

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

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

SEVENTEENTH REPORT OF FTI CONSULTING CANADA INC., AS MONITOR

April 11, 2018

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

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

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

APPLICANTS

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

A. INTRODUCTION

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

- (a) appointed FTI Consulting Canada Inc. as monitor of the Sears Canada Entities (the “**Monitor**”) in the CCAA Proceedings;
 - (b) granted an initial stay of proceedings against the Sears Canada Entities until July 22, 2017;
 - (c) authorized the Sears Canada Entities to enter into the DIP Credit Agreements and access funds available under the facilities provided under these agreements; and
 - (d) scheduled a comeback motion for July 13, 2017 (the “**Comeback Motion**”).
3. Following the Comeback Motion, the Court extended the Stay Period to October 4, 2017. In addition, the following orders were issued:
- (a) the amended and restated Initial Order;
 - (b) an order setting out the terms of the appointment of Ursel Phillips Fellows Hopkinson LLP as representative counsel for the non-unionized active and former employees of the Sears Canada Entities (“**Employee Representative Counsel**”);
 - (c) an order setting out the terms of the appointment of Koskie Minsky LLP as representative counsel to the non-unionized retirees and non-unionized active and former employees of the Sears Canada Entities with respect to pension and post-employment benefit matters (“**Pension Representative Counsel**”);
 - (d) an order authorizing the eventual suspension of special payments under the Sears Canada Pension Plan, certain payments in connection with supplemental pension plans and certain payments under post-retirement benefit plans pursuant to a term sheet agreed to by the Ontario Superintendent of Financial Services, as Administrator of the Pension Benefits Guarantee Fund (the “**Superintendent**”), Employee Representative Counsel, Pension Representative Counsel, each of their respective representatives, and the Sears Canada Entities; and

- (e) an order approving a sale and investor solicitation process (the “**SISP**”) to solicit interest in potential transactions, including investment and liquidation proposals, involving the business, property, assets and/or leases of the Applicants.
4. On July 18, 2017, the Court issued an order approving an agreement and a process for the liquidation of inventory and FF&E at certain initial closing Sears Canada locations, which liquidation process is now completed.
 5. On October 13, 2017, the Court issued, among other orders, an order (a) approving an agreement and a process (the “**Second Liquidation Process**”) for the liquidation of the inventory and FF&E at all remaining Sears Canada retail locations, which liquidation commenced shortly thereafter and is now completed.
 6. On December 8, 2017, the Court issued an Order (the “**Claims Procedure Order**”) approving a claims process for the identification, determination and adjudication of claims of creditors against the Sears Canada Entities and their Officers and Directors; and (ii) an Omnibus Approval and Vesting Order (the “**Omnibus Approval and Vesting Order**”) authorizing the Applicants to complete sales of residual assets (“**Residual Assets**”) not exceeding \$5 million in any one transaction without seeking further Court approval, and vesting those residual assets in the applicable purchaser free and clear of the claims and encumbrances against those assets.
 7. The Claims Procedure Order also directed the Monitor to assess in detail, with reasonably sufficient particulars and analysis, the validity and quantum of all intercompany claims, and to serve on the Service List and file with the Court a report detailing the work performed (the “**Intercompany Claims Report**”). The Monitor served the Intercompany Claims Report on the Service List on April 2, 2018 and filed it with the Court.
 8. On February 22, 2018, the Court issued an Employee and Retiree Claims Procedure Order (the “**E&R Claims Procedure Order**”) approving a process for the identification, determination and adjudication of claims of employees and retirees of the Sears Canada Entities.

9. On March 2, 2018, the Court issued an Order appointing Lax O’Sullivan Lisus Gottlieb LLP as Litigation Investigator (the “**Litigation Investigator Order**”), with a mandate to identify and report on certain rights and claims that the Sears Canada Entities and/or any creditors of the Sears Canada Entities may have against any parties.
10. The liquidation of assets at Sears Canada’s retail locations is now completed, all retail locations are closed, and leases in respect of such locations have been disclaimed. The monetization of Residual Assets is complete save for certain FF&E located at Sears’ data centres, which is expected to be sold by April 30, 2018, and certain domain names. The other major assets of the Sears Canada Entities that remain to be realized upon are the Remaining Real Estate Assets (as defined and discussed later in this Report).
11. Since the date of the Comeback Motion, the stay period has been extended a number of times and currently expires on April 27, 2018.
12. In connection with the CCAA Proceedings, the Monitor has provided sixteen reports and six supplemental reports (collectively, the “**Prior Reports**”), and prior to its appointment as Monitor, FTI also provided to this Court a pre-filing report of the proposed Monitor dated June 22, 2017 (the “**Pre-Filing Report**”). The Pre-Filing Report, the Prior Reports and other Court-filed documents and notices in these CCAA Proceedings are available on the Monitor’s website at cfcanada.fticonsulting.com/searscanada/ (the “**Monitor’s Website**”).

B. PURPOSE

13. The purpose of this seventeenth report of the Monitor (the “**Seventeenth Report**”) is to provide the Court with information regarding:
 - (a) the current status of various matters in the CCAA Proceedings, including the activities of the Monitor and the Sears Canada Entities since the status and activities updates outlined in the Fourteenth Report of the Monitor dated March 1, 2018;

- (b) the Monitor’s request for an order (the “**Interim Stay Extension Order**”) briefly extending the Stay Period by two weeks to May 11, 2018 (as set out below, the Applicants intend to return for a further extension of the Stay Period in early May, subject to confirmation of court availability);
- (c) the Monitor’s request for an order (the “**Second Fee Approval Order**”) approving the fees and disbursements of the Monitor and its counsel, Norton Rose Fulbright Canada LLP (“**NRFC**”), for the periods set out in the Fee Affidavits (as defined below); and
- (d) the Monitor’s comments and recommendations in connection with the foregoing.

C. TERMS OF REFERENCE

- 14. In preparing this Seventeenth Report, the Monitor has relied upon audited and unaudited financial information of the Sears Canada Entities, the Sears Canada Entities’ books and records, certain financial information and forecasts prepared by the Sears Canada Entities and discussions and correspondence with, among others, the senior management (“**Management**”) of, and advisors to, the Sears Canada Entities (collectively, the “**Information**”).
- 15. Except as otherwise described in this Seventeenth Report:
 - (a) the Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the *Chartered Professional Accountants of Canada Handbook*; and
 - (b) the Monitor has not examined or reviewed the financial forecasts or projections referred to in this Seventeenth Report in a manner that would comply with the procedures described in the *Chartered Professional Accountants of Canada Handbook*.

16. Future-oriented financial information reported in or relied on in preparing this Seventeenth Report is based on Management's assumptions regarding future events. Actual results will vary from these forecasts and such variations may be material.
17. The Monitor has prepared this Seventeenth Report in connection with the Monitor's motions for the Interim Stay Extension Order and the Second Fee Approval Order. The Seventeenth Report should not be relied on for any other purpose.
18. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars.
19. Capitalized terms not otherwise defined herein have the meanings ascribed to them in the following documents filed as part of the CCAA Proceedings: (i) the affidavits of Mr. Billy Wong, the Chief Financial Officer of Sears Canada; (ii) the affidavit of Ms. Becky Penrice, Executive Vice-President and Chief Operating Officer of Sears Canada; (iii) the affidavit of Mr. Philip Mohtadi, General Counsel and Corporate Secretary of Sears Canada; and (iv) the Prior Reports.

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

20. The current status of various matters in the CCAA Proceedings and the activities of the Sears Canada Entities and the Monitor since the date of the Fourteenth Report are summarized below.

Claims Process

21. Since the issuance of the Claims Procedure Order and the E&R Claims Procedure Order (collectively, the "**Claims Procedure Orders**"), the Monitor and the Sears Canada Entities have provided the notices and information that were required to be provided pursuant to the Claims Procedure Orders.
22. The Monitor and the Sears Canada Entities have also responded, and continue to respond, to a large volume of emails and telephone messages received from creditors of the Sears Canada Entities, including suppliers, vendors, landlords, employees and retirees, regarding the processes contemplated pursuant to the Claims Procedure Orders. The

Monitor estimates that, to date, it has responded to approximately 4000 emails and telephone messages.

23. On March 22 and 23, 2018, the Monitor and the Sears Canada Entities assisted Employee Representative Counsel in the presentation of live webinars (in English and in French) to employees who fall under the scope of engagement of Employee Representative Counsel, providing those employees with information on the E&R Claims Procedure Order and the process and methodologies contemplated thereunder.
24. Subject to extended dates that may apply to certain Restructuring Period Claims (as defined in the Claims Procedure Orders) and the May 7, 2018 Notice of Proposed Revision Bar Date¹ (as defined in the E&R Claims Procedure Order), the various claims bar dates under the Claims Procedure Orders have now passed.
25. The Monitor and the Sears Canada Entities are working diligently to review the Post-Filing trade claims received and reconcile them with the books and records of the Sears Canada Entities. The Sears Canada Entities, after review by, and with the concurrence of, the Monitor, are issuing payments on account of such claims if they are determined to be valid, accurate and outstanding.
26. As of the date of this Report, and in connection with the Claims Procedure Order, the Monitor has received in excess of 2000 proofs of claim in amounts totalling not less than \$36 billion. This amount includes a significant number of claims where the claimant has filed multiple claims for the same amount under different claim types (e.g. Pre-Filing, Post-Filing, Restructuring and D&O) or against multiple Sears Canada Entities; the Monitor expects this amount to be substantially reduced following the eradication of duplicates and the assessment and determination of the claims submitted.
27. In addition, in connection with the E&R Claims Procedure Order, the Monitor has compiled information in respect of the claims of 22,000 employees and former

¹ For Employees and Retirees who wish to submit Requests for Correction in respect of the Personal Information used to determine their Termination Claims and Retiree Benefit Claims, respectively.

employees and 17,000 retirees; the aggregate amount of these claims is currently expected to total \$900 million.

28. The Monitor, with the assistance of the Sears Canada Entities and counsel, has begun, but not completed, a summary review of proofs of claims filed pursuant to the Claims Procedure Orders.
29. The Monitor intends to provide more detail on the claims filed against the Sears Canada Entities and their respective Directors and Officers in its next report to the Court in connection with the Sears Canada Entities' motion for a further extension of the Stay Period (the "**May Motion**").

Second Liquidation Process

30. The Second Liquidation Process is now completed.
31. Sears Canada, the Monitor and the agent under the Second Liquidation Process have completed the final reconciliation process to determine any additional amounts payable by or to the agent or Sears Canada under the Second Liquidation Process.
32. On March 22, 2018, the Agent made a payment to Sears Canada in the amount of approximately \$39 million, in full and final settlement of amounts owing in respect of the final reconciliation under the Second Liquidation Process.

Real Estate Sale Process

33. Shortly following the approval of the SISP on July 12, 2017, Sears Canada, with the assistance of BMO Nesbitt Burns Inc. as financial advisor to the Sears Canada Entities ("**BMO**"), sought offers for the purchase of Sears Canada's remaining owned real property.
34. Expressions of interest were received for Sears Canada's owned real property by the August 31st bid deadline under the SISP.
35. Subsequent to the bid deadline, transactions for the sale of the Winnipeg Garden City and the Upper Canada Home Store locations were approved by the Court and completed.

36. While expressions of interest were received for Sears Canada's remaining real estate assets, Sears Canada, in consultation with BMO, the Monitor, Pension Representative Counsel, Employee Representative Counsel, the Superintendent and the Plan Administrator, and their respective financial and/or real estate advisors, determined that the best opportunities to monetize the remaining real estate assets would be available only after additional due diligence, including environmental studies, were completed and related materials were made available to potential purchasers. The above noted parties were identified as appropriate consultation parties by Sears Canada and the Monitor as they represent a significant portion of the unsecured creditor class and do not have conflicting interests as they would have no interest in acquiring any of the Remaining Real Estate Assets for their own benefit. All of these consultation parties have entered into non-disclosure agreements with Sears Canada.
37. Sears Canada continues to own the following real estate assets:
- (a) Upper Canada Mall full-line store (Newmarket, ON);
 - (b) Distribution center (Belleville, ON);
 - (c) Fleur de Lys full-line store (Quebec City, QC);
 - (d) Windsor full-line store (Windsor, ON);
 - (e) Peterborough full-line store (Peterborough, ON);
 - (f) Barrie full-line store (Barrie, ON);
 - (g) Trois-Rivières full-line store (Trois-Rivières, QC);
 - (h) Place Vertu liquidation store (Montréal, QC);
 - (i) Lévis full-line store (Lévis, QC);
 - (j) Charlottetown store (Charlottetown, PEI);
 - (k) Chicoutimi residual land (Chicoutimi, QC);

- (l) Edmonton residual land (Edmonton, AB); and
 - (m) Sainte-Agathe-des-Monts residual land (Sainte-Agathe-des-Monts, QC),
- (collectively, the “Remaining Real Estate Assets”).
38. As of February 7, 2018, the additional required due diligence information had been obtained and Sears Canada, in consultation with BMO, the Monitor, along with the consultation parties indicated above, determined that the sale process for the Remaining Real Estate Assets should continue.
39. On February 7, 2018, BMO delivered an updated sale process letter (the “**Updated Sale Process Letter**”) to those parties who previously expressed an interest in the Remaining Real Estate Assets under the SISP and parties who had contacted BMO expressing interest subsequent to the original bid deadline. BMO also delivered the Updated Sale Process Letter to potentially interested parties identified by the real estate advisor to the Superintendent. The Updated Sale Process Letter solicited bids for all of the Remaining Real Estate Assets other than the assets located in Charlottetown, Edmonton, Chicoutimi and Sainte-Agathe-des-Monts (which properties are listed by CBRE Limited and are discussed below). The Updated Sale Process Letter provided a bid deadline of March 7, 2018 at 5:00 p.m. (Eastern).
40. On March 7, 2018, BMO and the Monitor received a number of competing offers on the Remaining Real Estate Assets that were the subject of the Updated Sale Process Letter. BMO and the Sears Canada Entities have engaged in negotiations with potential purchasers in respect of those assets. Following consultation with the Monitor and the above-noted stakeholders and the negotiation of final purchase agreements, the Sears Canada Entities intend to return to Court to seek approval of the sale of Remaining Real Estate Assets.
41. A separate sale process has been commenced for the real property located in Charlottetown, Edmonton, Chicoutimi and Sainte-Agathe-des-Monts. These locations are being marketed under an Exclusive Sales Listing Agreement with CBRE Limited pursuant to which CBRE Limited acts as sale advisor. This alternative structure was

selected for the Charlottetown, Edmonton and Chicoutimi assets as these assets can be sold separately and likely in a more expedited manner through this process, without affecting bids for the other Remaining Real Estate Assets. CBRE Limited was selected as the appropriate agent following a competitive bid process and in consultation with the consultation parties. The Sainte-Agathe-des-Monts residual land was identified by the Sears Canada Entities following this selection process and was added to CBRE Limited's mandate due to the similarities with the Edmonton and Chicoutimi assets. Subject to the receipt of environmental reports, and in consultation with the Monitor and the above-noted stakeholders, the Sears Canada Entities are hopeful that transactions in respect of these 4 properties should be completed in the near term.

42. As noted above, Employee Representative Counsel, Pension Representative Counsel, the Superintendent, the Plan Administrator and their respective advisors have been, and continue to be, consulted extensively in the development of the updated process to market the Remaining Real Estate Assets.

Residual Asset Sales

43. The Applicants have now substantially completed the sales of all of the Residual Assets. The only remaining Residual Assets to be monetized are:
 - (a) certain FF&E at Sears' two data centres located in the Greater Toronto Area. The leases in respect of these data centres have been disclaimed by the Sears Canada Entities effective April 30, 2018. Any transaction to sell the FF&E is anticipated to be completed by that date; and
 - (b) certain domain names.

Employee Matters

44. As of the date of this Seventeenth Report, the Applicants have 58 remaining employees including 42 employees at Sears Canada's current headquarter offices in Toronto, and 16 employees located at, or overseeing the Remaining Real Estate Assets. Following the sale of the Remaining Real Estate Assets and as the need for Management to assist the

Monitor in the claims process contemplated by the Claims Procedure Orders is reduced, the Monitor expects that the number of employees will continue to decrease.

45. To date, the Monitor has received 63 applications for assistance from the Employee Hardship Fund, of which 45 have been approved. So far, approximately \$102,000 has been paid out of the Employee Hardship Fund. The time period for applications to the Employee Hardship Fund currently expires on April 27, 2018. The Monitor believes the application period for the Employee Hardship Fund should be extended in a manner consistent with the proposed extension of the Stay Period.
46. The Monitor, the Sears Canada Entities and Employee Representative Counsel are in discussions with representatives of the Federal Government in connection with the timing and availability of the *Wage Earning Protection Program* (“**WEPP**”) to the former employees of the Sears Canada Entities who qualify for the assistance provided under that program.
47. The Monitor understands that pursuant to the 2018 Federal budget, the Federal Government announced an increase of the maximum amount available to qualifying employees under the WEPP. However, the Monitor also understands that the increase is likely not to be in effect for several months. The Monitor, the Sears Canada Entities and Employee Representative Counsel are working together to ensure that qualifying employees receive the most favourable treatment available to them under the WEPP in the circumstances.

Pension Wind-Up

48. The Monitor previously reported that on November 10, 2017, the Superintendent issued a Notice of Intended Decision advising that it intended to make an order for the wind up of the Sears Canada Pension Plan, effective October 1, 2017 unless a request for hearing with the Financial Services Tribunal (the “**FST**”) was submitted within 30 days of the Notice of Intended Decision.
49. On December 7, 2017, counsel to 1291079 Ontario Limited (“**129**”), a creditor of Sears Canada, delivered a letter to the Service List identifying a concern that the proposed

wind-up of the Sears Canada Pension Plan may have the effect of altering priorities among creditors. The Monitor understands 129 delivered a Request for Hearing Form to the FST requesting a hearing to challenge the intended decision to wind up the Sears Canada Pension Plan. On or about February 6, 2018, 129 delivered its pre-hearing conference brief in the FST proceeding, a copy of which was attached to the Monitor's Fourteenth Report dated March 1, 2018.

50. On March 28, 2018, 129 withdrew its request for a hearing and on March 29, 2018, the Superintendent issued an order winding-up the Sears Canada Pension Plan, effective October 1, 2017. A copy of the Superintendent's order is attached as **Appendix "A"** to this Seventeenth Report.

Intercompany Claims Report

51. On April 2, 2018, the Monitor issued its Sixteenth Report, which constituted the Monitor's Intercompany Claims Report required by the Claims Procedure Order. A copy of the Sixteenth Report containing the Monitor's findings and conclusions can be found on the Monitor's Website.
52. In summary, the following groups of intercompany claims were identified:
 - (a) pre-filing and post-filing claims that arose in the normal course of business and often on a recurring basis from intercompany transactions totalling approximately \$94 million and \$18 million, respectively; and,
 - (b) two claims that arose from unique and identifiable intercompany transactions that were completed outside of the normal course of business totalling approximately \$341 million.
53. At the time of writing the Intercompany Claims Report, professional fees, DIP repayment obligations, and DIP fees and interest had not yet been allocated amongst the Sears Canada Entities and were therefore not yet accounted for as part of the Intercompany Claims. Effectively, all of these costs were, or are, continuing to be paid by Sears

Canada with the exception of three payments of professional fees and one DIP repayment that were paid using sale proceeds received by Corbeil from the sale of its business.

54. The Monitor undertook a review of these costs and developed a proposed allocation methodology outlined in detail in the Sixteenth Report that it believes equitably allocates a portion of these costs to Corbeil and the SLH Group. The allocations resulted in five additional post-filing intercompany claims amongst Sears Canada, SLH, and Corbeil totalling approximately \$50 million. The Monitor has discussed the proposed approach with Sears Canada and its counsel who are of the view that this approach is reasonable. Further allocation to other Sears Canada Entities can be undertaken if it becomes necessary.
55. For the reasons outlined in the Sixteenth Report, the Monitor performed a targeted level of review of the Intercompany Claims that it believes is sufficient at present given the specific circumstances of the Sears Canada Entities, distribution scenarios and the potential consolidation of certain Applicants, access to information limitations, and the level of potential creditor recoveries. For clarity, the Monitor did not complete an exhaustive review of all individual intercompany transactions, and the Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Intercompany Claims in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants of Ontario Handbook. Should the Monitor's view or the circumstances of the Applicants change, the Monitor may see fit to prepare a supplement to the Sixteenth Report, which it will serve on the Service List and file with the Court.

Litigation Matters

56. In the Eleventh Report of the Monitor dated January 15, 2018, the Monitor identified certain Transactions of Interest to be further investigated to determine if remedies should be pursued by the Monitor in connection with such transactions pursuant to Section 36.1 of the CCAA. The Monitor, together with its counsel, have continued to review documentation and information in connection with these Transactions of Interest, including, without limitation, financial data, legal documentation, correspondence and

other information in the possession of Sears Canada, and have interviewed selected individuals who were believed to have information relevant to the review of these transactions. The Applicants have cooperated to facilitate such reviews and interviews.

57. The Monitor has not reached any definitive conclusions at this stage regarding any next steps to pursue remedies in connection with the Transactions of Interest or any other pre-filing transactions the Applicants may have entered into. As such, the Monitor believes the specific details of the reviews undertaken to date must remain confidential. However, the Monitor believes that it is appropriate to provide a summary of the reviews undertaken to date to provide information to creditors on the scope of the overall review process, which has been extensive. The Monitor's review has included:

- (a) preliminary analysis of the Applicants' financial position at the time of the Transactions of Interest;
- (b) organization of electronic documents received beginning in October 2017 from Sears Canada that may be relevant to the Transactions of Interest;
- (c) establishing procedures to limit the review of the information received based upon relevance using a variety of electronic document review tools;
- (d) continuing review of the foregoing documents that are believed to be potentially relevant to the Monitor's consideration of the Transactions of Interest; and
- (e) consideration of the law applicable to, and remedies that may be appropriate in connection with, the Transactions of Interest.

58. In view of the high value of the Transactions of Interest, the potential recoveries to the Applicants' creditors should remedies in connection with the Transactions of Interests be successfully pursued, and the likely high cost of pursuing such remedies, a thorough review of all of the foregoing matters has been necessary in the circumstances to ensure that any final decision of the Monitor to pursue or not pursue remedies in connection with these transactions is made based upon the best available information and analysis in the circumstances.

59. The Monitor has also commenced discussions with the Litigation Investigator appointed by the Court pursuant to the Litigation Investigator Order to coordinate the investigations that are within the scope of the Litigation Investigator's mandate with the work of the Monitor and has also participated in discussions between counsel to the Applicants and the Litigation Investigator regarding the sharing of information between the Applicants and the Litigation Investigator. As a result of those discussions, it became clear that certain amendments to the Litigation Investigator Order would be necessary to facilitate the sharing of information by the Applicants with the Litigation Investigator. As a result, the Litigation Investigator and the Applicants are proposing certain modifications to the Litigation Investigator Order. The Monitor is supportive of these modifications. A copy of the Litigation Investigator Order identifying these proposed modifications is attached hereto as **Appendix "B"**. The Monitor understands that the proposed modifications to the Litigation Investigator Order will be sought at the April 18, 2018 Court hearing.

Path Forward

60. The Sears Canada Entities believe that the CCAA Proceedings are currently at a critical juncture. The majority of the asset realizations have been completed and the most significant claims bar dates have passed. As such, during the week of March 26, 2018, the Monitor and the Sears Canada Entities met with counsel who have been active in the CCAA Proceedings and who represent clients with significant claims in the estate including landlords, Employee Representative Counsel, Pension Representative Counsel, the Superintendent, the Plan Administrator, 129, and their respective advisors to discuss the next steps towards the completion of these CCAA Proceedings, including the potential resolution of significant outstanding creditor claims in the context of a mediation (the "**Mediation**"), and completion of the distributions to the creditors of the Sears Canada Entities through a possible plan of compromise or arrangement pursuant to the CCAA.
61. During the week of April 2, 2018, all of those parties confirmed to the Monitor that they wished to participate in a Mediation.

62. Details regarding the Mediation have yet to be settled, including the dates and length of the Mediation, the participants, the procedures to be followed and an agreed upon list of the issues to be mediated.
63. So far, the stakeholder groups named above are working cooperatively with each other, the Monitor and the Sears Canada Entities to agree on those details. To the extent that an agreement cannot be reached in a reasonable period of time, the Monitor intends to return to this Court for advice and direction.
64. Parties who wish to discuss their representation in the Mediation with the Monitor are invited to communicate with the Monitor through its counsel, NRFC.

Other Activities of the Monitor

65. The Monitor has also undertaken the following activities:
 - (a) monitored the Sears Canada Entities' receipts and disbursements;
 - (b) maintained the current Service List for the CCAA Proceedings and posted regular updates of the Service List to the Monitor's Website;
 - (c) supervised and assisted in activities related to the sale of the Residual Assets and the Remaining Real Estate Assets;
 - (d) worked with Employee Representative Counsel, Pension Representative Counsel and their advisors to respond to questions and provide information to their respective constituents;
 - (e) worked with the Sears Canada Entities to assist in appropriately accounting for pre-filing and post-filing obligations;
 - (f) attended numerous meetings and teleconferences with stakeholders, their counsel and advisors;
 - (g) attended regular board meetings and teleconferences;

- (h) planned and worked with the Sears Canada Entities to facilitate an orderly wind-down of their operations;
- (i) monitored the Second Liquidation Process;
- (j) responded to requests by former employees for financial assistance under the Employee Hardship Fund;
- (k) continued to operate and monitor its telephone hotline and email account for stakeholder inquiries and to respond to such inquiries; and
- (l) undertaken extensive work in connection with the claims processes contemplated pursuant to the Claims Procedure Orders, including, assisting the Sears Canada Entities in preparing Termination Claim Statements and Retiree Benefit Claim Statements for the 22,000 Employees and 17,000 Retirees, tracking a high volume of claims filed to date, responding to extensive inquiries from creditors, building and administering an electronic portal for the filing of claims by creditors, including employees, and summarily reviewing proofs of claims received.

E. RECEIPTS AND DISBURSEMENTS FOR THE SIX WEEK PERIOD ENDING MARCH 31, 2018

66. The Sears Canada Entities' actual net cash inflow on a consolidated basis for the six-week period ended March 31, 2018 was approximately \$19.1 million, compared to a forecast net cash inflow of \$41.8 million disclosed in the Monitor's Eleventh Report dated January 15, 2018, resulting in a negative variance of approximately \$22.7 million as indicated in the table below:

VARIANCE REPORT	Actual	Forecast	Variance
(CAD in Millions)	For the 6 Week Period Ending March 31, 2018		
Receipts	38.0	66.9	(28.9)
Operating Disbursements			
Payroll and Employee Related Costs	(4.8)	(5.5)	0.7
Merchandise Vendors	3.0	-	3.0
Non-Merchandise Vendors	(4.4)	(5.5)	1.1
Rent and Property Taxes	(2.7)	(0.6)	(2.1)
Sales Taxes	(3.1)	(6.8)	3.7
IT Costs	(1.0)	(0.9)	(0.1)
Total Operating Disbursements	(13.0)	(19.3)	6.3
Net Operating Cash Inflows / (Outflows)	25.0	47.6	(22.6)
Professional Fees	(5.9)	(5.8)	(0.1)
Net Cash Inflows / (Outflows)	19.1	41.8	(22.7)
Cash			
Beginning Balance	113.3	23.9	89.4
Net Cash Inflows / (Outflows)	19.1	41.8	(22.7)
Ending Balance	132.4	65.7	66.7

67. Explanations for the key variances are as follows:

- (a) the negative variance of \$28.9 million in receipts consists of the reversal of a positive timing variance with respect to the Second Liquidation Process as reported in the Fourteenth Report of the Monitor totalling \$45.3 million, offset by a positive permanent difference of \$16.4 million primarily as a result of higher-than-forecast receipt of the profit-sharing amount from the third-party liquidator agent;
- (b) the positive variance in Payroll and Employee Related Costs of \$0.7 million consists primarily of a timing difference that is expected to reverse in a future period;
- (c) the positive variance in Merchandise Vendor disbursements of \$3.0 million consists of a permanent difference due to refunds and collections received from

vendors which were not included in the forecast due to uncertainty of the amounts and timing of these refunds;

- (d) the positive variance in Non-Merchandise Vendor disbursements of \$1.1 million consists of a positive permanent difference of \$2.6 million due to lower-than-forecast vendor payments and refunds received from non-merchandise vendors, offset by a negative timing difference of \$1.5 million due to the reversal of positive timing differences reported in the Fourteenth Report of the Monitor;
 - (e) the negative variance in Rent and Property Taxes of \$2.1 million is a timing difference due to scheduled rent and property tax payments, and is a reversal of the positive timing difference as indicated in the Fourteenth Report of the Monitor; and
 - (f) the positive variance in Sales Taxes of \$3.7 million is a permanent difference as a result of input tax credits related to the Second Liquidation Process being applied to reduce the Sears Canada Entities' sales tax payable.
68. The Sears Canada Entities' cumulative receipts and disbursements since the commencement of CCAA proceedings until the week ended March 31, 2018 are reflected in the table below:

CUMULATIVE RECEIPTS AND DISBURSEMENTS	
(CAD in Millions)	
For the 41 Week Period Ending March 31, 2018	
Receipts	1,245.5
Operating Disbursements	
Payroll and Employee Related Costs	(260.0)
Merchandise Vendors	(292.4)
Non-Merchandise Vendors	(174.7)
Rent and Property Taxes	(84.7)
Sales Taxes	(71.7)
Pension	(14.7)
IT Costs	(25.4)
Recovery of Expenses from Agent	83.6
Capital Expenditures	(0.8)
Total Operating Disbursements	(840.8)
Net Operating Cash Inflows / (Outflows)	404.7
Professional Fees	(60.9)
Repayments of Existing Credit Facilities	(283.3)
DIP Fees and Interest Paid	(19.7)
Net Cash Inflows / (Outflows)	40.8
Cash	
Beginning Balance	126.5
Net Cash Inflows / (Outflows)	40.8
DIP Draws / (Repayments)	(32.0)
Others incl. FX Valuation	(2.9)
Ending Balance	132.4

69. The Initial Order allowed the Sears Canada Entities to continue to utilize their existing Cash Management System as described in the First Wong Affidavit dated June 22, 2017 and the Pre-Filing Report. After the commencement of the CCAA Proceedings, the Sears Canada Entities have continued to utilize their Cash Management System in a manner consistent with past practice.

F. STAY EXTENSION

70. The Stay Period currently expires on April 27, 2018.

71. The Applicants intend to return to Court, subject to confirmation of court availability, in early May to provide a further update to the stakeholders and the Court on the proposed path forward for these proceedings, and seek an extension to the Stay Period that will reflect such proposed path forward. The proposed path forward will be informative when determining the required duration of any further stay extension that may be granted at that time.
72. In the meantime, the Monitor is seeking a brief two-week extension of the Stay Period to May 11, 2018. The Monitor is seeking the proposed Interim Stay Extension Order to allow for continued stakeholder consultations on the path forward and the proposed Mediation. While the Applicants may be in a position to provide more detailed information by the expiry of the current Stay Period on April 27th, the Monitor understands that it will not be possible to schedule a hearing in connection with these matters at that time. The Monitor is currently confirming availability for a hearing on these matters in early May prior to the expiry of the proposed extended Stay Period. The Applicants require the continued stability provided by the Court-ordered stay of proceedings in order to pursue the proposed path forward.
73. The Sears Canada Entities no longer have any operations and currently hold cash balances of approximately \$132.4 million. The extension of the Stay Period sought by the Monitor pursuant to the Interim Stay Extension Order covers a period of 14 days. In the circumstances, and consistent with the approach taken at similar stages of other CCAA cases, the Monitor has not prepared weekly cash forecasts for the proposed two-week extension of the Stay Period. The Monitor intends to prepare Revised Cash Flow Forecasts in connection with the May Motion.
74. The Sears Canada Entities have sufficient liquidity to fund the CCAA Proceedings for the next two weeks, and beyond.
75. The Monitor believes that the Applicants have acted and continue to act in good faith and with due diligence and that circumstances exist that make an extension of the Stay Period appropriate.

G. FEE APPROVAL MOTION

76. The Monitor and NRFC have each maintained detailed records of their time and disbursements with respect to these CCAA Proceedings.
77. Pursuant to an order made on January 22, 2018 (the “**First Fee Approval Order**”), this Court approved the fees and disbursements of the Monitor and NRFC for the periods described in the First Fee Approval Order.
78. The Monitor and NRFC are now seeking the approval of their fees and disbursements since the First Fee Approval Order.
79. Attached as **Exhibit “A”** to the Affidavit of Paul Bishop sworn April 11, 2018 that is attached as **Appendix “C”** to this Seventeenth Report (the “**Bishop Affidavit**”) are copies of the invoices rendered by the Monitor in respect of these CCAA Proceedings for the period from January 1, 2018 to March 31, 2018. For this period, the Monitor’s accounts total \$3,838,248.00 in fees, \$140,321.70 in disbursements and \$517,214.06 in HST for a total amount of \$4,495,783.76. **Exhibit “C”** to the Bishop Affidavit contains a summary of the personnel, hours and hourly rates charged by the Monitor in respect of these proceedings during the applicable period.
80. Attached as **Appendix “D”** to this Seventeenth Report is the Affidavit of Orestes Pasparakis, sworn April 11, 2018 (the “**Pasparakis Affidavit**” and, together with the Bishop Affidavit, the “**Fee Affidavits**”). For the period from December 18, 2017 to March 18, 2018, NRFC’s accounts total \$2,044,712.00 in fees, \$23,032.81 in disbursements and \$268,718.21 in HST for a total amount of \$2,336,463.02. At **Exhibit “C”** to the Pasparakis Affidavit are copies of invoices rendered by NRFC as counsel to the Monitor for such amounts, while **Exhibits “A”** and “**B**” to the Pasparakis Affidavit contain a summary of the personnel, hours and hourly rates charged by NRFC in respect of these CCAA Proceedings during the applicable period.
81. As indicated in the invoices included in the Fee Affidavits and the descriptions of activities contained in this Seventeenth Report and the Prior Reports, the Monitor’s role

in these proceedings over the past three months has been extensive. In addition to the activities noted earlier in this Seventeenth Report, the Monitor and its counsel have:

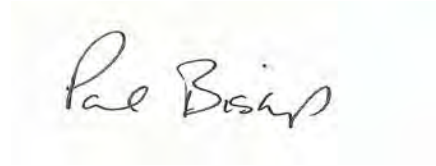
- (a) performed a comprehensive oversight role in respect of management and wind-up of the business;
- (b) supervised the closures of all remaining stores and locations of the Applicants, including their former head office and distribution centres;
- (c) resolved stakeholder issues and concerns constructively on a daily basis to ensure that Court appearances are limited;
- (d) worked with stakeholders to finalize a form of Litigation Investigator Order that was approved by the Court on March 2, 2018;
- (e) continued its review of potential reviewable transactions that could provide additional recoveries to the Sears Canada Entities' estates; and
- (f) worked with the Applicants to develop a proposed path forward to efficiently resolve the remaining issues in these proceedings.

82. The Monitor respectfully submits that the Monitor's and its counsel's fees and disbursements are reasonable in the circumstances and have been validly incurred in accordance with the provisions of the orders issued in these CCAA Proceedings. Accordingly, the Monitor respectfully seeks the approval of its fees and disbursements and the fees and disbursements of its counsel.

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

Dated this 11th day of April, 2018.

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

A handwritten signature in black ink that reads "Paul Bishop". The signature is written in a cursive style with a large initial "P".

Paul Bishop
Senior Managing Director

A handwritten signature in blue ink that reads "Greg Watson". The signature is written in a cursive style with a large initial "G".

Greg Watson
Senior Managing Director

Appendix “A”

Order of the Superintendent

**Financial Services
Commission
of Ontario**

Pension Plans Branch

5160 Yonge Street
16th Floor
Toronto ON
M2N 6L9

Telephone: 416 226 7776
Facsimile: 416 526 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



VIA COURIER

March 29, 2018

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

Attn: Bev Church
Sears Canada Inc.
700-290 Yonge Street,
Toronto ON M5B 2C3

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

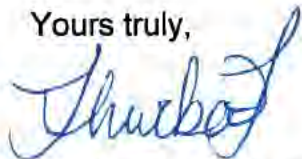
FTI Consulting
79 Wellington Street West
Suite 2010, P.O. Box 104
Toronto ON M5K 1G8

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

**Re: Sears Canada Inc. Registered Retirement Plan
Registration Number 0360065**

Enclosed please find the Order in respect to the above pension plan.

Yours truly,



Thurka Thankathurai
Project Coordinator

Enclosure

c: Anna Vani, Financial Services Commission of Ontario



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

Appendix “B”

Proposed Modifications to the Litigation Investigator Order

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

THE HONOURABLE)
FRIDAY, THE 2nd

MR. JUSTICE HAINEY)
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 “**CCAA**”) 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**"). To the extent that the Litigation Investigator requests documents or information from the Sears Canada Entities and such requests are consistent with the Mandate (the "**Additional Company Information**"), then, subject to satisfactory resolution of issues of privilege and confidentiality (including any terms regarding sharing of information with the Creditors' Committee), the Sears Canada Entities shall cooperate with the Monitor to provide the Additional Company Information to the Litigation Investigator. 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). The Sears Canada Entities' delivery of the Additional Company Information pursuant to the terms of this Order shall be subject to strict confidentiality, and the Sears Canada Entities and their directors and officers are 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). Notwithstanding the foregoing, any document provided by the Sears Canada Entities as part of the Additional Company Information may be submitted by a party in receipt of such document to the court under seal for the purpose of resolving any dispute over whether such document should be produced in litigation involving the Sears Canada Entities.

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.

HAINY, J.

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
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Tel: 416-595-2083 / Fax: 416-204-2872

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