed Claims and related issues in a timely, efficient and cost-effective manner, and indeed as mentioned Claims Officers are also provided for under the General Claims Process also. This is of particular importance in this case given the number of potential Claimants involved.

(g) Hardship Fund

84. By Order dated August 18, 2017, this Court approved an employee hardship fund (the "**Hardship Fund**") for payments to be made to former Employees of the Sears Canada Group who could demonstrate urgent or immediate hardship in dealing with their financial obligations.
85. One of the conditions of the term sheet upon which the Hardship Fund was based, and which was approved by the Court in that Order, provided that where payments were made out of the fund to a former employee, any future distributions made to such employee on claims allowed in any claims process conducted by the Sears Canada Entities would be correspondingly reduced.

86. To reflect this, the Proposed Order provides that any payments paid to any Employee out of the Hardship Fund will correspondingly reduce any distributions ultimately made to such Employee on a Claim.

I. CONCLUSION

87. In the Monitor's view, the proposed Claims Process and Methodologies appropriately balance competing stakeholder views, and is fair and appropriate in light of the anticipated nature and volume of Employee Claims and Retiree Claims. In particular, the proposed Claims Process:

- (a) represents a fair, reasonable, efficient and practical method for the calculation and submission of employment-related claims that approximately 40,000 Retirees and Employees may have against the Sears Canada Entities;
- (b) will assist in ensuring that claims that have facts or issues in common will, to the greatest extent possible, be determined consistently;
- (c) brings greater certainty to the calculation of Employee Claims and Retiree Claims, including Sears Pension Claims, thereby reducing the risk that assets be depleted in order to resolve thousands of claims; and
- (d) has been arrived at after extensive negotiations among the E&R Process Participants.

88. For the reasons set out above, the Monitor supports the Applicants' motion for the Proposed Order and recommends that it be granted.

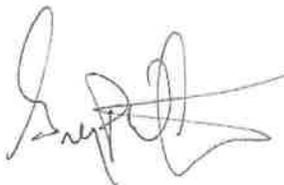
The Monitor respectfully submits to the Court this, its Thirteenth Report.

Dated this 18th day of February, 2018.

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

Handwritten signature of Paul Bishop in cursive script.

Paul Bishop
Senior Managing Director

Handwritten signature of Greg Watson in cursive script.

Greg Watson
Senior Managing Director

Tab 1

This is Exhibit "I" referred to
in the Affidavit of Karen Ensslen
Affirmed this 11th day of October, 2018.



A COMMISSIONER FOR TAKING AFFIDAVITS

Exhibit "I"
Limited Receivership Property

1. Account in the name of Sears Canada Inc. located at Royal Bank of Canada, Toronto, ON and ending with 271-618-1.
2. Account in the name of 191020 Canada Inc. located at Royal Bank of Canada, Toronto, ON and ending with 139-333-9
3. Account in the name of 9370-2751 Québec Inc. located at Royal Bank of Canada, Toronto, ON and ending with 139-330-5
4. Account in the name of 168886 Canada Inc. located at Royal Bank of Canada, Toronto, ON and ending with 139-333-9.
5. Account in the name of Sears Contact Services Inc. located at Royal Bank of Canada, Toronto, ON and ending with 135-672-4.

TAB J

This is Exhibit "J" referred to
in the Affidavit of Karen Ensslen
Affirmed this 11th day of October, 2018.



A COMMISSIONER FOR TAKING AFFIDAVITS

EQUALITY GROWTH

A Strong Middle Class

Tabled in the House of Commons
by the Honourable William Francis Morneau, P.C., M.P.
Minister of Finance

February 27, 2018

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Cette publication est aussi disponible en français.

Enhancing the Wage Earner Protection Program

Innovation is changing how we live and work, bringing with it new realities for Canadian workers. To support workers in this new environment, the Government will propose legislative amendments to the *Wage Earner Protection Program Act* to increase the maximum payment under the Wage Earner Protection Program to seven weeks of Employment Insurance insurable earnings from four. Changes will also be made to make eligibility for the Program more equitable, so that workers who are owed wages, vacation, severance or termination pay when their employer files for bankruptcy or enters receivership receive greater support during a difficult time.

A More Secure Retirement

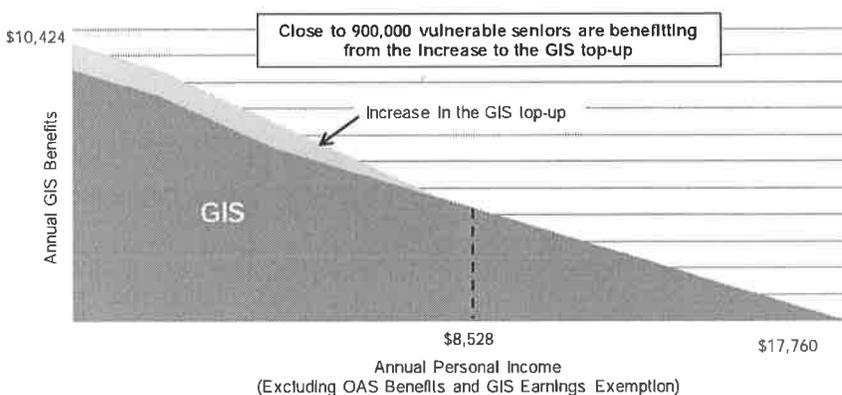
Every Canadian deserves a secure retirement, free of financial worries. Canada's public pensions—the Old Age Security (OAS) program and the Canada and Quebec Pension Plans—play an important role in giving Canadians confidence that they can retire in dignity. The Government is committed to strengthening public pensions and to improving the quality of life for seniors now, and for generations to come.

Since 2016, the Government has:

- Increased Guaranteed Income Supplement (GIS) payments by up to \$947 per year for single recipients, which is helping nearly 900,000 low-income seniors, of which 70 per cent are women.
- Ensured that senior couples who receive GIS and Allowance benefits and have to live apart—because of long-term care requirements, for example—can receive higher benefits based on their individual incomes.
- Restored the eligibility age for OAS and GIS benefits to 65, putting thousands of dollars back in the pockets of Canadians as they become seniors.

Chart 1.5

Annual GIS Benefits for Single Seniors, 2017



TAB 3

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.)	TUESDAY, THE 16TH
)	
JUSTICE HAINEY)	DAY OF OCTOBER 2018

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

AND IN THE MATTER OF SECTION 243 OF THE *BANKRUPTCY*
AND INSOLVENCY ACT, R.S.C., 1985, c. B-3, 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.

(each, an "**Applicant**", and collectively, the "**Applicants**")

RECEIVERSHIP ORDER

THIS MOTION made by Ursel Phillips Fellows Hopkinson LLP, as Employee Representative Counsel (as defined in the Employee Representative Counsel Order granted by this Court on July 13, 2017), for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3 as amended (the "**BIA**") appointing FTI Consulting Canada Inc. as receiver (in such capacity, the "**Receiver**") without security, of the bank accounts described in **Schedule "B"** to this Order, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavit of Karen Ensslen, sworn October 11, 2018, the 26th Report of FTI Consulting Canada Inc., in its capacity as monitor (the "**Monitor**"), and on hearing the submissions of counsel for the Applicants, the Monitor, FTI Consulting Canada Inc. (as the proposed Receiver), and Employee Representative Counsel, no one else appearing although duly served as appears from the affidavit of service of Christien Lam sworn October 12, 2018 and on reading the consent of FTI Consulting Canada Inc. to act as the Receiver,

SERVICE

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

LIFTING OF THE STAY

2. THIS COURT ORDERS that the stay of proceedings granted by this Court under the Amended and Restated Initial Order dated June 22, 2017, (the "**Initial Order**") is hereby lifted with respect to the Applicants and the Receivership Property (as defined below) solely to allow: (i) the appointment of the Receiver over the Receivership Property on the Receivership Effective Date (as defined below); and (ii) the Receiver to act in respect of the Receivership Property in accordance with the provisions of this Order.

APPOINTMENT

3. THIS COURT ORDERS that pursuant to section 243(1) of the BIA, and effective two (2) business days following service on the Service List (as defined in the Initial Order) of the certificate attached as **Schedule "A"** hereto (the "**Receivership Effective Date**"), FTI Consulting Canada Inc. will hereby be appointed Receiver, without security, of the bank accounts described in **Schedule "B"** to this Order (the "**Receivership Property**"), and of no other property of the Applicants.

4. THIS COURT DECLARES that the Receiver is a receiver within the meaning of Section 243(1) of the BIA.

RECEIVER'S POWERS

5. THIS COURT ORDERS that, from and after the Receivership Effective Date, the Receiver will be empowered and authorized, but not obligated, to act at once in respect of the

Receivership Property and the Receiver will be expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- a) subject to paragraphs 12 and 13 of this Order, to exercise control over the Receivership Property;
- b) to perform its statutory obligations under the *Wage Earner Protection Program Act* (Canada) (the "**WEPPA**");
- c) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations; and
- d) to engage counsel to assist with the exercise of the Receiver's powers conferred by this Order.

6. THIS COURT ORDERS that the Receiver be and is hereby relieved from compliance with the provision of Sections 245(1), 245(2) and 246 of the BIA, provided that the Receiver shall provide notice of its appointment in the prescribed form and manner to the Superintendent of Bankruptcy, accompanied by the prescribed fee.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

7. THIS COURT ORDERS that (i) the Applicants, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and members, and all other persons acting on their instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Receivership Property in such Person's possession or control and shall grant immediate and continued access to the Receivership Property to the Receiver.

8. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the Receivership Property, the employees of the Applicants for the purposes of complying with the Receiver's statutory obligations under the WEPPA, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall grant to the Receiver unfettered

access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 8 or in paragraph 9 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to applicable laws prohibiting such disclosure.

9. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER

10. THIS COURT ORDERS that the stay of proceedings in effect in accordance with paragraphs 14 and 17 of the Initial Order shall apply *mutatis mutandis* to any Proceedings (as defined in the Initial Order) or any right or remedy against or in respect of the Receiver and the Receivership Property and nothing herein shall derogate from the stay of proceedings in effect pursuant to the Initial Order, except to the extent necessary to give effect to the appointment of the Receiver.

EMPLOYEES

11. THIS COURT ORDERS that all employees of the Applicants shall remain the employees of the Applicants until such time as the Applicants may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities or obligations, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA.

LIMITATION ON ENVIRONMENTAL LIABILITIES

12. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or

collectively, "**Possession**") of any of the Receivership Property or any of the Applicants' other assets, property or undertaking, including (without limitation) 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**").

POSSESSION OF RECEIVERSHIP PROPERTY

13. The Receiver shall take no part whatsoever in the management or the supervision of the management of the Business (as defined in the Initial Order) and the Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in possession of or be deemed to have taken any steps to dispose of any of the Receivership Property, or of any other assets, property or undertaking of the Applicants, including (without limitation) within the meaning of any Environmental Legislation, unless it is actually in possession. Any distribution of the Receivership Property shall be made only upon further Order of this Court following service and notice as required by the Initial Order; provided, however, that the Receiver is authorized and directed to permit the Applicants' access to sufficient funds from the Receivership Property as requested by the Applicants to operate the Business in compliance with the Initial Order.

LIMITATION ON THE RECEIVER'S LIABILITY

14. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its delivery of the Receivership Certificate, its appointment or the carrying out the provisions of this Order or the Applicants' operation of their Business, including any liability or obligation in respect of taxes, withholdings, interest, penalties, or other like claims, save and except for any gross negligence or wilful misconduct on its part, and it shall have no obligations under sections 81.4(5) or 81.6(3) of the BIA. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

COSTS OF ADMINISTRATION

15. THIS COURT ORDERS that paragraphs 35, 36 and 37 of the Initial Order shall apply *mutatis mutandis* to the Receiver and the Receiver's legal counsel. The Receiver and the Receiver's legal counsel shall be entitled to the benefit of the Administration Charge on the Property (each as defined in the Initial Order) as security for their professional fees and disbursements incurred at their standard rates and charges subject to the maximum amount set out in the Initial Order and with the priority set out in the Initial Order. The fees and disbursements of the Receiver and the Receiver's counsel shall not be subject to Section 246(3) of the BIA.

SERVICE AND NOTICE

16. THIS COURT ORDERS that, subject to further Order of the Court, service and notice with respect to this Order and the appointment of the Receiver shall be in accordance with Paragraphs 60, 61 and 62 of the Initial Order.

INITIAL ORDER

17. THIS COURT ORDERS that, except as expressly stated herein with respect to the Receivership Property, nothing herein amends the terms of the Initial Order, including the powers, authorizations, obligations and protections for the Monitor, the Applicants and the Applicants' directors and officers contained in the Initial Order.

GENERAL

18. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

19. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Applicants (or any of them).

20. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 p.m. Eastern Time on October 16, 2018.

Schedule "A"
Receivership Certificate

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 SECTION 243 OF THE *BANKRUPTCY*
AND INSOLVENCY ACT, R.S.C., 1985, c. B-3, AS AMENDED

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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.

RECEIVERSHIP CERTIFICATE

The undersigned confirm that this is the "Receivership Certificate" referred to in the Receivership Order of the Ontario Superior Court of Justice (Commercial List) made on October 16, 2018, and that in accordance with paragraph 3 of the Receivership Order, the Receivership Effective Date shall be **[insert date that is two (2) business days following service of this certificate on the Service List]**.

**FTI CONSULTING CANADA INC., IN
ITS CAPACITY AS PROPOSED
RECEIVER, AND NOT IN ITS
PERSONAL OR CORPORATE
CAPACITY**

**URSEL, PHILLIPS, FELLOWS HOPKINSON
LLP, IN ITS CAPACITY AS EMPLOYEE
REPRESENTATIVE COUNSEL IN THE
WITHIN PROCEEDINGS**

Per: _____
Name:
Title:

Per: _____
Name:
Title:

Schedule "B"**Receivership Property**

1. Account in the name of Sears Canada Inc. located at Royal Bank of Canada, Toronto, ON and ending with 271-618-1.
2. Account in the name of 191020 Canada Inc. located at Royal Bank of Canada, Toronto, ON and ending with 139-333-9
3. Account in the name of 9370-2751 Québec Inc. located at Royal Bank of Canada, Toronto, ON and ending with 139-330-5
4. Account in the name of 168886 Canada Inc. located at Royal Bank of Canada, Toronto, ON and ending with 139-333-9.
5. Account in the name of Sears Contact Services Inc. located at Royal Bank of Canada, Toronto, ON and ending with 135-672-4.

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

AND IN THE MATTER OF SECTION 243 OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C., 1985, c. B-3, 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

RECEIVERSHIP ORDER

Ursel Phillips Fellows Hopkinson LLP
555 Richmond St. W., Suite 1200
Toronto, Ontario M5V 3B1

Susan Ursel LS#: 26024G
Email: sursel@upflaw.ca
Tel: (416) 969-3515

Katy O'Rourke LS#: 66420K
Email: korourke@upflaw.ca
Tel: (416) 969-3507

Fax: (416) 968-0325

Employee Representative Counsel

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

AND IN THE MATTER OF SECTION 243 OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
R.S.C., 1985, c. B-3, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
SEARS CANADA INC., et al.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at TORONTO

**MOTION RECORD OF
EMPLOYEE REPRESENTATIVE COUNSEL**

Ursel Phillips Fellows Hopkinson LLP
555 Richmond St. W., Suite 1200
Toronto, Ontario M5V 3B1

Susan Ursel (LSUC# 26024G)
Tel: (416) 969-3515/Fax: (416) 968-0325
sursel@upflaw.ca

Katy O'Rourke (LSUC# 66420K)
Tel: (416) 969-3507/Fax: (416) 968-0325
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