

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

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

THIRTEENTH REPORT OF FTI CONSULTING CANADA INC., AS MONITOR

February 18, 2018

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

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

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

APPLICANTS

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

A. INTRODUCTION

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

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

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

5. In connection with the CCAA Proceedings, the Monitor has provided twelve reports and five supplemental reports (collectively, the “**Prior Reports**”), and prior to its appointment as Monitor, FTI also provided to this Court a pre-filing report of the proposed Monitor dated June 22, 2017 (the “**Pre-Filing Report**”). The Pre-Filing Report, the Prior Reports and other Court-filed documents and notices in these CCAA Proceedings are available on the Monitor’s website at cfcanada.fticonsulting.com/searscanada/ (the “**Monitor's Website**”).

B. PURPOSE

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

C. TERMS OF REFERENCE

7. In preparing this Thirteenth Report, the Monitor has relied upon audited and unaudited financial information of the Sears Canada Entities, the Sears Canada Entities’ books and records, certain financial information and forecasts prepared by the Sears Canada Entities and discussions and correspondence with, among others, the senior management (“**Management**”) of, and advisors to, the Sears Canada Entities (collectively, the “**Information**”).

8. Except as otherwise described in this Thirteenth Report:
 - (a) the Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with

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

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

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

D. OVERVIEW

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

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

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

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

20. The Proposed Order provides, among other things, that:

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

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

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

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

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

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

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

E. DEVELOPMENT OF THE CLAIMS PROCESS

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

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

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

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

- (e) considered:
 - (i) aggregated demographic and other data with respect to Employees and Retirees available to the Applicants;
 - (ii) the nature and quantum of the potential Employee and Retiree Claims;
 - (iii) the strength of the legal basis of potential Employee and Retiree Claims;
 - (iv) the current circumstances of the Applicants, including the preliminary estimated distributions to creditors; and
 - (v) the limited resources anticipated to be available to the Applicants, including key personnel and information technology systems, to administer the Claims Process.

- 29. For their part, Representative Counsel, the Plan Administrator, and their respective advisors, also identified potential Employee and Retiree Claims and presented proposals and counter-proposals for the Claims Process and the Methodologies, which the Sears Canada Entities with the assistance of the Monitor and counsel carefully considered.

- 30. Discussions and negotiations among the E&R Process Participants took place over a period of nearly three months and culminated in an agreement on the guiding principles of the Claims Process and the Proposed Order, including the Methodologies.

- 31. In developing the Claims Process, the Sears Canada Entities, the Monitor and their respective counsel, considered the practical elements of implementing a claims process for Employee and Retiree Claims, including:
 - (a) the number of potential Claimants, which is currently estimated at approximately 40,000 (comprised of approximately 22,000 Employees and 17,000 Retirees);
 - (b) the variety of legal frameworks, including across multiple Canadian jurisdictions, applicable to the claims that may be asserted;

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

F. TYPES OF CLAIMANTS AND CLAIMS GOVERNED

32. The Proposed Order applies to the following Claimants:

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

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

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

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

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

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

G. METHODOLOGIES

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

(a) Termination Claims Methodology

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

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

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

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

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

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

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

(b) Retiree Benefit Claims Methodology

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

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

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

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

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

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

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

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

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

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

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

(d) Lifetime Discount Claims Methodology

48. The Lifetime Discount Claims Methodology provides that each Retiree (which definition under the Proposed Order includes Employees with entitlements to the Lifetime Discount) with an entitlement to the Lifetime Discount would be deemed to have a claim for the loss of his Lifetime Discount in the amount of \$840.

49. The proposed methodology for calculating the Lifetime Discount is based on information provided by Sears Canada and takes into consideration:

- (a) the average value of discount per transaction of the holder of a Lifetime Discount and the average number of transactions per month by holders of Lifetime Discount for the 12 month period between October 2016 and September 2017;
- (b) the historic usage rate of the Lifetime Discount by Retirees during the same period; and
- (c) the fact that Sears Canada had no obligation to ensure that a Retiree or Employee would always have access to a Sears Canada store.

50. Based on the Lifetime Discount Claims Methodology, the Applicants estimate Lifetime Discount Claims to total approximately \$13.77 million.

51. The Monitor believes that the Lifetime Discount Claims Methodology is appropriate for the following reasons:

- (a) precedent cases have recognized the existence of a claim for a lifetime discount;
- (b) the amount proposed in this case was arrived at as a result of negotiations amongst the relevant E&R Process Participants; and

(c) it takes into account relevant mitigating factors.

(d) *Sears Pension Claim Methodology*

52. The Penrice Affidavit describes the Sears Pension Claim Methodology in detail.

53. In summary:

(a) the Proposed Order contemplates that only the Plan Administrator, Pension Representative Counsel and/or the Superintendent may file a proof of claim with respect to the DB Component of the Sears Canada Plan or the wind-up deficiency thereof;

(b) the Sears Pension Claim Methodology provides that any Sears Pension Claim will initially be calculated as an estimate (the “**Preliminary Wind-up Liability Estimate**”) using (i) statutory mortality assumptions applicable as of September 30, 2017 for the purposes of a hypothetical wind-up valuation and estimating the cost of purchasing all required annuities, (ii) demographic assumptions that Aon Hewitt Inc. (“**Aon**”) used for its last actuarial report in respect of Sears Canada, and (iii) economic assumptions projected by Aon for the purpose of calculating an hypothetical wind-up as at September 30 2017;

(c) any Sears Pension Claim will (i) reflect an increase of the projected deficit at September 30, 2017 of approximately \$7 million as a result of the liquidation of certain equity investments for less than 100% of their quoted value as at that date, (ii) include a 2% provision for adverse deviations (such as the ultimate cost of annuities and fees), and (iii) include a contingency reserve of 1.5% to account for the fact that the Plan Administrator has not been able to fully review and verify the data upon which the Preliminary Wind-Up Liability Estimate will be calculated.

54. The Plan Administrator has indicated to the Monitor that, using the Sears Pension Claim Methodology, their expectation is that their Sears Pension Claim would be in the range of approximately \$250-260 million.

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

H. CLAIMS PROCEDURE

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

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

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

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

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

all as described further below.

(a) Notice to Employees and Retirees

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) Adjudication of Proofs of Claim

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

76. If the Monitor intends to revise or reject a Claim, the Monitor will notify the Claimant by sending a Notice of Disallowance (Proof of Claim) setting out the reasons therefor by no later than July 31, 2018, or such later date as ordered by the Court. Given its estimated nature (as described above in paragraph 52), this deadline will not apply to any Sears Pension Claims.
77. Any Claimant that intends to dispute a Notice of Disallowance (Proof of Claim) must send written notice to the Monitor by completing a Notice of Dispute (Proof of Claim) that must be received by the Monitor within 30 days after the date on which the Claimant receives the Notice of Revision or Disallowance (Proof of Claim).
78. In the event a dispute raised in a Notice of Dispute (Proof of Claim) is not settled within a time period or in a manner satisfactory to the Monitor, in consultation with the Sears Canada Entities (or the applicable Directors and Officers in respect of a D&O Claim), the Monitor, at its election, shall refer the dispute raised to a Claims Officer or the Court. Any Claimant who wishes to challenge the method of adjudication elected by the Monitor may apply to the Court to determine the appropriate method of adjudication.
79. Any Claimant who receives a Notice of Disallowance (Proof of Claim) and does not file a completed Notice of Dispute (Proof of Claim) with the Monitor by the applicable deadline shall be deemed to have accepted the amount and determination as set out in the Notice of Disallowance (Proof of Claim) and such Claimant shall have no further right to dispute the same.
- (f) *Claims Officers and Adjudication of Claims, Personal Information and Methodologies in Dispute*
80. The Claims Procedure contemplates that the Monitor may refer disputed Claims and disputes as to personal information and alternative proposed methodologies to a Claims Officer for resolution, which the Proposed Order contemplates would be the Honourable former Justices Dennis O'Connor, and James Farley, who have also been appointed for this role in the General Claims Process. The decision of a Claims Officer will be binding on all parties, subject to appeal rights to the Court.

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

(g) *Hardship Fund*

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

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

I. CONCLUSION

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

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

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

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

Dated this 18th day of February, 2018.

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



Paul Bishop
Senior Managing Director



Greg Watson
Senior Managing Director

Appendix A
Common Law Severance Formula

The Common Law Severance Formula is one of the mechanisms that may be used to determine the notice period of various Employees under the Termination Claims Methodology. The notice period will be determined as follows: (i) a base amount determined by the Employee's position, plus (ii) additional weeks based on completed years of service and the Employee's age. In addition, the Common Law Severance Formula includes a minimum and maximum entitlement that each Employee will be subject to depending on their position.

Position	Base	Additional weeks per complete year of service	Additional weeks based on age	Minimum/Maximum
Part Time Associate	2 weeks	2 weeks / year	Add 4 weeks if over 55 at termination	Minimum: 2 weeks Maximum: 52 weeks
Full Time Associate	4 weeks	2 weeks / year	Add 2 weeks if 40-45 at termination Add 3 weeks if 46-50 at termination Add 4 weeks if 51-55 at termination Add 5 weeks if 56-60 at termination Add 8 weeks if over 60 at termination	Minimum: 4 weeks Maximum: 78 weeks
Supervisors	6 weeks	2.5 weeks / year	Add 2 weeks if 40-45 at termination Add 3 weeks if 46-50 at termination Add 4 weeks if 51-55 at termination Add 5 weeks if 56-60 at termination Add 8 weeks if over 60 at termination	Minimum: 6 weeks Maximum: 78 weeks
Managers	8 weeks	3 weeks / year	Add 2 weeks if 40-45 at termination Add 3 weeks if 46-50 at termination Add 4 weeks if 51-55 at termination Add 5 weeks if 56-60 at termination Add 8 weeks if over 60 at termination	Minimum: 8 weeks Maximum: 78 weeks
Divisional Vice	10 weeks	4 weeks / year	Add 2 weeks if 40-45 at termination Add 5 weeks if 46-50 at termination	Minimum: 10 weeks

Presidents			Add 8 weeks if 51-55 at termination Add 10 weeks if over 56 at termination	Maximum: 104 weeks
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Appendix B
Benefits Gross-Up

The Benefits Gross-Up for each level of Employee with respect to their participation in various benefits are as follows:

Position	Life Insurance, Health and Dental (including Tax Impact)	Defined Contribution Plan (including Tax Impact)
Part Time Associate	9.9%	3.1%
Full Time Associate	8.4%	4.3%
Supervisors	7.0%	3.2%
Managers	3.8%	3.3%
Divisional Vice Presidents	4.4%	3.2%

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

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

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