

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

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

SEVENTH REPORT OF FTI CONSULTING CANADA INC., AS MONITOR

November 17, 2017

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

APPLICANTS

**SEVENTH 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 "**Sears Canada Group**" or 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 LP, a partnership forming part of the operations of the Sears Canada Group. The proceedings commenced under the CCAA by the Sears Canada Group 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 Group (the “**Monitor**”) in the CCAA Proceedings;
 - (b) granted an initial stay of proceedings against the Sears Canada Group until July 22, 2017;
 - (c) authorized the Sears Canada Group 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 of proceedings 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 Group (“**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 Group with respect to pension and post-employment benefit matters (“**Pension and Retiree 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 Superintendent of Financial Services, as Administrator of the Pension Benefits Guarantee Fund, Employee Representative Counsel, Pension and Retiree Representative Counsel, each of their respective representatives, and the Sears Canada Group; 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 October 4, 2017, the Court issued, among other orders, an order extending the stay of proceedings to November 7, 2017 and Orders approving the sale of certain businesses and assets of the Applicants, including:
- (a) the businesses of Corbeil Électrique Inc. (“**Corbeil**”) and S.L.H. Transport Inc. (“**SLH**”) on a going-concern basis;
 - (b) sales of owned real estate (“**Property Sale Transactions**”);
 - (c) transfers of leases to new tenants (“**Lease Transfer Transactions**”); and
 - (d) surrenders of leases to landlords (“**Lease Surrender Transactions**”).
5. On October 13, 2017, the Court issued, among other orders, an order approving an agreement (the “**Second Liquidation Agreement**”) and a process (the “**Second Liquidation Process**”) for the liquidation of the inventory and FF&E at all remaining Sears Canada locations and extending the stay of proceedings to January 22, 2018.
6. The purpose of this seventh report of the Monitor (the “**Seventh Report**”) is to provide the Court with an update on these CCAA Proceedings and the Monitor’s comments and recommendations regarding the Sears Canada Group’s motions returnable November 21, 2017 (the “**November 21 Motions**”) seeking approval of the assignment of certain contracts from Corbeil and SLH to the purchasers of their respective businesses pursuant to Section 11.3 of the CCAA and certain related orders.

B. TERMS OF REFERENCE

7. In preparing this Seventh Report, the Monitor has relied upon audited and unaudited financial information of the Sears Canada Group, the Sears Canada Group’s books and records, certain financial information and forecasts prepared by the Sears Canada

Group, the SLH Purchaser and the Corbeil Purchaser (each as defined below) and discussions and correspondence with the various parties, including senior management (“**Management**”) of, and advisors to, Sears Canada (collectively, the “**Information**”).

8. Except as otherwise described in this Seventh 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 Seventh Report in a manner that would comply with the procedures described in the *Chartered Professional Accountants of Canada Handbook*.
9. Future-oriented financial information reported in or relied on in preparing this Seventh Report is based on Management’s assumptions regarding future events. Actual results will vary from these forecasts and such variations may be material.
10. The Monitor has prepared this Seventh Report in connection with the November 21 Motions. The Seventh Report should not be relied on for any other purpose.
11. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars.
12. Capitalized terms not otherwise defined herein have the meanings ascribed to them in the affidavit of Mr. Billy Wong, the Chief Financial Officer of Sears Canada, sworn on June 22, 2017 (the “**First Wong Affidavit**”), the Affidavits of Mr. Wong, sworn November 13, 2017 in connection with the November 21 Motions (the “**Section 11.3 Affidavits**”), the SISP and the prior reports of the Monitor in these proceedings.
13. This Report should be read together with the Third Report of the Monitor, dated October 2, 2017 (the “**Third Report**”), which provided a detailed description of the steps taken in connection with the SISP and the transactions for the sales of the

Corbeil Business and the SLH Business. These descriptions are not repeated in this Seventh Report.

C. THE ACTIVITIES OF THE SEARS CANADA GROUP AND THE MONITOR

14. The activities of the Sears Canada Group and the Monitor since October 2, 2017 being the date of the update provided in the Fourth Report of the Monitor, are summarized below.

SISP Process

15. Between October 4, 2017 and October 27, 2017, the following transactions were approved by the Court:

- (a) transactions for the sale of the Home Services Business, the Corbeil Business and the SLH Business;
- (b) Property Sale Transactions for the Sears Canada owned properties known as Winnipeg Garden City and the Newmarket Home Store;
- (c) Lease Transfer Transaction for a distribution centre located in Calgary; and
- (d) Lease Surrender Transactions for the following locations: (i) Promenade Mall; (ii) Scarborough Town Centre; (iii) Oakville Place; (iv) Nanaimo North Town Centre; (v) Lime Ridge Mall and Polo Park shopping centre; (vi) Kelowna home and full line stores; (vii) Pointe-Claire shopping centre and Fairview Mall; (viii) Brentwood Town Centre; and (ix) Avalon Mall.

16. With the exception of the transactions for the SLH Business and the Corbeil Business that, subject to the issuance of the orders to be sought on the November 21 Motions, are scheduled to close later this month or early in December, all of the foregoing approved transactions have now closed and proceeds have been applied in accordance with the court orders granted in connection with such transactions.

17. In connection with the Lease Surrender Transactions, the Monitor holds a portion of the surrender consideration in an amount of approximately \$7.3 million in a Construction

Lien Claims Reserve. The Construction Lien Claims Reserve amounts are held pending resolution of claims to those funds, including any claims of parties who previously held construction liens on the properties that were the subject of the Lease Surrender Transactions.

18. In connection with the Lease Surrender Transactions relating to Lime Ridge Mall, Polo Park shopping centre, Pointe-Claire shopping centre and Fairview Mall (collectively, the “**CF Properties**”) the Applicants were required, as a condition of closing, to ensure that certain liens (the “**Additional Liens**”) registered against real or immovable properties owned by one or more affiliates of the landlords at the CF Properties were vacated or expunged on closing of these Lease Surrender Transactions. The Applicants were required to deliver funds in an aggregate amount of approximately \$3.8 million into escrow with the Monitor’s counsel or to the Ontario Superior Court of Justice under Section 44 of the *Construction Lien Act* (Ontario) in order to cause the Additional Liens to be vacated. These funds are held by the Monitor’s counsel and the Ontario Court pending resolution of the claims to which the Additional Liens relate and, in certain cases, priority issues in respect of such claims.
19. A motion for approval of the sale of certain “Viking” brand trademarks by Sears Canada to Canadian Tire Corporation was heard on November 7, 2017. Middleby Corporation objected to the sale approval motion and sought an order compelling Sears Canada to comply with a right of first refusal in connection with such “Viking” brand trademarks. The motion is currently under consideration by the Court. The Court has directed that Middleby Corporation receive an unredacted copy of the Asset Purchase Agreement between Sears Canada and Canadian Tire Corporation. Middleby Corporation reviewed the agreement with Canadian Tire Corporation and has confirmed that it wishes to exercise its right of first refusal if the Court determines that Middleby Corporation is permitted to do so.
20. The Applicants, with the assistance of the Monitor, are establishing a protocol for the solicitation of offers for their remaining sundry assets (the “**Sundry Asset Protocol**”).

21. The Applicants, in consultation with the Monitor and stakeholders, are considering various options in connection with the monetization of their remaining owned real estate assets. The Applicants continue to market their remaining lease portfolio and are permitted to do so, in accordance with the endorsement of the Court issued on October 27, 2017, until November 30, 2017¹ and have consulted with various stakeholders on this process.

DIP Facilities

22. The obligations under the DIP ABL Credit Agreement have been repaid in full and all outstanding letters of credit have been cash collateralized.
23. Obligations under the DIP Term Credit Agreement have been repaid substantially from the proceeds of the transactions described above and from the Second Liquidation Agreement described below. As of November 11, 2017, the remaining outstanding obligations under the DIP Term Credit Agreement were US\$18.2 million plus interest, fees and costs.
24. The DIP Term Credit Agreement has a maturity date of December 20, 2017. If the Assignment Orders sought on the November 21 Motions are received and the sales of the SLH Business and the Corbeil Business are completed as anticipated thereafter, sufficient funds are expected to be available to repay the balance of the obligations under the DIP Term Credit Agreement prior to or on the stated maturity date.

Suppliers

25. As part of the overall liquidation of the Sears Canada retail business, Sears Canada has commenced the process of disclaiming, with the consent of the Monitor, or otherwise terminating, arrangements that are no longer required at this time. Sears Canada is also engaging in extensive discussions with various suppliers to complete reconciliations of amounts owing as a result of post-filing transactions and accruals.

¹ These timelines may be amended with the consent of the Applicants, the Monitor, the DIP Lender and the relevant landlord.

Landlords

26. The Applicants have advised the Monitor that on or about October 27, 2017, VSL Logistics Hub Limited Partnership (“VSL”), the landlord at Sears Canada’s Montreal distribution centre made demand and drew the full amount of approximately \$16.1 million on a letter of credit posted as security for performance of monetary obligations under the lease at this site. The Applicants have advised VSL that, among other things, in the Applicants’ view, these funds are to be held in trust and only released on further written direction from Sears Canada. The Applicants confirmed that they did not dispute VSL’s right to apply these funds against any rent due and payable during the month of November 2017. Counsel to VSL has responded indicating that they do not agree with the position of the Applicants. The matter remains unresolved at this time.
27. The Monitor has worked with the Applicants to resolve issues that arise from time to time in connection with the leases at Sears Canada’s remaining leased properties in a timely manner.

Employee Matters

28. The Applicants, with the assistance of the Monitor, have worked with Employee Representative Counsel, Pension and Retiree Representative Counsel, counsel to the Superintendent, and their respective advisors, to provide these parties with information regarding the current status of the SISP.
29. In addition, the Monitor has reviewed applications to the Employee Hardship Fund approved pursuant to an order of the Court granted on August 18, 2017. To date the Monitor has received 34 applications to the Employee Hardship Fund, 21 of which have been approved. At the date of this report, approximately \$43,000 has been distributed or committed for distribution from the Employee Hardship Fund. The deadline to submit claims to the Employee Hardship Fund was extended by Court order to January 22, 2018.
30. On October 18, 2017, the Court approved an amended key employee retention plan (the “**Amended KERP**”). The Amended KERP was implemented to re-allocate a portion of the amount that was unpaid under the original key employee retention plan in these

proceedings to management and staff employees whose services would be required for the liquidation process that is now ongoing. The Applicants have subsequently identified six additional employees whose services are necessary for the completion of the inventory liquidation currently underway and who cannot be replaced at this time. The Applicants have offered these additional six employees retention and incentive payments in an aggregate amount of approximately \$151,000². The Monitor has reviewed the proposed payments and the contributions and circumstances of the proposed beneficiaries of these payments. The Monitor supports the payment of these incentive and retention amounts. The Monitor notes that the Applicants are not seeking to include these individuals in the key employee retention program approved by the Court at this time and are not seeking to have the payments to these employees secured by the Court-ordered charge established in connection with the key employee retention program.

31. The Monitor has been working with Employee Representative Counsel to identify options to make available the benefits under the Wage Earner Protection Program to terminated employees as soon as possible. Employee Representative Counsel is currently seeking to arrange a meeting with the applicable government ministries to obtain clarity on certain administrative and technical issues that may assist in expediting availability of payments under the Wage Earner Protection Program. The Monitor will participate in any such meetings. The Monitor recognizes the importance of ensuring terminated employees can access the benefits of the Wage Earner Protection Program as soon as possible and the Monitor expects claims submitted to this program as a result of the Sears Canada insolvency will be substantial.
32. On November 6, 2017, counsel to the Monitor received a copy of correspondence from the British Columbia Labour Relations Board with respect to a hearing concerning the dismissal of an individual employee represented by the International Brotherhood of Electrical Workers. Sears Canada and the Monitor previously requested that the British Columbia Labour Relations Board not proceed with this matter as, among other things,

² A portion of these payments is earned based upon achievement of sales targets and a portion of these payments is earned if such employee remains employed by Sears Canada for a specified period of time.

the employee will have an opportunity to make a claim in any claims process established in the CCAA Proceedings. The correspondence states that the British Columbia Labour Relations Board will proceed to hear this matter notwithstanding the submissions of Sears Canada. In the Monitor's view, this matter should be subject to the stay of proceedings granted in the Initial Order. However, the Monitor has not taken steps to have this proceeding stayed as the practical benefit of doing so would be outweighed by the costs. The Monitor may revisit this determination if circumstances change, including if any steps are taken to enforce any award that may be granted by the British Columbia Labour Relations Board. Sears Canada is currently exploring a potential resolution with the union in order to avoid the time and expense of a hearing, with the assistance of a labour board mediation officer.

Pension and Benefits Matters

33. On October 17, 2017, the Superintendent announced that Morneau Shepell would be appointed administrator of the Sears Canada Inc. Registered Retirement Plan (the "**Sears Canada Pension Plan**") effective immediately.
34. On November 10, 2017, pursuant to section 89(5) of the *Pension Benefits Act* (Ontario), the Superintendent issued a notice that he intended to make an order under Section 69 of the *Pension Benefits Act* (Ontario) to, among other things, wind-up the Sears Canada Pension Plan effective October 1, 2017. A copy of the notice received from the Superintendent is attached hereto as Appendix "A".
35. If the above described wind-up order is made, this will render the motion by Pension and Retiree Representative Counsel, also seeking a wind up of the Sears Canada Pension Plan, unnecessary.
36. On November 7, 2017, the Court made an Order approving the establishment of a Retiree Committee to fulfill certain functions under the Amended and Restated Retirement Compensation Trust Agreement between Sears Canada Inc. and CIBC Mellon Trust Company, which governs a trust established to hold assets to provide for certain benefits payable under Sears Canada's Supplemental Retirement Plan.

Reviewable Transactions

37. The Monitor has begun its review of the books and records of the Applicants with a view to identifying potential transactions at undervalue (collectively, “TUVs”) or other reviewable transactions involving the Applicants. Counsel to certain stakeholders have also reached out to the Monitor regarding the pursuit of such claims. The Monitor is in the early stages of discussions with those stakeholders.
38. The Monitor will report to the Court at a later time on its findings in respect of TUVs and any other reviewable transactions and next steps, if any, in advancing these claims.

Other Activities of the Monitor

39. The Monitor has also undertaken the following activities:
 - (a) monitored the Sears Canada Group’s receipts and disbursements including the receipts and disbursements of SLH and Corbeil;
 - (b) maintained the current Service List for these CCAA Proceedings and posted regular updates of the Service List to the Monitor’s Website;
 - (c) with the assistance of the Applicants where appropriate, responded to stakeholders who have contacted the Monitor directly or via the Monitor’s hotline or email address;
 - (d) supervised and assisted in activities related to the SISP, and worked with the Special Committee and advisors to ensure that the SISP was conducted in a manner consistent with standards expected of similar processes under the CCAA;
 - (e) assisted in the development of the Sundry Asset Protocol;
 - (f) provided SISP-related information to counsel and advisors to the Superintendent, Employee Representative Counsel, Pension and Retiree Representative Counsel and their financial advisors;

- (g) worked with Employee Representative Counsel, Pension and Retiree Representative Counsel and their advisors to respond to questions and provide information to their respective constituents;
- (h) worked with the Sears Canada Group to ensure appropriate accounting for pre-filing and post-filing obligations;
- (i) planned and worked with the Sears Canada Group to facilitate an orderly wind-down of the its operations, monitored the original Liquidation Process and the Second Liquidation Process, worked with the Sears Canada Group and vendors to resolve account discrepancies; and
- (j) worked with the Applicants and their counsel to develop a timeline and high-level process for the Applicants' upcoming proposed claims process. The current timeline contemplates that the Applicants would return to the Court seeking a claims process Order in December 2017. Details on the claims process will be contained in the Monitor's report to be filed in connection with that motion. Employee Representative Counsel, the Superintendent's counsel, Pension and Retiree Representative Counsel, and their financial advisors have been consulted on administrative matters related to the filing of potential pension, benefit and employee related claims in this process.

40. The Monitor has continued to operate and monitor its telephone hotline and email account for stakeholder inquiries. Since the commencement of the Second Liquidation Process on October 19, 2017, the Monitor has received approximately 10,000 calls and emails relating to, among other things:

- (a) customer and vendor inquiries,
- (b) the SISP
- (c) claims in the potential claims process;
- (d) warranties;

- (e) the Employee Hardship Fund;
- (f) pension issues; and
- (g) employment matters.

41. As a result of technical difficulties, voicemail functionality for the Monitor's telephone hotline was temporarily unavailable on November 8th and 9th. The Monitor is also working to recover certain voicemails from November 13th and 14th that may not have been properly delivered to the Monitor's inbox. As of November 15th, voicemails to the Monitor's telephone hotline are again being delivered properly and responses are being sent.

D. UPDATE ON THE LIQUIDATION PROCESS

42. The Monitor has reviewed the progress of the original Liquidation Process commenced in July 2017 on an ongoing basis from the commencement of that process.

43. The Monitor has not identified any matters in connection with the original Liquidation Process that result in any material concerns.

44. The original Liquidation Process is now substantially complete with only the final reconciliation of certain expenses and the determination of the company's share of proceeds in excess of the guaranteed amount left to be resolved.

45. The Second Liquidation Process for the remaining Sears Canada stores approved by the Court on October 13, 2017 is ongoing. The Monitor has received regular updates on the Second Liquidation Process since the commencement of that process.

46. On November 8, 2017, the Competition Bureau (Canada) sent letters to each of the liquidators (collectively, the "**Liquidators**") under the Second Liquidation Agreement enquiring about allegations made by others with respect to the sale price of certain merchandise sold in the Second Liquidation Process. The Monitor understands that the allegations, amongst others, are that the price of certain merchandise was marked up prior to promoting 20% to 50% savings. The Competition Bureau has requested a response to

these letters by no later than November 17, 2017. The Monitor is following the situation and will report to the Court on any material developments.

E. RECEIPTS AND DISBURSEMENTS FOR THE SEVEN WEEK PERIOD ENDING NOVEMBER 11, 2017

47. The Sears Canada Group's actual net cash inflow on a consolidated basis for the seven-week period ended November 11, 2017 was approximately \$253.9 million, compared to a forecast net cash inflow of \$226.9 million resulting in a positive variance of approximately \$27.0 million as indicated in the table below:

| VARIANCE REPORT | Actual | Forecast | Variance |
|--|---|-----------------|-----------------|
| (CAD in Millions) | For the 7 Week Period Ending November 11, 2017 | | |
| Operating Receipts | 462.8 | 462.8 | - |
| Operating Disbursements | | | |
| Payroll and Employee Related Costs | (57.6) | (62.6) | 5.0 |
| Merchandise Vendors | (68.8) | (80.1) | 11.3 |
| Non-Merchandise Vendors | (44.5) | (58.1) | 13.6 |
| Rent and Property Taxes | (20.1) | (18.7) | (1.4) |
| Sales Taxes | (3.9) | (3.1) | (0.8) |
| Pension | (3.7) | (3.7) | - |
| IT Costs | (7.5) | (12.0) | 4.5 |
| Recovery of Expenses from Agent | 15.3 | 21.6 | (6.3) |
| Capital Expenditures | (0.1) | (0.4) | 0.3 |
| Total Operating Disbursements | (190.9) | (217.1) | 26.2 |
| Net Operating Cash Inflows / (Outflows) | 271.9 | 245.7 | 26.2 |
| Professional Fees | (13.6) | (14.5) | 0.9 |
| Repayments of Existing Credit Facilities | - | - | - |
| DIP Fees and Interest Paid | (4.4) | (4.3) | (0.1) |
| Net Cash Inflows / (Outflows) | 253.9 | 226.9 | 27.0 |
| Cash | | | |
| Beginning Balance | 43.2 | 43.2 | - |
| Net Cash Inflows / (Outflows) | 253.9 | 226.9 | 27.0 |
| DIP Draws / (Repayments) | (218.7) | (210.9) | (7.8) |
| Others incl. FX Valuation | - | - | - |
| Ending Balance | 78.4 | 59.2 | 19.2 |

48. Explanations for the key variances are as follows:
- (a) Although on a consolidated basis there was no variance in forecast versus actual Operating Receipts, the results for the period ending November 11, 2017 reflect lower-than-forecast sales of cosmetic products and Dealer store merchandise of approximately \$3.2 million, offset by positive variances including primarily the collection of transfer taxes on Court-approved transactions that closed in the period. The positive variance with respect to transfer taxes will reverse following the Company's monthly sales tax reporting and remitting procedures at the end of the month.
 - (b) the positive variance in Payroll and Employee Related Costs of \$5.0 million consists primarily of a positive timing variance in respect of the remittance of payroll withholding taxes and accrued vacation payouts;
 - (c) the positive variance in Merchandise Vendor disbursements of \$11.3 million consists of a permanent variance of approximately \$8.5 million due to the cancellation of certain merchandise purchase orders combined with a timing variance of approximately \$2.8 million as a result of delays in the receipt of certain merchandise shipments which are expected to be received over the next several weeks;
 - (d) the positive variance in Non-Merchandise Vendor disbursements of \$13.6 million consists primarily of a permanent difference as a result of lower-than-expected purchases of non-merchandise goods and services;
 - (e) the negative variance in Rent and Property Taxes of \$1.4 million is a timing difference that is expected to reverse in future forecast periods;
 - (f) the positive variance in IT Costs of \$4.5 million is a timing difference due to the deferral of certain IT services-related payments which is expected to reverse in future forecast periods;

- (g) the negative variance in Recovery of Expenses from Agent of approximately \$6.3 million consists primarily of timing differences associated with the reimbursement of expenses from the Agent in respect of the Second Liquidation Process which are expected to reverse in future forecast periods;
 - (h) the positive variance in Professional Fees of \$0.9 million is primarily a timing difference that is expected to reverse in future forecast periods;
 - (i) the variance in DIP Draws / (Repayments) is due to greater-than-forecast proceeds available for distribution to the DIP Lenders associated with the closing of Court-approved transactions during the period.
49. The Initial Order allowed the Sears Canada Group to continue to utilize their existing Cash Management System as described in the First Wong Affidavit and the pre-filing report of the Monitor. After the commencement of the CCAA Proceedings, the Sears Canada Group has continued to utilize its Cash Management System in a manner consistent with past practice.

F. ASSIGNMENT ORDERS

50. On October 4, 2017, the Court approved transactions pursuant to which:
- (a) the business of Corbeil would be sold to Am-Cam Électromenagers Inc. (the “**Corbeil Purchaser**”), a subsidiary of Distinctive Appliances Inc. (“**Distinctive**”); and
 - (b) the business of SLH would be sold to 8507597 Canada Inc. (the “**SLH Purchaser**”), an affiliate of C.A.T. Inc.
51. The bid for the Corbeil business provided by the Corbeil Purchaser was the highest and otherwise best bid for the Corbeil Business. The Corbeil Purchaser has agreed to provide at least 90% of Corbeil’s current employees in purchased locations with employment offers. The Corbeil Purchaser also intends to continue the Corbeil Business as a going concern.

52. Similarly, the bid for the SLH Business provided by the SLH Purchaser was the highest and otherwise best bid for the SLH Business. Sears Canada has advised that 448 SLH employees have accepted offers of employment with the SLH Purchaser (offers of employment were to be made to a minimum of 362 employees under the SLH Purchase Agreement). The SLH Purchaser intends to continue the SLH Business as a going concern.
53. As part of the sale of each of the Corbeil Business and the SLH Business, Sears Canada is obligated to seek the assignment of certain contracts (the “**Contracts**”) to the Corbeil Purchaser and the SLH Purchaser, as applicable. Sears Canada must unilaterally assign these contracts, if permissible under the terms of the applicable contract, or seek: (i) consent of the counterparty where such consent is required; or (ii) where such consent is required but cannot be obtained, an Order under Section 11.3 of the CCAA.
54. Completion of the sale of the Corbeil Business is subject to conditions in favour of the Corbeil Purchaser requiring that a subset of the Contracts must be assigned (such Contracts being the “**Corbeil Key Contracts**”). If Contracts that are not Corbeil Key Contracts cannot be assigned, the Corbeil Purchaser will remain obligated to purchase the Corbeil Business. However, in certain limited circumstances, the failure to obtain the assignment of such other Contracts may result in a negative purchase price adjustment.
55. Completion of the sale of the SLH Business is also subject to conditions in favour of the SLH Purchaser requiring that a subset of the Contracts must be assigned (such Contracts being the “**SLH Key Contracts**”). If Contracts that are not SLH Key Contracts cannot be assigned, the SLH Purchaser will remain obligated to purchase the SLH Business.
56. The following is a summary of Contracts by type for which orders are sought under Section 11.3 of the CCAA on the November 21 Motions:

| | | Contracts | Key Contracts |
|---------|------------------------|-----------|----------------|
| Corbeil | Real Property Leases | 8 | 8 ³ |
| | Equipment Leases | 2 | 0 |
| | Supply Agreements | 5 | 0 |
| | | | |
| SLH | Real Property Leases | 1 | 0 |
| | Equipment/Truck Leases | 39 | 39 |
| | Customer Contracts | 33 | 6 |

57. The Contracts are not post-filing agreements, eligible financial contracts or collective agreements that cannot be assigned under Section 11.3 of the CCAA.
58. The Monitor approved the proposed assignment of the Contracts under Section 11.3 of the CCAA.
59. In approving the proposed assignment, the Monitor considered the factors to be considered under Section 11.3(3) of the CCAA.

Ability to Perform Obligations

60. The SLH Purchaser, the Corbeil Purchaser and the Sears Canada Group have each provided certain financial information that supports the SLH Purchaser's and the Corbeil Purchaser's ability to perform their obligations under the applicable purchase agreement and the applicable Contracts. The Monitor has not audited or otherwise independently

³ Three additional consents were obtained from counterparties following the service of the Section 11.3 Affidavits.

confirmed the information provided. The Monitor has reviewed this information and, in reliance upon this information, the Monitor is satisfied that the Corbeil Purchaser and the SLH Purchaser have sufficient financial resources to continue to perform under the Contracts.

61. The Monitor has reviewed the following financial information provided by the SLH Purchaser and the Sears Canada Group:
- (a) a commitment letter received by the SLH Purchaser to provide financing for the acquisition of the SLH Business, which provides approximately \$2 million of additional financing to operate the SLH Business in excess of the funding needed to satisfy the purchase price;
 - (b) unaudited financial statements for the SLH Business for the 2012 to 2016 years provided by the Sears Canada Group, which indicate that the SLH Business experienced positive EBITDA during each fiscal year presented; and
 - (c) pro forma financial forecasts prepared by the SLH Purchaser for the period until August 2018 that accounts for an anticipated reduction in the SLH Business' revenue from the removal of the Sears Canada related business, and also assumes the purchase of the SLH Business is completed in December 2017 as contemplated.

Copies of the foregoing financial information are attached hereto as Confidential Appendix "B".

62. The Monitor has reviewed the following financial information provided by the Corbeil Purchaser and the Sears Canada Group:
- (a) an executed financing letter addressed to the Corbeil Purchaser regarding an original credit facility sufficient to satisfy both the purchase price and working capital needs of the Corbeil Business, and a draft updated financing letter addressed to the Corbeil Purchaser regarding a substantial demand operating

facility that increases the original availability under the original credit facility by \$5 million; and

- (b) unaudited financial statements for the Corbeil Business for the 2014 through 2016 years as well as fiscal 2017 year to date. These statements indicate that the Corbeil Business experienced positive net earnings during each fiscal year presented.

Copies of the foregoing financial information are attached hereto as Confidential Appendix “C”.

- 63. Each of the SLH Purchaser and the Corbeil Purchaser are affiliates of corporate groups with significant relevant industry experience. The SLH Purchaser is an affiliate of C.A.T. Inc., a Canadian freight carrier established over thirty years ago. The Corbeil Purchaser is an affiliate of Distinctive Appliances Inc., a distributor of high end appliances in Canada and the United States.

Assignment Is Appropriate

- 64. In addition to the factors set out in Section 11.3(3) of the CCAA, the Monitor considered the nature of the Contracts proposed to be assigned. The Contracts fall into the following categories:
 - (a) Corbeil: store leases; supply contracts with appliance vendors; and equipment leases.
 - (b) SLH: leases for the portion of the SLH fleet that is not owned; customer contracts, including six key contracts with Canada Post; and a real property lease agreement.

In the Monitor’s view, the Contracts are not of a nature such that assignment would not be appropriate. The Contracts are commercial arrangements under which the counterparty would not, absent any unique circumstances of which the Monitor is unaware at this time, reasonably be expected to have a material objection to dealing with a legal entity other than Corbeil or SLH provided that such parties have the financial and technical capability to perform and carry on the Corbeil Business and the SLH Business,

as applicable. As noted above, the SLH Purchaser and the Corbeil Purchaser have provided evidence of their abilities in these respects.

65. The Corbeil Key Contracts and the SLH Key Contracts are critical to the operation of the applicable business. The Corbeil Key Contracts are leases of key locations for this retail business. In the case of SLH, the SLH Key Contracts are six critical customer agreements with Canada Post and 39 truck leases with ARI Financial Services Inc. needed to operate a portion of the SLH fleet of trucks.
66. As described in the Section 11.3 Affidavits, the Applicants have made efforts to obtain consents required to assign the Contracts. In the event that consents to assignment of any of the Contracts to which the November 21 Motions apply are subsequently received prior to the hearing of the November 21 Motions, these Contracts will cease to be included in the orders sought on the November 21 Motions.

Cure Costs

67. The proposed assignment orders for the SLH sale transaction and the Corbeil sale transaction each provide for the payment of all costs necessary to satisfy monetary defaults in relation to the agreements to the extent required by Section 11.3 of the CCAA.
68. In the case of the SLH sale transaction, the SLH Purchaser will pay these cure costs within five (5) business days following the closing of the sale transaction. The Applicants have advised that they do not believe any cure costs are payable in connection with the SLH contracts that are the subject of the November 21 Motions.
69. In the case of the Corbeil sale transaction, the Monitor shall pay these cure costs from the purchase price received by the Monitor on closing of the sale transaction. In determining the cure costs payable, the Monitor shall rely upon a written direction received from Corbeil.
70. For the foregoing reasons, the Monitor supports the Applicants' requests for the orders under Section 11.3 of the CCAA to be sought on the November 21 Motions. These orders will assist in completing value maximizing going-concern transactions for the

SLH Business and the Corbeil Business and, in the case of the Corbeil Key Contracts and the SLH Key Contracts, are a necessary condition precedent to completion of these transactions.

G. APPROVAL AND VESTING ORDER

71. As described in the Third Report, the SLH Purchaser may designate additional specified real property leases, not originally included in the assets to be purchased from SLH, for acquisition by the SLH Purchaser in exchange for the assumption of all liabilities with respect thereto and other nominal consideration. Following such designation SLH or Sears Canada, as applicable, will use commercially reasonable efforts to promptly seek an approval and vesting order and, if applicable, an assignment order from the Court with respect to such real property leases.
72. The SLH Purchaser has designated two real property leases to be assigned as described above. These real property leases are as follows:
 - (a) Lease Agreement between 855 Park Street Properties Limited Partnership and Sears Canada Inc. regarding a property located in Regina, Saskatchewan; and
 - (b) Lease Agreement between Tamworth Properties Inc. and Sears Canada Inc. regarding a property located in Vaughan, Ontario.

(the “**Additional Leases**”).
73. The Additional Leases include facilities for general freight, switching, assembly, maintenance and other trucking-related operations.
74. In accordance with the terms of the SLH Purchase Agreement, no additional material consideration would be paid by the SLH Purchaser in connection with the assignment of these agreements other than the assumption of future liabilities thereunder.

75. The Monitor supports the Applicants' request for an order approving the assignment of these agreements (to the extent required)⁴ under Section 11.3 of the CCAA for the reasons set out earlier in this Seventh Report.
76. The Monitor supports the Applicants' request for an approval and vesting order in respect of these contracts as well. For the reasons set out in the Monitor's Third Report, in the Monitor's view, it is appropriate for the assets of SLH to be transferred to the SLH Purchaser free and clear of encumbrances in accordance with the SLH Purchase Agreement. The proposed approval and vesting order gives effect to the existing terms of the SLH Purchase Agreement, which was previously approved by the Court and which contemplated the potential transfer of these Additional Leases. The Monitor is not aware of any party with an interest in the Additional Leases who would be prejudiced by the transfer of the Additional Leases free and clear of encumbrances. To the extent any such encumbrances do exist, they would be treated in the same manner as any other encumbrances on the SLH assets.

H. REQUEST FOR SEALING ORDER

77. The confidential appendices to this Seventh Report contain commercially sensitive information regarding the SLH Purchaser, the Corbeil Purchaser as well as the SLH Business and the Corbeil Business. Public disclosure of this information would be prejudicial to the commercial interests of the SLH Purchaser and the SLH Business, as well as the Corbeil Purchaser and the Corbeil Business. This information was provided on a confidential basis to the Monitor. The Monitor is not aware of any party who is materially prejudiced by the sealing of this information.
78. The Monitor supports the Applicants' request for a sealing order to protect this information.

⁴ Consent for the assignment of the Regina location has been obtained and, as a result an order under Section 11.3 of the CCAA will not be needed for this property.

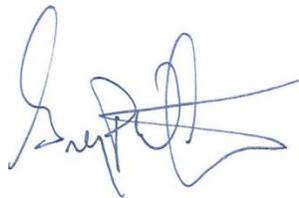
The Monitor respectfully submits to the Court this, its Seventh Report.

Dated this 17th day of November, 2017.

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

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"



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

CONFIDENTIAL APPENDIX "B"

CONFIDENTIAL APPENDIX "C"

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., *et al.*

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at TORONTO

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

NORTON ROSE FULBRIGHT CANADA LLP
Royal Bank Plaza, South Tower, Suite 3800
200 Bay Street, P.O. Box 84
Toronto, Ontario M5J 2Z4 CANADA

Orestes Pasparakis, LSUC#: 36851T

Tel: +1 416.216.4815

Virginie Gauthier, LSUC#: 41097D

Tel: +1 416.216.4853

Alan Merskey, LSUC#: 41377I

Tel: +1 416.216.4805

Evan Cobb, LSUC#: 55787N

Tel: +1 416.216.1929

Fax: +1 416.216.3930

orestes.pasparakis@nortonrosefulbright.com

virginie.gauthier@nortonrosefulbright.com

alan.merskey@nortonrosefulbright.com

evan.cobb@nortonrosefulbright.com

Lawyers for FTI Consulting Canada Inc., in its capacity as
Monitor