

Court File Number: CV-17-11846-0001

Superior Court of Justice  
Commercial List

FILE/DIRECTION/ORDER

In The MATTER OF  
Plaintiff(s)

AND

SEARS CANADA INC  
Defendant(s)

Case Management  Yes  No by Judge: \_\_\_\_\_

Counsel	Telephone No:	Facsimile No:

- Order     Direction for Registrar (No formal order need be taken out)
- Above action transferred to the Commercial List at Toronto (No formal order need be taken out)

- Adjourned to: \_\_\_\_\_
- Time Table approved (as follows):

① The attached orders which are not approved shall issue on the terms of the attached.

② There shall be a

Date

Judge's Signature

Additional Pages 2

Superior Court of Justice  
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

Sealing Order on  
the Terms of para 17  
of the Governance  
Protocol and Stay  
extension Order.

③ The balance of my  
endorsement and  
attached on Consent.

Haining J

December 3, 2018

On October 15, 2018, Sears Holdings Corporation (“SHC”) filed voluntary petitions for relief pursuant to Chapter 11 of the *Bankruptcy Code* in the U.S. Bankruptcy Court for the Southern District of New York.

Counsel for the Litigation Investigator, the Monitor and SHC disagree regarding the effect of the stay of proceedings in the U.S. on the proceedings before this Court.

Notwithstanding this disagreement, counsel for SHC, the Litigation Investigator and the Monitor have agreed that:

1. neither the Litigation Investigator nor the Monitor are proposing to take any fresh step in any proceeding against SHC at this time and SHC will be advised if this changes in the future;
2. none of the orders that Litigation Investigator and/or the Monitor are seeking today are being sought against SHC in any proceeding or proposed proceeding; and
3. none of the steps that the Litigation Investigator and/or the Monitor are now taking are intended to affect the stay that was agreed to between SHC and the plaintiffs in the 129 action.

Harvey J.

December 3, 2018

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

BETWEEN:

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.

**Before:       Hainey J.**

**Date:         December 3, 2018**

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**ENDORSEMENT**


[1] Counsel for the Former Directors has advised that, in response to the five actions that will be pursued, their clients will almost certainly bring claims (including crossclaims and third party claims) against other parties involved with Sears Canada, some of which claims will be asserted against parties that are currently beneficiaries of the stay. In respect of any of such claims that are to be asserted against beneficiaries of the stay, the directors or any other defendant in the actions that wishes to assert such claims may later seek to lift the CCAA stay to permit such claims to be advanced.

[2] To address the Proposed Defendants' ability to recover costs in these proceedings, the Monitor confirms that it will set aside a reserve of \$12,000,000 from the funds in the Sears Canada

Estate. The reserve is intended to cover 1) the Monitor's and Litigation Trustee's fees (including fees and costs of legal counsel) and disbursements regarding their proposed claims, and 2) any and all cost awards in favour of the Proposed Defendants against the Monitor, Litigation Trustee, or the Estate, as the case may be. The Monitor acknowledges that the Proposed Defendants shall have a post-filing claim, on a dollar for dollar basis, against the Estate for any award of costs. Nothing in this Endorsement precludes the Proposed Defendants from applying to this court to seek an increase to the reserve .

[3] The ESL Parties agree to reserve their objection to the issuance of the claims on the basis of abuse of process arising from any failure to obtain a waiver of privilege from Sears Canada. The ESL Parties have reserved their rights to seek any remedy, including a motion to strike or a stay of the proposed claims, before the case management judge despite not opposing the issuance of the proposed claims at this stage.

[4] The Former Directors have raised concerns about a potential conflict of interest relating to FTI as a result of its role in these CCAA proceedings, the litigation against the Proposed Defendants, and in the Chapter 11 proceedings of Sears Holdings Corporation. The relief granted today is without prejudice to the ability of the Proposed Defendants to later raise conflict of interest issues relative to FTI and seek appropriate relief or for FTI to defend itself.

  
HAINEY J