

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

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

Plaintiff

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

Defendants

**RESPONDING MOTION RECORD OF
REPRESENTATIVE COUNSEL TO THE RETIREES**

**(Motion by defendants to examine retirees Ken Eady and William Turner,
returnable November 15, 2019)**

November 6, 2019

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TAB 1

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

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

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

Plaintiff

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

Defendants

**AFFIDAVIT OF SYDNEY EDMONDS
(sworn November 6, 2019)**

I, **SYDNEY EDMONDS**, of the City of Toronto, in the Province of Ontario,
MAKE OATH AND SAY:

1. I am an articling student with Koskie Minsky LLP, Representative Counsel to all of the retirees of Sears Canada Inc. ("**Sears Canada**") with pension and other post-retirement benefit entitlements.
2. Attached hereto as **Exhibit "A"** is a copy of the Order of Mr. Justice Hainey dated June 22, 2017 granting protections under the *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36 ("**CCAA**") to the Sears Canada Entities.

3. Attached hereto as **Exhibit "B"** is a copy of the Order of Mr. Justice Hainey dated October 13, 2017 (without schedules) ordering, *inter alia*, the liquidation of the assets of the Sears Canada Entities.

4. Attached hereto as **Exhibit "C"** is a copy of the letter from Anna Vani of the Financial Services Commission of Ontario dated October 17, 2017, appointing the actuarial firm of Morneau Shepell ("**Morneau**") as administrator of the Sears Canada Inc. Registered Retirement Pension Plan ("**Sears Canada Plan**") effective as of October 16, 2017, pursuant to subsection 8(1.1) of the *Pension Benefits Act*, R.S.O. 1990, c. P.8 ("**PBA**").

5. Attached hereto as **Exhibit "D"** is a copy of the Notice of Intended Decision of the Superintendent dated November 10, 2017 proposing that the Sears Canada Plan be wound-up effective October 1, 2017, pursuant to s. 69(2) of the *PBA*.

6. Attached hereto as **Exhibit "E"** is a copy of the Order of Mr. Justice Hainey dated March 2, 2018 appointing Lax O'Sullivan Lisus Gottlieb LLP as litigation investigator ("**Litigation Investigator**") as an officer of the court in the *CCAA* proceedings for the benefit of the estates of the Sears Canada Entities and its creditors for the purpose of investigating, considering, and reporting on any rights or claims that the Sears Canada Entities and its creditors may have as against any parties.

7. Attached hereto as **Exhibit "F"** is a copy of the Order of the Superintendent dated March 29, 2018 ordering that the Sears Canada Plan be wound-up effective as of October 1, 2017.

8. Attached hereto as **Exhibit "G"** is a copy of the Proof of Claim dated April 5, 2018 of Morneau (without attachments), in its capacity as administrator of the Sears Canada Plan, claiming the deficit owing to the fund of the Sears Canada Plan by Sears Canada ("**Wind-Up Deficit**"), being \$260,000,000 as of September 30, 2017.

9. Attached hereto as **Exhibit "H"** is a copy of the template of the letter sent by Morneau on June 1, 2018 to all non-Ontario members of the Sears Canada Plan, advising such members of the underfunded state of the pension fund and the corresponding reduction to the amount of monthly pension benefits.

10. Attached hereto as **Exhibit "I"** is a copy of the template of the letter sent by Morneau on June 1, 2018 to the Ontario members of the Sears Canada Plan whose monthly pension benefits continued to be paid in full as they were within the maximum cap covered by the Pension Benefits Guarantee Fund ("**PBGF**") parameters.

11. Attached hereto as **Exhibit "J"** is a copy of the template of the letter sent by Morneau on June 1, 2018 to the Ontario members of the Sears Canada Plan whose monthly pension benefits were not within the maximum cap covered by the PBGF, such that their monthly pension benefits would be reduced only to the amount guaranteed by the PBGF.

12. Attached hereto as **Exhibit "K"** is a copy of the Order of the Superintendent dated September 27, 2018 declaring that the PBGF applies to the Sears Canada Plan, pursuant to s. 83 of the *PBA*.

13. Attached hereto as **Exhibit "L"** is a copy of the First Report of the Litigation Investigator dated November 5, 2018.

14. Attached hereto as **Exhibit "M"** is a copy of the Order of Mr. Justice Hailey dated December 3, 2018 appointing the Honourable J. Douglas Cunningham, Q.C. as Litigation Trustee over and in respect of the claims of the Applicants and its creditors as identified in the First Report of the Litigation Investigator.


15. Attached hereto as **Exhibit "N"** is an excerpt from the Twenty-Ninth Report of the Monitor dated February 6, 2019 in which it was reported that the expected recovery in respect of the claims of unsecured creditors as against the Sears Canada Entities was 6-8 cents on the dollar.

16. Attached hereto as **Exhibit "O"** is a copy of the letter from Thomas D. Levy of Segal Consulting to Andrew Hatnay dated November 6, 2019.

17. I make this affidavit in good faith and for no other or improper purpose.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario, this 6th day of November, 2019.


A Commissioner for taking Affidavits, etc.
LSO # 620020


SYDNEY EDMONDS

TAB "A"

This is **Exhibit "A"** referred to in the
affidavit of Sydney Edmonds
sworn before me, 6th day of November,
2019

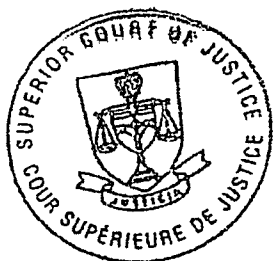

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A Commissioner for taking affidavits,
LSO#620620 etc.

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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



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

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

(each, an “**Applicant**”, and collectively, the “**Applicants**”)

INITIAL ORDER

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

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

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

SERVICE

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

APPLICATION

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

PLAN OF ARRANGEMENT

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

POSSESSION OF PROPERTY AND OPERATIONS

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

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

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

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

- (a) all outstanding and future wages, salaries, commissions, employee and retiree benefits (including, without limitation, medical, dental, life insurance and similar benefit plans or arrangements), pension benefits or contributions, vacation pay, expenses, and director fees and expenses, payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements (but not including termination or severance payments), and all other payroll, pension and benefits processing and servicing expenses;
- (b) all outstanding and future amounts owing to or in respect of Persons working as independent contractors in connection with the Business;
- (c) all outstanding or future amounts owing in respect of customer rebates, refunds, discounts or other amounts on account of similar customer programs or obligations;
- (d) all outstanding or future amounts related to honouring customer obligations, whether existing before or after the date of this Order, including customer financing, product warranties, pre-payments, deposits, gift cards, Sears Club programs (including redemptions of Sears Club points) and other customer loyalty programs, offers and benefits, in each case incurred in the ordinary course of business and consistent with existing policies and procedures;
- (e) the fees and disbursements of any Assistants retained or employed by the Sears Canada Entities at their standard rates and charges; and
- (f) with the consent of the Monitor, amounts owing for goods or services actually supplied to the Sears Canada Entities prior to the date of this Order by:

- (i) logistics or supply chain providers, including customs brokers and freight forwarders, fuel providers, repair, maintenance and parts providers, and security and armoured truck carriers, and including amounts payable in respect of customs and duties for goods;
- (ii) providers of information, internet, and other technology, including e-commerce providers and related services;
- (iii) providers of credit, debit and gift card processing related services; and
- (iv) other third party suppliers up to a maximum aggregate amount of \$25 million, if, in the opinion of the Sears Canada Entities, the supplier is critical to the business and ongoing operations of the Sears Canada Entities.

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

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors' and officers' insurance), maintenance (including environmental remediation) and security services; and
- (b) payment for goods or services actually supplied to the Sears Canada Entities following the date of this Order.

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

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

- (b) all goods and services taxes, harmonized sales taxes or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the Sears Canada Entities in connection with the sale of goods and services by the Sears Canada Entities, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order;
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business, workers' compensation or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Sears Canada Entities; and
- (d) taxes under the *Income Tax Act* (Canada) or other relevant taxing statutes to the extent that such taxing statutes give rise to statutory deemed trust amounts in favour of the Crown in right of Canada or any Province thereof or any political subdivision thereof or any other taxation authority.

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

RESTRUCTURING

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

- (a) permanently or temporarily cease, downsize or shut down any of their Business or operations, and to dispose of redundant or non-material assets not exceeding \$2 million in any one transaction or \$5 million in the aggregate in any series of related transactions, provided that, with respect to leased premises, the Sears Canada Entities may, subject to the requirements of the CCAA and paragraphs 11 to 13 herein, vacate, abandon or quit the whole (but not part of) and may permanently (but not temporarily) cease, downsize or shut down any of their Business or operations in respect of any leased premises;
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as the relevant Sears Canada Entity deems appropriate; and
- (c) pursue all avenues of refinancing, restructuring, selling and reorganizing the Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing, restructuring, sale or reorganization,

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

REAL PROPERTY LEASES

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

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

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

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

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

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

NO EXERCISE OF RIGHTS OR REMEDIES

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

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

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

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

NO INTERFERENCE WITH RIGHTS

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

CONTINUATION OF SERVICES

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

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

NON-DEROGATION OF RIGHTS

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

KEY EMPLOYEE RETENTION PLAN

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

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

APPROVAL OF FINANCIAL ADVISOR AGREEMENT

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

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

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

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

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

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

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

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

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

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

APPOINTMENT OF MONITOR

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

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

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

- (c) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, the Restructuring and such other matters as may be relevant to the proceedings herein;
- (d) assist the Sears Canada Entities, to the extent required by the Sears Canada Entities, in their dissemination of financial and other information to the DIP ABL Agent, the DIP ABL Lenders, the DIP Term Agent, the DIP Term Lenders and each of their respective counsel and financial advisors, pursuant to and in accordance with the Definitive Documents;
- (e) advise the Sears Canada Entities in their preparation of the Sears Canada Entities' cash flow statements and any reporting required by the Definitive Documents, which information shall be reviewed with the Monitor and delivered to the DIP ABL Agent, the DIP ABL Lenders, the DIP Term Agent, the DIP Term Lenders and each of their respective counsel and financial advisors, pursuant to and in accordance with the Definitive Documents;
- (f) advise the Sears Canada Entities in their development of the Plan and any amendments to the Plan;
- (g) assist the Sears Canada Entities, to the extent required by the Sears Canada Entities, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (h) have full and complete access to the Property (including any Property in the possession of the Hometown Dealers and the Corbeil Franchisees), including the premises, books, records, data, including data in electronic form, and other financial documents of the Sears Canada Entities, to the extent that is necessary to adequately assess the Business and the Sears Canada Entities' financial affairs or to perform its duties arising under this Order;
- (i) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;

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

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

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

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

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

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

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

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

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

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

DIP FINANCING

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

- (a) the Senior Secured Superpriority Debtor-in-Possession Amended and Restated Credit Agreement dated as of June 22, 2017 and attached to the Wong Affidavit as Exhibit K, among the Sears Canada Entities, the DIP ABL Agent and the lenders from time to time party thereto (the “**DIP ABL Lenders**”) (as may be amended, restated, supplemented and/or modified, subject to approval of this Court in respect of any amendment that the Monitor determines to be material, the “**DIP ABL Credit Agreement**”), in order to finance the Sears Canada Entities’ working capital requirements and other general corporate purposes and capital expenditures, all in accordance with the Definitive Documents, provided that borrowings under DIP ABL Credit Agreement shall not exceed \$300 million unless permitted by further Order of this Court (the “**DIP ABL Credit Facility**”); and
- (b) the Senior Secured, Superpriority Debtor-in-Possession Credit Agreement dated as of June 22, 2017 and attached to the Wong Affidavit as Exhibit K, among the Sears Canada Entities, the DIP Term Agent and the lenders from time to time party thereto (the “**DIP Term Lenders**”) (as may be amended, restated, supplemented and/or modified, subject to approval of this Court in respect of any amendment that the Monitor determines to be material, the “**DIP Term Credit Agreement**”), in order to finance the Sears Canada Entities’ working capital requirements and other general corporate purposes and capital expenditures, all in accordance with the Definitive Documents, provided that borrowings under the DIP Term Credit Agreement shall not exceed \$150 million unless permitted by further Order of this Court (the “**DIP Term Credit Facility**”, and together with the DIP ABL Credit Facility, the “**DIP Facilities**”).

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

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

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

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

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

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

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

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

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

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

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

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

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (i) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the DIP ABL Credit Agreement, the DIP Term Credit Agreement or the other Definitive Documents shall create or be deemed to constitute a breach by the Sears Canada Entities of any Agreement to which it is a party;
- (ii) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Sears Canada Entities entering into the DIP ABL Credit Agreement and the DIP Term Credit Agreement, the creation of the Charges, or the execution, delivery or performance of the other Definitive Documents; and
- (iii) the payments made by the Sears Canada Entities pursuant to this Order, the DIP ABL Credit Agreement, the DIP Term Credit Agreement or the other Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

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

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

CORPORATE MATTERS

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

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

SERVICE AND NOTICE

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

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

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

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

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

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

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

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

COMEBACK MOTION

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

GENERAL

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

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

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

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

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


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

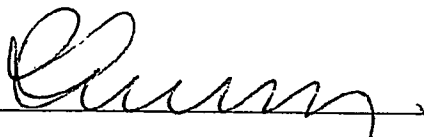
68. **THIS COURT ORDERS** that Confidential Appendix B and Confidential Appendix C to the Pre-Filing Report shall be and are hereby sealed, kept confidential and shall not form part of the public record pending further Order of this Court.

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

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

JUN 22 2017

PER / PAR: 


C. Irwin
Registrar

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

INITIAL ORDER

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

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

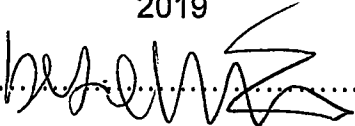
Jeremy Dacks (LSUC #: 41851R)
Tel: 416.862.4923

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

Lawyers for the Applicants

TAB "B"

This is **Exhibit "B"** referred to in the
affidavit of Sydney Edmonds
sworn before me, 6th day of November,
2019

..........

A Commissioner for taking affidavits,
etc.

LSO#620620

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)	FRIDAY, THE 13 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")

**LIQUIDATION SALE APPROVAL ORDER
(Phase II Liquidation)**

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 transactions contemplated under the Amended and Restated Agency Agreement entered into between 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 (collectively, the "Agent") dated as of October 10, 2017 (the "Agency Agreement") and certain related relief; and (ii) the Sale, the Hometown Dealer Sale, and the Sale Guidelines (each as defined below) and certain related relief, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of the Applicants, the Affidavit of Mark Caiger sworn October 10, 2017 including the exhibits thereto, the Fourth Report of FTI Consulting

Canada Inc., in its capacity as Monitor (the “**Monitor**”) filed October 11, 2017 and on hearing the submissions of respective counsel for the Applicants, counsel to the Monitor, counsel to the Board of Directors and the Special Committee of the Board of Directors of Sears Canada, counsel to Wells Fargo Capital Finance Corporation Canada as administrative agent under the DIP ABL Credit Agreement, counsel to GACP Finance Co., LLC as administrative agent under the DIP Term Credit Agreement, and such other counsel as were present, no one else appearing although duly served as appears from the Affidavits of Service of Sonja Pavic and Sean Stidwill, each sworn October 10, 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 Initial Order in these proceedings dated June 22, 2017 (as amended, the “**Initial Order**”), the Agency Agreement, or the Sale Guidelines, as applicable.

THE AGENCY AGREEMENT

3. THIS COURT ORDERS that the Agency Agreement, including the Sale Guidelines attached hereto as Schedule “A” (the “**Sale Guidelines**”), and the transactions contemplated thereunder, including the Bid Protections (which, for greater certainty, includes the Break-Up Fee) (each as such term is defined in the Agency Agreement), are hereby approved, authorized and ratified and that the execution of the Agency Agreement by Sears Canada is hereby approved, authorized, and ratified with such minor amendments as Sears Canada (with the consent of the Monitor and, to the extent required under the Agency Agreement or the Definitive Documents, the DIP ABL Lenders and the DIP Term Lenders) and the Agent may agree to in writing. Subject to the provisions of this Order and the Initial Order, Sears Canada is hereby authorized and directed to take any and all actions as may be necessary or desirable to implement the Agency Agreement and each of the transactions contemplated therein. Without limiting the foregoing, Sears Canada is authorized to execute any other agreement, contract, deed or any

other document, or take any other action, which could be required or be useful to give full and complete effect to the Agency Agreement.

THE SALE

4. THIS COURT ORDERS that, subject to receipt of the Initial Guaranty Payment by Sears Canada and delivery of the Agent L/C to Sears Canada, the Agent is authorized to conduct the Sale (as defined in the Agency Agreement), including the liquidation of the Merchandise, Designated Sundry Goods, Designated Company Consignment Goods, Cosmetic Products (if so elected by Sears Canada pursuant to Section 4.5 of the Agency Agreement), and FF&E (including DC FF&E, if so included pursuant to Section 5.1(i) of the Agency Agreement) (each as defined in the Agency Agreement) (the "Sale") at the Applicants' retail stores as set out on Schedule "B" attached hereto (the "Stores") in accordance with this Order, the Agency Agreement and the Sale Guidelines and to advertise and promote the Sale within the Stores in accordance with the Sale Guidelines. If there is a conflict between this Order, the Agency Agreement and the Sale Guidelines, the order of priority to resolve such conflicts is as follows: (1) this Order; (2) the Sale Guidelines; and (3) the Agency Agreement.

5. THIS COURT ORDERS that, subject to paragraph 12 of the Initial Order, the Agent, in its capacity as agent of Sears Canada is authorized to market and sell the Merchandise, Designated Sundry Goods, Designated Company Consignment Goods, Cosmetic Products, and FF&E (as such terms are defined in the Agency Agreement) on a "final sale" and "as is" basis and in accordance with the Sale Guidelines, and free and clear of all liens, claims, encumbrances, security interests, mortgages, charges, trusts, deemed trusts, executions, levies, financial, monetary or other claims, whether or not such claims have attached or been perfected, registered or filed and whether secured, unsecured, quantified or unquantified, contingent or otherwise, whensoever and howsoever arising, and whether such claims arose or came into existence prior to or following the date of this Order (in each case, whether contractual, statutory, arising by operation of law, in equity or otherwise) (all of the foregoing, collectively "Claims"), including, without limitation 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 granted by this Court in these proceedings

- 4 -

(collectively, the “CCAA Charges”), and (ii) all Claims, charges, security interests or liens evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal or movable property registration system (all of such Claims, charges (including the CCAA Charges), security interests and liens collectively referred to herein as “Encumbrances”), which Encumbrances, subject to this Order, will attach instead to the Guaranteed Amount and any other amounts received or to be received by Sears Canada under the Agency Agreement, in the same order and priority as they existed on the Sale Commencement Date.

6. THIS COURT ORDERS that subject to the terms of this Order, the Initial Order, the Agency Agreement and the Sale Guidelines, the Agent shall have the right to enter and use the Stores and Distribution Centers (as defined in the Agency Agreement) and all related store services and all facilities and all furniture, trade fixtures and equipment, including the FF&E, located at the Stores and Distribution Centers, and other assets of Sears Canada as designated under the Agency Agreement, for the purpose of conducting the Sale, and for such purposes, the Agent shall be entitled to the benefit of the Applicants’ stay of proceedings provided under the Initial Order, as such stay of proceedings may be extended by further Order of the Court.

7. THIS COURT ORDERS that until the FF&E Removal Deadline (as defined in the Agency Agreement) for each Store, the Agent shall have access to the Stores in accordance with the applicable Leases (as such term is defined in the Sale Guidelines) and the Sale Guidelines on the basis that the Agent is an agent of Sears Canada and Sears Canada has granted the right of access to the Stores to the Agent. To the extent that the terms of the applicable Leases are in conflict with any term of this Order or the Sale Guidelines, the terms of this Order and the Sale Guidelines shall govern.

8. THIS COURT ORDERS that except as provided for in this Order, any further order of the Court and the Sale Guidelines, nothing in this Order shall amend or vary, or be deemed to amend or vary the terms of the Leases or operation agreements. Nothing contained in this Order or the Sale Guidelines shall be construed to create or impose upon Sears Canada or the Agent any additional restrictions not contained in the applicable Leases, occupancy agreements, or operation agreements.

9. THIS COURT ORDERS that, except as provided for in Section 4 hereof in respect of the advertising and promotion of the Sale within the Stores, subject to and in accordance with this Order, the Agency Agreement and the Sale Guidelines, the Agent, as agent for Sears Canada, is authorized to advertise and promote the Sale, without further consent of any Person (as defined in the Initial Order) other than Sears Canada and the Monitor as provided under the Agency Agreement or a Landlord as expressly provided under the Sale Guidelines.

10. THIS COURT ORDERS that until the Vacate Date, the Agent shall have the right to use, without interference by any intellectual property licensor, Sears Canada's intellectual property including without limitation trade names, trademarks and logos relating to and used in connection with the operation of the Stores, as well as all licenses and rights granted to Sears Canada to use the trade names, trademarks and logos of third parties, solely for the purpose of advertising and conducting the Sale in accordance with the terms of the Agency Agreement, the Sale Guidelines and this Order.

11. THIS COURT ORDERS that upon delivery of a Monitor's certificate to the Agent substantially in the form attached as Schedule "D" hereto, (the "Monitor's Certificate") and subject to payment in full by the Agent to Sears Canada of the Guaranteed Amount, the Expenses, any Company's Sharing Recovery Amount, the Net FF&E Proceeds, the Net Designated Sundry And Consignment Goods Proceeds, proceeds from the sale of Cosmetic Products (less the applicable commission payable to the Agent under the Agency Agreement), and all other amounts due to Sears Canada under the Agency Agreement, all of Sears Canada's right, title and interest in and to any Remaining Merchandise and Remaining FF&E at the Stores and the Distribution Centers, shall vest absolutely in the Agent, free and clear of and from any and all Claims, including without limiting the generality of the foregoing, the Encumbrances, and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to such Remaining Merchandise or Remaining FF&E shall be expunged and discharged as against such Remaining Merchandise or Remaining FF&E upon the delivery of the Monitor's Certificate to the Agent; provided, however, that nothing herein shall discharge the obligations of the Agent pursuant to the Agency Agreement, or the rights or claims of Sears Canada in respect thereof, including without limitation, the obligations of the Agent to account for and remit the proceeds of sale of such Remaining Merchandise and Remaining FF&E (less the FF&E Commission) to the Designated Deposit Accounts, subject to the terms of the Agency Agreement. The Agent

- 6 -

shall comply with paragraph 12 of the Initial Order and the Sale Guidelines regarding the removal and/or sale of any FF&E or any Remaining FF&E.

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

AGENT LIABILITY

13. THIS COURT ORDERS that the Agent shall act solely as an agent to Sears Canada and that it shall not be liable for any claims against Sears Canada other than as expressly provided in the Agency Agreement. More specifically:

- (a) the Agent shall not be deemed to be an owner or in possession, care, control or management of the Stores, of the assets located therein or associated therewith or of Sears Canada's employees (including the Retained Employees) located at the Stores or any other property of Sears Canada;
- (b) the Agent shall not be deemed to be an employer, or a joint or successor employer or a related or common employer or payor within the meaning of any legislation governing employment or labour standards or pension benefits or health and safety or other statute, regulation or rule of law or equity for any purpose whatsoever, and shall not incur any successorship liabilities whatsoever; and
- (c) Sears Canada shall bear all responsibility for any liability whatsoever (including without limitation losses, costs, damages, fines, or awards) relating to claims of customers, employees and any other persons arising from events occurring at the Stores during and after the term of the Agency Agreement, or otherwise in connection with the Sale, except to the extent that such claims are the result of events or circumstances caused or contributed to by the gross negligence or wilful misconduct of the Agent, or its employees, agents or independent contractors (other than Sears Canada's employees and the Retained Employees, agents or independent contractors) located at the Stores, or otherwise in accordance with the Agency Agreement.

14. THIS COURT ORDERS that to the extent any Landlord may have a claim against the Applicants arising solely out of the conduct of the Agent in conducting the Sale for which Sears Canada has claims against the Agent under the Agency Agreement, the Applicants shall be deemed to have assigned such claims free and clear to the applicable Landlord (the “**Assigned Landlord Rights**”); provided that each such Landlord shall only be permitted to advance each such claims against the Agent if written notice, including the reasonable details of such claims, is provided by such Landlord to the Agent, Sears Canada and the Monitor during the period from the Sale Commencement Date to the date that is thirty (30) days following the FF&E Removal Deadline, provided however that the Landlords shall be provided with access to the Stores to inspect the Stores within fifteen (15) days following the FF&E Removal Deadline.

AGENT AN UNAFFECTED CREDITOR

15. THIS COURT ORDERS that the Agency Agreement shall not be repudiated, resiliated or disclaimed by Sears Canada nor shall the claims of the Agent pursuant to the Agency Agreement and under the Second Agent’s Charge and Security Interest (as defined in this Order) be compromised or arranged pursuant to any plan of arrangement or compromise among the Applicants and their creditors (a “**Plan**”) and, for greater certainty, the Agent shall be treated as an unaffected creditor in these proceedings and under any Plan.

16. THIS COURT ORDERS that Sears Canada is hereby authorized and directed, in accordance with the Agency Agreement, to remit all amounts that become due to the Agent thereunder.

17. THIS COURT ORDERS that no Encumbrances shall attach to any amounts payable or to be credited or reimbursed to, or retained by, the Agent pursuant to the Agency Agreement, including, without limitation, any amounts to be reimbursed by Sears Canada to the Agent pursuant to the Agency Agreement, and at all times the Agent will retain such amounts, free and clear of all Encumbrances, notwithstanding any enforcement or other process or Claims, all in accordance with the Agency Agreement.

DESIGNATED DEPOSIT ACCOUNTS

18. THIS COURT ORDERS that no Person shall take any action, including any collection or enforcement steps, with respect to amounts deposited into the Designated Deposit Accounts

pursuant to the Agency Agreement, including any collection or enforcement steps, in relation to any Proceeds or FF&E Proceeds, that are payable to the Agent or in relation to which the Agent has a right of reimbursement or payment under the Agency Agreement.

19. THIS COURT ORDERS that amounts deposited in the Designated Deposit Accounts by or on behalf of the Agent or Sears Canada pursuant to the Agency Agreement, including Proceeds and FF&E Proceeds, shall be and be deemed to be held in trust for Sears Canada and the Agent, as the case may be, and, for clarity, no Person shall have any claim, ownership interest or other entitlement in or against such amounts, including, without limitation, by reason of any claims, disputes, rights of offset, set-off, or claims for contribution or indemnity that it may have against or relating to Sears Canada or any third party.

AGENT'S CHARGE AND SECURITY INTEREST

20. THIS COURT ORDERS that subject to the receipt by Sears Canada of the Initial Guaranty Payment and the issue of the Agent L/C (except for the Bid Protections, in which case the charge shall be granted and be effective on the making of this Order without any further condition or formality), the Agent be and is hereby granted a charge (the "**Second Agent's Charge and Security Interest**") on all of the Merchandise, Proceeds, the FF&E Proceeds (to the extent of the FF&E Commission), the Designated Sundry And Consignment Goods Proceeds (to the extent of the Designated Sundry And Consignment Goods Commission), and proceeds from the sale of Cosmetic Products (to the extent of the applicable commission as set out in the Agency Agreement) (and, for greater certainty, the Second Agent's Charge and Security Interest shall not extend to other Property of the Applicants as defined in paragraph 4 of the Initial Order) as security for all of the obligations of Sears Canada to the Agent under the Agency Agreement, including, without limitation, all amounts owing or payable to the Agent from time to time under or in connection with the Agency Agreement, including the Bid Protections, which charge shall rank in priority to all Encumbrances including without limitation all charges created under the Initial Order; provided, however, that the Second Agent's Charge and Security Interest shall be junior and subordinate to all Encumbrances, but solely to the extent of any unpaid portion of the Unpaid Company's Entitlement due to Sears Canada under the Agency Agreement (the "**Subordinated Amount**").

21. THIS COURT ORDERS that the filing, registration, recording or perfection of the Second Agent's Charge and Security Interest shall not be required; and the Second Agent's Charge and Security Interest shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered or perfected prior or subsequent to the Second Agent's Charge and Security Interest coming into existence, notwithstanding any failure to file, register or perfect any such Second Agent's Charge and Security Interest. Absent the Agent's written consent or further Order of this Court (on notice to the Agent), Sears Canada shall not grant or permit to exist any Encumbrances over any Merchandise, Proceeds, FF&E Proceeds (to the extent of the FF&E Commission), the Designated Sundry And Consignment Goods Proceeds (to the extent of the Designated Sundry And Consignment Goods Commission), or proceeds from the sale of Cosmetic Products (to the extent of the applicable commission as set out in the Agency Agreement) that rank in priority to, or *pari passu* with the Second Agent's Charge and Security Interest.

22. THIS COURT ORDERS that the Second Agent's Charge and Security Interest shall constitute a mortgage, hypothec, security interest, assignment by way of security and charge over the Merchandise, the Proceeds, the FF&E Proceeds (to the extent of the FF&E Commission), the Designated Sundry And Consignment Goods Proceeds (to the extent of the Designated Sundry And Consignment Goods Commission), and proceeds from the sale of Cosmetic Products (to the extent of the applicable commission as set out in the Agency Agreement) and other than in relation to the Subordinated Amount, shall rank in priority to all other Encumbrances of or in favour of any Person.

23. THIS COURT ORDERS that notwithstanding:

- (a) the pendency of these proceedings;
- (b) any application for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* ("BIA") in respect of any of the Applicants, or any bankruptcy order made pursuant to any such applications;
- (c) any assignment in bankruptcy made in respect of any of the Applicants;
- (d) the provisions of any federal or provincial statute; or

- (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of encumbrances, contained in any existing loan documents, lease, mortgage, security agreement, debenture, sublease, offer to lease or other document or agreement to which an Applicant is a party;
- (i) the Agency Agreement and the transactions and actions provided for and contemplated therein, including without limitation, the payment of amounts due to the Agent thereunder and any transfer of Remaining Merchandise and Remaining FF&E, (ii) the Assigned Landlord Rights, and (iii) the Second Agent's Charge and Security Interest, shall be binding on any trustee in bankruptcy that may be appointed in respect of any of the Applicants and shall not be void or voidable by any Person, including any creditor of the Applicants, nor shall they, or any of them, constitute or be deemed to be a preference, fraudulent conveyance, transfer at undervalue or other challengeable reviewable transaction, under the BIA or any applicable law, nor shall they constitute oppressive or unfairly prejudicial conduct under any applicable law.

24. THIS COURT ORDERS that Sears Canada is authorized and permitted to transfer to the Agent personal information in Sears Canada's custody and control solely for the purposes of assisting with and conducting the Sale and only to the extent necessary for such purposes and the Agent is hereby authorized to make use of such personal information as if it were Sears Canada, subject to and in accordance with the Agency Agreement.

DISTRIBUTION

25. 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, immediately following receipt of the Initial Guaranty Payment, any other portion of the Guaranteed Amount, or the Company Sharing Recovering Amount, Sears Canada be and is hereby authorized and directed, without further Order of the Court, to distribute from such amounts to the DIP ABL Agent and/or the DIP Term Agent, in accordance with the terms of the Definitive Documents and the Intercreditor Agreement (as defined in the DIP ABL Credit Agreement), which distribution(s) shall be free and clear of all Claims and Encumbrances and (i) in respect of the DIP ABL Credit Agreement, shall be made as a full and final repayment of all

amounts then owing by the Applicants (subject to all outstanding letters of credit being dealt with as provided below) and immediately upon the repayment in full of all amounts then owing by the Applicants (and the cash collateralizing of all outstanding letters of credit as provided below) under the DIP ABL Credit Agreement in accordance with its terms, all obligations of the parties thereto shall terminate (except for those obligations specifically intended to survive termination in accordance with the terms of the DIP ABL Credit Agreement), including terminating all unfunded commitments to make loans or otherwise extend credit to the Borrower under the DIP ABL Credit Agreement, provided that all undrawn letters of credit issued under the DIP ABL Credit Agreement or under any prior ABL credit agreement that remain outstanding at the date of such repayment shall remain in place until their expiry in accordance with their terms, and provided that the Applicants shall provide to the DIP ABL Agent cash collateral in an amount equal to 105% of the sum of all such letters of credit to be held by the DIP ABL Agent in the L/C Collateral Account as security for such letters of credit and any fees or expenses related thereto in accordance with the DIP ABL Credit Agreement and pursuant to amended paragraph 54 of the Initial Order, and (ii) in respect of the DIP Term Credit Agreement, shall be made as full or partial repayment of amounts then owing by the Applicants under the DIP Term Credit Agreement.

26. 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(s) permitted by paragraph 25 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.

APPROVAL OF THE HOMETOWN DEALER SALE

27. THIS COURT ORDERS that Sears Canada and the Hometown Dealers are authorized to conduct a liquidation sale (the “Hometown Dealer Sale”) of Merchandise and FF&E (each as defined in the Sale Guidelines) located at their respective Hometown Dealer stores as set out on Schedule “C” attached hereto in accordance with this Order and the Sale Guidelines, as applicable. The rights and obligations of the landlords of such Hometown Dealers shall also be governed by this Order and the Sale Guidelines, as applicable.

SEALING

28. THIS COURT ORDERS that Confidential Appendix “A” to the Fourth Report of the Monitor shall be and is hereby sealed, kept confidential and shall not form part of the public record pending further Order of this Court.

GENERAL

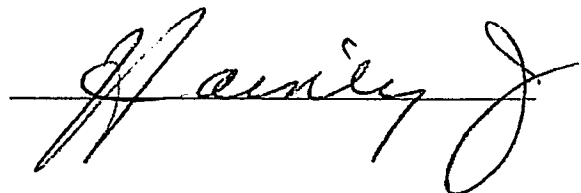

29. THIS COURT ORDERS that this Order shall have full force and effect in all provinces and territories in Canada.

30. 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 A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

OCT 13 2017

PER / PAR:



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., CORBEL 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 3339511 CANADA INC.

Applicants

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

LIQUIDATION SALE APPROVAL ORDER
(Phase II Liquidation)

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

Marc Wasserman LSUC# 44066M
Tel: 416.862.4908

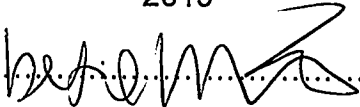
Jeremy Dacks LSUC# 41851R
Tel: 416.862.4923

Michael De Lellis LSUC# 48038U
Tel: 416.862.5997

Lawyers for the Applicants

TAB "C"

This is **Exhibit "C"** referred to in the
affidavit of Sydney Edmonds
sworn before me, 6th day of November,
2019

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A Commissioner for taking affidavits,
LSO #62062U etc.

**Financial Services
Commission
of Ontario**

Pension Plans Branch

5160 Yonge Street
16th Floor
Toronto ON
M2N 6L9

Telephone: 416 226 7776
Facsimile: 416 226 7777
Toll free: 1 800 668 0128

**Commission des
services financiers
de l'Ontario**

Direction des régimes de retraite

5160, rue Yonge
16^e étage
Toronto (Ontario)
M2N 6L9

Téléphone : 416 226 7776
Télécopieur : 416 226 7777
Sans frais : 1 800 668 0128



October 17, 2017

Registration Number: 0360065

Al Kiel
Managing Partner
Morneau Shepell
895 Don Mills Road
Tower One, Suite 700
Toronto ON M3C 1W3

Dear Mr. Kiel:

**Re: Administrator Appointment Confirmation
Sears Canada Inc. Registered Retirement Pension Plan (the 'Plan')**

This is to confirm that by delegated authority from the Superintendent of Financial Services, I have formally appointed Morneau Shepell as the administrator of the above-referenced pension plan effective October 16, 2017. The appointment has been made pursuant to subsection 8(1.1) of the *Pension Benefits Act*, R.S.O. 1990, Chapter P.8, as amended.

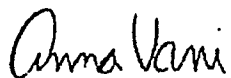
The appointment is also made in accordance with the terms and conditions of the Appointment Agreement attached hereto, between the Superintendent of Financial Services and Morneau Shepell.

Please notify all interested parties of your appointment as administrator of the plan.

Registration Number: 0360066
October 17, 2017
page 2

If you have any questions or concerns, you may contact me at the address above, or directly by telephone at (416) 226-7833. Please quote the registration number at the top of this letter.

Yours Truly,

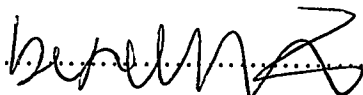


Anna Vani
Insolvency Coordinator
Pension Plans Branch

Attachment

TAB "D"

This is **Exhibit "D"** referred to in the
affidavit of Sydney Edmonds
sworn before me, 6th day of November,
2019

..........

A Commissioner for taking affidavits,
LSO#62062U etc.



IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990,
c. P.8, as amended (the "*PBA*");

AND IN THE MATTER OF a Notice of Intended Decision of the
Superintendent of Financial Services to Make an Order under section 69
of the *PBA* relating to the Sears Canada Inc. Registered Retirement Plan,
Registration Number 0360065.

NOTICE OF INTENDED DECISION

TO: **Morneau Shepell Ltd.**
895 Don Mills Road
Tower One, Suite 700
Toronto ON M3C 1W3

Attention: Al Kiel
Managing Partner

Administrator

AND TO: **Sears Canada Inc.**
700-290 Yonge Street,
Toronto ON M5B 2C3

Attention: Bev Church
Senior Director, Treasury

Employer

I INTEND TO MAKE AN ORDER in respect of the Sears Canada Inc. Registered
Retirement Plan, Registration Number 0360065, (the "*Plan*") under section 69 of the
PBA.

Si vous désirez recevoir cet avis en français, veuillez envoyer votre demande
immédiatement à: Adjointe, audiences, Greffe, Commission des services financiers de
l'Ontario, 5160 rue Yonge, boîte 85, Toronto ON M2N 6L9.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the

"Tribunal") pursuant to section 89(6) of the *PBA*. **A hearing before the Tribunal about this Notice of Intended Decision may be requested by completing the enclosed Request for Hearing (Form 1) and submitting it to the Tribunal within 30 days after this Notice of Intended Decision is served on you.¹ A copy of that form is included with this Notice of Intended Decision.** Additional copies can be obtained by visiting the Tribunal's website at www.fstontario.ca.

IF A REQUEST FOR HEARING (Form 1) is submitted to the Tribunal within 30 days after this Notice of Intended Decision is served on you, sections 89(8) and 89(9) of the *PBA* provide that the Tribunal shall appoint a time for and hold a hearing, and by order may direct the Superintendent of Financial Services (the "Superintendent") to make or refrain from making the intended decision indicated in this notice and to take such action as the Tribunal considers the Superintendent ought to take in accordance with the *PBA* and the regulations, and for such purposes, the Tribunal may substitute its opinion for that of the Superintendent.

IF NO WRITTEN REQUEST FOR A HEARING IS MADE within 30 days after this Notice is served on you, TAKE NOTICE THAT the Superintendent will order the following:

- 1) The wind up of the Plan effective October 1, 2017, such wind up to include all members of the Plan whose employment was terminated on or after June 13, 2017, pursuant to section 69(1)(b) of the *PBA*; and
- 2) That contributions towards the defined contribution component of the Plan continue until all or substantially all of the members of the Plan cease employment with Sears, despite the wind up of the Plan.

A COMPLETED REQUEST FOR HEARING form must be received by the Tribunal within 30 days after this Notice is served on you. It may be mailed, faxed, or delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
Toronto ON M2N 6L9

Attention: The Registrar

Fax: 416-226-7750

THE HEARING BEFORE THE TRIBUNAL will proceed in accordance with the Rules of Practice and Procedure for Proceedings before the Financial Services Tribunal made under the authority of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended. Those Rules are available at the website of the Tribunal: www.fstontario.ca. Alternatively, a copy can be obtained by telephoning the Registrar of the Tribunal at 416-590-7294, or toll free at 1-800-668-0128 ext. 7294.

¹ NOTE - Pursuant to section 112 of the *PBA* any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by regular mail and any document sent by regular mail shall be deemed to be given, served or delivered on the fifth day after the date of mailing.

REASONS FOR DECISION

I INTEND TO MAKE THE ORDER for the following reasons:

1. Sears Canada Inc. and its affiliated companies ("Sears") is the employer under the Plan. Until October 16, 2017, Sears was the administrator of the Plan.
2. The Plan is a single employer, multi-jurisdictional, hybrid pension plan.
3. The Plan was established on January 1, 1971, as a defined benefit ("DB") pension plan.
4. On July 1, 2008, all members of the Plan had their DB service frozen, although the DB entitlement at termination or retirement would continue to reflect any earning increases after July 1, 2008.
5. For service on or after July 1, 2008, pension benefits for all members accrued under the defined contribution ("DC") component of the Plan.
6. The latest filed actuarial report for the Plan as at December 31, 2015 (the "2015 Actuarial Report") indicated that the DB component of the Plan was underfunded by \$267 million on a wind up basis, with a solvency ratio of 0.85 and a transfer ratio of 0.81.
7. On June 13, 2017, Sears released its first quarter financial statements, reporting substantial decline in revenue compared to the previous year and a net loss of \$144.4 million for the quarter. On June 13, 2017, Sears issued a press release indicating that the conditions facing the company "raise significant doubt as to the Company's ability to continue as a going concern." This press release was widely reported on, including by the *Globe and Mail* and the *Toronto Star*.
8. On June 22, 2017, Sears was granted an order under the *Companies' Creditors Arrangement Act* ("CCAA").
9. On July 13, 2017, Justice Hainey of the Ontario Superior Court of Justice made an order suspending the obligation for Sears to make special payments to the Plan effective on and after October 1, 2017 (the "Special Payment Suspension Order").
10. Prior to September 30, 2017, Sears was making special payments of approximately \$3.7 million per month.
11. On September 30, 2017, Sears remitted the final special payment to the Plan.
12. On October 13, 2017, Justice Hainey issued an order approving a liquidation sale in respect of Sears (the "Liquidation Sale Approval Order").

13. The Superintendent appointed Morneau Shepell Ltd. as the administrator of the Plan pursuant to section 8(1.1) of the *PBA* effective October 16, 2017.
14. To date, all required contributions have been made to the DC component of the Plan.

Special Payments

15. As indicated above, the 2015 Actuarial Report indicated a solvency ratio of 0.85.
16. Section 55(2) of the *PBA* states that an employer required to make contributions under a pension plan shall make the contributions in accordance with the prescribed requirements for funding and in the prescribed manner and at the prescribed times to the pension fund.
17. Because the Plan is underfunded, Sears is required under sections 4 and 5 of Regulation 909 (the "Regulation") to continue to make special payments in equal monthly installments as calculated in the actuarial valuation report filed for the Plan.
18. Pursuant to the 2015 Actuarial Report, Sears was required to make special payments to amortize the solvency deficiency under the Plan until December 31, 2021.
19. However, pursuant to the Special Payment Suspension Order, Sears ceased to make special payments after September 30, 2017.
20. Section 69(1)(b) of the *PBA* provides that the Superintendent may require the wind up of a pension plan if the employer fails to make contributions to the pension fund as required by the *PBA* and the regulations.
21. Since October 1, 2017, Sears has failed to make special payments as required. Therefore, the Superintendent has grounds pursuant to section 69(1)(b) of the *PBA* to order the wind up of the Plan.

Wind Up Date

22. Pursuant to section 69(2) of the *PBA*, the wind up order must specify the effective date of the wind up.
23. The Superintendent proposes that the effective date of the wind up be October 1, 2017.
24. As a result of the Liquidation Sale Approval Order, Sears will inevitably cease operating and terminate all remaining employees.

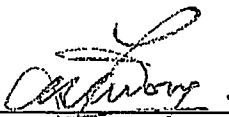
Contributions to the DC Component

25. As noted above, Sears continues to make payments to the DC component of the Plan.
26. Approximately 4,500 active members continue to accumulate benefits under the DC component of the Plan.
27. This benefit accumulation has no impact on the funded status of the DB component of the Plan.
28. It would be contrary to the purposes of the *PBA* if members of the DC component of the Plan were forced to cease accumulating retirement benefits.
29. Therefore, the Superintendent proposes that contributions towards the DC component of the Plan continue until all or substantially all of the members of the Plan cease employment with Sears, despite the wind up of the Plan.
30. Such further or other reasons as may come to my attention.

THE ADMINISTRATOR IS REQUIRED pursuant to section 89(5) of the *PBA* to transmit a copy of this Notice of Intended Decision to the following persons:

- 1) The persons listed as of the date of this Notice of Intended Decision on the Service List as defined in the Initial Order, dated June 22, 2017, of Justice Hainey in the Sears CCAA Proceedings (Court File No. CV-17-11846-00CL), at paragraph 57;
- 2) Unifor Local 40, Métallos Local 9153, and I.B.E.W. Local 213;
- 3) Any other person entitled to a payment from the pension fund of the Plan who is not represented by Koskie Minsky LLP, or the unions listed above.

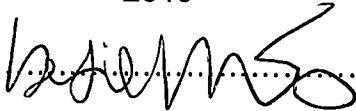
DATED at Toronto, Ontario, this 10th day of November, 2017.



 Lester J. Wong
 Deputy Superintendent, Pensions
 By delegated authority from the
 Superintendent of Financial Services

TAB "E"

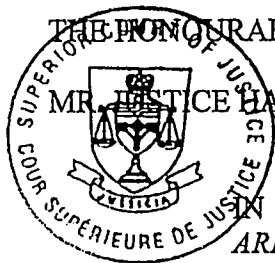
This is **Exhibit "E"** referred to in the
affidavit of Sydney Edmonds
sworn before me, 6th day of November,
2019

..........

A Commissioner for taking affidavits,
LSO#62062U etc.

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)



THE HONOURABLE)

MR. JUSTICE HAINES)

FRIDAY, THE 2nd

DAY OF MARCH, 2018

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.

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

LITIGATION INVESTIGATOR ORDER

THIS MOTION, made by Representative Counsel to the court-appointed Representatives of employees and retirees with respect to pension and post-retirement benefits of the Applicants ("**Retiree Representative Counsel**") pursuant to the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, (the "**CCA**") for an order appointing a Litigation Investigator to identify and report on certain rights and claims of the Applicants and SearsConnect (collectively, the "**Sears Canada Entities**") and/or any creditors of the Sears Canada Entities, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavit of William Turner sworn on February 12, 2018 including the exhibits thereto, the Affidavit of William Turner sworn on August 11, 2017, including the exhibits thereto, the Affidavit of William Turner sworn on February 14, 2018 including the exhibits thereto, the Affidavit of Jules Monteyne sworn on February 14, 2018 including the exhibits thereto, the Affidavit of Leanne M. Williams sworn on February 14, 2018 including the exhibits annexed thereto, the Monitor's Fourteenth Report to the Court dated March 1, 2018, and on hearing the submissions of Retiree Representative Counsel, Representative Counsel for the employees of the Sears Canada Entities ("**Employee Representative Counsel**"), counsel for the Applicants, counsel for the Monitor, and such other counsel for various creditors and stakeholders as were present, no one else appearing although duly served as appears from the Affidavit of Service of Veronica de Leoz, sworn February 12, 2018:

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 Lax O'Sullivan Lisus Gottlieb LLP is hereby appointed as Litigation Investigator (the "**Litigation Investigator**") in these CCAA proceedings for the benefit of the estates of the Sears Canada Entities and its creditors. The Litigation Investigator shall be an officer of this Court, and is appointed for the purpose of investigating, considering, and reporting to the Creditors' Committee (defined below), regarding any rights or claims, whether legal, equitable, statutory or otherwise, that the Sears Canada Entities and/or any creditors of any of the Sears Canada Entities may have as against any parties, including but not limited to current and former directors, officers, shareholders and advisors of any of the Sears Canada Entities (the "**Mandate**"). For greater certainty, the Litigation Investigator may

investigate any and all claims regardless of whether such claims have been included by creditors' proofs of claims filed pursuant to the Claims Procedure Order and E&R Claims Procedure Order (defined below), however, the Litigation Investigator shall have no role in determining, advising on, opposing, supporting, or articulating any claim of any creditor or stakeholder in the Claims Process, as defined in the Order of this Court dated December 8, 2017 as amended by Order dated February 22, 2018 or as further amended by Order of the Court (as amended, the "**Claims Procedure Order**") or any Claim as defined in the Employee and Retiree Claims Procedure Order dated February 22, 2018 (the "**E&R Claims Procedure Order**") and shall have no role in the distribution or allocation of estate funds.

Litigation Investigator Reporting

3. **THIS COURT ORDERS** that the Litigation Investigator's Mandate shall include reporting to the Creditors' Committee with such details as the Litigation Investigator considers advisable (all such reporting being collectively defined herein as the "**Report**"), taking into account any concerns of privilege and confidentiality. All Reports by the Litigation Investigator and all communications among the Creditors' Committee members and the Litigation Investigator shall be subject to common interest privilege. A Report by the Litigation Investigator will include recommendations regarding a proposed litigation plan that includes, but is not limited to:

- (a) those potential rights or claims of the Sears Canada Entities or any creditors of the Sears Canada Entities that should be pursued (if any); and
- (b) describing how and by whom such rights or claims (if any) can best be pursued or continued, including, but not limited to:

- (i) the coordination of the prosecution of such rights or claims with similar or related facts, rights or other claims that may be asserted by different parties;
- (ii) if necessary or desirable, a proposed governance structure for the Creditors' Committee created pursuant to this Order (or as same may be amended, expanded or reconstituted in future, in accordance with the terms of this Order) for the purpose of providing input to the Litigation Investigator in the prosecution of such rights, claims or causes of action; and
- (iii) consideration as to the various options available for funding the prosecution of such rights, claims or causes of action.

A confidential briefing ("**Investigator Briefing**") regarding all Reports prepared by the Litigation Investigator shall be given to the Monitor; provided that such Investigator Briefing shall be kept confidential by the Monitor and shall remain subject to privilege.

4. **THIS COURT ORDERS** that following delivery of a Report to the Creditors' Committee in accordance with its Mandate, the Litigation Investigator shall not take any further steps without a further Order of the Court. For greater certainty, nothing herein shall prevent the Litigation Investigator from seeking an Order of the Court authorizing it to pursue any claims identified pursuant to the Mandate.

The Committee

5. **THIS COURT ORDERS** that the Litigation Investigator shall fulfil his Mandate in consultation with a creditors' committee (the "**Creditors' Committee**") comprised of no more than seven (7) members at any one time appointed by, or on behalf of the following creditor groups of the Sears Canada Entities: (i) Retiree Representative Counsel; (ii) Employee Representative Counsel; (iii) landlords; (iv) Hometown Dealers Class Action plaintiff counsel; (v) Morneau Shepell Ltd. in its capacity as Administrator for the Sears Canada Inc. Registered Retirement Plan; (vi) the Ontario Superintendent of Financial Services as Administrator of the Pension Benefits Guarantee Fund; and (vii) such other unsecured creditors of the Sears Canada Entities not represented in (i) through (vi) above as the majority of the Creditors' Committee may agree be included, in consultation with the Monitor, or as may be directed by the Court. The Creditors' Committee and the Litigation Investigator shall cooperate with the Monitor, and the Monitor shall cooperate with the Litigation Investigator and the Creditors' Committee in connection with the Mandate. The Creditors' Committee shall consult with and provide input to the Litigation Investigator with respect to the Mandate.

6. **THIS COURT ORDERS** that each member of the Creditors' Committee (including any alternates or replacements from the same stakeholder group as may be appointed by an existing member) may be a creditor itself or counsel/advisor representing that stakeholder interest, but in either case each member shall execute a Confidentiality Agreement in a form acceptable to the Litigation Investigator, the Sears Canada Entities and the Monitor prior to being entitled to participate in any discussions or meetings of the Creditors' Committee, receive any information from the Monitor, the Litigation Investigator or any other member of the Creditors' Committee, or to receive the Report. The Litigation Investigator will meet with the Creditors' Committee at

least monthly, or such other times as may be agreed by the Litigation Investigator and the Creditors' Committee. Meetings will only be conducted in person, to ensure the confidentiality of all discussions.

7. **THIS COURT ORDERS** that the Monitor shall provide to the Litigation Investigator (and, upon execution of appropriate Confidentiality Agreements, for delivery by the Litigation Investigator to the Creditors' Committee) a confidential briefing regarding the "Transactions of Interest" as identified in the Monitor's 11th Report to the Court (the "**Monitor Briefing**"). The Monitor's delivery of the Monitor Briefing pursuant to the terms of this Order shall be subject to common interest privilege and strict confidentiality, and the Monitor is protected for so doing pursuant to section 142 of the *Courts of Justice Act* (Ontario). In the event of any concerns being raised regarding the delivery by the Monitor of any particular aspect of the Monitor Briefing that cannot be resolved without breaching the underlying basis for the concern, such concerns shall be resolved following a review by an independent party appointed by the Monitor and the Litigation Investigator (or, absent agreement on the identity of such party, by the Court).

8. **THIS COURT ORDERS** that, for greater certainty, any right, claim or cause of action identified by the Litigation Investigator as capable of being advanced and that is advanced with approval of the Court, whether by the Litigation Investigator or otherwise, may be removed from the claims process established under the Claims Procedure Order or the E&R Claims Procedure Order.

9. **THIS COURT ORDERS** that the Claims Procedure Order is hereby amended as follows:

- (i) subparagraph (vii) in the definition of “Excluded Claim” is hereby amended to read as follows: “Claim that may be asserted by any of the Sears Canada Entities or that are advanced by the Litigation Investigator or any creditors, in each case, as may be permitted or directed by further Order of the Court, against the Sears Canada Entities or any Directors and/or Officers, which for greater certainty shall include any Claim that may be identified, reviewed or investigated as part of the Litigation Investigator’s Mandate (as defined in an Order of the Court dated March 2, 2018)”.

10. **THIS COURT ORDERS** that the E&R Claims Procedure Order is hereby amended as follows:

- (i) the definition of “Excluded Claim” is hereby amended to add a new subparagraph (vi) that shall read as follows: “Claim that is advanced by the Litigation Investigator or any creditors, in each case, as may be permitted or directed by further Order of the Court, against the Sears Canada Entities or any Directors and/or Officers, which for greater certainty shall include any Claim that may be identified, reviewed or investigated as part of the Litigation Investigator’s Mandate (as defined in an Order of the Court dated March 2, 2018)”.

Litigation Investigator Costs

11. **THIS COURT ORDERS** that the Litigation Investigator shall be paid from the funds of the Applicants its reasonable fees and disbursements, including the fees of any counsel retained by the Litigation Investigator in respect of the Mandate, the amount of which is not to exceed a budget approved by the Creditors’ Committee in consultation with the Monitor prior to the Litigation Investigator commencing work in respect of fulfilling its Mandate in accordance with

this Order. The Litigation Investigator and any counsel it retains shall be paid forthwith upon rendering fully-redacted versions of their accounts to the Applicants and the Monitor. Un-redacted versions of accounts rendered by the Litigation Investigator shall be made available to the Creditors' Committee and, upon request of the Court and subject to a sealing order to protect privilege and confidentiality, to the Court. In the event of any disagreement with respect to a proposed budget, any requested increased to such budget, or any accounts rendered by the Litigation Investigator, such disagreement may be remitted to this Court for determination.

12. **THIS COURT ORDERS** that the Litigation Investigator shall be entitled to the benefit of the Administrative Charge, as defined in the Initial Order issued by the Court dated June 22, 2017 as amended, for the Litigation Investigator's costs, as security for its professional fees, taxes, and disbursements reasonably incurred.

13. **THIS COURT ORDERS** that the Litigation Investigator is hereby authorized to take all appropriate steps and do all appropriate acts necessary or desirable to carry out its Mandate in accordance with the terms of this Order.

14. **THIS COURT ORDERS** that the Litigation Investigator shall be at liberty, and is hereby authorized, at any time, to apply to this Court for advice and directions in respect of its Mandate or any variation or expansion of the powers and duties of the Litigation Investigator, which shall be brought on at least seven (7) business days' notice to the Service List in these CCAA proceedings, unless time for service is otherwise abridged.

15. **THIS COURT ORDERS** that the Litigation Investigator shall have no personal liability as a result of the performance of its duties in carrying out the provisions of this Order, save and except for liability arising out of gross negligence or wilful misconduct. The Creditors'

Committee members shall have no liability as a result of their participation on the Creditors' Committee or in providing input to the Litigation Investigator, save and except for liability arising out of gross negligence or wilful misconduct.

16. **THIS COURT ORDERS** that no action or proceeding may be commenced against the Litigation Investigator or any Creditors' Committee member in respect of the performance of its or their duties under this Order without leave of this Court on seven (7) business days' notice to the Litigation Investigator and the Creditors' Committee.

17. **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) (the "BIA") in respect of any of the Applicants and any bankruptcy order issued pursuant to such applications; or
- (c) any assignment in bankruptcy made in respect of any of the Applicants;

the provisions of this Order shall be binding on any Investigator in bankruptcy or receiver that may be appointed in respect of any of the Applicants and any payments of fees and disbursements made to the Litigation Investigator in accordance with this Order shall not be void or voidable by creditors of any of the Applicants, nor shall any such payments constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or any reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

18. **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 Litigation Investigator 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 Litigation Investigator as may be necessary or desirable to give effect to this Order, or to assist the Litigation Investigator in carrying out the terms of this Order.



~~CHAINEY, J.~~

Maggie Sawka
Registrar, Superior Court of Justice

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

MAR 02 2018

PER / PAR:



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")

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

Proceeding commenced at Toronto

LITIGATION INVESTIGATOR ORDER

KOSKIE MINSKY LLP
20 Queen Street West, Suite 900, Box 52
Toronto, ON M5H 3R3

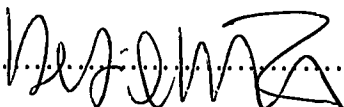
Andrew J. Hatnay – LSUC No. 31885W
Tel: 416-595-2083 / Fax: 416-204-2872
Email: ahatnay@kmlaw.ca

Mark Zigler – LSUC No. 19757B
Tel: 416-595-2090 / Fax: 416-204-2877
Email: mzigler@kmlaw.ca

Representative Counsel for the Non-Unionized Retirees
and Non-Unionized Active and Former Employees of the
Sears Canada Entities

TAB "F"

This is **Exhibit "F"** referred to in the
affidavit of Sydney Edmonds
sworn before me, 6th day of November,
2019

..........

A Commissioner for taking affidavits,
LSO#620620 etc.



IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990,
c. P.8, as amended (the "*PBA*");

AND IN THE MATTER OF a Notice of Intended Decision of the
Superintendent of Financial Services to Make an Order under section 69
of the *PBA* relating to the Sears Canada Inc. Registered Retirement Plan,
Registration Number 0360065.

TO: **Morneau Shepell Ltd.**
895 Don Mills Road
Tower One, Suite 700
Toronto ON M3C 1W3

Attention: Al Kiel
Managing Partner

Administrator

AND TO: **Sears Canada Inc.**
700-290 Yonge Street,
Toronto ON M5B 2C3

Attention: Bev Church

Employer

AND TO: **1291079 Ontario Limited**
c/o Blaney McMurtry LLP
2 Queen Street East
Suite 1500
Toronto ON M5C 3G5

AND TO: **FTI Consulting**
79 Wellington Street West
Suite 2010, P.O. Box 104
Toronto ON M5K 1G8

AND TO: **Koskie Minsky**
20 Queen Street West
Suite 900, Box 52
Toronto ON M5H 3R3

ORDER

ON OR ABOUT November 10, 2017, the Superintendent of Financial Services (the "Superintendent") issued a Notice of Intended Decision (the "NOID") to Morneau Shepell Ltd. (the "Administrator") and Sears Canada Inc. (the "Employer") proposing to order:

- (1) the wind up of the Sears Canada Inc. Registered Retirement Plan, Registration Number 0360065 (the "Plan") effective October 1, 2017, such wind up to include all members of the Plan whose employment was terminated on or after June 13, 2017, pursuant to section 69(1)(b) of the PBA; and
- (2) that contributions towards the defined contribution component of the Plan continue until all or substantially all of the members of the Plan cease employment with Sears, despite the wind up of the Plan.

The NOID was published on the Financial Services Commission of Ontario (FSCO) website.

A REQUEST FOR HEARING before the Financial Services Tribunal (the "Tribunal") was filed by 1291079 Ontario Ltd. on December 7, 2017.

An Application for Party Status was filed by Morneau Shepell Ltd. in its capacity as Administrator of the Plan on December 14, 2017.

An Application for Party Status was filed by Sears Canada Inc. on December 20, 2017.

An Application for Party Status was filed by FTI Consulting Canada Inc. in its capacity as Court Appointed Monitor of Sears Canada Group on December 21, 2017.

An Application for Party Status was filed by Koskie Minsky on behalf of Sears Canada Plan Members on March 20, 2018.

ON March 28, 2018, the request for a hearing was withdrawn by 1291079 Ontario Ltd.


ON March 28, 2018, the Tribunal closed its file on the hearing request.

For the reasons set out in the NOID, I **ORDER**:

- (1) that the Plan is wound up, effective October 1, 2017, such wind up to include all members of the Plan whose employment was terminated on or after June 13, 2017, pursuant to section 69(1)(b) of the PBA; and

- (2) that contributions towards the defined contribution component of the Plan continue until all or substantially all of the members of the Plan cease employment with Sears, despite the wind up of the Plan.

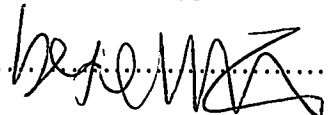
DATED at Toronto, Ontario, this 29th day of March, 2018.



Lester J. Wong
Deputy Superintendent, Pensions
By delegated authority from the
Superintendent of Financial Services

TAB "G"

This is **Exhibit "G"** referred to in the affidavit of Sydney Edmonds sworn before me, 6th day of November, 2019

..........

A Commissioner for taking affidavits,
etc.

LSO#620624

SCHEDULE Q

PROOF OF CLAIM FORM
FOR CERTAIN EMPLOYEE AND RETIREE CLAIMS AGAINST THE SEARS
CANADA ENTITIES

1. NAME OF SEARS CANADA ENTITY OR ENTITIES (THE "DEBTOR(S)")¹ AGAINST WHICH THE CLAIM IS BEING MADE:

Debtor(s): Sears Canada Inc. and other Sears Canada Entities

2. (A) PARTICULARS OF CLAIMANT

Full Legal Name of Claimant: Morneau Shepell Ltd. in its capacity as Administrator for the Sears Canada Inc. Registered Retirement Plan

Full Mailing Address of Claimant: 895 Don Mills Road, Suite 700
One Morneau Shepell Centre
Toronto, M3C 1W3

Telephone Number of Claimant: (416) 380-2737

Facsimile Number of Claimant: _____

E-mail Address of Claimant: hdunlop@morneaushepell.com

Attention (Contact Person): Hamish Dunlop

(B) PARTICULARS OF ORIGINAL CLAIMANT FROM WHOM YOU ACQUIRED CLAIM, IF APPLICABLE

- (i) Has the Claimant acquired this Claim by assignment? Yes No
- (ii) If yes, attach documents evidencing assignment and provide full particulars of the original Claimant from whom the Claim was acquired from:

¹ The "Sears Canada Entities" are Sears Canada Inc., 9370-2751 Quebec Inc. (formerly Corbell Electric Inc.), 191020 Canada Inc. (formerly S.L.H. Transport Inc.), The Cut Inc., Sears Contact Services Inc., Inilium Logistics Services Inc., Inilium Commerce Labs Inc., Inilium Logistics Services Inc., Inilium Commerce Labs Inc., Inilium 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., 3339611 Canada Inc., and SearsConnect.

Full Legal Name of original Claimant: _____

Full Mailing Address of original Claimant: _____

Telephone Number of original Claimant: _____

Facsimile Number of original Claimant: _____

E-mail Address of original Claimant: _____

Attention (Contact Person): _____

3. AMOUNT AND TYPE OF CLAIM

The Debtor is indebted to the Claimant as follows:

Currency:	Amount of <u>Pre-Filing</u> Claim (including interest up to and including June 22, 2017) ² :	Whether Claim is Secured:	Value of Security Held, if any ³ :
Canadian	\$260,200,000, the estimated Sears Pension Claim as at September 30, 2017 calculated in accordance with the Sears Pension Claim Methodology described in the Employee and Retiree Claims Procedure Order dated February 22, 2018 (the "Order") . Defined terms used herein have the meanings ascribed to them in the Order.	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Administrator's Lien and Charge pursuant to s. 57(5) and deemed trust pursuant to s. 57 (4) of the Pension Benefits Act (Ontario) for the full amount of the Wind-Up Deficiency over all assets of the Sears Canada Entities.
		Yes <input type="checkbox"/> No <input type="checkbox"/>	
		Yes <input type="checkbox"/> No <input type="checkbox"/>	

² Interest accruing from the Filing Date (June 22, 2017) shall not be included in any Claim.

³ If the Claim is secured, provide full particulars of the security, including the date on which the security was given, the value for which you ascribe to the assets charged by your security, the basis for such valuation and attach a copy of the security documents evidencing the security. This information may be provided in a separate schedule, if necessary.

Currency:	Amount of <u>Restructuring Period</u> Claim	Whether Claim Is Secured:	Value of Security Held, if any:
		Yes <input type="checkbox"/> No <input type="checkbox"/>	
		Yes <input type="checkbox"/> No <input type="checkbox"/>	
		Yes <input type="checkbox"/> No <input type="checkbox"/>	

4. DOCUMENTATION

Provide all particulars of the Claim and supporting documentation, including amount, and description of transaction(s) or agreement(s), or legal breach(es) giving rise to the Claim, including any claims assignment/transfer agreement or similar document, if applicable, and amount of invoices, particulars of all credits, discounts, etc. claimed, description of the security, if any, granted by the affected Debtor to the Claimant and estimated value of such security.

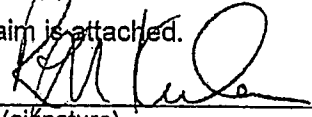
This Proof of Claim provides the estimated calculation of the Wind-Up Deficiency as at September 30, 2017 in accordance with the Sears Pension Claim Methodology approved by the Order. The attached opinion identifies the assumptions and methodology used, and confirms that the assumptions and methodology are consistent with actuarial standards and appropriate for providing an estimate of the Wind-Up Deficiency under the Sears Pension Plan as contemplated by paragraph 62 of the Penrice Affidavit. The Pension Plan Administrator reserves all rights to update, amend and/or refile this Proof of Claim to reflect the actual Wind-Up Deficiency when determined. The PBA provides priority rights for such Wind-Up Deficiency over all assets of the Sears Canada Entities.

5. CERTIFICATION

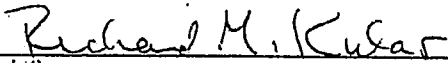
I hereby certify that:

- (a) I am the Claimant or authorized representative of the Claimant.
- (b) I have knowledge of all the circumstances connected with this Claim.
- (c) The Claimant asserts this Claim against the Debtor(s) as set out above.
- (d) All available documentation in support of this Claim is attached.

Signature: 

Witness: 
(signature)

Name: Hamish Dunlop


(print)

Title: Principal

Dated at Toronto this 5th day of April, 2018.

6. FILING OF CLAIM AND APPLICABLE DEADLINE

This Proof of Claim form must be returned to and received by the Monitor by 5:00 p.m. (Toronto time) on April 9, 2018 (the "Proof of Claim Bar Date").

Completed forms must be delivered to the Monitor by prepaid ordinary mail, registered mail, courier, personal delivery, facsimile transmission or email at the following address:

FTI Consulting Canada Inc., Sears Canada Monitor
TD Waterhouse Tower
79 Wellington Street West
Suite 2010, P.O. Box 101
Toronto, Ontario M5K 1G8

Attention: Sears Canada Employee and Retiree Claims Process
Fax No.: 416-649-8101
Email for Employee Claims: SearsEmployeeClaimSite@fticonsulting.com
Email for Retiree Claims: SearsRetireeClaimSite@fticonsulting.com

Failure to file your Proof of Claim so that it is actually received by the Monitor on or before 5:00 p.m. (Toronto time) on the Proof of Claim Bar Date WILL result in your Claim being forever barred and you will be prevented from making or enforcing your Claim against the Sears Canada Entities. In addition, you shall not be entitled to further notice of and shall not be entitled to participate as a creditor in the Sears Canada Entities' CCAA proceedings.

TAB "H"

This is **Exhibit "H"** referred to in the affidavit of Sydney Edmonds sworn before me, 6th day of November, 2019

.....*hej d m*.....

A Commissioner for taking affidavits,
etc.

LSD #G20620

June 1, 2018

«First» «Last»

SEARS.0001

«Street»

EMPLOYEE ID: «EE»

«City», «Province» «Postal_Code»

SINGLE-PROV_Not ONT

«Country»

Dear «Sal» «Last»:

**Re: Sears Canada Inc. Registered Retirement Plan (the "Plan")
Registration No. 0360065, Defined Benefit Component¹**

Further to our letter dated December 8, 2017, advising you of the appointment of Morneau Shepell Ltd. as Administrator of the Plan, we are now writing to advise you of an important issue regarding your pension from the Defined Benefit Component of the Plan.

Based on the most recent actuarial valuation as at December 31, 2015, prepared by the prior actuary for the Plan, there were insufficient assets to fully satisfy the defined benefit entitlements of all members and pensioners. We have reviewed the current funded status of the Plan and have determined, on a preliminary basis, that the assets continue to be insufficient to fully satisfy the defined benefit entitlements. Newly retired members who commence their pension during the Plan wind up period, will have their pensions reduced to a preliminary 75% estimated funded level that is based on conservative assumptions and may be changed later in the wind up process.

It is important to note that if the final funded ratio of the Plan is 80%, for example, then pensioners in pay as of the wind up date are entitled to receive their pensions at that ratio from the wind up date of October 1, 2017 onwards. Since cutbacks to pensions will occur commencing with the August 2018 pension payment this means that pensioners in pay as of the wind up date have been overpaid by 20% per month for a period of ten months. To recover these overpayments, pensioners currently receiving 100% of their pensions will therefore have their monthly benefits reduced to 70% of their full pension entitlement as an interim measure during the wind up process. At the end of the wind up process, any net over or underpayment paid to pensioners will be taken into account when determining the amount of pension they will receive on final settlement of plan benefits by annuity purchase.

¹ The Sears Canada Inc. Registered Retirement Plan stopped defined benefit service accrual and introduced a defined contribution component with effect on and after July 1, 2008. Credited service stopped to accrue after June 30, 2008 in the defined benefit component of the Plan.

On March 29, 2018, the Superintendent of Financial Services ("Superintendent") issued an Order under section 69 of the Ontario *Pension Benefits Act, R.S.O. 1990, C.P.8* (the "Act") to formally wind up the Plan effective October 1, 2017. The Order provides that:

- all members of the Plan who terminate employment on or after June 13, 2017 have their pension benefit entitlement determined under the wind up of the Plan; and
- contributions to the Defined Contribution (DC) component of the Plan be allowed to continue after October 1, 2017 for members still employed with Sears in accordance with the Plan terms until all or substantially all of the members of the DC component terminate employment with Sears Canada Inc.

Your current gross monthly pension payment will be revised as follows effective with your **August 1, 2018** payment (tax deductions will be adjusted accordingly):

	Lifetime Benefit	Bridge Benefit	Total
Current Monthly Amount (gross)²	«Current_NonON_Lifetime»	«Current_NonON_Bridge»	«Current_NonON_Total»
Reduced Sears Plan Pension at 70% Funded Level - Revised Monthly Amount (gross)	«Revised_Lifetime»	«Revised_Bridge»	«Revised_Total»

We regret that such action is necessary in light of the Plan's underfunding, but the Administrator is responsible for ensuring that all members and pensioners of the Plan are dealt with in a fair and equitable manner and in accordance with the Act. We continue to pursue a claim against the estate of Sears Canada Inc. ("Sears") in respect of the deficiencies in the Plan. In the event of collection on that claim, the funded level will be revised to reflect the additional funding. If that is the case, any pensions that were reduced will be revised accordingly.

IMPORTANT: Verification of Province of Employment³

Your pension amount quoted above was calculated using the province of employment provided to us by Sears. Our files indicate that «Final_Province_DB_or_DC» was your province of employment for all benefits earned under the Defined Benefit Component of the Plan. If we discover additional information which confirms a different province of employment, or if you advise us that you were actually employed in a different province, an adjustment will be made to your pension amount, accordingly.

² Excludes temporary payments scheduled to stop before August 1, 2018.

³ If you are the surviving spouse of a deceased Plan member, please verify the province of employment of the Plan member.

- **If you agree** that your province of employment on file is correct, you **do not need** to complete the attached Statutory Declaration (Verification of Province of Employment).
- If you **do not agree** with the province of employment quoted and you have **supporting documentation**, please send us copies for our **review** and you **do not need** to complete the attached Statutory Declaration.
- If you **do not agree** with the province of employment quoted and you are **not able to provide** any supporting documentation, then you **must complete and sign** the attached Statutory Declaration in front of a commissioner of oaths and return it to us for our review.

Please note that Federal pension legislation applies to employment with SLH Transport. If you worked for SLH Transport at any time prior to July 1, 2008, please inform us.

Our address is: Morneau Shepell Ltd.
 895 Don Mills Road, Tower One, Suite 700
 Toronto, Ontario M3C 1W3
 Attn: Regulatory Services – 9th Floor (Sears Pension Plan)

You can also return the form by email to searspension@morneaushepell.com or fax to 416-445-7989.

If you have any questions regarding the administration of your Plan, please call us at **1-888-841-8956**, from Monday to Friday, between 9:00 a.m. and 5:00 p.m. (Eastern time). You can also email us at searspension@morneaushepell.com. For more information regarding the wind up process, please visit our website at www.pensionwindups.morneaushepell.com.

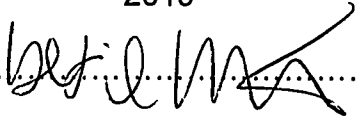
Yours truly,

Morneau Shepell Ltd.

In its capacity as Administrator for the
 Sears Canada Inc. Registered Retirement Plan
 and not in its personal capacity.

TAB "I"

This is **Exhibit "I"** referred to in the
affidavit of Sydney Edmonds
sworn before me, 6th day of November,
2019

..........

A Commissioner for taking affidavits,
LSO#620620 etc.

June 1, 2018

«First» «Last»
«Street»
«City», «Province» «Postal_Code»
«Country»

SEARS.0001
EMPLOYEE ID: «EE»
ONT_No Cutback

Dear «Sal» «Last»:

**Re: Sears Canada Inc. Registered Retirement Plan (the “Plan”)
Registration No. 0360065, Defined Benefit Component¹**

Further to our letter dated December 8, 2017, advising you of the appointment of Morneau Shepell Ltd. as Administrator of the Plan, we are now writing to advise you of an important issue regarding your pension from the Defined Benefit Component of the Plan.

Based on the most recent actuarial valuation as at December 31, 2015, prepared by the prior actuary for the Plan, there were insufficient assets to fully satisfy the defined benefit entitlements of all members and pensioners. We have reviewed the current funded status of the Plan and have determined, on a preliminary basis, that the assets continue to be insufficient to fully satisfy the defined benefit entitlements, excluding indexation, for Ontario service. Newly retired members who commence their pension during the Plan wind up period, will have their pensions reduced to a preliminary 75% estimated funded level that is based on conservative assumptions and may be changed later in the wind up process.

It is important to note that if the final funded ratio of the Plan is 80%, for example, then pensioners in pay as of the wind up date are entitled to receive their pensions at that ratio from the wind up date of October 1, 2017 onwards. Since cutbacks to pensions will occur commencing with the August 2018 pension payment this means that pensioners in pay as of the wind up date have been overpaid by 20% per month for a period of ten months. To recover these overpayments, pensioners currently receiving 100% of their pensions will therefore have their monthly benefits reduced to 70% of their full pension entitlement as an interim measure during the wind up process. At the end of the wind up process, any net over or underpayment paid to pensioners will be taken into account when determining the amount of pension they will receive on final settlement of plan benefits by annuity purchase.

¹ The Sears Canada Inc. Registered Retirement Plan stopped defined benefit service accrual and introduced a defined contribution component with effect on and after July 1, 2008. Credited service stopped to accrue after June 30, 2008 in the defined benefit component of the Plan.

On March 29, 2018, the Superintendent of Financial Services (“Superintendent”) issued an Order under section 69 of the Ontario *Pension Benefits Act, R.S.O. 1990, C.P.8* (the “Act”) to formally wind up the Plan effective October 1, 2017. The Order provides that:

- all members of the Plan who terminate employment on or after June 13, 2017 have their pension benefit entitlement determined under the wind up of the Plan; and
- contributions to the Defined Contribution (DC) component of the Plan be allowed to continue after October 1, 2017 for members still employed with Sears in accordance with the Plan terms until all or substantially all of the members of the DC component terminate employment with Sears Canada Inc.

We have filed an application with the Superintendent requesting a declaration pursuant to subsection 83(1) of the Act that the Pension Benefits Guarantee Fund (the “PBGF”) applies to the Plan. The PBGF is an insurance-type compensation fund that provides limited protection for pension benefits for Ontario members and pensioners in under-funded pension plans in circumstances set out in the Act.

The PBGF was established in 1980 and is funded by assessments levied on sponsors of defined benefit pension plans registered in Ontario. The PBGF, in general, “tops up” the *first* \$1,500 of pension income if a pension plan is in deficit when it is wound up (terminated). As an example, if an eligible pensioner is entitled to a pension of \$2,000 a month and the pension plan is only 75% funded on wind up, the pensioner would receive only \$1,500 a month from the pension plan. The PBGF, however, would provide a \$375 top up for the first \$1,500 of pension income to bring the total monthly pension to \$1,875. The PBGF top-up is paid to the eligible pensioner through the pension plan, and not as a separate payment.

Based on our review of the information available to us, we have assumed that your monthly pension payment is fully covered under the PBGF and therefore, **no reduction is required**.

This is to confirm you will continue to receive:

	Lifetime Benefit	Bridge Benefit	Total
Current Monthly Amount (gross)²	«Current_ON_Lifetime»	«Current_ON_Bridge»	«Current_ON_Total»
Reduced Sears Plan Pension at 70% Funded Level	«Reduced_70_ON_Lifetime»	«Reduced_70_ON_Bridge»	«Reduced_70_ON_Total»
PBGF Top-up (if eligible)	«PBGF_Top_Up_ON_Lifetime»	«PBGF_Top_Up_ON_Bridge»	«PBGF_Top_Up_ON_Total»

² Excludes temporary payments scheduled to stop before August 1, 2018.

Continuing Monthly Amount (gross)	«Revised_Lifetime»	«Revised_Bridge»	«Revised_Total»
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Unfortunately, a number of pensioners in the Plan will receive a reduced pension effective with their August 1, 2018 payment. We regret that such action is necessary in light of the Plan's underfunding, but the Administrator is responsible for ensuring that all members and pensioners of the Plan are dealt with in a fair and equitable manner and in accordance with the Act. We continue to pursue a claim against the estate of Sears Canada Inc. ("Sears") in respect of the deficiencies in the Plan. In the event of collection on that claim, the funded level will be revised to reflect the additional funding.

IMPORTANT: Verification of Province of Employment³

Your pension amount quoted above was calculated using the province of employment provided to us by Sears. Our files indicate that **Ontario** was your province of employment for all benefits earned under the Defined Benefit Component of the Plan. If we discover additional information which confirms a different province of employment, or if you advise us that you were actually employed in a different province, an adjustment will be made to your pension amount, accordingly.

- **If you agree** that your province of employment on file is correct, you **do not need** to complete the attached Statutory Declaration (Verification of Province of Employment).
- If you **do not agree** with the province of employment quoted and **you have supporting documentation**, please send us copies for our review and you **do not need** to complete the attached Statutory Declaration.
- If you **do not agree** with the province of employment quoted and **you are not able to provide** any supporting documentation, then you **must complete and sign** the attached Statutory Declaration in front of a commissioner of oaths and return it to us for our review.

Please note that Federal pension legislation applies to employment with SLH Transport. If you worked for SLH Transport at any time prior to July 1, 2008, please inform us.

Our address is: Morneau Shepell Ltd.
895 Don Mills Road, Tower One, Suite 700
Toronto, Ontario M3C 1W3
Attn: Regulatory Services – 9th Floor (Sears Pension Plan)

³ If you are the surviving spouse of a deceased Plan member, please verify the province of employment of the Plan member.

You can also return the form by email to searspension@morneaushepell.com or fax to 416-445-7989.

If you have any questions regarding the administration of your Plan, please call us at **1-888-841-8956**, from Monday to Friday, between 9:00 a.m. and 5:00 p.m. (Eastern time). You can also email us at searspension@morneaushepell.com. For more information regarding the wind up process, please visit our website at www.pensionwindups.morneaushepell.com.

Yours truly,

Morneau Shepell Ltd.

In its capacity as Administrator for the
Sears Canada Inc. Registered Retirement Plan
and not in its personal capacity.

TAB "J"

This is **Exhibit "J"** referred to in the
affidavit of Sydney Edmonds
sworn before me, 6th day of November,
2019

.....*Bob M. E.*.....

A Commissioner for taking affidavits,
LSO#62062W etc.

June 1, 2018

«First» «Last»
«Street»
«City», «Province» «Postal_Code»
«Country»

SEARS.0001
EMPLOYEE ID: «EE»
ONT_Cutback

Dear «Sal» «Last»:

**Re: Sears Canada Inc. Registered Retirement Plan (the "Plan")
Registration No. 0360065, Defined Benefit Component¹**

Further to our letter dated December 8, 2017, advising you of the appointment of Morneau Shepell Ltd. as Administrator of the Plan, we are now writing to advise you of an important issue regarding your pension from the Defined Benefit Component of the Plan.

Based on the most recent actuarial valuation as at December 31, 2015, prepared by the prior actuary for the Plan, there were insufficient assets to fully satisfy the defined benefit entitlements of all members and pensioners. We have reviewed the current funded status of the Plan and have determined, on a preliminary basis, that the assets continue to be insufficient to fully satisfy the defined benefit entitlements, excluding indexation, for Ontario service. Newly retired members who commence their pension during the Plan wind up period, will have their pensions reduced to a preliminary 75% estimated funded level that is based on conservative assumptions and may be changed later in the wind up process.

It is important to note that if the final funded ratio of the Plan is 80%, for example, then pensioners in pay as of the wind up date are entitled to receive their pensions at that ratio from the wind up date of October 1, 2017 onwards. Since cutbacks to pensions will occur commencing with the August 2018 pension payment this means that pensioners in pay as of the wind up date have been overpaid by 20% per month for a period of ten months. To recover these overpayments, pensioners currently receiving 100% of their pensions will therefore have their monthly benefits reduced to 70% of their full pension entitlement as an interim measure during the wind up process. At the end of the wind up process, any net over or underpayment paid to pensioners will be taken into account when determining the amount of pension they will receive on final settlement of plan benefits by annuity purchase.

¹ The Sears Canada Inc. Registered Retirement Plan stopped defined benefit service accrual and introduced a defined contribution component with effect on and after July 1, 2008. Credited service stopped to accrue after June 30, 2008 in the defined benefit component of the Plan.

On March 29, 2018, the Superintendent of Financial Services (“Superintendent”) issued an Order under section 69 of the Ontario *Pension Benefits Act, R.S.O. 1990, C.P.8* (the “Act”) to formally wind up the Plan effective October 1, 2017. The Order provides that:

- all members of the Plan who terminate employment on or after June 13, 2017 have their pension benefit entitlement determined under the wind up of the Plan; and
- contributions to the Defined Contribution (DC) component of the Plan be allowed to continue after October 1, 2017 for members still employed with Sears in accordance with the Plan terms until all or substantially all of the members of the DC component terminate employment with Sears Canada Inc.

We have filed an application with the Superintendent requesting a declaration pursuant to subsection 83(1) of the Act that the Pension Benefits Guarantee Fund (the “PBGF”) applies to the Plan. The PBGF is an insurance-type compensation fund that provides limited protection for pension benefits for Ontario members and pensioners in under-funded pension plans in circumstances set out in the Act.

The PBGF was established in 1980 and is funded by assessments levied on sponsors of defined benefit pension plans registered in Ontario. The PBGF, in general, “tops up” the *first* \$1,500 of pension income if a pension plan is in deficit when it is wound up (terminated). As an example, if an eligible pensioner is entitled to a pension of \$2,000 a month and the pension plan is only 75% funded on wind up, the pensioner would receive only \$1,500 a month from the pension plan. The PBGF, however, would provide a \$375 top up for the first \$1,500 of pension income to bring the total monthly pension to \$1,875. The PBGF top-up is paid to the eligible pensioner through the pension plan, and not as a separate payment.

Therefore, rather than reduce all of your monthly benefits to the 70% estimated funded level for the duration of the wind up process, as an interim measure, we will make monthly pension payments up to the amounts guaranteed by the PBGF for Ontario employment.

Your current gross monthly pension payment will be revised as follows effective with your **August 1, 2018** payment (tax deductions will be adjusted accordingly):

	Lifetime Benefit	Bridge Benefit	Total
Current Monthly Amount (gross)²	«Current_ON_Lifetime»	«Current_ON_Bridge»	«Current_ON_Total»
Reduced Sears Plan Pension at 70% Funded Level	«Reduced_70_ON_Lifetime»	«Reduced_70_ON_Bridge»	«Reduced_70_ON_Total»
PBGF Top-up (if eligible)	«PBGF_Top_Up	«PBGF_Top_U	«PBGF_Top_Up

² Excludes temporary payments scheduled to stop before August 1, 2018.

	_ON_Lifetime»	p_ON_Bridge»	_ON_Total»
Continuing Monthly Amount (gross)	«Revised_Lifetime»	«Revised_Bridge»	«Revised_Total»

We regret that such action is necessary in light of the Plan's underfunding, but the Administrator is responsible for ensuring that all members and pensioners of the Plan are dealt with in a fair and equitable manner and in accordance with the Act. We continue to pursue a claim against the estate of Sears Canada Inc. ("Sears") in respect of the deficiencies in the Plan. In the event of collection on that claim, the funded level will be revised to reflect the additional funding. If that is the case, any pensions that were reduced will be revised accordingly.

IMPORTANT: Verification of Province of Employment³

Your pension amount quoted above was calculated using the province of employment provided to us by Sears. Our files indicate that **Ontario** was your province of employment for all benefits earned under the Defined Benefit Component of the Plan. If we discover additional information which confirms a different province of employment, or if you advise us that you were actually employed in a different province, an adjustment will be made to your pension amount, accordingly.

- **If you agree** that your province of employment on file is correct, you **do not need** to complete the attached Statutory Declaration (Verification of Province of Employment).
- If you **do not agree** with the province of employment quoted **and you have supporting documentation**, please send us copies for our **review** and you **do not need** to complete the attached Statutory Declaration.
- If you **do not agree** with the province of employment quoted **and you are not able to provide** any supporting documentation, then you **must complete and sign** the attached Statutory Declaration in front of a commissioner of oaths and return it to us for our review.

Please note that Federal pension legislation applies to employment with SLH Transport. If you worked for SLH Transport at any time prior to July 1, 2008, please inform us.

Our address is: Morneau Shepell Ltd.
895 Don Mills Road, Tower One, Suite 700
Toronto, Ontario M3C 1W3
Attn: Regulatory Services – 9th Floor (Sears Pension Plan)

³ If you are the surviving spouse of a deceased Plan member, please verify the province of employment of the Plan member.

You can also return the form by email to searspension@morneaushepell.com or fax to 416-445-7989.

If you have any questions regarding the administration of your Plan, please call us at **1-888-841-8956**, from Monday to Friday, between 9:00 a.m. and 5:00 p.m. (Eastern time). You can also email us at searspension@morneaushepell.com. For more information regarding the wind up process, please visit our website at www.pensionwindups.morneaushepell.com.

Yours truly,

Morneau Shepell Ltd.

In its capacity as Administrator for the
Sears Canada Inc. Registered Retirement Plan
and not in its personal capacity.

TAB "K"

This is **Exhibit "K"** referred to in the
affidavit of Sydney Edmonds
sworn before me, 6th day of November,
2019

.....*berl m*.....

A Commissioner for taking affidavits,
LSO#620624 etc.

Disclaimer

This is a reproduction of an Order as issued and is provided for reference purposes only. In the event of an inconsistency, the Order as issued takes precedence over this reproduction.

Superintendent of
Financial
Services



Surintendant des
services
financiers

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the “*PBA*”);

AND IN THE MATTER OF a Notice of Intended Decision of the Superintendent of Financial Services to make an Order under section 83 of the *PBA*, respecting the Sears Canada Inc. Registered Retirement Plan, Registration Number 0360065.

TO:

Al Kiel
Managing Partner
Morneau Shepell Ltd.
895 Don Mills Road
Tower One, Suite 700
Toronto ON M3C 1W3

Administrator

AND TO:

Bev Church
Sears Canada Inc.
82 Peter Street, 4th Floor
Toronto ON M5V 2G5

Employer

ORDER

ON OR ABOUT July 30, 2018, the Superintendent of Financial Services (the “Superintendent”) issued a Notice of Intended Decision (the “NOID”) to Morneau Shepell Ltd. (the “Administrator”) and Sears Canada Inc. (the “Employer”) proposing to make an order under section 83 of the *PBA* declaring that the Pension Benefits Guarantee Fund applies to the Sears Canada Inc. Registered Retirement Plan, Registration Number 0360065 (the “Plan”).

ON OR ABOUT July 30, 2018, the NOID was sent by courier to the Administrator.

ON OR ABOUT August 13, 2018, the NOID was sent by courier to the Employer.

NO REQUEST FOR HEARING (Form 1) was delivered to the Financial Services Tribunal within the time prescribed by section 89(6) of the *PBA* respecting the NOID.

THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE MAKES THIS ORDER, pursuant to section 83 of the *PBA*, declaring that the Pension Benefits Guarantee Fund applies to the Plan for the reasons set out in the NOID.

DATED at Toronto, Ontario, this 27th day of September, 2018.

Original signed by

Gino Marandola
Director, Pension Plans Branch
by Delegated Authority from the
Superintendent of Financial Services

TAB "L"

This is **Exhibit "L"** referred to in the
affidavit of Sydney Edmonds
sworn before me, 6th day of November,
2019

.....*[Handwritten Signature]*.....

A Commissioner for taking affidavits,
etc.

LSO#62062U

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

**FIRST REPORT OF LAX O'SULLIVAN LISUS GOTTLIEB LLP
IN ITS CAPACITY AS LITIGATION INVESTIGATOR
NOVEMBER 5, 2018**

LAX O'SULLIVAN LISUS GOTTLIEB LLP
Counsel
Suite 2750, 145 King Street West
Toronto, ON M5H 1J8

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Litigation Investigator

TO: **THE SERVICE LIST**

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I. OVERVIEW

1. This is the first report of Lax O'Sullivan Lisus Gottlieb LLP ("**LOLG**"), in its capacity as Litigation Investigator ("**LI**"). It outlines the background to its appointment, the terms of the LI Order (defined below), the work done by the LI, and relief sought by the LI pursuant to the LI's recommendation.

II. BACKGROUND TO APPOINTMENT

2. 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 ("**CCAA**"). The relief granted under the Initial Order was later extended to SearsConnect, a partnership forming part of the operations of the Applicants (together with the Applicants, the "**Sears Canada Entities**"). The proceeding commenced under the CCAA by the Applicants are referred to in this report as the "**CCAA Proceeding**".

3. Among other things, the Initial Order:

- (a) appointed FTI Consulting Canada Inc. as monitor of the Sears Canada Entities (the "**Monitor**") in the CCAA Proceeding; and
- (b) granted an initial stay of proceedings against the Sears Canada Entities until July 22, 2017.

4. The Court has subsequently extended the stay period, most recently by order dated July 24, 2018, to December 18, 2018.

5. Pursuant to an order of this Court dated March 2, 2018, LOLG was appointed as LI to investigate, identify and report on certain potential rights and claims of the Sears Canada Entities and/or creditors of the Sears Canada Entities. The order was amended on April 26, 2018 (the “**LI Order**”).

6. The LI Order provides, among other things, that the LI shall be an officer of this Court.

III. PURPOSE OF THIS REPORT

7. The purpose of this first report is to provide the Court with information regarding:

- (a) the work done by the LI to discharge its Mandate under the LI Order;
- (b) the LI’s recommendation of a course of action in accordance with its Report to the Creditors’ Committee (the “**Report**”) provided pursuant to the LI Order; and
- (c) the LI’s request for an order authorizing the appointment of a litigation trustee to pursue the relief recommended in the Report, and related relief.

IV. LI’S MANDATE AND REPORT UNDER THE LI ORDER

8. The LI Order required the LI to do the following:

- (a) Investigate claims and possible claims that the Sears Canada Entities and/or their creditors may have against any parties (“**Mandate**”); and
- (b) Report to the Creditors’ Committee with such details as the LI considers advisable, with such reporting to include recommendations regarding a proposed litigation plan that includes (but is not limited to):
 - (i) the potential rights or claims of Sears Canada Entities or their creditors that should be pursued, if any; and
 - (ii) a description of how and by whom such rights and claims, if any, can best be pursued or continued, including:

- (1) the coordination of the prosecution of such rights or claims with other rights or claims that may be asserted by different parties;
- (2) if necessary or desirable, a proposed governance structure for the Creditors' Committee for the purpose of providing input to the LI in the prosecution of such rights, claims or causes of action; and
- (3) consideration of various options for funding the prosecution of such rights, claims or causes of action.

9. As set out below, the LI has now completed its Mandate and the Report.

V. THE WORK OF THE LI

10. Pursuant to the LI Order, a Creditors' Committee was established. The members of the Creditors' Committee executed confidentiality agreements and the persons to whom they reported signed non-disclosure agreements.

11. Following its appointment, and in accordance with the LI Order and the Mandate, the LI investigated claims and possible claims of the Sears Canada Entities and/or their creditors and the Monitor. During the course of this investigation, the LI:

- (a) met with the Monitor and its counsel for the purpose of receiving a confidential briefing from the Monitor, as contemplated in the LI Order;
- (b) reviewed documents provided to it by the Applicants concerning possible claims the Sears Canada Entities may have against various potential defendants;
- (c) met with the Applicants and their counsel;
- (d) conducted extensive legal research;

- (e) met with members of the Creditors' Committee, both individually and as a group, to discuss the members' views of possible claims the Applicants or creditors might advance;
- (f) met with the Creditors' Committee, the Monitor and the Monitor's counsel on multiple occasions to keep them apprised of the progress of the LI's investigation; and
- (g) considered how claims and possible claims may best be pursued, and how to coordinate various streams of potentially overlapping claims by different claimants.

12. On July 5, 2018, the LI presented a confidential interim report to the Creditors' Committee. On September 11, 2018, the LI presented a confidential final report to the Creditors' Committee ("**Report to Committee**"). At these meetings, the LI provided recommendations, discussed the basis for those recommendations, and answered questions. The members of the Creditors' Committee also discussed the recommendations and Report to Committee.

13. The Creditors' Committee unanimously accepted the LI's recommendation as set out in its Report to Committee.

VI. LI'S RECOMMENDATION CONCERNING FURTHER STEPS

A. The LI Order Contemplates Further Steps

14. The LI Order expressly provides that the LI shall be at liberty, and is authorized, at any time, to apply to the Court for advice and directions in respect of its Mandate or any variation or expansion of the powers and duties of the LI.

15. The LI Order also provides that, following delivery of a Report to the Creditors' Committee in accordance with its Mandate, the LI shall not take any further steps without a further order of

the Court. The LI Order expressly provides that nothing in it shall prevent the LI from seeking an order of the Court authorizing it to pursue any claims identified pursuant to the Mandate.

B. Litigation Should Be Pursued on Behalf of the Sears Canada Entities and Their Creditors

16. The LI recommends that litigation should be pursued on behalf of and for the benefit of the Sears Canada Entities and their creditors. As set out below, it is recommended that the defendants to the claims be the members of the Sears Canada Board of Directors as of November 2013 (the “**Directors**”), Edward Lampert (“**Lampert**”) and ESL Investments Inc., and certain of its affiliates who were shareholders of Sears Canada (collectively, “**ESL**”). But for the recent Chapter 11 filing of Sears Holdings Corp. (“**Holdings**”), the LI would recommend that Holdings also be a defendant in the litigation. Given the filing, the LI recommends that, at this time, litigation not be commenced against Holdings but that the Monitor consider the steps that should or could be taken regarding Holdings in the Chapter 11 proceeding or otherwise.

17. The LI’s view is that this litigation should be co-ordinated with the parties and counsel, to the extent practicable, for the sake of fairness to the parties, including the proposed defendants, and efficiency.

18. As a result of the recommendations contained herein, the LI believes and recommends that its mandate as LI should come to an end.

1. Appointment of Litigation Trustee to Pursue Sears Canada Claims

19. The LI recommends that a litigation trustee should be appointed with a mandate to pursue certain claims on behalf of and for the benefit of the Sears Canada Entities and their creditors (the “**LT Claims**”) with respect to the \$509 million dividend declared by Sears Canada’s Board of

Directors in November 2013 and paid to its shareholders, including Holdings and ESL, in December 2013 (the “**Dividend**”).

20. The LT Claims would be for oppression, breach of fiduciary duty and breach of the standard of care (against the Directors), conspiracy (against the Directors, ESL and Lampert, the principal of ESL), and unjust enrichment, knowing assistance, and knowing receipt.

21. In the LI’s view, appointment of an experienced litigation trustee would likely facilitate the efficient management and prosecution of litigation for the benefit of the Sears Canada Entities and their creditors.

22. The litigation trustee would be a court officer whose role would be to act on behalf of the Sears Canada Entities to prosecute and, where appropriate, resolve claims. The litigation trustee would also coordinate with other stakeholders.

23. The LI recommends that the Honourable J. Douglas Cunningham, Q.C. be appointed as the litigation trustee. The Creditors’ Committee and the Monitor support this recommendation.

24. The LI further recommends that LOLG be appointed as counsel to the LT to pursue the LT Claims and to co-ordinate the pursuit of claims with other counsel. The Creditors’ Committee and the Monitor also support this recommendation.

25. The reasonable fees and disbursements of the LT and his counsel would be paid by the Sears Canada Entities from the fund described below.

2. The Monitor Should Pursue a Transfer at Undervalue Claim

26. The LI recommends that the Monitor pursue a transfer at undervalue (“TUV”) claim under section 96 of the *Bankruptcy and Insolvency Act*, as incorporated into the CCAA pursuant to

section 36.1 with the respect to the CCAA (the “**Monitor’s Claim**”). Through this Claim, the Monitor would seek to set aside the Dividend on the basis that it was a gratuitous transfer to non-arm’s-length parties (specifically, ESL, Lampert, and Holdings) and that Sears Canada intended to defraud, defeat or delay creditors by paying it.

3. Pension Administrator and Superintendent of FSCO to Pursue Pension Claims

27. The LI recommends that certain creditors pursue claims directly. In particular, the LI understands that the Pension Administrator (defined below) and the Superintendent of the Financial Services Commission of Ontario wish to and intend to pursue pension claims, as follows:

- (a) A claim by Sears Canada’s pension administrator, Morneau Shepell Ltd. (the “**Pension Administrator**”) for breach of fiduciary duty, knowing assistance, knowing receipt and conspiracy. This claim would be brought against those persons who were directors of Sears Canada at the time the Dividend was declared, for breach of their obligations in their capacity as directors of the pension administrator of the Sears Canada pension plan at that time. The claim against ESL and Lampert would be for knowing assistance, knowing receipt and conspiracy; and
- (b) A claim for oppression, breach of fiduciary duty, breach of standard of care, knowing assistance, knowing receipt and conspiracy to be brought by Sears Canada’s Pensioners against the directors of Sears Canada at the time the 2013 Dividend was declared. The claim against ESL and Lampert would be for knowing assistance, knowing receipt and conspiracy.

28. The LI recommends that these claims be pursued in concert with the LT Claims and the Monitor’s Claim.

4. Franchisee Class Action Should be Transferred to the Commercial List

29. The LI recommends that an existing proposed class proceeding commenced in October 2015 by former “Sears Hometown” store franchisees (the “**Proposed Class Action**”) for oppression on the basis of the payment of the Dividend in the face of their previous suit for breaches of contract and the *Arthur Wishart Act (Franchise Disclosure), 2000*, S.O. 2000, c. 3, for damages continue. It is recommended that Sotos LLP/Blaney McMurtry LLP, as class action counsel, in conjunction with the recommendation and the support of the LI, and with the support of the Monitor, seek an order of the Court transferring the Proposed Class Action (Court File No. 4114/15 commenced in Milton, Ontario) to the Commercial List and promptly seek an Order certifying the action as a class action under the *Class Proceedings Act, 1992*, S.O. 1992, c. 6.

30. The LI believes that it is important to co-ordinate the Proposed Class Action with the other proposed proceedings referred to herein as all of the proceedings deal with a significant overlap of critical facts. It would be inefficient for the Proposed Class Action to proceed in a different forum and could potentially lead to inconsistent findings on the same issues.

C. Claims Should Be Pursued in a Common Issues Trial

31. The LI recommends that the claims listed above (the “**Claims**”) be heard by this Court—to the extent possible—in a single joint issues trial to ensure efficiency in cost and time.

32. The LI proposes that the Claims be pursued through four separate actions (i.e., separate statements of claim), in which the Monitor, Pension Administrator, Litigation Trustee and the representative plaintiff are the respective plaintiffs, each to be represented by separate counsel. It is recommended that the Pension Administrator and Pensioners have one counsel appointed to deal with pension claims, with an assignment of claims being made as necessary.

33. Because an overwhelming majority of the facts and legal issues in the Claims overlap, the Claims should be joined into a single “common issues trial” to be case managed by a single judge on the Commercial List of the Superior Court of Justice. The LI’s proposed order seeks this relief.

34. It is recommended that meetings be convened by the Litigation Trustee on a periodic basis with the Creditor’s Committee and the Monitor to discuss the progress of the Claims and matters related to the Claims.

35. Other elements of the Claims which are specific to particular claims, claimants, or defendants should be heard separately as required.

D. LT Claims and Monitor’s Claim to be Funded by the Estate

36. The LI recommends that the LT Claims and the Monitor’s Claim be funded by the Estate, and that a fund totalling \$12 million be established for this purpose. The LI and the Monitor both agree that this amount represents a conservative estimate, including a buffer, for the contemplated fees and disbursements to be incurred by the LI, the Litigation Trustee, and the Monitor.

37. Management of Sears Canada, with oversight by the Monitor, would review the accounts and arrange for payment of those accounts.

38. This would necessarily include a mechanism to allow creditors to opt out of litigation funding. The Litigation Investigator has reviewed and supports the Monitor’s proposed opt-out mechanism.

39. The LI recommends that the remaining claims *not* be funded by the estate.
40. The LI respectfully submits to the Court this, its First Report.

Dated this 5th day of November, 2018.


LAX O'SULLIVAN LISUS GOTTLIEB LLP
In its capacity as court-appointed Litigation
Investigator

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 QUEBEC 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.

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT TORONTO

FIRST REPORT TO THE COURT
OF LAX O'SULLIVAN LISUS GOTTLIEB LLP
IN ITS CAPACITY AS LITIGATION INVESTIGATOR
NOVEMBER 5, 2018

LAX O'SULLIVAN LISUS GOTTLIEB LLP

Counsel

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Toronto, ON M5H 1J8

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Fax: 416 598 3730

Litigation Investigator

TAB "M"

This is **Exhibit "M"** referred to in the
affidavit of Sydney Edmonds
sworn before me, 6th day of November,
2019

..........

A Commissioner for taking affidavits,
LSD#620620 etc.

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE)	MONDAY, THE 3RD
)	
MR. JUSTICE HAINEY)	DAY OF DECEMBER, 2018

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 QUEBEC 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”)

**ORDER
(APPOINTMENT OF LITIGATION TRUSTEE,
LIFTING OF STAY, AND OTHER RELIEF)**

THIS MOTION, made by the Litigation Investigator, for an Order pursuant to section 11 of the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36., as amended (the “*CCAA*”) and Rule 6.01 of the *Rules of Civil Procedure*, RRO 1990, Reg. 194, as amended (the “*Rules*”) for an order, among other things, appointing a Litigation Trustee to pursue certain claims on behalf of the Applicants and/or any creditors of the Applicants and providing for the process by which a

common issues trial will be heard, was heard this day at 330 University Avenue, 8th Floor, Toronto, Ontario.

ON READING the Monitor's 27th Report to the Court dated November 5, 2018 and the Litigation Investigator's First Report to the Court dated November 5, 2018 (the "**First Report**"), and on reading and hearing the submissions of counsel for the Applicants, counsel for the Monitor, counsel for the Litigation Investigator, and such other counsel for various creditors and stakeholders as were present, no one else appearing although duly served as appears from the Affidavit of Service.

SERVICE

1. THIS COURT ORDERS that this motion is properly returnable today and hereby dispenses with further service thereof.

TERMINATION OF LITIGATION INVESTIGATOR APPOINTMENT

2. THIS COURT ORDERS that the appointment of the Litigation Investigator pursuant to the Amended Litigation Investigator Order dated April 26, 2018 (the "**Amended Litigation Investigator Order**"), is hereby terminated, effective immediately.

CONTINUATION AND EXTENSION OF LITIGATION CREDITORS' COMMITTEE

3. THIS COURT ORDERS that the Creditors' Committee established pursuant to the Amended Litigation Investigator Order dated April 26, 2018 shall continue as currently constituted thereunder to consult with and provide input to the Litigation Trustee Parties in respect of the claims brought by the Litigation Trustee in accordance with this Order.

4. THIS COURT ORDERS that the Litigation Trustee Parties shall meet with the Creditors' Committee on a monthly basis unless otherwise agreed for a particular month by said parties, and which meetings shall be subject to confidentiality and that privilege shall be maintained.

APPOINTMENT OF LITIGATION TRUSTEE

5. THIS COURT ORDERS that the Honourable J. Douglas Cunningham, Q.C. is hereby appointed as an officer of this Court to be the Litigation Trustee over and in respect of the Applicants' claims identified in the First Report of the Litigation Investigator (the "Litigation Assets" or the "Claims") on the terms described herein.

LITIGATION TRUSTEE'S POWERS

6. THIS COURT ORDERS that the Litigation Trustee is hereby empowered, authorized and directed to do all things and carry out all actions necessary to prosecute the Claims, including:

- (a) to engage, give instructions and pay counsel as well as consultants, appraisers, agents, advisors, experts, auditors, accountants, managers and such other persons from time to time on whatever basis the Litigation Trustee may agree, in consultation with the Monitor, to assist with the exercise of his powers and duties. Notwithstanding such authority, the Litigation Trustee shall be under no obligation to consult with its counsel, consultants, appraiser, agents, advisors, experts, auditors, accountants, managers and its good faith determination not to do so shall not result in the imposition of liability on the Litigation Trustee, unless such determination is based on gross negligence or willful misconduct;

- (b) to execute, assign, issue and endorse documents of whatever nature in the name of and on behalf of Sears Canada for any purpose in connection with the Claims or otherwise pursuant to this Order; and
- (c) to pursue the Claims, defend any counter claim, third party claim or other claim brought against Sears Canada, and subject to further Order of the Court, and in consultation with the Monitor, to settle or compromise, abandon, dismiss or otherwise dispose of such proceeding. The authority hereby conferred shall extend to any appeals or applications for judicial review in respect of any order or judgment pronounced in such proceeding.

7. THIS COURT ORDERS that, notwithstanding the generality of paragraph 5^(c) above, the Litigation Trustee is hereby authorized and empowered to commence claims, in his own name or on behalf of the Applicants, against ESL Investments Inc. (and certain affiliates), Edward Lampert, William C. Crowley, William R. Harker, Donald Campbell Ross, Ephraim J. Bird, Deborah E. Rosati, R. Raja Khanna, James McBurney and Douglas Campbell.

8. THIS COURT ORDERS that the stay of proceedings provided for in paragraph 25 of the Initial Order dated June 22, 2017 (the "Initial Order"), is hereby lifted as against William C. Crowley, William R. Harker, Donald Campbell Ross, Ephraim J. Bird, Deborah E. Rosati, R. Raja Khanna, James McBurney and Douglas Campbell for the purposes of permitting the claims referred to in the First Report, including those of the Litigation Trustee, to be commenced and pursued against those persons.

INDEMNITY

9. THIS COURT ORDERS that the Litigation Trustee shall incur no liability or obligation as a result of his appointment or in carrying out of any of the provisions of this Order, save and except for any gross negligence or any willful misconduct. Sears Canada shall indemnify and hold harmless the Litigation Trustee and his designated agents, representatives and professionals with respect to any liability or obligations as a result of his appointment or the fulfillment of his duties in carrying out the provisions of this Order, save and except for any gross negligence or willful misconduct. For clarity, in no event shall the Litigation Trustee be personally liable for any costs awarded against Sears Canada in the action. Any such costs awarded shall be a claim solely against Sears Canada estate. No action, application or other proceeding shall be commenced against the Litigation Trustee as a result of, or relating in any way to his appointment, the fulfillment of his duties or the carrying out of any Order of this Court except with leave of this Court being obtained. Notice of any such motion seeking leave of this Court shall be served upon Sears Canada, the Monitor and the Litigation Trustee at least seven (7) days prior to the return date of any such motion for leave.

10. THIS COURT ORDERS that the indemnity pursuant to paragraphs ⁵⁻⁹ ~~4-8~~ above shall survive any termination, replacement or discharge of the Litigation Trustee. Upon any termination, replacement or discharge of the Litigation Trustee, on not less than 10 business days' notice, all claims against the Litigation Trustee, his designated agents, representatives and professionals for which leave of the Court has not already been sought and obtained shall be, and are hereby forever discharged, other than claims for which a party seeks leave prior to the discharge date to bring a ~~claim against the Litigation Trustee and (i) such leave has been obtained; or (ii) the request for~~ leave remains outstanding.

LITIGATION TRUSTEE'S ACCOUNTS

11. THIS COURT ORDERS that the Litigation Trustee and counsel to the Litigation Trustee (collectively, the "**Litigation Trustee Parties**") shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by Sears Canada as part of the costs of these proceedings. Sears Canada is authorized and directed to pay the accounts of the Litigation Trustee Parties on a bi-weekly basis (or such other interval as may be mutually agreed upon) and, in addition, Sears Canada is hereby authorized to pay to the Litigation Trustee Parties retainers not exceeding \$50,000.00 each, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

12. THIS COURT ORDERS that the Litigation Trustee Parties shall pass their accounts from time to time, and for this purpose the accounts of the Litigation Trustee Parties are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

13. THIS COURT ORDERS that the Litigation Trustee Parties shall be entitled to the benefit of and are hereby granted a charge in the maximum amount of \$500,000.00 (the "**Litigation Trustee's Charge**") on the "**Property**" of Sears Canada as defined by paragraph 4 of the Initial Order, ranking *pari passu* with the Administration Charge (as defined in the Initial Order), in priority to all other security interests, trusts (statutory or otherwise), liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any person, including all charges granted by the Initial Order (other than the Administration Charge) and all other Orders of this Court granted in these proceedings.

14. THIS COURT ORDERS that the filing, registration or perfection of the Litigation Trustee's Charge shall not be required, and that the Litigation Trustee's Charge shall be valid and enforceable for all purposes, notwithstanding any such failure to file, register, record or perfect.

15. THIS COURT ORDERS that the granting of the Litigation Trustee's Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Litigation Trustee's Charge shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declaration of insolvency herein; (b) any application(s) for bankruptcy order(s) issued pursuant to *Bankruptcy and Insolvency Act* (Canada) (the "BIA"), or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; or (d) the provisions of any federal or provincial statutes, and notwithstanding any provision to the contrary in any agreement.

16. THIS COURT ORDERS that the payments made by Sears Canada pursuant to this Order and the granting of the Litigation Trustee's Charge, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

LIMITATION ON ENVIRONMENTAL LIABILITIES

17. THIS COURT ORDERS that nothing herein contained shall require the Litigation Trustee to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the

disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the “**Environmental Legislation**”), provided however that nothing herein shall exempt the Litigation Trustee from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Litigation Trustee shall not, as a result of this Order or anything done in pursuance of the Litigation Trustee’s duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

PROCEDURE

18. THIS COURT ORDERS that a case management judge for the claims brought by the Monitor, the Litigation Trustee, the Pension Administrator, and the Class Action plaintiffs as referred to in the First Report will be appointed as soon as possible.

19. THIS COURT ORDERS that the procedure to be followed for the claims brought by the Monitor, the Litigation Trustee, the Pension Administrator, and the Class Action plaintiffs as referred to in the First Report shall be determined by the case management judge.

GENERAL

20. THIS COURT ORDERS that, without limiting any other provisions of this Order, the Litigation Trustee may from time to time apply to this Court for advice and directions in the discharge of his powers and duties hereunder.

21. THIS COURT ORDERS that the Monitor and the Litigation Trustee may report to the Court on their activities from time to time as any of them may see fit or as this Court may direct.

22. 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 Litigation Trustee and its 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 Litigation Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Litigation Trustee and its agents in carrying out the terms of this Order.

23. THIS COURT ORDERS that the Litigation Trustee be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Litigation Trustee is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

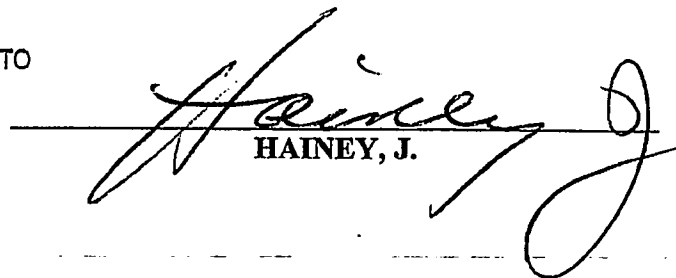
24. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Litigation Trustee and the Monitor and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

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

DEC 04 2018

PER / PAR:

UM


HAINEY, J.

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 QUEBEC 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.

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT TORONTO

ORDER

**(APPOINTMENT OF LITIGATION TRUSTEE,
LIFTING OF STAY, AND OTHER RELIEF)**

LAX O'SULLIVAN LISUS GOTTLIEB LLP

Counsel

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Litigation Investigator

TAB "N"

This is **Exhibit "N"** referred to in the
affidavit of Sydney Edmonds
sworn before me, 6th day of November,
2019

.....*Benjamin*.....

A Commissioner for taking affidavits,
LSO#62062U etc.

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

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

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

February 6, 2019

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of mailing such materials individually as weighed against the anticipated distributions to such creditors; and

- (e) the provisions of the Meetings Order governing the conduct of the Meetings as well as the timing of the service of materials with respect to the Sanction Hearing are customary, reasonable and appropriate.
88. Accordingly, the Monitor respectfully requests that its motion on behalf of the Sears Canada Entities for the Meetings Order be granted.

G. THE MONITOR'S ASSESSMENT OF THE PLAN

89. Subject to the terms of the limited settlement arrangements described above, the Plan provides the Affected Unsecured Creditors with *pro rata* recoveries in accordance with their entitlements as unsecured creditors. In the Monitor's view, the Plan is fair in its treatment of creditors. Where the Plan deviates from such direct pro rata treatment, such deviations are justified for practical and/or commercial reasons.
90. Implementation of the Plan would effect a settlement of various significant matters in the CCAA Proceedings, and as detailed below, would provide substantial incremental benefits to Affected Unsecured Creditors in comparison to the available alternatives.

Joint Plan and Substantive Consolidation

91. With respect to the partial substantive consolidation and the resulting joint plan, for the purposes of the Plan, the Monitor believes that it is appropriate and reasonable in the circumstances—particularly given the independence of the three debtor groups' respective businesses and the intertwined nature of the assets and operations of the Sears Parties and SLH Parties themselves, as detailed above.

Compliance with Statutory Requirements

92. A plan of compromise or arrangement can only be sanctioned by the Court if, among other things, it complies with all statutory requirements.

93. Section 5.1(1) of the CCAA contemplates the compromise of claims against directors provided that such claims do not include those that relate to the contractual rights against one or more directors or that are based in allegations of misrepresentations made by directors to creditors or of wrongful or oppressive conduct by directors. By virtue of the definition of “Non-Released Claims”, section 9.1(a) of the Plan ensures the Plan releases comply with these statutory restrictions.
94. Section 6(3) of the CCAA requires that the Plan provide for the payment in full of certain Crown claims within six months of the Court’s sanctioning of the Plan, while section 6(5) of the CCAA requires that the Plan provide for the payment of certain amounts owing to employees and former employees immediately after sanction. Section 5.8 of the Plan stipulates that any Government Priority Claims and Employee Priority Claims must be paid in compliance with sections 6(3) and 6(5) of the CCAA.
95. Section 6(6) of the CCAA requires that the Plan provide for the payment of certain unpaid amounts relating to pension plans and that the Court be satisfied that such claims can and will be paid. In the present case however, no such amounts that would be payable by the Sears Canada Entities are outstanding, and so this requirement of the CCAA is not engaged.
96. Pursuant to section 6(8) of the CCAA, no plan of compromise or arrangement that provides for payment of an equity claim may be sanctioned by the Court unless all non-equity claims are paid in full. In light of the shortfall on account of the claims of Affected Unsecured Creditors of the Sears Parties and the SLH Parties, Section 5.7 of the Plan provides that no payments will be made on account of equity claims, and stipulates further that such claims will be fully, finally, irrevocably and forever compromised released cancelled are barred. The Monitor notes that in the case of Former Corbeil, amounts will be paid on account of Sears Canada’s equity claim as the shareholder of Former Corbeil as all other claims against Former Corbeil will be paid in full.
97. Pursuant to section 19(2) of the CCAA, a plan of compromise or arrangement may not deal with any claim that relates to the debts or liabilities described in section 19(2) unless the plan explicitly provides for the compromise of such claim and the creditor holding the

claim votes in favour of the plan. Section 5.13 of the Plan provides that claims listed under Section 19(2) of the CCAA shall be Affected Claims for the purposes of the Plan; provided that such claims shall be deemed to be Unaffected Claims to the extent held by any creditors who have not voted in favour of the Plan.

98. Based on the foregoing, the Monitor is not aware of any aspect of the Plan that is not in compliance with the statutory requirements of the CCAA.

Treatment of Pre-Filing Warranty Claims

99. As indicated above, the Plan provides that the holders of Pre-Filing Warranty Claims will not receive payment on account of the allowed value of their claims, but rather (a) establishes the Warranty Reimbursement Pool in an amount equal to the notional distributions that Pre-Filing Warranty Claims would have otherwise received based on the remaining unamortized value of the original purchase price of the Warranties at issue, up to an aggregate amount of \$8,000,000; and (b) grants to any holders of Warranties purchased prior to the Filing Date 180 days from the Plan Implementation Date to establish that they have incurred expenses that would otherwise be reimbursable under the terms of such Warranty, and assert a claim for this expense against the Warranty Reimbursement Pool.
100. In the Monitor's view this approach is reasonable and appropriate in the circumstances as:
- (a) It avoids making large numbers of very small distributions: There are approximately 800,000 Pre-Filing Warranty claim holders. Given the relatively low remaining unamortized value of individual Warranty claims (estimated to be approximately \$125 per claim on average), if the Monitor were to apply the De Minimis Claim Amount threshold, only 32%, or approximately 256,000 claimants, would receive a distribution and each of those distributions, aside from exceptional circumstances, would be very low in value;
 - (b) It addresses a practical difficulty with the reliability of creditor contact details: Although the Sears Canada Entities have records with respect to most of the key

details of the Warranties, such as date of purchase, purchase price, and product covered, given the amount of time that has passed since most of these Warranties were sold, they cannot ensure they have accurate contact details for most Warranty holders. As such, the Monitor expects that if cheques were delivered based upon such records, a high number of those cheques would be returned; and

- (c) *It addresses the damages actually suffered:* Making distributions against expenses actually incurred and reimbursable under the terms of a Warranty compensates those claimants for the actual damage that they have suffered as a result of losing the benefit of that Warranty.

Releases

101. As outlined above, the Plan provides for full and final releases of the Sears Released Parties, the FTI Released Parties, and the Third Party Released Parties, subject to certain exceptions, including that (a) the Plan does not release any of the Non-Released Claims identified above, and (b) does not affect, release or prejudice any of the claims currently being pursued or that may arise in connection with the 2013 Dividend, including the Estate 2013 Dividend Claims, the Pension 2013 Dividend Claim, and the Dealer 2013 Dividend Claim.
102. The releases contained in the Plan are important components of the Plan and rationally connected to it. Among other things:
- (a) pursuant to the Claims Procedure Orders, the Applicants have already granted persons ample opportunity to make claims against the current and former officers and directors. Many of the officers and directors who held those positions at the commencement of these CCAA Proceedings have contributed materially to the resolution of these CCAA Proceedings;
 - (b) the Sears Canada Entities' advisors have assisted with and provided guidance through the restructuring and ultimate liquidation process and these CCAA Proceedings generally;

- (c) the Monitor has overseen every aspect of these CCAA Proceedings from the outset, and together with its legal counsel and the other FTI Released Parties, has developed and would implement the Plan, if approved; and
- (d) each of Employee Representative Counsel and Pension Representative Counsel, as well as the individual employee and pension representatives, were appointed in their roles by this Court, and have contributed throughout these CCAA Proceedings, including towards the achievement of the Pension Resolution and the development and implementation of the Employee and Retiree Claims Procedure.
103. As such, the Monitor views the releases provided for under the Plan as reasonable and justified in the circumstances.

Estimated Recoveries for Affected Unsecured Creditors under the Plan

104. The amounts available for payment to Affected Unsecured Creditors under the Plan remains uncertain because of a variety of unresolved matters in the CCAA Proceedings, including the resolution of remaining unresolved claims, potential realizations of the Sears Canada Entities' remaining real estate property and other minor assets and potential litigation costs and recoveries.
105. The Monitor has estimated the range of the potential amount to be distributed to Affected Unsecured Creditors (calculated as a potential recovery percentage), leaving aside any potential litigation recoveries, as follows:³

<i>Sears Parties</i>	<i>Former Corbeil</i>	<i>SLH Parties</i>
6 - 8%	100%	15 - 20%

³ The estimated recoveries are based on certain forward-looking assumptions relating to each debtor group's cash realizations and claims pool, and include claims that are currently in dispute and subject to final determination. The estimated recovery figures may be subject to change.

Alternatives to the Plan and Estimated Recoveries

106. If the Plan is not implemented and the settlement of the Pension Claims not effected thereby, the Pension Plan Administrator and other Pension Parties would most likely resume their motions asserting, among other things, that:
- (a) the wind-up deficiency under the Pension Plan has a deemed trust priority over the claims of unsecured creditors (the “**Deemed Trust Motion**”);
 - (b) the Pension Plan Administrator has a statutory lien and charge for the amount of the wind-up deficiency in connection with the Pension Plan (the “**Lien Motion**”); and
 - (c) the Sears Canada Entities have joint and several liability for the wind-up deficiency (the “**Joint and Several Motion**”, and together with the Deemed Trust Motion and Lien Motion, the “**Pension Motions**”).
107. Given that the quantum of the wind-up deficiency of the Pension Plan (estimated at approximately \$250 million) is likely to significantly exceed the aggregate of realizations available to creditors (leaving aside any potential litigation recoveries in connection with the 2013 Dividend), if the Deemed Trust Motion or Lien Motion were successful, the Pension Claims would have priority for the full quantum of the wind-up deficiency and unsecured creditors of the Sears Parties would receive no distributions at all.
108. If the Joint and Several Motion were also to succeed along with the Deemed Trust Motion and/or Lien Motion, creditors of each of Former Corbeil and the SLH Parties would similarly receive no distributions. If only the Joint and Several Motion succeeded, and the Deemed Trust Motion and Lien Motion did not, distributions for the creditors of Former Corbeil and the SLH Parties would not be reduced to zero, but would nevertheless still be significantly reduced.
109. Given the impact of the Pension Motion on potential estimated recoveries therefore, no distributions could be made to unsecured creditors generally until such issues were resolved.

110. The impact on estimated distributions to the three different unsecured creditor groups under the different scenarios presented by the potential recommencement of the Pension Motions is summarized in the table below,⁴ in which:

- (a) Scenario 1 contemplates the failure of the Deemed Trust Motion and Lien Motion and the Joint and Several Motion;
- (b) Scenario 2 contemplates the failure of the Deemed Trust Motion and Lien Motion but the success of the Joint and Several Motion;
- (c) Scenario 3 contemplates the success of the Deemed Trust Motion and/or Lien Motion but the failure of the Joint and Several Motion; and
- (d) Scenario 4 contemplates the success of the Deemed Trust Motion and/or the Lien Motion and the success of the Joint and Several Motion.

		Sears Parties	Former Corbeil	SLH Parties	Total
Scenario 1	Pension Parties	23,000,000	-	2,900,000	25,900,000
	Other 3rd Party Creditors	138,200,000	500,000	6,000,000	144,700,000
		161,200,000	500,000	8,900,000	170,600,000
Scenario 2	Pension Parties	19,700,000	28,400,000	8,100,000	56,200,000
	Other 3rd Party Creditors	113,700,000	100,000	600,000	114,400,000
		133,400,000	28,500,000	8,700,000	170,600,000
Scenario 3	Pension Parties	162,100,000	-	8,000,000	170,100,000
	Other 3rd Party Creditors	-	500,000	-	500,000
		162,100,000	500,000	8,000,000	170,600,000
Scenario 4	Pension Parties	132,400,000	30,200,000	8,000,000	170,600,000
	Other 3rd Party Creditors	-	-	-	-
		132,400,000	30,200,000	8,000,000	170,600,000

111. While the Monitor, together with Employee Representative Counsel, opposed the Pension Motions and believes that the merits of such opposition remains strong, particularly considering the impact of a possible intervening bankruptcy, the uncertainty as to the

⁴ The estimated distributions under each scenario are based on the same set of underlying assumptions relating to realizations and claims except for the treatment of the Pension Claim, as described in each scenario. The figures presented are for illustrative purposes only and are subject to change.

outcome of this issue and related delay justifies the resolution proposed in the Plan. Given the potential impact of the outcome of the Pension Motions on the recoveries of both the Pension Plan and other unsecured creditors, it can be expected that these motions would be both pursued and opposed vigorously, and accordingly there would be significant risk, time and expense associated with litigating such motions. Of further significance would be the time associated with pursuing all potential appeals in connection with the Pension Motions, which could delay distributions for potentially years.

112. Employee Representative Counsel previously brought a motion in connection with the Pension Motions (and currently adjourned *sine die* with those motions in light of the Pension Resolution) to lift the stay of proceedings to commence a bankruptcy application for the Sears Canada Entities. However what effect any bankruptcy of the Sears Canada Entities might have on the Deemed Trust Motion and Lien Motions is a matter that one would expect to be similarly vigorously contested by the Pension Parties. A bankruptcy would also not eliminate the Joint and Several Motion. As such, even in a bankruptcy context distributions to unsecured creditors would need to be delayed until these issues were resolved.

The Monitor's Recommendation

113. In the Monitor's view the Plan is a compromise that is reasonable and appropriate and is the best available alternative in the circumstances. Among other things, it:
 - (a) resolves the Pension Motions without the significant time and expense that would otherwise be incurred to litigate such motions;
 - (b) resolves significant further claims against the Sears Canada Entities, including that of the Dealer Representative Plaintiff, without the significant time and expense that would otherwise be incurred to further investigate and adjudicate such claims;
 - (c) enables Affected Unsecured Creditors to opt-in or opt-out of participating in the sharing of the costs and benefits of the Estate 2013 Dividend Claims, which in the

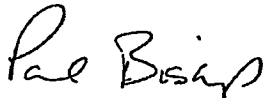
Monitor's view is unlikely to be possible to implement in a bankruptcy context without significant legal and administrative complexity and expense;

- (d) permits post-filing and Pre-Filing Warranty Claims to be addressed in an efficient manner;
 - (e) respects the relative rights, priorities and entitlements of creditors of the Sears Canada Entities generally; and
 - (f) avoids unnecessary intercompany allocation disputes.
114. Accordingly, the Monitor is of the view that the Plan is fair, equitable and reasonable to affected parties, and recommends that Affected Unsecured Creditors vote in favour of the Plan.

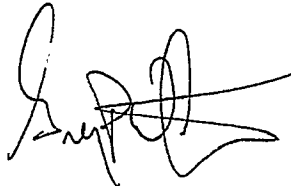
The Monitor respectfully submits to the Court this, its 29th Report.

Dated this 6th day of February, 2019.

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



Paul Bishop
Senior Managing Director



Greg Watson
Senior Managing Director

TAB "O"

This is **Exhibit "O"** referred to in the
affidavit of Sydney Edmonds
sworn before me, 6th day of November,
2019

.....*Belinda*.....

A Commissioner for taking affidavits,
LSO#620620 etc.



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Thomas D. Levy
SVP Chief Actuary Emeritus
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November 6, 2019

STRICTLY PRIVATE & CONFIDENTIAL

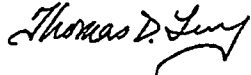
Mr. Andrew Hatnay
Koskie Minsky LLP
20 Queen St W,
Toronto, ON
M5H 3R3

Dear Mr. Hatnay:

1. My name is Thomas D. Levy. I am a Fellow of the Canadian Institute of Actuaries and a Fellow of the Society of Actuaries. I am Senior Vice President and Chief Actuary Emeritus of Segal Consulting, a large actuarial consulting firm with over 1,000 employees in offices throughout Canada and the United States. I am familiar with pensions and other post-retirement benefits in Canada, and have been involved in a number of CCAA proceedings on behalf of participants in pension plans.
2. The Sears Canada plan is registered with the Ontario regulator, the Superintendent of Financial Services. The applicable laws and regulations include (a) minimum ongoing funding obligations by employers and (b) employer obligations in the event of the wind-up of a plan.
3. The Superintendent also administers Ontario's Pension Benefits Guarantee Fund ("PBGF"). The PBGF generally supplements plan assets for Ontario participants in underfunded terminating plans of insolvent employers. With respect to the Sears Canada plan, the PBGF guarantees payment in full of the first \$1,500 per month of accrued pension entitlements. There are no such guarantees for benefits accrued as the result of employment in other Canadian jurisdictions.
4. Any proceeds from litigation against various defendants initiated by Morneau Shepell, the replacement administrator of the plan appointed by the Superintendent, are payable in the first instance to the fund of the plan. No litigation proceeds are immediately payable to plan participants.

5. Ultimately, Morneau Shepell will allocate those proceeds along with any other plan assets to (a) administration expenses, (b) reduced funding from the PBGF, (c) benefits to non-Ontario participants, and (d) benefits in excess of PBGF guaranteed benefits to Ontario participants.

Sincerely yours,

A handwritten signature in cursive script that reads "Thomas D. Levy". The signature is written in black ink and is positioned above the printed name.

Thomas D. Levy

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

ESL INVESTMENTS INC. et. al.

Defendants

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

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

Proceeding commenced at Toronto

AFFIDAVIT OF SYDNEY EDMONDS

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Representative Counsel to the Retirees

TO: The Litigation Service List

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

and

ESL INVESTMENTS INC. et. al.

Defendants

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

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

Proceeding commenced at Toronto

**RESPONDING MOTION RECORD OF
REPRESENTATIVE COUNSEL
TO THE RETIREES**
(Motion by defendants to examine retirees Ken
Eady and William Turner,
returnable November 15, 2019)

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Representative Counsel to the Retirees

TO: The Litigation Service List