

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST



THE HONOURABLE MR. )

FRIDAY, THE 16th

JUSTICE HAINEY )

DAY OF OCTOBER, 2020

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF SEARS CANADA INC., 9370-2751  
QUEBEC INC., 191020 CANADA INC., THE CUT INC., SEARS  
CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES  
INC., 9845488 CANADA 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

ORDER  
(Coface LCs)

**THIS MOTION**, made by FTI Consulting Canada Inc., in its capacity as Court-appointed Monitor (the "Monitor") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") for an Order (i) approving the Acknowledgement and Release Agreement among Compagnie Française D'assurance Pour Le Commerce Extérieur, Canada Branch and Coface North America Insurance Company (collectively, "Coface"), Sears Canada Inc. ("Sears Canada") and the Monitor dated September 25, 2020 (the "Agreement"); and (ii) certain other relief, proceeded by way of videoconference due to the COVID-19 crisis.

**ON READING** the Notice of Motion of the Monitor and the Forty-First Report of the Monitor dated September 25, 2020 (the "Forty-First Report"), filed, and on hearing the submissions of counsel for the Monitor, counsel for Coface, and such other counsel as were present, no one else appearing,

## **SERVICE AND DEFINED TERMS**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record and the Forty-First Report is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that unless otherwise indicated or defined herein, capitalized terms used in this Order shall have the meaning given to them in the Agreement.

## **APPROVAL OF AGREEMENT AND RELEASES**

3. **THIS COURT ORDERS AND DECLARES** that (i) the Agreement and the settlement and releases contemplated therein are hereby approved, (ii) Sears Canada and the Monitor are hereby authorized and directed, *nunc pro tunc*, to enter into such Agreement, and to take or cause to be taken such steps and execute such additional documents as may be necessary or desirable for the performance of their obligations thereunder, and (iii) upon satisfaction of the conditions set out in Section 1 of the Agreement, Coface is directed to remit to the Monitor (for and on behalf of Sears Canada), in accordance with the terms of the Agreement, (i) the Remaining CAD LC Funds, less a Professional Fee Reserve in the amount of CAD \$25,000, and (ii) the Remaining USD LC Funds, which payments shall be in full and final satisfaction of any and all obligations that Coface may have to the Sears Releasers in respect of the Released Matters or to the Issuing Bank and Wells Fargo Capital Finance Corporation in respect of the Released Matters.
4. **THIS COURT ORDERS AND DECLARES** that, upon the remittance of the payment set out at paragraph 3 above, any and all Avoidance Actions that may be asserted by any party against any Insured Supplier in connection with the Insured Receivables, including, without limitation, by the Monitor, any trustee in bankruptcy of Sears Canada and any creditor or stakeholder of Sears Canada are hereby fully, finally and forever barred, extinguished and released.

## **SEALING OF CONFIDENTIAL APPENDICES**

5. **THIS COURT ORDERS** that Confidential Appendices "B", "C" and "D" to the Forty-First Report be sealed, kept confidential and not form part of the public record and be placed separate and apart from all other contents of the Court File, in a sealed envelope attached to a

notice that sets out the title of these proceedings and a statement that the contents are subject to a sealing order and shall only be opened upon further Order of this Court.

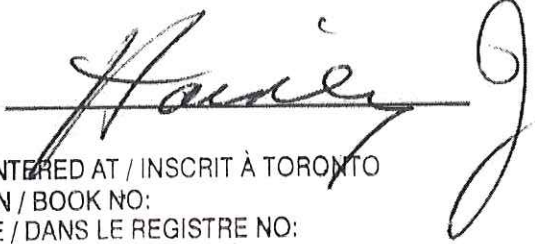
## GENERAL

6. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings under the CCAA;
- (b) any assignment in bankruptcy or any application for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3. ("BIA") and any order issued pursuant to any such application;
- (c) any application for a receivership order; or
- (d) the provisions of any federal or provincial legislation;

the payment and releases provided for in the Agreement and this Order shall be binding on any trustee in bankruptcy or receiver that may be appointed in respect of Sears Canada and shall not be void or voidable by creditors of Sears Canada nor shall they constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall they constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

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

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

OCT 23 2020

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**ORDER  
(Coface LCs)**

**NORTON ROSE FULBRIGHT CANADA LLP**  
222 Bay Street, P.O. Box 53  
Toronto, Ontario M5K 1E7 CANADA

**Orestes Pasparakis, LSO#: 36851T**

Tel: +1 416.216.4815

**Alan Merskey, LSO#: 41377I**

Tel: +1 416.216.4805

**Evan Cobb, LSO#: 55787N**

Tel: +1 416.216.1929

Fax: +1 416.216.3930

[orestes.pasparakis@nortonrosefulbright.com](mailto:orestes.pasparakis@nortonrosefulbright.com)

[alan.merskey@nortonrosefulbright.com](mailto:alan.merskey@nortonrosefulbright.com)

[evan.cobb@nortonrosefulbright.com](mailto:evan.cobb@nortonrosefulbright.com)

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