

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

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

**FIFTH SUPPLEMENT TO THE NINETEENTH REPORT OF FTI CONSULTING
CANADA INC., AS MONITOR**

August 31, 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

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

A. INTRODUCTION

1. On June 1, 2018, the Monitor filed the Nineteenth Report to the Court (the “**Nineteenth Report**”) in these CCAA Proceedings. The Nineteenth Report included an update on the steps taken by the Applicants and their advisors, in consultation with the Monitor, in connection with the marketing of the Remaining Real Estate Assets.
2. Capitalized terms used herein and not otherwise defined in this Fifth Supplement to the Nineteenth Report (the “**Fifth Supplement**”) have the meanings given to them in the Nineteenth Report.

3. The purpose of this Fifth Supplement is to provide the Court with updated information and the Monitor's comments and recommendations regarding the Sears Canada Group's motion for approval of a sale transaction for the former Sears Canada distribution centre and ancillary property located at 500 and 531 College Street East, Belleville, Ontario (the "**Belleville Property**") and to provide the Court with an update on other matters described later in this report.
4. This Fifth Supplement should be read in conjunction with the Nineteenth Report. A copy of the Nineteenth Report is attached hereto as Appendix "A".

B. BELLEVILLE PROPERTY

5. The main portion of the Belleville Property was a customized distribution facility built for Sears Canada (the "**Belleville DC**").
6. The Belleville Property also includes certain neighbouring ancillary lands previously used as a repair shop for the Sears Canada Group's equipment and trucks.
7. The Belleville DC, at over 1.8 million square feet, was the largest of the Sears Canada distribution facilities. The Property functioned as a warehouse and logistics centre for retail and e-commerce distribution of merchandise, receiving and inspecting incoming shipments, preparing outbound shipments and inventory control, and was also used as a call centre.
8. Additional details on the Belleville Property are included in the affidavit of Philip Mohtadi, affirmed August 29, 2018 (the "**Mohtadi Affidavit**"), and are not repeated herein.
9. The proposed purchaser of the Belleville Property is Groupe Mach Inc. (the "**Belleville Purchaser**").
10. On March 7, 2018, as requested in the Updated Sale Process Letter, offers were received for the Belleville Property, including from the Belleville Purchaser. The Belleville

Purchaser had previously submitted a bid for the Belleville Property in connection with the initial bid deadline under the SISP.

11. A summary of offers received for the Belleville Property at and following the initial August 31, 2017 bid deadline under the SISP and the subsequent March 7, 2018 bid deadline is included in Confidential Appendix “B”.
12. Following an extensive period of negotiation with multiple parties during which multiple offers and counter-offers were exchanged with the Belleville Purchaser and with various other potential purchasers of the Belleville Property, Sears Canada determined, in consultation with the Sale Advisor, the Monitor and the Owned Real Estate Consultation Parties, that the transaction proposed by the Belleville Purchaser was in the best interests of the Applicants and their stakeholders. The transaction was approved by the board of directors of Sears Canada.
13. The terms of the final accepted bid by the Belleville Purchaser for this property are contained in an Agreement of Purchase and Sale dated with effect as of August 17, 2018 between the Belleville Purchaser and Sears Canada (the “**Belleville APS**”). An unredacted copy of the Belleville APS is attached hereto as Confidential Appendix “C”.
14. As described in the Mohtadi Affidavit, after acceptance and execution of the Belleville APS by Sears Canada, two unsolicited late offers were submitted by a party who was previously engaged in the sale process and who had previously submitted multiple offers in the process that were not accepted. Sears Canada and its counsel advised the Monitor and the Owned Real Estate Consultation Parties of these late offers. The late offers are also summarized in Confidential Appendix “B”.
15. The Monitor reviewed the late offers and did not support any further discussion with the party submitting those late offers. In the Monitor’s view the integrity of the sale process is best preserved by proceeding with the Belleville APS that was accepted in that process. All interested bidders were provided with an adequate opportunity to provide their best and final offers prior to the acceptance of the Belleville APS. In addition, the terms and

value of the late offers did not raise any doubts about the fairness or appropriateness of the sale process for the Belleville Property.

16. The Monitor notes that the Owned Real Estate Consultation Parties were consulted throughout the process.
17. The terms of the Belleville APS are substantially similar to Sears Canada's template transaction agreement described in the Nineteenth Report. Modifications to the template transaction terms include:
 - (a) No contracts will be assigned or assumed as part of this transaction;
 - (b) The outside date for completion of the transaction is October 31, 2018;
 - (c) The 10% deposit was to be delivered by the Belleville Purchaser within 48 hours following execution of the Belleville APS by Sears Canada. The deposit was delivered in accordance with the terms of the Belleville APS.
 - (d) From and after the date of execution of the Belleville APS, Sears Canada will not agree to enter into any new permitted encumbrances without the consent of the Belleville Purchaser.
 - (e) Vacant possession of the Belleville Property shall be given to the Belleville Purchaser subject only to permitted encumbrances.
 - (f) The approval and vesting order approving the transaction must not be subject to any appeal or motion for leave to appeal that has not been fully disposed of as of the time of closing.
 - (g) The Belleville Purchaser had the right to assign the Belleville APS on five business days prior notice to Sears Canada and before the granting of any approval and vesting order for the transaction provided that such assignment must be to an affiliate and provided further that the Belleville Purchaser shall remain liable for the obligations under the Belleville APS until closing of the transaction.

The Belleville APS has been assigned by the Belleville Purchaser to Belleville Complex Inc. in accordance with the Belleville APS.

C. MOTION FOR APPROVAL OF THE SALE

18. Sears Canada now seeks approval for:

- (a) its entry into and completion of the transactions under the Belleville APS; and
- (b) the sealing of Confidential Appendices “B” through “D” to this Fifth Supplement.

Sale of the Belleville Property

19. Section 36(1) of the CCAA states:

36(1) Restriction on disposition of business assets - A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

20. Section 36(3) of the CCAA states:

(3) Factors to be considered - In deciding whether to grant the authorization, the court is to consider, among other things,

- (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
- (b) whether the monitor approved the process leading to the proposed sale or disposition;
- (c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
- (d) the extent to which the creditors were consulted;
- (e) the effects of the proposed sale or disposition on the creditors and other interested parties; and

(f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

21. The SISP was approved by the Court on July 13, 2017. The Monitor notes that the SISP was the subject of significant media attention, thereby further increasing the notice to all bona fide interested parties about the ongoing SISP.
22. The Belleville Property has been marketed extensively for a period of approximately 12 months. As described in the Mohtadi Affidavit, the Monitor understands a customized listing for the Belleville Property was sent to the Sale Advisor's property brokerage distribution list in July-August 2017, which includes over 2,500 individuals from approximately 1,300 unique companies.
23. The Monitor participated in all stages of the marketing process and is satisfied that the marketing process was carried out in accordance with all orders of the Court, that the opportunity to acquire the assets offered was widely known and that the processes that resulted in the Belleville APS were fair and reasonable. In the Monitor's view, the Applicants' marketing efforts were appropriate in the circumstances.
24. The Monitor approved the process set out in the SISP and the extended marketing process in early 2018 led by the Sale Advisor that resulted in the transaction for the Belleville Property.
25. The Sears Canada Group has consulted extensively with the Owned Real Estate Consultation Parties during the process to market the Belleville Property. The Owned Real Estate Consultation Parties were informed of material developments in that marketing processes. This consultation included in-person meetings and conference calls regarding the status of the sale processes and access to bids received and counter-proposals delivered by Sears Canada through Sears Canada's electronic data room.
26. The Monitor has not been advised of any objection to the transaction by the Owned Real Estate Consultation Parties.

27. The proposed transaction maximizes value from all options available at this time for the Belleville Property and eliminates ongoing carrying costs of the Belleville Property, estimated at approximately \$350,000 per month.
28. The proposed transaction represents the highest and best executable offer obtained for the Belleville Property.
29. The Monitor understands an appraisal of the Belleville Property was obtained in May 2017, when the property was still operating as a going concern distribution centre. A copy of the appraisal is attached as Confidential Appendix “D”.

Sealing of Confidential Appendices

30. Confidential Appendices “B” through “D” to this Fifth Supplement contain commercially sensitive information, including information on the bids received for the Belleville Property, the purchase price for the Belleville Property and the appraisal regarding the Belleville Property. The public disclosure of this information would be harmful to the integrity of the process to sell the Belleville Property, including if the Belleville Property needed to be subject to a further marketing process.

D. MONITOR’S RECOMMENDATION

31. Based upon the considerations set out above, the Monitor supports the Applicants’ motion for approval of the sale of the Belleville Property as contemplated in the Belleville APS.
32. The Monitor supports the sealing of Confidential Appendices “B” through “D” to this Fifth Supplement.

The Monitor respectfully submits to the Court this, its Fifth Supplement to the Nineteenth Report.

E. OTHER UPDATES

Newmarket Property

33. On June 13, 2018, Sears Canada entered into an agreement of purchase and sale with 1979353 Ontario Inc. (the “**Newmarket Sale**”) for the Upper Canada Mall full-line store in Newmarket, Ontario (the “**Newmarket Store**”). On June 14, 2018, the Monitor received from 1979353 Ontario Inc. the required deposit in respect of the Newmarket Sale.
34. Oxford Properties Retail Holdings II Inc. and CPPIB Upper Canada Mall Inc. (the “**Mall Owner**”) held a right of first refusal and an option to purchase in relation to the Newmarket Store. The right of first refusal could be exercised up to June 29, 2018. The option to purchase could be exercised up to July 24, 2018.
35. The Mall Owner elected not to exercise the right of first refusal.
36. On June 29, 2018, the Mall Owner provided notice that they were exercising their option to purchase (the “**Option**”) in relation to the Newmarket Store.
37. The terms of the Option provide that the exercise price for the Option is based upon a specific definition of current value of the property less set-offs for amounts owing by Sears Canada to the Mall Owners.
38. The Option provides that following exercise, the current value of the property is to be determined by:
 - (a) agreement among the parties within seven days;
 - (b) if no agreement is reached, appraisals by an appraiser for each of Sears Canada and the Mall Owner, separately.
 - (c) if the foregoing appraisals are not within a 5% value range, arbitration.
39. The appraisal process described above has now been completed, with each of Sears Canada and the Mall Owner obtaining a separate appraisal. The two appraisals were not

within a 5% value range and the parties have not subsequently been able to agree on a current value for the property. As a result, the terms of the Option require that the determination of current value be submitted to an arbitrator.

40. Sears Canada, in consultation with the Monitor, and the Mall Owner have not agreed on an arbitrator to determine this matter within the time periods permitted under the terms of the Option. The Mall Owners have delivered a motion record seeking the appointment of John Keefe as arbitrator. Sears Canada, through the Monitor, previously proposed the Honourable James Farley Q.C., as arbitrator. In the case of a disagreement, the Option provides that the arbitrator shall be determined by court order.
41. Sears Canada, the Mall Owner and the Monitor intend to attend a chambers appointment before the Court to discuss next steps in connection with this matter.
42. In the Monitor's view, this matter should move forward on an expedited basis to allow for the completion of the sale transaction with limited ongoing carrying costs for the Newmarket property. An expedited resolution of this matter requires not only a determination of current value of the property but also a determination of the validity of certain potential set off amounts claimed to be owing by the Mall Owner that could affect the final purchase price under the Option. In the Monitor's view, the determination of these two matters should run concurrently.

Claims Process Matters

43. The final determination of claims in accordance with the Claims Procedure Order granted on December 8, 2017 in these proceedings is a necessary step toward completion of these proceedings.
44. Due to the volume of claims to be finally determined, the Monitor believes the process to resolve claims should begin to move forward immediately.
45. Time has been scheduled on September 20, 2018 for a motion to be served by Blaney McMurtry, as counsel to certain landlords regarding the determination of their claims (the "**Objecting Landlords**"). While the materials for this motion are not yet served, the

Monitor understands the relief to be sought will relate to a deferral of steps to determine these landlords' claims until a final determination of the motions brought by various pension-related parties asserting deemed trusts in connection with the wind up deficit under the defined benefit component of the Sears Canada pension plan.

46. In the interim, the Monitor has scheduled a case conference with the Honourable James Farley, Q.C., as claims officer, to discuss the process to move the determination of these claims forward pending determination of the September 20, 2018 motion.
47. Blaney McMurtry has advised that the Objecting Landlords do not agree with the Monitor's approach to these claims and do not agree that the proposed case conference should proceed. In addition, counsel to the Objecting Landlords has advised that he has instructions to seek costs personally against the Monitor and its counsel for proceeding with the case conference. Email correspondence setting out the positions of the Monitor and the Objecting Landlords is attached hereto as Appendix "E". Given the nature of the objections raised to the Monitor's proposed approach to these claims and the impact on timing of resolution of these claims, the Monitor believes it is necessary to bring this dispute to the Court's attention.

Dated this 31st day of August, 2018.

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



Paul Bishop
Senior Managing Director



Greg Watson
Senior Managing Director

Appendix "A"
Nineteenth Report

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

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

NINETEENTH REPORT OF FTI CONSULTING CANADA INC., AS MONITOR

June 1, 2018

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**NINETEENTH 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 SearsConnect, 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; and
 - (c) 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**”); and
 - (d) 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 (the “**SISP Approval Order**”).
4. On July 18, 2017, the Court issued a Liquidation Sale Approval Order, which approved
 - (i) a process for the liquidation of inventory, furniture, fixtures and equipment (“**FF&E**”) at locations scheduled for closure (the “**Liquidation Process**”); and (ii) in connection with that Liquidation Process, an Amended and Restated Agency Agreement and a Consulting Agreement between Sears Canada and the agent and consultant described therein. The Liquidation Process is now completed.

5. On October 13, 2017, the Court issued, among other orders, an order (a) approving an agreement and a process (the “**Second Liquidation Process**”) for the liquidation of the inventory and FF&E at all remaining Sears Canada retail locations, which liquidation commenced shortly thereafter and is now completed.
6. On December 8, 2017, the Court issued an Order (the “**Claims Procedure Order**”) approving a claims process for the identification, determination and adjudication of claims of creditors against the Sears Canada Group and their Officers and Directors.
7. On February 22, 2018, the Court issued an Employee and Retiree Claims Procedure Order (the “**E&R Claims Procedure Order**”) approving a process for the identification, determination and adjudication of claims of employees and retirees of the Sears Canada Entities.
8. The liquidation of assets at Sears Canada’s retail locations is now completed, all retail locations are closed, and leases in respect of such locations have been disclaimed or otherwise dealt with in the CCAA Proceedings. The primary assets of the Sears Canada Group that remain to be realized upon are the Remaining Real Estate Assets (as defined and discussed later in this Report).
9. Since the date of the Comeback Motion, the stay period has been extended a number of times and currently expires on July 31, 2018. A Court-ordered mediation described in greater detail in the Monitor’s Eighteenth Report has been scheduled for June 13-14, 2018.
10. In connection with the CCAA Proceedings, the Monitor has provided eighteen reports and eight 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

11. The purpose of this nineteenth report of the Monitor (the “**Nineteenth Report**”) is to provide the Court with updated information, and where appropriate the Monitor’s comments and recommendations, regarding the following:
 - (a) the steps being taken by the Sears Canada Group to market its Remaining Real Estate Assets; and
 - (b) the Sears Canada Group’s motion for approval of a sale transaction for the former Sears Canada store located at the shopping centre commonly referred to as Place Vertu in St. Laurent, Quebec (the “**Place Vertu Property**”).

C. TERMS OF REFERENCE

12. In preparing this Nineteenth 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, and discussions with various parties, including senior management (“**Management**”) of, and advisors to, Sears Canada (collectively, the “**Information**”).
13. Except as otherwise described in this Nineteenth 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 Nineteenth Report in a manner that would comply with the procedures described in the *Chartered Professional Accountants of Canada Handbook*.
14. Future-oriented financial information reported in or relied on in preparing this Nineteenth Report is based on Management’s assumptions regarding future events. Actual results will vary from these forecasts and such variations may be material.

15. The Monitor has prepared this Nineteenth Report in connection with the hearing on June 5, 2018. The Monitor also anticipates that this Report will be relied upon at future hearings seeking approval of further transactions for the Remaining Real Estate Assets.
16. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars.
17. Capitalized terms not otherwise defined herein have the meanings ascribed to them in the following documents filed as part of the CCAA Proceedings: (i) the affidavits of Mr. Billy Wong, the Chief Financial Officer of Sears Canada; (ii) the affidavit of Ms. Becky Penrice, Executive Vice-President and Chief Operating Officer of Sears Canada; (iii) the affidavits of Mr. Philip Mohtadi, General Counsel and Corporate Secretary of Sears Canada; (iv) the Affidavit of Mark Caiger, sworn May 29, 2018 (the “**Caiger Affidavit**”) and (v) the Prior Reports.

D. UPDATES ON REAL PROPERTY MARKETING PROCESS

18. Shortly following the approval of the SISP on July 13, 2017, Sears Canada, with the assistance of BMO Nesbitt Burns Inc. as financial advisor to the Sears Canada Group (“**BMO**” or the “**Sale Advisor**”), sought offers for, among other things, the purchase of Sears Canada’s owned real property.
19. As required by the SISP Approval Order, the Monitor and the Special Committee (as defined in the SISP Approval Order) supervised the implementation of the SISP by the Sears Canada Group and its advisors.
20. In particular, the Monitor:
 - (a) ensured that appropriate protections were put in place to preserve the integrity and fairness of the SISP;
 - (b) was consulted on documentation used to implement the SISP;

- (c) participated in extensive meetings, negotiations and discussions with SISP participants interested in all or part of the business and assets of the Sears Canada Group;
 - (d) reviewed and provided feedback to the Sale Advisor, the Sears Canada Group and the Special Committee regarding the bids and expressions of interest received through the SISP; and
 - (e) worked with the Sears Canada Group to provide disclosure of information regarding the progress and results of the SISP to various stakeholder groups in accordance with their access to information rights under the SISP and the term sheet regarding the 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.
21. The SISP solicited interest in a broad range of transactions to refinance, restructure, sell or reorganize the business and assets, including owned real estate assets, of the Sears Canada Group.
 22. The implementation of the SISP, including steps taken to solicit interest from potential bidders, are described in greater detail in the Caiger Affidavit and the Exhibits thereto.
 23. Expressions of interest were received for Sears Canada's owned real property by the August 31, 2017 bid deadline under the SISP.
 24. Subsequent to the bid deadline, transactions for the sale of the Winnipeg Garden City and the Upper Canada Home Store locations were approved by the Court and completed.
 25. In light of the expressions of interest that were received by the August 31st bid deadline for Sears Canada's remaining real estate assets, Sears Canada, in consultation with BMO, and the Monitor, as well as Pension Representative Counsel, Employee Representative Counsel, the Ontario Superintendent of Financial Services (the "**Superintendent**") and Morneau Shepell Limited, as administrator of the Sears Canada Pension Plan (the "**Plan Administrator**"), and their respective financial and/or real estate advisors, (collectively,

the “**Owned Real Estate Consultation Parties**”¹ determined that additional time should be provided for the completion of further due diligence, including making available further environmental studies and related materials to potential purchasers.

26. Sears Canada currently continues to own the following real estate assets:

- (a) Upper Canada Mall full-line store (Newmarket, ON);
 - (b) Distribution centre (Belleville, ON);
 - (c) Fleur de Lys full-line store (Quebec City, QC);
 - (d) Windsor full-line store (Windsor, ON);
 - (e) Peterborough full-line store (Peterborough, ON);
 - (f) Barrie full-line store (Barrie, ON);
 - (g) Trois-Rivières full-line store (Trois-Rivières, QC);
 - (h) Place Vertu liquidation store (Montréal, QC);
 - (i) Lévis full-line store (Lévis, QC);
 - (j) Charlottetown store (Charlottetown, PEI);
 - (k) Chicoutimi residual land (Chicoutimi, QC);
 - (l) Edmonton residual land (Edmonton, AB); and
 - (m) Sainte-Agathe-des-Monts residual land (Sainte-Agathe-des-Monts, QC),
- (collectively, the “**Remaining Real Estate Assets**”).

¹ The above noted parties were identified as appropriate consultation parties by Sears Canada and the Monitor as they represent a significant portion of the unsecured creditor class and do not have conflicting interests as they would have no interest in acquiring any of the Remaining Real Estate Assets for their own benefit. All of these consultation parties have entered into non-disclosure agreements with Sears Canada.

27. As of February 7, 2018, the additional due diligence information referenced above had been obtained and Sears Canada, in consultation with BMO, the Monitor and the Owned Real Estate Consultation Parties, determined that the sale process for the Remaining Real Estate Assets should continue.
28. On February 7, 2018, BMO delivered an updated sale process letter (the “**Updated Sale Process Letter**”) to those parties who had previously expressed an interest in the Remaining Real Estate Assets under the SISP and parties who had contacted BMO expressing interest subsequent to the original bid deadline. BMO also delivered the Updated Sale Process Letter to other potentially interested parties identified by the real estate advisor to the Superintendent.
29. As noted in the Caiger Affidavit, the Sale Advisor contacted or was contacted by approximately 100 potentially interested parties regarding their interest in Sears Canada’s owned real estate assets. These parties included landlords, institutional real estate investors and parties identified by the real estate advisor to the Superintendent.
30. The Updated Sale Process Letter solicited bids for all of the Remaining Real Estate Assets other than the assets located in Charlottetown, Edmonton, Chicoutimi and Sainte-Agathe-des-Monts (which properties are being marketed by CBRE Limited). The Updated Sale Process Letter provided for a bid deadline of March 7, 2018 at 5:00 p.m. (Eastern).
31. A template transaction document was prepared for the Remaining Real Estate Assets containing the following material provisions:
 - (a) A deposit of 10% of the cash purchase consideration must be submitted by the acquirer to be held in escrow by the Monitor.
 - (b) The purchase consideration would be subject to customary adjustments.
 - (c) Any taxes associated with the closing of these transactions would be paid by the acquirer.

- (d) The acquirer would acquire Sears Canada's interest in any outstanding realty tax appeals and would be entitled to assume and retain carriage of such appeals.
 - (e) Transactions would be completed on an 'as is, where is' basis without representations and warranties other than minimal warranties expressly stated in the transaction documents that are customary for transactions of this type in an insolvency context.
 - (f) Sears Canada would have no obligations to repair or otherwise remediate the applicable property. The acquirer would be responsible for the condition of the property on closing.
 - (g) Closing would be conditional upon court approval.
32. On March 7, 2018, BMO and the Monitor received a number of competing offers to purchase the Remaining Real Estate Assets that were the subject of the Updated Sale Process Letter. Subsequently, the Sears Canada Group, in consultation with the Sale Advisor, the Monitor and the Owned Real Estate Consultation Parties, have reviewed bids received and engaged in extensive discussions with bidders to seek to improve and finalize value maximizing executable transactions. This process is ongoing.
33. The Monitor intends to serve and file supplements to this Nineteenth Report to the Court as transactions for the Remaining Real Estate Assets are finalized and brought for approval by the Court.

E. THE PLACE VERTU PROPERTY

34. The Place Vertu Property is located adjacent to a mall in St. Laurent, Quebec, owned by Place Vertu Nominee Inc. / Fiduciare Place Vertu Inc. (the "**Mall Owner**").
35. Pursuant to an Operating Agreement dated as of June 1, 1975, as amended from time to time (the "**Vertu Operating Agreement**"), the Mall Owner holds a right of first refusal on the Place Vertu Property, providing the Mall Owner with the right to receive notice of any bona fide offers to purchase the Place Vertu Property, following which the Mall

Owner has 15 days to elect whether or not to purchase the Place Vertu Property on those same terms (the “**Vertu ROFR**”).

36. The Vertu Operating Agreement contains certain restrictions on the use of the Place Vertu Property for purposes other than a Sears branded department store. The existence of the Vertu Operating Agreement and the restrictions contained therein as well as the Vertu ROFR would be relevant factors for potential purchasers considering the acquisition of this property.
37. On or about the March 7th bid deadline, Sears Canada received offers for the Place Vertu Property, including an offer from LaSalle Acquisitions Corp. (the “**Place Vertu Purchaser**”), an affiliate of the Mall Owner. A summary of offers received for the Place Vertu Property at the initial August 31, 2017 bid deadline under the SISP and the subsequent March 7, 2018 bid deadline is attached hereto as Confidential Appendix “A”. The Monitor notes that the Place Vertu Purchaser did submit an offer by the initial August 31, 2017 deadline under the SISP.
38. Negotiations ensued with interested parties including the Place Vertu Purchaser in respect of the financial and legal aspects of the offers, draft documents were exchanged by the parties and follow up discussions were held as necessary.
39. Following those discussions and exchanges, Sears Canada determined, in consultation with the Sale Advisor, the Monitor and the Owned Real Estate Consultation Parties, that the transaction proposed by the Place Vertu Purchaser was in the best interests of the Applicants and their stakeholders, and was formally approved by the board of directors of Sears Canada.
40. The Monitor notes that the Owned Real Estate Consultation Parties were consulted throughout the process.
41. The terms of the successful bid by the Place Vertu Purchaser for this property are contained in an Agreement of Purchase and Sale dated May 17, 2018 between the Place Vertu Purchaser and Sears Canada (the “**Place Vertu APS**”). An unredacted copy of the Place Vertu APS is attached hereto as Confidential Appendix “B”.

42. The terms of the Place Vertu APS are substantially similar to the template transaction document described above. Modifications to the template transaction terms include:
- (a) It is a condition of closing that the Approval and Vesting Order granted in connection with the transaction is not stayed, amended, modified, reversed, dismissed or appealed and that all applicable appeal periods have expired.
 - (b) The outside date for completion of the transaction is July 24, 2018.
 - (c) It is a condition of closing that the Vertu ROFR has expired or has been waived. The Monitor notes that the Mall Owner has provided a signed waiver of the Vertu ROFR in connection with this transaction or in connection with any other transaction to the extent the Place Vertu APS does not close solely as a result of a default by the Place Vertu Purchaser under the Place Vertu APS.
 - (d) The Place Vertu Purchaser must deliver an assumption agreement in favour of Sears Canada and the Mall Owner in accordance with the terms of, among other things, the Vertu Operating Agreement in form and substance acceptable to Sears Canada and providing for the Place Vertu Purchaser's assumption of any amounts owing under, among other things, the Vertu Operating Agreement, other than amounts claimed by the Mall Owner under proofs of claim filed by the Mall Owner pursuant to the Claims Procedure Order in the CCAA Proceedings.
 - (e) The Place Vertu Purchaser must deliver a release in favour of Sears Canada from the Mall Owner of all of Sears Canada's obligations under the Vertu Operating Agreement, other than liabilities, if any, set out in proofs of claim filed by the Mall Owner pursuant to the Claims Procedure Order in the CCAA Proceedings.
 - (f) The Place Vertu Purchaser may assign the Place Vertu APS to a corporation, fund or limited partnership (i) owned by investors of LaSalle Investment Management; and (ii) managed by LaSalle Investment Management, the Place Vertu Purchaser or affiliates thereof; provided that any such assignment may include 10338788 Canada Inc. or an affiliate of such entity as to an approximately 10% interest. In

the case of such assignment, the Place Vertu Purchaser is not relieved of its obligations under the Place Vertu APS until closing.

F. SALE APPROVAL MOTION

43. Sears Canada now seeks approval for:

- (a) its entry into and completion of the transactions under the Place Vertu APS; and
- (b) the sealing of Confidential Appendices “A”, “B” and “C” to this Nineteenth Report.

44. Section 36(1) of the CCAA states:

36(1) Restriction on disposition of business assets - A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

45. Section 36(3) of the CCAA states:

(3) Factors to be considered - In deciding whether to grant the authorization, the court is to consider, among other things,

(a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

(b) whether the monitor approved the process leading to the proposed sale or disposition;

(c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;

(d) the extent to which the creditors were consulted;

(e) the effects of the proposed sale or disposition on the creditors and other interested parties; and

(f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

46. The SISP was approved by the Court on July 13, 2017. The Monitor notes that the SISP was the subject of significant media attention, thereby further increasing the notice to all *bona fide* interested parties about the ongoing SISP.
47. The Place Vertu Property has been marketed extensively for a period of approximately 10 months.
48. The Monitor participated in all stages of the marketing process and is satisfied that the marketing process was carried out in accordance with all orders of the Court, that the opportunity to acquire the asset offered was widely known and that the process that resulted in the Place Vertu APS was fair and reasonable. In the Monitor's view, the Applicants' marketing efforts were appropriate in the circumstances.
49. The Monitor approved the process set out in the SISP and the extended marketing process in early 2018 that led to the transaction for the Place Vertu Property.
50. The Sears Canada Group have consulted extensively with the Owned Real Estate Consultation Parties during the process to market the Place Vertu Property. The Owned Real Estate Consultation Parties were informed of material developments in that marketing process. This consultation included in-person meetings and conference calls regarding the status of the sale process and access to bids received and counter-proposals delivered by Sears Canada through Sears Canada's electronic data room.
51. The Monitor has not been advised of any objection to the transaction by the Owned Real Estate Consultation Parties. On May 19, 2018, BMO advised the Owned Real Estate Consultation Parties, through their financial advisors, of the terms of the Place Vertu APS and sought confirmation of the positions of the Owned Real Estate Consultation Parties on the transaction. The financial advisors for Employee Representative Counsel and Pension and Retiree Representative Counsel advised that their clients were not taking a position on the transaction at that time. The Monitor is not aware of any opposition from the other Owned Real Estate Consultation Parties.

52. The proposed transaction maximizes value from all options available at this time for the Place Vertu Property and eliminates ongoing carrying costs of this property, estimated at approximately \$95,000 per month.
53. The proposed transaction does not negatively affect the Mall Owner's rights under the Vertu Operating Agreement as: (i) the Vertu ROFR has been waived by the Mall Owner and, (ii) the Vertu Operating Agreement will be assumed by the Place Vertu Purchaser.
54. The proposed transaction represent the highest and best executable offer obtained for the Place Vertu Property.
55. The Monitor understands an appraisal of the Place Vertu Property was obtained in May 2017, when the property was still operating as a going concern Sears store. A copy of that appraisal is attached as Confidential Appendix "C".

G. MONITOR'S RECOMMENDATION

56. Based upon the considerations set out above, the Monitor supports the Applicants' motion for approval of the sale of the Place Vertu Property as contemplated in the Place Vertu APS.
57. Confidential Appendices "A", "B" and "C" to this Nineteenth Report contain commercially sensitive information, including information on the bids received for the Place Vertu Property, the purchase price for the Place Vertu Property and the appraisal regarding the Place Vertu Property. The public disclosure of this information would be harmful to the integrity of the process to sell the Place Vertu Property, including if the Place Vertu Property needed to be subject to a further marketing process. The Monitor supports the sealing of Confidential Appendices "A", "B" and "C" to this Nineteenth Report.

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

Dated this 1st day of June, 2018.

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

A handwritten signature in black ink that reads "Paul Bishop". The signature is written in a cursive style with a light blue background behind it.

Paul Bishop
Senior Managing Director

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

Greg Watson
Senior Managing Director

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at TORONTO

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

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

Confidential Appendix “B”

Bid Summary

Confidential Appendix “C”

Unredacted Belleville APS

Confidential Appendix “D”

Appraisal

Appendix “E”

Email Correspondence with Counsel to Objecting Landlords

Ma, Catherine

From: Merskey, Alan
Sent: August-29-18 9:48 AM
To: David T. Ullmann
Cc: Pasparakis, Orestes; Gauthier, Virginie; Cobb, Evan; John C. Wolf
Subject: RE: Sears - Claims Hearing re Landlords Represented by Blaney McMurtry

David,

That is the very relief you are requesting on September 20, which we continue to oppose. The Monitor is not prepared to stay your claims until after disposition of the deemed trust motion. Accordingly we shall proceed on the basis set out below.

Best regards

Alan Merskey
Partner

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alan.merskey@nortonrosefulbright.com

NORTON ROSE FULBRIGHT

From: David T. Ullmann [mailto:DUllmann@blaney.com]
Sent: August-29-18 9:42 AM
To: Merskey, Alan
Cc: Pasparakis, Orestes; Gauthier, Virginie; Cobb, Evan; John C. Wolf
Subject: RE: Sears - Claims Hearing re Landlords Represented by Blaney McMurtry

Alan,

For clarity, the disconnect between what you have said below and what I was asking at the end of my email is that I am suggesting that we attend the case conference and no further steps be taken until after the Deemed trust motion is ruled on, as opposed to what you have said, which is that we attend the case conference but nothing will happen until after Sept 20th, which would be practical reality in any event. If you are interested in discussing what I have suggested, let me know and I will seek instructions.

David

David T. Ullmann
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dullmann@blaney.com
☎ 416-596-4289 | ☎ 416-594-2437

From: Merskey, Alan [mailto:alan.merskey@nortonrosefulbright.com]
Sent: August 29, 2018 9:01 AM
To: David T. Ullmann
Cc: Pasparakis, Orestes; Gauthier, Virginie; Cobb, Evan; John C. Wolf
Subject: RE: Sears - Claims Hearing re Landlords Represented by Blaney McMurtry

David,

Thank you for your reply. We will ensure it, and your prior correspondence are before the Court on September 4th. The choice of attendance is of course yours. With respect to your final paragraph we thought it evident from:

1. Its character as a case conference;
2. Your limited availability between July 24 and September 20; and
3. Our prior correspondence

that the purpose of the case conference was exactly that; to manage the case. In any event, to allow you to obtain instructions, it is our intention on September 7 to ask Justice Farley to set a schedule for the expeditious resolution of your clients' claims commencing immediately after September 20 (or the release of reasons).

With respect to the remainder of your email, we continue to disagree with your assertions. As we have previously expressed our views I see little purpose in belabouring the matter further through correspondence.

Best regards

Alan Merskey
Partner

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NORTON ROSE FULBRIGHT

From: David T. Ullmann [mailto:DUllmann@blaney.com]
Sent: August-28-18 9:09 PM
To: Merskey, Alan
Cc: Pasparakis, Orestes; Gauthier, Virginie; Cobb, Evan; John C. Wolf
Subject: RE: Sears - Claims Hearing re Landlords Represented by Blaney McMurtry

Alan,

Thank you for your email. As you have previously made clear, and as our court materials will relate, there is in fact no urgency to resolving our clients claims at this time. As such the statement upon which you rely at the outset of your email below to justify your approach is incorrect.

You and your colleagues were very clear in advising us that our clients held no leverage in this matter because you had already proceeded to present the landlord solution as a fait accompli to the other key stakeholders and they had been encouraged by it. You made it quite clear that you did not need the resolution of our claims to proceed and we will strongly object to any attempt by the Monitor to say otherwise in its court materials, as your email seems to suggest you might do. As such, it is simply untrue, according to your own words, that failure to have a resolution with our clients is in any way impeding the progress of the Sears matter. Indeed, that had to be untrue in order for you to have proceeded with the settlement you entered into with the other landlords.

As to the issues of costs, we will rely on the Monitor's previous statements, plus statements made in court by the Monitor at the July 24th hearing, to make it crystal clear that the monitor is using this hardball approach to the valuation of our clients claims for a collateral purpose, i.e. to force our clients to abandon their objection to the landlord formula. That is ultra vires the role of the of the Monitor and it is inappropriate conduct by a court officer, as is scheduling a moot case conference in the face of a pending motion. When we make these facts known to the Court, we have little doubt that the Court will agree that costs against the Monitor are warranted. As you are aware, when a court officer descends into taking litigious positions and engaging in litigation tactics, akin to those taken by an ordinary litigant, it sheds its protective mantle.

We will not be attending court on September 4th as we have no interest in attempting to deal with this piecemeal. We have a motion set for Sept 20th and we will present our record to the court at that time.

We again encourage you to rethink your approach to this matter. If the Monitor was prepared to discuss deferring any further steps related to our disputed claims beyond what might be discussed at the Sept 7th case conference (should we receive instructions to attend same) that may be something we could discuss (although I have no such instructions at this time).

Regards,

David

David T. Ullmann

Partner

dullmann@blaney.com

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From: Merskey, Alan [mailto:alan.merskey@nortonrosefulbright.com]
Sent: August 28, 2018 2:38 PM
To: David T. Ullmann
Cc: Pasparakis, Orestes; Gauthier, Virginie; Cobb, Evan; John C. Wolf
Subject: RE: Sears - Claims Hearing re Landlords Represented by Blaney McMurtry

David,

Thank you for your email.

As we have indicated to you it is the Monitor's view that the administration of the estate needs to proceed expeditiously. Your clients' outstanding claims represent a significant impediment to that administration. Notwithstanding the relief you are seeking, a case conference with Justice Farley on September 7 will provide helpful guidance and scheduling certainty on the resolution of those claims. It is the Monitor's view that such guidance will provide useful input to the Court in addressing the relief you are requesting. It is for that reason that the Monitor remains of the view that the case conference is a proper step.

Please be advised that the Monitor will not be dissuaded from the correct conduct of its office by threats or aspersions on the propriety of its actions. There is court time booked for September 4th at 10:00 am which we expect to use for some small matters. We will raise your correspondence with the court then. We expect that to the extent you continue to have any concerns with the steps undertaken by the Monitor you will make yourself or a member of your firm available at that time to address those allegations.

Best regards

Alan Merskey

Partner

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NORTON ROSE FULBRIGHT

From: David T. Ullmann [mailto:DUllmann@blaney.com]
Sent: August-27-18 5:01 PM
To: Merskey, Alan
Cc: Pasparakis, Orestes; Gauthier, Virginie; Cobb, Evan; John C. Wolf
Subject: RE: Sears - Claims Hearing re Landlords Represented by Blaney McMurtry

Alan,

I am still on vacation, as you know. I see that you have proceeded to send volumes of materials to the Claims Officer over our objection. I did want to write to you to confirm that our clients did not consent to the proposed case conference with Justice Farley on September 7th and if it proceeds, I have instructions to add to our motion on Sept 20th a claim for costs personally against the Monitor and its counsel for proceeding with that case conference without our consent and in the face of our motion which will render that case conference moot. I encourage you to rethink this approach by the Monitor and defer the case conference until after the Sept 20th motion is heard and ruled on.

Regards,

David

David T. Ullmann

Partner

dullmann@blaney.com

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From: David T. Ullmann

Sent: August 16, 2018 2:53 PM

To: 'Merskey, Alan'

Cc: Pasparakis, Orestes; Gauthier, Virginie; Cobb, Evan

Subject: RE: Sears - Claims Hearing re Landlords Represented by Blaney McMurtry

Alan,

I will be out of the office on vacation for the next two weeks. A courtesy call to me to schedule this would have let you know that fact. The week of September 3rd I have a time on Sept 6th or 7th. The following week is out because of the Jewish Holidays and then I am off to the Insolvency Conference in Vancouver on the 13th.

We continue to object to any case conference being held prior to the hearing of our motion on Sept 20th as a complete waste of time and estate resources.

Regards,

David

David T. Ullmann

Partner

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From: Merskey, Alan [mailto:alan.merskey@nortonrosefulbright.com]

Sent: August 16, 2018 2:46 PM

To: jamesfarley@sympatico.ca

Cc: David T. Ullmann; Pasparakis, Orestes; Cobb, Evan; Gauthier, Virginie

Subject: Sears - Claims Hearing re Landlords Represented by Blaney McMurtry

Your Honour,

I am writing on behalf of the Monitor in connection with the Sears claims procedure.

Mr Ullman, copied, acts for certain landlords with respect to 26 properties formerly occupied by Sears, or otherwise affected by the Sears CCAA proceedings. Those landlords have filed claims for which the Monitor has issued notices of revision and disallowance, and the landlords have in turn filed notices of dispute.

The Monitor wishes to schedule a case conference with you to set out a timetable and any related procedure for the hearing and determination of those disputed claims. Mr Ullman has advised that his clients' position with respect to the claims process, is, among other things, that:

(a) the resolution of their claims as a whole should be stayed indefinitely pending determination of a priority dispute in the Sears CCAA proceedings with respect to a claim for deemed trust asserted over all estate proceeds on behalf of the beneficiaries to a defined benefit pension plan which is in a deficit position. Mr Ullman has scheduled although not served a motion before Justice Hainey on September 20, 2018 for this relief;

(b) that certain of his clients' claims pertaining to an issue they refer to as co-tenancy damages (claims arising against landlords by other tenants as a result of Sears ceasing to operate in a particular location) are not appropriately before the Claims Officer, as matters of first impression; and

(c) the appropriate evidentiary basis for the hearing of their claims extends beyond the claims and notices of dispute filed with the Monitor.

Given the positions expressed, the Monitor proposes that a case conference be set to give directions on those issues and, if so advised, set a hearing schedule. We note that the positions set out above are intended simply to delineate the Monitor's understanding of the issues for the case conference and not to limit or qualify the position of Mr Ullman's clients.

I understand that you have some availability the week of August 27th. We propose meeting on August 28th at 9 am, subject to your and Mr Ullman's availability.

Finally, the Monitor has prepared a brief of the claim notices, disallowances and dispute notices. The brief is approximately 700 pages. Could you please advise if you would prefer hard copies or electronic or both. While we do not propose you review the brief in any detail before the proposed case conference it may be of some use to you for reference purposes.

We look forward to your directions on the above.

Yours truly

Alan Merskey
Partner

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NORTON ROSE FULBRIGHT

Law around the world
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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., *et al.*

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at TORONTO

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

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