

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

B E T W E E N:

FTI CONSULTING CANADA INC.,  
in its capacity as Court-appointed monitor in proceedings  
pursuant to the *Companies' Creditors Arrangement Act*, RSC 1985, c. c-36

Plaintiff

- and -

ESL INVESTMENTS INC., ESL PARTNERS LP, SPE I PARTNERS, LP, SPE MASTER I, LP,  
ESL INSTITUTIONAL PARTNERS, LP, EDWARD S. LAMPERT, WILLIAM HARKER  
and WILLIAM CROWLEY

Defendants

**MOTION RECORD**

February 7, 2019

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BETWEEN:

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Defendants

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**Tab 1**

Court File No. CV-18-00611219-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
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B E T W E E N:

FTI CONSULTING CANADA INC.,  
in its capacity as Court-appointed monitor in proceedings  
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Plaintiff

- and -

ESL INVESTMENTS INC., ESL PARTNERS LP, SPE I PARTNERS, LP, SPE MASTER I, LP,  
ESL INSTITUTIONAL PARTNERS, LP, EDWARD S. LAMPERT, WILLIAM HARKER  
and WILLIAM CROWLEY

Defendants

**NOTICE OF MOTION**

The Defendants William Harker and William Crowley (the "**Former Directors**") will make a Motion to Mr. Justice McEwen of the Commercial List on March 20, 2019 at 10:00 a.m., or as soon after that time as the Motion can be heard, at 330 University Avenue, 8th Floor, Toronto, Ontario, M5G 1R7.

**PROPOSED METHOD OF HEARING:** The Motion is to be heard orally.

**THE MOTION IS FOR:**

- (a) an order that the Plaintiff produce forthwith for inspection all documents that are in the Plaintiff's possession, control, or power which are relevant to this action;
- (b) in the alternative, an order that the Plaintiff produce forthwith for inspection all documents relating to Sears Canada Inc. ("**Sears Canada**") that the Plaintiff has provided to Lax O'Sullivan Lisus Gottlieb LLP in its capacity as Litigation

Investigator (the "**Litigation Investigator**") or to Court-appointed Litigation Trustee for Sears Canada or its counsel which are relevant to this action;

- (c) costs of this motion; and
- (d) such further and other relief as to this Honourable Court may seem just.

**THE GROUNDS FOR THE MOTION ARE:**

***Nature of Allegations Made by the Plaintiff***

- (a) in this action, the Plaintiff seeks damages of \$509 million against the Former Directors, as well as other related relief, based on allegations that the Former Directors, as members of the board of directors of Sears Canada (the "**Board**"), improperly approved and caused Sears Canada to pay a dividend to shareholders in December 2013 (the "**Dividend**");
- (b) these allegations against the Former Directors relate entirely to their association with Sears Canada as members of the Board;
- (c) the Plaintiff makes allegations of misconduct against the Former Directors relating to the performance of their duties, including their oversight responsibility for certain strategic decisions, including the disposition of certain real estate assets and the operational and financial performance of Sears Canada, during the period 2010 to 2014;
- (d) in particular, and among other things, the Plaintiff alleges that the Former Directors:
  - (i) were directed by, and acted in concert with, the Defendants Edward S. Lampert, ESL Investments Inc., and other related entities (the "**ESL**");



**Defendants**”) to implement a plan to improperly extract cash from Sears Canada through the disposition of valuable real estate assets to pay the Dividend;

- (ii) failed to implement or ensure an adequate corporate governance process for the consideration of the Dividend, including full disclosure of all relevant information and obtaining necessary external professional advice; and
  - (iii) knew and recklessly disregarded operational and financial challenges, management projections and long term viability risk and failed to exercise proper business judgment in approving the Dividend;
- (e) the statement claim references and relies on numerous unspecified corporate presentations and other documents which relate to the operational and financial performance of Sears Canada over a lengthy period of time in support of serious allegations of misconduct by the Former Directors;

***Unfair Informational Advantage: the Plaintiff has Obtained Sears Canada Documents and Shared those Documents with Others***

- (f) this matter involves highly unusual and unique circumstances regarding access to Sears Canada documents;
- (g) in particular, the Plaintiff has already obtained possession of thousands of Sears Canada documents and has had the opportunity to review them over a period in excess of fourteen months;
- (h) the Plaintiff has a significant and unfair informational advantage regarding the documents and information of Sears Canada and has utilized this information to advance this claim against the Former Directors;

- (i) the Former Directors have requested all relevant non-privileged Sears Canada documents from the Plaintiff;
- (j) despite such repeated requests, the Plaintiff has denied the Former Directors any access to the Sears Canada documents;
- (k) in contrast, the Plaintiff has provided certain Sears Canada documents to certain former director defendants in the other actions;

***The Former Directors are Entitled to and Require Document Production to Plead***

- (l) this action involves complex legal and factual issues and will be proceeding on an expedited timetable, with a trial currently scheduled to commence less than one year from the return date of this motion;
- (m) this action raises serious allegations against the Former Directors and relates to events which occurred more than five years ago, with some allegations relating to Sears Canada corporate developments and conduct of the Former Directors which occurred as far back as 2005;
- (n) the documents sought by the Former Directors are essential and necessary for the purpose of allowing them to properly and adequately plead their defence;
- (o) the Former Directors will be unable to properly and adequately plead and provide meaningful answer and defence to these serious allegations, including to frame the issues for the Court and fully outline all material facts, if they are required to plead in the absence of an opportunity to access the documents sought;

- (p) an order for production by the Plaintiff before the close of pleadings will promote the aim of securing the most just, most expeditious, and least expensive determination of this proceeding on its merits;
- (q) the Former Directors are entitled to access the documents of Sears Canada pursuant to the terms of individual director indemnification agreements with Sears Canada, which provide each of the Former Directors with broad, comprehensive access to documents and information of Sears Canada relating to the defence of any proceeding, and pursuant to general corporate law and governance policy objectives;
- (r) the Former Directors will be entitled to production by the Plaintiff in the normal course in any event and production prior to the close of pleadings will reduce or eliminate the time-consuming and expensive process of amending pleadings without placing the currently scheduled trial date in jeopardy;
- (s) rules 1.04, 30.04(5), 37, and 57 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and
- (t) such further and other grounds as the lawyers for the Former Directors may advise.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the Motion:

- (a) the affidavit of John N. Birch, sworn February 7, 2019; and
- (b) such further and other evidence as the lawyers for the Former Directors may advise and this Honourable Court may permit.

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February 7, 2019

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FTI CONSULTING CANADA INC.  
Plaintiff

-and-

ESL INVESTMENTS INC *et al.*  
Defendants

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

PROCEEDING COMMENCED AT  
TORONTO

**NOTICE OF MOTION  
RETURNABLE MARCH 20, 2019**

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William Harker and William Crowley

Tab 2

Court File No. CV-18-00611219-00CL

**ONTARIO  
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B E T W E E N:

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Plaintiff

- and -

ESL INVESTMENTS INC., ESL PARTNERS LP, SPE I PARTNERS, LP, SPE MASTER I, LP,  
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and WILLIAM CROWLEY

Defendants

**AFFIDAVIT OF JOHN N. BIRCH  
(SWORN FEBRUARY 7, 2019)**

I, John N. Birch, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am the President and director of John N. Birch Professional Corporation, which corporation is a partner of Cassels Brock & Blackwell LLP ("**Cassels**"). Cassels is counsel of record for the Defendants William Harker ("**Harker**") and William Crowley ("**Crowley**") in this action (the "**Monitor Action**") and for them and the Defendants Ephraim J. Bird ("**Bird**"), Douglas Campbell ("**Campbell**"), James McBurney ("**McBurney**"), and Donald Ross ("**Ross**") (collectively, the "**Former Directors**") in a proceeding commenced by Sears Canada Inc. ("**Sears Canada**"), by its Court-appointed Litigation Trustee under Toronto Court File No. CV-18-00611214-00CL (the "**Litigation Trustee Action**").



2. As one of the members of Cassels with primary carriage of this matter, I have knowledge of the matters to which I hereinafter depose in this affidavit. To the extent that I do not have personal knowledge of any particular matter, I have identified the source of my information and I believe that information to be true.

## **BACKGROUND**

3. Sears Canada and its affiliated companies (collectively, the **"Sears Entities"**) obtained protection under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the **"CCAA"**) on June 22, 2017 pursuant to an initial order (as amended and restated on July 13, 2017, the **"Initial Order"**).

4. The relief granted by the Initial Order included a stay of proceedings against the Sears Entities until July 22, 2017 and the appointment of FTI Consulting Canada Inc. as monitor of the Sears Entities (the **"Monitor"**). The Initial Order also provided that no proceeding could be commenced or continued against, among others, any former directors or officers of the Sears Entities. The Initial Order is attached as Exhibit A.

5. On March 2, 2018, this court issued an Order (amended on April 26, 2018), attached as Exhibit B, appointing Lax O'Sullivan Lisus Gottlieb LLP (**"Lax O'Sullivan"**) as litigation investigator of the Sears Entities (the **"Litigation Investigator"**). The Litigation Investigator, as an officer of the court, was given a mandate to investigate, identify, and report on potential rights and claims of the Sears Entities and/or creditors of the Sears Entities against third parties, including Sears Canada's former directors.

6. The stay period granted by the Initial Order has been extended numerous times, most recently to May 2, 2019. The Order granting the most recent extension, which is the Governance Protocol and Stay Extension Order dated December 3, 2018, is attached as Exhibit C.

7. On December 3, 2018, the court also ordered that the stay provided by the Initial Order (as extended) be lifted to permit specific claims to be continued or commenced against, among others, the Former Directors (the "**Lift-Stay Order**"). The Lift-Stay Order is attached as Exhibit D.

#### **THE CLAIMS**

8. Pursuant to the Lift-Stay Order, a putative class action commenced by 1291079 Ontario Limited on October 21, 2015 against, among others, the Former Directors, was permitted to continue (the "**129 Action**"). The statement of claim in the 129 Action is attached as Exhibit E.

9. On December 19, 2018, the following actions were commenced against, among others, the Former Directors:

- (a) the Monitor Action, the statement of claim for which is attached as Exhibit F;
- (b) the Litigation Trustee Action brought by Douglas Cunningham (the "**Litigation Trustee**"), the statement of claim for which is attached as Exhibit G; and
- (c) an action by Morneau Shepell Ltd., in its capacity as administrator of the Sears Canada registered pension plan (the "**Morneau Shepell Action**"), the statement of claim for which is attached as Exhibit H.

10. Each of the Monitor Action, the Litigation Trustee Action, the 129 Action, and the Morneau Shepell Action (collectively, the "**Actions**") seek damages of at least one hundred million dollars as well as additional relief. The Monitor Action and the Litigation Trustee Action each seek damages of \$509 million.

#### **DOCUMENTS IN THE MONITOR'S AND LITIGATION TRUSTEE'S POSSESSION**

11. The situation that the Former Directors face is extremely unusual. Even though they are adverse parties in the Actions, the Litigation Trustee and Monitor have obtained possession of the

very documents that the Former Directors were entitled to access and have possession of in connection with their work as members of the board of directors of Sears Canada (the "**Board**"). The Litigation Trustee and Monitor were able to review and analyze these documents over periods of, respectively, more than nine months and fourteen months, before the Actions even started.

12. However, as I will describe in more detail below, the Former Directors have not been afforded the same access to documents so far, and there has been a clear imbalance of access to relevant documents.

13. The Monitor and Litigation Trustee are in possession of hundreds of thousands of Sears Canada documents. This preferential access is well documented in the evidentiary record from the CCAA proceedings of Sears Canada:

- (a) paragraph 22 of the 27<sup>th</sup> Report of the Monitor dated November 5, 2018 indicates that the Monitor received over 100,000 documents from Sears Canada and related companies and undertook a targeted review in relation to the claims against the Former Directors. The 27<sup>th</sup> Report of the Monitor is attached as Exhibit I;
- (b) as part of the CCAA proceeding, the Monitor and its counsel have brought fee approval motions and the invoices filed in support of such motions (the "**Invoices**") include detailed time dockets showing that, among other things, beginning in March 2018, the Monitor and its counsel devoted significant time and resources to document review. The pages of the Invoices detailing the document review efforts are attached as Exhibit J; and
- (c) paragraph 11(b) of the First Report of the Litigation Investigator, Lax O'Sullivan (which is now counsel to the Litigation Trustee) dated November 5, 2018 states

that, in carrying out its mandate, it investigated claims and possible claims of Sears Canada and/or their creditors and the Monitor, and as part of that process reviewed documents from the Sears Entities. The First Report of the Litigation Investigator is attached as Exhibit K.

14. I am advised by counsel to other former directors, who are Defendants in the Litigation Trustee Action, that the Monitor has provided documents to those former directors.

#### **THE ALLEGATIONS RELATE TO INFORMATION THE FORMER DIRECTORS DON'T HAVE**

15. The Actions are based on allegations that the Former Directors approved, and caused Sears Canada to pay (in December 2013), a \$509 million dividend to shareholders (the "**Dividend**"). The Actions allege that the Dividend was inappropriate as a matter of law. Different causes of action, including oppression and breach of section 96 of the *Bankruptcy and Insolvency Act*, are pleaded.

16. These allegations against the Former Directors relate entirely to their association with Sears Canada as members of the Board.

17. In particular, the Plaintiff makes allegations of misconduct against the Former Directors relating to the performance of their duties, including their oversight responsibility for certain strategic decisions, including the disposition of certain real estate assets, and the operational and financial performance of Sears Canada, during the period 2010 to 2014. Moreover, among other things, the Plaintiff alleges that the Former Directors

- (a) were directed by, and acted in concert with, the Defendants Edward S. Lampert, ESL Investments Inc., and other related entities (the "**ESL Defendants**") to implement a plan to improperly extract cash from Sears Canada through the disposition of valuable real estate assets to pay the Dividend;

- (b) failed to implement or ensure an adequate corporate governance process for the consideration of the Dividend, including full disclosure of all relevant information and obtaining necessary external professional advice; and
- (c) knew and recklessly disregarded operational and financial challenges, management projections, and long term viability risk, and failed to exercise proper business judgment in approving the Dividend.

18. The statements of claim reference and rely on numerous corporate presentations and other documents which relate to the operational and financial performance of Sears Canada over a lengthy period of time in support of serious allegations of misconduct by the Former Directors.

19. Moreover, the events to which these allegations relate took place at least five years ago, and in some cases as much as fourteen years ago. The Former Directors ceased to sit on the board of Sears Canada many years ago. In particular, the Former Directors left the Board at the following times:

- (a) Campbell in October 2014;
- (b) Ross in April 2014;
- (c) McBurney in April 2015;
- (d) Harker and Crowley in April 2015; and
- (e) Bird in November 2013, immediately prior to the approval of the Dividend.

20. Based upon my review of the statements of claim in the Monitor Action and the Litigation Trustee Action, I believe that there are analyses, strategic plans, board and committee presentations, emails, and other documents stored in Sears Canada's files and computer

systems that are relevant to the Actions. An order for production of the documents sought at this stage of the proceeding will allow the Former Directors to review and rely on such items for the purposes of responding to the specific allegations in the statements of claim and preparing their statements of defence.

21. In both the Monitor Action and the Litigation Trustee Action, the plaintiffs base their claims on events that long pre-date the payment of the Dividend in 2013. For example, in paragraphs 10 to 13 of the statement of claim in the Monitor's Action and paragraphs 2 to 4 of the statement of claim in Litigation Trustee Action, allegations are made about events that go back to at least 2010.

22. Moreover, in both the Monitor Action and the Litigation Trustee Action, the plaintiffs rely on events taking place even earlier. For example, in paragraph 51 of the statement of claim in the Monitor's Action and paragraph 49 of the statement of claim in the Litigation Trustee Action, allegations relating to asset sales and dividend distributions are made that go back to 2005. Many of the Former Directors were not on the Board at that time.

23. I believe that the documents sought on this motion are therefore essential and necessary for the purpose of allowing the Former Directors to adequately and properly plead in the Monitor Action and the Litigation Trustee Action, and likely the other Actions as well. In other words, I do not believe that the Former Directors can provide meaningful answer and defence to the serious allegations against them in the Actions without first reviewing the documents sought.

24. If the requested documents are not produced at this stage, it is likely that the Former Directors will have to prepare and file much more general statements of defence, which will contain bald denials of the allegations. Then, after documents are subsequently produced following the close of pleadings, the Former Directors will have to seek additional time to review these documents and to prepare amended statements of defence.

25. Production of the documents sought on this motion will avoid the need to prepare two separate sets of defences, and will prevent the associated delay and additional legal fees from being incurred.

#### **INDEMNIFICATION AGREEMENTS**

26. Apart from the justified need, in these circumstances, to obtain production at this stage, the Former Directors have a contractual entitlement to obtain documents from Sears Canada.

27. In particular, the Former Directors have each entered into indemnification agreements with Sears Canada (the “**Indemnification Agreements**”). The Indemnification Agreements contain provisions that are standard in these types of agreements, including an undertaking by Sears Canada to pay defence costs and indemnify the Former Directors for liability associated with their activities as directors.

28. The Indemnification Agreements also include provisions entitling the Former Directors to access the documents of Sears Canada in connection with their defence of any proceeding. For example, the Indemnification Agreement between Crowley and Sears Canada dated July 4, 2014 provides the following, in relevant part:

The Indemnified Party and the Corporation shall cooperate fully with each other and their respective counsel in the investigation related to, and defence of, any proceeding and shall make available to each other all relevant books, records, documents and files and shall otherwise use their best efforts to assist each other’s counsel to conduct a proper and adequate defence.

29. The Indemnification Agreements between each of Harker, Campbell, Ross, Bird, McBurney and Sears Canada contain an identical provision. These Indemnification Agreements are attached as Exhibit L (Crowley), Exhibit M (Harker), Exhibit N (Campbell), Exhibit O (Bird), Exhibit P (McBurney), and Exhibit Q (Ross).

30. Notwithstanding the numerous requests described below, the Monitor and the Litigation Trustee have not provided the documentary disclosure mandated by the Indemnification Agreements.

#### **PRIOR ATTEMPTS TO OBTAIN DOCUMENTS**

31. Cassels has made a number of attempts to obtain the documents from the Monitor and the Litigation Investigator (and subsequently counsel to the Litigation Trustee), both prior to the Lift-Stay Order and thereafter.

32. On October 19, 2018, I wrote a letter to counsel for the Monitor requesting the collection and preservation of Sears Canada documents. In that letter, I indicated that the preservation of Sears Canada documents was particularly important given the following:

- (a) numerous claims had been asserted against the Former Directors in the CCAA process;
- (b) there was outstanding litigation against Sears Canada and some of the directors which predated the CCAA proceeding; and
- (c) the anticipated claims the Litigation Investigator might recommend be pursued.

33. In that letter, I also offered to meet with counsel for the Monitor to discuss the document preservation and collection process. My letter dated October 19, 2018 is attached as Exhibit R.

34. Almost one month later, on November 16, 2018, counsel for the Monitor responded to my letter advising that a request for production of documents and a meeting to discuss documentary production was premature. The Monitor's responding letter is attached as Exhibit S.

35. Shortly thereafter, on November 20, 2018, I replied to counsel for the Monitor (and the Litigation Investigator), by sending a letter (attached as Exhibit T) requesting access to all records



of Sears Canada relating to any actual or possible claims being asserted against the Former Directors. In that letter, I expressed the Former Directors' concern about the Monitor's refusal to produce documents given the following factors:

- (a) the Monitor is supposed to be a neutral party and act in the interests of all stakeholders, which include the Directors who are creditors of Sears Canada; and
- (b) the incongruence of the Monitor and Litigation Investigator having had access to documents for the purpose of advancing claims on behalf of Sears Canada's creditors while withholding these same documents from the very individuals that had access to them as part of their tenure on the Sears Canada board.

36. In my November 20, 2018 letter, I also highlighted the risk of delay caused by the Monitor and Litigation Investigator's refusal to provide documentary production to the Former Directors given that the Monitor's Reports filed in the CCAA proceeding, indicate that it took approximately eight months for the Monitor to review the documents and consider potential claims.

37. On November 22, 2018, the Litigation Investigator advised that the Monitor would not be producing the requested Sears Canada documents. Counsel to the Monitor sent me an email agreeing with the Litigation Investigator's refusal to provide documentary production. The Litigation Investigator's letter and the email from Monitor's counsel are attached, collectively, as Exhibit U.

38. On January 25, 2019, at a case conference, Justice McEwen scheduled a trial for the claims against the Former Directors for February 2020. Justice McEwen's endorsement is attached as Exhibit V.

39. Shortly thereafter, in an attempt to avoid unnecessary motions, on January 28, 2019, my colleague, Wendy Berman, wrote a letter to counsel for the Monitor, attached as Exhibit W, again

requesting access to the Sears Canada documents in the possession, control, or power of the Monitor that are relevant to the Monitor Action (other than privileged documents).

40. In that letter, Ms. Berman outlined that the requested Sears Canada documents were necessary for the Former Directors to provide a meaningful response to the Monitor Action, including preparation of a statement of defence. She also made it clear that the Former Directors are entitled to documentary production contractually and as a matter of corporate law.

41. On January 31, 2019, Ms. Berman wrote a letter to counsel for the Litigation Trustee, attached as Exhibit X, requesting access to the Sears Canada documents in the possession, control, or power of the Litigation Trustee that are relevant to the Litigation Trustee Action (other than privileged documents). Further, Ms. Berman repeated that the Sears Canada documents were necessary for the Former Directors to provide a meaningful response to the Monitor Action.

42. Cassels has not received a response from the Monitor's counsel or the Litigation Trustee's counsel to its letters of January 28 and 31, 2019.

#### **DOCUMENT PRODUCTION WILL NOT CAUSE DELAY**

43. The Monitor and the Litigation Trustee will be required to produce the requested documents in the ordinary course of the litigation. In the circumstances, ordering production prior to the close of pleadings will not cause any delay. It will only cause the steps in the Monitor Action and the Litigation Trustee Action to take place in a different sequence while also preserving the trial dates, which have been set for February 2020.

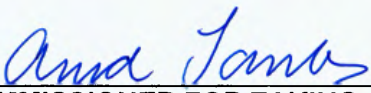
44. Moreover, in the circumstances, ordering production prior to the close of pleadings will prevent delay because it will prevent the Former Directors from being forced to file placeholder statements of defence as a result of not having had an opportunity to conduct a meaningful review

of relevant documents to refresh their respective memories, and therefore save the significant time and expense that would be incurred through pleading amendments and associated motions.

**NO WAIVER OF PRIVILEGE**

45. The Former Directors and their counsel do not waive privilege over communications and advice provided to the Former Directors, the work product created for use in the four pending actions referred to above, or otherwise.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario, on February 7, 2019

  
\_\_\_\_\_  
COMMISSIONER FOR TAKING AFFIDAVITS  
LSUC # 6574140

}   
\_\_\_\_\_  
JOHN N. BIRCH

FTI CONSULTING CANADA INC. -and- ESL INVESTMENTS INC *et al.*  
Plaintiff Defendants

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

PROCEEDING COMMENCED AT  
TORONTO

**AFFIDAVIT OF JOHN N. BIRCH  
(SWORN FEBRUARY 7, 2019)**

**CASSELS BROCK & BLACKWELL LLP**

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Lawyers for the Defendants  
William Harker and William Crowley

This is Exhibit "A" referred to in the Affidavit of Service of John N. Birch,  
sworn February 7, 2019



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Commissioner for Taking Affidavits  
(or as may be)

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

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

THE HONOURABLE MR.	)	THURSDAY, THE 22 <sup>ND</sup>
	)	
JUSTICE HAINEY	)	DAY OF JUNE, 2017



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

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

(each, an “**Applicant**”, and collectively, the “**Applicants**”)

**INITIAL ORDER**

**THIS APPLICATION**, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the affidavit of Billy Wong sworn June 22, 2017, and the Exhibits thereto (collectively, the “**Wong Affidavit**”), and the pre-filing report dated June 22, 2017 of FTI Consulting Canada Inc. (“**FTI**”), in its capacity as the proposed Monitor of the Applicants (the “**Pre-Filing Report**”), and on hearing the submissions of counsel to the Applicants and Sears Connect LP (the “**Partnership**”, and collectively with the Applicants, the “**Sears Canada**

**Entities**”), counsel to the Board of Directors (the “**Board of Directors**”) of Sears Canada Inc. (“**SCI**”) and the Special Committee of the Board of Directors (the “**Special Committee**”) of SCI, counsel to FTI, counsel to Wells Fargo Capital Finance Corporation Canada (the “**DIP ABL Agent**”), as administrative agent under the DIP ABL Credit Agreement (as defined herein), and counsel to GACP Finance Co., LLC (the “**DIP Term Agent**”), as administrative agent under the DIP Term Credit Agreement (as defined herein), Koskie Minsky LLP as counsel for Store Catalogue Retiree Group, counsel for the Financial Services Commission of Ontario, and on reading the consent of FTI to act as the Monitor.

### **SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

### **APPLICATION**

2. **THIS COURT ORDERS AND DECLARES** that the Applicants are companies to which the CCAA applies. Although not an Applicant, the Partnership shall enjoy the benefits of the protections and authorizations provided by this Order.

### **PLAN OF ARRANGEMENT**

3. **THIS COURT ORDERS** that the Applicants, individually or collectively, shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the “**Plan**”).

### **POSSESSION OF PROPERTY AND OPERATIONS**

4. **THIS COURT ORDERS** that the Sears Canada Entities shall remain in possession and control of their respective current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”). For greater certainty, the “**Property**” includes all inventory, assets, undertakings and property of the Sears Canada Entities in the possession or control of the Hometown Dealers (as defined in the Wong Affidavit) and all inventory, assets, undertakings and property of the Sears Canada

Entities in the possession or control of the Corbeil Franchisees (as defined in the Wong Affidavit). Subject to further Order of this Court, the Sears Canada Entities shall continue to carry on business in a manner consistent with the preservation of the value of their business (the “**Business**”) and Property. The Sears Canada Entities shall each be authorized and empowered to continue to retain and employ the employees, independent contractors, advisors, consultants, agents, experts, accountants, counsel and such other persons (collectively, “**Assistants**”) currently retained or employed by them, with liberty, subject to the terms of the Definitive Documents (as defined herein) to retain such further Assistants, as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. **THIS COURT ORDERS** that the Sears Canada Entities shall be entitled to continue to utilize the central cash management services currently in place as described in the Wong Affidavit, or, with the consent of the Monitor, the DIP ABL Agent on behalf of the DIP ABL Lenders (as defined herein) and the DIP Term Agent on behalf of the DIP Term Lenders (as defined herein), replace it with another substantially similar central cash management services (the “**Cash Management System**”) and that any present or future bank or other institution providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Sears Canada Entities of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Sears Canada Entities, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System; provided, however, that no bank or other institution providing such Cash Management System shall be obliged to extend any overdraft credit, on an aggregate net basis, directly or indirectly in connection therewith and further provided that, to the extent any overdraft occurs, on an aggregate net basis, the Sears Canada Entities shall make arrangements to repay such overdraft forthwith.



6. **THIS COURT ORDERS** that the Sears Canada Entities, subject to availability under, and in accordance with the terms of the DIP Facilities (as defined herein) and the Definitive Documents, and subject to further Order of this Court, shall be entitled but not required to pay the following expenses whether incurred prior to, on or after this Order to the extent that such expenses are incurred and payable by the Sears Canada Entities:

- (a) all outstanding and future wages, salaries, commissions, employee and retiree benefits (including, without limitation, medical, dental, life insurance and similar benefit plans or arrangements), pension benefits or contributions, vacation pay, expenses, and director fees and expenses, payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements (but not including termination or severance payments), and all other payroll, pension and benefits processing and servicing expenses;
- (b) all outstanding and future amounts owing to or in respect of Persons working as independent contractors in connection with the Business;
- (c) all outstanding or future amounts owing in respect of customer rebates, refunds, discounts or other amounts on account of similar customer programs or obligations;
- (d) all outstanding or future amounts related to honouring customer obligations, whether existing before or after the date of this Order, including customer financing, product warranties, pre-payments, deposits, gift cards, Sears Club programs (including redemptions of Sears Club points) and other customer loyalty programs, offers and benefits, in each case incurred in the ordinary course of business and consistent with existing policies and procedures;
- (e) the fees and disbursements of any Assistants retained or employed by the Sears Canada Entities at their standard rates and charges; and
- (f) with the consent of the Monitor, amounts owing for goods or services actually supplied to the Sears Canada Entities prior to the date of this Order by:

- (i) logistics or supply chain providers, including customs brokers and freight forwarders, fuel providers, repair, maintenance and parts providers, and security and armoured truck carriers, and including amounts payable in respect of customs and duties for goods;
- (ii) providers of information, internet, and other technology, including e-commerce providers and related services;
- (iii) providers of credit, debit and gift card processing related services; and
- (iv) other third party suppliers up to a maximum aggregate amount of \$25 million, if, in the opinion of the Sears Canada Entities, the supplier is critical to the business and ongoing operations of the Sears Canada Entities.

7. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein and subject to the terms of the Definitive Documents, the Sears Canada Entities shall be entitled but not required to pay all reasonable expenses incurred by them in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order and any other Order of this Court, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors' and officers' insurance), maintenance (including environmental remediation) and security services; and
- (b) payment for goods or services actually supplied to the Sears Canada Entities following the date of this Order.

8. **THIS COURT ORDERS** that the Sears Canada Entities shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from the Sears Canada Entities' employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;

- (b) all goods and services taxes, harmonized sales taxes or other applicable sales taxes (collectively, “Sales Taxes”) required to be remitted by the Sears Canada Entities in connection with the sale of goods and services by the Sears Canada Entities, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order;
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business, workers’ compensation or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Sears Canada Entities; and
- (d) taxes under the *Income Tax Act* (Canada) or other relevant taxing statutes to the extent that such taxing statutes give rise to statutory deemed trust amounts in favour of the Crown in right of Canada or any Province thereof or any political subdivision thereof or any other taxation authority.

9. **THIS COURT ORDERS** that, except as specifically permitted herein, the Sears Canada Entities are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by any one of the Sears Canada Entities to any of their creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of the Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business or pursuant to this Order or any further Order of this Court.

## **RESTRUCTURING**

10. **THIS COURT ORDERS** that the Sears Canada Entities shall, subject to such requirements as are imposed by the CCAA, and subject to the terms of the Definitive Documents, have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of their Business or operations, and to dispose of redundant or non-material assets not exceeding \$2 million in any one transaction or \$5 million in the aggregate in any series of related transactions, provided that, with respect to leased premises, the Sears Canada Entities may, subject to the requirements of the CCAA and paragraphs 11 to 13 herein, vacate, abandon or quit the whole (but not part of) and may permanently (but not temporarily) cease, downsize or shut down any of their Business or operations in respect of any leased premises;
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as the relevant Sears Canada Entity deems appropriate; and
- (c) pursue all avenues of refinancing, restructuring, selling and reorganizing the Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing, restructuring, sale or reorganization,

all of the foregoing to permit the Sears Canada Entities to proceed with an orderly restructuring of the Sears Canada Entities and/or the Business (the “**Restructuring**”).

#### **REAL PROPERTY LEASES**

11. **THIS COURT ORDERS** that until a real property lease is disclaimed or resiliated in accordance with the CCAA, the Sears Canada Entities shall pay, without duplication, all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under its lease, but for greater certainty, excluding accelerated rent or penalties, fees or other charges arising as a result of the insolvency of any or all of the Sears Canada Entities or the making of this Initial Order) or as otherwise may be negotiated between the applicable Sears Canada Entity and the landlord from time to time (“**Rent**”), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

12. **THIS COURT ORDERS** that the Sears Canada Entities shall provide each of the relevant landlords with notice of the relevant Sears Canada Entity's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the entitlement of a Sears Canada Entity to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the relevant Sears Canada Entity, or by further Order of this Court upon application by the Sears Canada Entities on at least two (2) days' notice to such landlord and any such secured creditors. If any of the Sears Canada Entities disclaims or resiliates the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer or resiliation of the lease shall be without prejudice to the relevant Sears Canada Entity's claim to the fixtures in dispute.

13. **THIS COURT ORDERS** that if a notice of disclaimer or resiliation is delivered pursuant to Section 32 of the CCAA by any of the Sears Canada Entities, then: (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the relevant Sears Canada Entity and the Monitor 24 hours' prior written notice; and (b) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the relevant Sears Canada Entity in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

**NO PROCEEDINGS AGAINST THE SEARS CANADA ENTITIES, THE BUSINESS OR THE PROPERTY**

14. **THIS COURT ORDERS** that until and including July 22, 2017, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the

Sears Canada Entities or the Monitor or their respective employees and representatives acting in such capacities, or affecting the Business or the Property, except with the written consent of the Sears Canada Entities and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Sears Canada Entities or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

15. **THIS COURT ORDERS** that during the Stay Period, no Person having any agreements or arrangements with the owners, operators, managers or landlords of commercial shopping centres or other commercial properties (including retail, office and industrial (warehouse) properties) in which there is located a store, office or warehouse owned or operated by the Sears Canada Entities shall take any Proceedings or exercise any rights or remedies under such agreements or arrangements that may arise upon and/or as a result of the making of this Order, the insolvency of, or declarations of insolvency by, any or all of the Sears Canada Entities, or as a result of any steps taken by the Sears Canada Entities pursuant to this Order and, without limiting the generality of the foregoing, no Person shall terminate, accelerate, suspend, modify, determine or cancel any such arrangement or agreement or be entitled to exercise any rights or remedies in connection therewith.

16. **THIS COURT ORDERS** that during the Stay Period, no Person having any agreements or arrangements with the Hometown Dealers or the Corbeil Franchisees shall take any Proceedings or exercise any rights or remedies under such agreements or arrangements that may arise upon and/or as a result of the making of this Order, the insolvency of, or declarations of insolvency by, any or all of the Sears Canada Entities, or as a result of any steps taken by the Sears Canada Entities pursuant to this Order and, without limiting the generality of the foregoing, no Person shall terminate, accelerate, suspend, modify, determine or cancel any such arrangement or agreement or be entitled to exercise any rights or remedies in connection therewith.

17. **THIS COURT ORDERS** that during the Stay Period all rights and remedies, of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Sears Canada Entities or the Monitor or their respective employees and representatives acting in

such capacities, or affecting the Business or the Property, are hereby stayed and suspended, except with the written consent of the Sears Canada Entities and the Monitor, or leave of this Court, provided that nothing in this Order shall: (a) empower the Sears Canada Entities to carry on any business that the Sears Canada Entities are not lawfully entitled to carry on; (b) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA; (c) prevent the filing of any registration to preserve or perfect a security interest; or (d) prevent the registration of a claim for lien.

#### **NO INTERFERENCE WITH RIGHTS**

18. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, lease, sublease, licence or permit in favour of or held by the Sears Canada Entities, except with the written consent of the Sears Canada Entities and the Monitor, or leave of this Court. Without limiting the foregoing, no right, option, remedy, and/or exemption in favour of the relevant Sears Canada Entity shall be or shall be deemed to be negated, suspended, waived and/or terminated as a result of this Order.

#### **CONTINUATION OF SERVICES**

19. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Sears Canada Entities or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all trademark license and other intellectual property, computer software, communication and other data services, centralized banking services, payroll and benefit services, insurance, warranty services, transportation services, freight services, security and armoured truck carrier services, utility, customs clearing, warehouse and logistics services or other services to the Business or the Sears Canada Entities are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply or license of such goods, services, trademarks and other intellectual property as may be required by the Sears Canada Entities, and that the Sears Canada Entities shall be entitled to the continued use of the trademarks and other intellectual property currently licensed to, used or owned by the Sears Canada Entities, premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by

the Sears Canada Entities in accordance with normal payment practices of the Sears Canada Entities or such other practices as may be agreed upon by the supplier or service provider and each of the Sears Canada Entities and the Monitor, or as may be ordered by this Court.

#### **NON-DEROGATION OF RIGHTS**

20. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Sears Canada Entities. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

#### **KEY EMPLOYEE RETENTION PLAN**

21. **THIS COURT ORDERS** that the Key Employee Retention Plan (the “**KERP**”), as described in the Wong Affidavit, is hereby approved and the Sears Canada Entities are authorized to make payments contemplated thereunder in accordance with the terms and conditions of the KERP.

22. **THIS COURT ORDERS** that the key employees referred to in the KERP (the “**Key Employees**”) shall be entitled to the benefit of and are hereby granted the following charges on the Property, which charges shall not exceed: (a) an aggregate amount of \$4.6 million (the “**KERP Priority Charge**”) to secure the first \$4.6 million payable to the Key Employees under the KERP; and (b) an aggregate amount of \$4.6 million (the “**KERP Subordinated Charge**”) to secure any other payments to the Key Employees under the KERP. The KERP Priority Charge and the KERP Subordinated Charge shall have the priority set out in paragraphs 46, 47 and 49 hereof.

#### **APPROVAL OF FINANCIAL ADVISOR AGREEMENT**

23. **THIS COURT ORDERS** that the agreement dated May 15, 2017 engaging BMO Nesbitt Burns Inc. (the “**Financial Advisor**”) as financial advisor to SCI and attached as Confidential Appendix C to the Pre-Filing Report (the “**Financial Advisor Agreement**”), and the retention of the Financial Advisor under the terms thereof, is hereby ratified and approved



and SCI is authorized and directed *nunc pro tunc* to make the payments contemplated thereunder in accordance with the terms and conditions of the Financial Advisor Agreement.

24. **THIS COURT ORDERS** that the Financial Advisor shall be entitled to the benefit of and is hereby granted a charge (the “**FA Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$3.3 million, as security for the fees and disbursements payable under the Financial Advisor Agreement, both before and after the making of this Order in respect of these proceedings. The FA Charge shall have the priority set out in paragraphs 46, 47 and 49 hereof.

#### **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

25. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Sears Canada Entities with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Sears Canada Entities whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Sears Canada Entities, if one is filed, is sanctioned by this Court or is refused by the creditors of the Sears Canada Entities or this Court.

#### **DIRECTORS’ AND OFFICERS’ INDEMNIFICATION AND CHARGE**

26. **THIS COURT ORDERS** that the Sears Canada Entities shall jointly and severally indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Sears Canada Entities after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director’s or officer’s gross negligence or wilful misconduct.

27. **THIS COURT ORDERS** that the directors and officers of the Sears Canada Entities shall be entitled to the benefit of and are hereby granted the following charges on the Property, which charges shall not exceed: (a) an aggregate amount of \$44 million (the “**Directors’**

**Priority Charge**"); and (b) an aggregate amount of \$19.5 million (the "**Directors' Subordinated Charge**"), respectively, and in each case, as security for the indemnity provided in paragraph 26 of this Order. The Directors' Priority Charge and the Directors' Subordinated Charge shall have the priority set out in paragraphs 46, 47 and 49 hereof.

28. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary: (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Priority Charge and the Directors' Subordinated Charge; and (b) the Sears Canada Entities' directors and officers shall only be entitled to the benefit of the Directors' Priority Charge and the Directors' Subordinated Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 26 of this Order.

#### **APPOINTMENT OF MONITOR**

29. **THIS COURT ORDERS** that FTI is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the Business and financial affairs of the Sears Canada Entities with the powers and obligations set out in the CCAA or set forth herein and that the Sears Canada Entities and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Sears Canada Entities pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

30. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Sears Canada Entities' receipts and disbursements;
- (b) liaise with the Sears Canada Entities and the Assistants and, if determined by the Monitor to be necessary, the Hometown Dealers and Corbeil Franchisees, with respect to all matters relating to the Property, the Business, the Restructuring and such other matters as may be relevant to the proceedings herein;

- (c) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, the Restructuring and such other matters as may be relevant to the proceedings herein;
- (d) assist the Sears Canada Entities, to the extent required by the Sears Canada Entities, in their dissemination of financial and other information to the DIP ABL Agent, the DIP ABL Lenders, the DIP Term Agent, the DIP Term Lenders and each of their respective counsel and financial advisors, pursuant to and in accordance with the Definitive Documents;
- (e) advise the Sears Canada Entities in their preparation of the Sears Canada Entities' cash flow statements and any reporting required by the Definitive Documents, which information shall be reviewed with the Monitor and delivered to the DIP ABL Agent, the DIP ABL Lenders, the DIP Term Agent, the DIP Term Lenders and each of their respective counsel and financial advisors, pursuant to and in accordance with the Definitive Documents;
- (f) advise the Sears Canada Entities in their development of the Plan and any amendments to the Plan;
- (g) assist the Sears Canada Entities, to the extent required by the Sears Canada Entities, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (h) have full and complete access to the Property (including any Property in the possession of the Hometown Dealers and the Corbeil Franchisees), including the premises, books, records, data, including data in electronic form, and other financial documents of the Sears Canada Entities, to the extent that is necessary to adequately assess the Business and the Sears Canada Entities' financial affairs or to perform its duties arising under this Order;
- (i) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;

- (j) assist the Sears Canada Entities, to the extent required by the Sears Canada Entities, with any matters relating to any foreign proceeding commenced in relation to any of the Sears Canada Entities, including retaining independent legal counsel, agents, experts, accountants, or such other persons as the Monitor deems necessary or desirable respecting the exercise of this power; and
- (k) perform such other duties as are required by this Order or by this Court from time to time.

31. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

32. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, “**Possession**”) of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the “**Environmental Legislation**”), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor’s duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

33. **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Sears Canada Entities, the DIP ABL Agent, the DIP ABL Lenders, the DIP Term Agent and the DIP Term Lenders with information provided by the Sears Canada Entities in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor

shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Sears Canada Entities is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Sears Canada Entities may agree.

34. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

35. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, counsel to the Sears Canada Entities and counsel to the Board of Directors and the Special Committee shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, whether incurred prior to or subsequent to the date of this Order, by the Sears Canada Entities as part of the costs of these proceedings. The Sears Canada Entities are hereby authorized and directed to pay the accounts of the Monitor, counsel to the Monitor, counsel to the Sears Canada Entities and counsel to the Board of Directors and the Special Committee on a weekly basis and, in addition, the Sears Canada Entities are hereby authorized to pay to the Monitor, counsel to the Monitor, counsel to the Sears Canada Entities and counsel to the Board of Directors and the Special Committee, retainers in the aggregate amount of \$700,000, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

36. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

37. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, counsel to the Sears Canada Entities and counsel to the Board of Directors and the Special Committee shall be entitled to the benefit of and are hereby granted a charge (the “**Administration Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$5 million, as security for their professional fees and disbursements incurred at their respective standard rates and charges, both

before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 46, 47 and 49 hereof.

## **DIP FINANCING**

38. **THIS COURT ORDERS** that the Sears Canada Entities are hereby authorized and empowered to obtain and borrow or guarantee, as applicable, on a joint and several basis, under:

- (a) the Senior Secured Superpriority Debtor-in-Possession Amended and Restated Credit Agreement dated as of June 22, 2017 and attached to the Wong Affidavit as Exhibit K, among the Sears Canada Entities, the DIP ABL Agent and the lenders from time to time party thereto (the “**DIP ABL Lenders**”) (as may be amended, restated, supplemented and/or modified, subject to approval of this Court in respect of any amendment that the Monitor determines to be material, the “**DIP ABL Credit Agreement**”), in order to finance the Sears Canada Entities’ working capital requirements and other general corporate purposes and capital expenditures, all in accordance with the Definitive Documents, provided that borrowings under DIP ABL Credit Agreement shall not exceed \$300 million unless permitted by further Order of this Court (the “**DIP ABL Credit Facility**”); and
- (b) the Senior Secured, Superpriority Debtor-in-Possession Credit Agreement dated as of June 22, 2017 and attached to the Wong Affidavit as Exhibit K, among the Sears Canada Entities, the DIP Term Agent and the lenders from time to time party thereto (the “**DIP Term Lenders**”) (as may be amended, restated, supplemented and/or modified, subject to approval of this Court in respect of any amendment that the Monitor determines to be material, the “**DIP Term Credit Agreement**”), in order to finance the Sears Canada Entities’ working capital requirements and other general corporate purposes and capital expenditures, all in accordance with the Definitive Documents, provided that borrowings under the DIP Term Credit Agreement shall not exceed \$150 million unless permitted by further Order of this Court (the “**DIP Term Credit Facility**”, and together with the DIP ABL Credit Facility, the “**DIP Facilities**”).

39. **THIS COURT ORDERS** that the DIP Facilities shall be on the terms and subject to the conditions set forth in the DIP ABL Credit Agreement, the DIP Term Credit Agreement and the other Definitive Documents.

40. **THIS COURT ORDERS** that the Sears Canada Entities are hereby authorized and empowered to execute and deliver the DIP ABL Credit Agreement, the DIP Term Credit Agreement and such mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, and including any schedules (as amended and updated from time to time) thereto, the “**Definitive Documents**”), as are contemplated by the DIP ABL Credit Agreement and the DIP Term Credit Agreement or as may be reasonably required by the DIP ABL Agent on behalf of the DIP ABL Lenders and the DIP Term Agent on behalf of the DIP Term Lenders pursuant to the terms thereof, as applicable, and the Sears Canada Entities are hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP ABL Agent, the DIP ABL Lenders, the DIP Term Agent and the DIP Term Lenders under and pursuant to the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

41. **THIS COURT ORDERS** that the DIP ABL Agent and the DIP ABL Lenders shall be entitled to the benefit of and are hereby granted a charge (the “**DIP ABL Lenders’ Charge**”) on the Property as security for any and all Obligations (as defined in the DIP ABL Credit Agreement) other than the Prepetition Obligations (as defined in the DIP ABL Credit Agreement) (including on account of principal, interest, fees, expenses and other liabilities, and the aggregate of all such obligations, the “**DIP ABL Obligations**”), which DIP ABL Lenders’ Charge shall be in the aggregate amount of the DIP ABL Obligations outstanding at any given time under the DIP ABL Credit Agreement. The DIP ABL Lenders’ Charge shall not secure an obligation that exists before this Order is made. The DIP ABL Lenders’ Charge shall have the priority set out in paragraphs 46, 47 and 49 hereof.

42. **THIS COURT ORDERS** that the DIP Term Agent and the DIP Term Lenders shall be entitled to the benefit of and are hereby granted a charge (the “**DIP Term Lenders’ Charge**”) on the Property as security for any and all Obligations (as defined in DIP Term Credit Agreement) (including on account of principal, interest, fees, expenses and other liabilities, and the aggregate of all such obligations, the “**DIP Term Obligations**”), which DIP Term Lenders’ Charge shall

be in the aggregate amount of the DIP Term Obligations outstanding at any given time under the DIP Term Credit Agreement. The DIP Term Lenders' Charge shall not secure an obligation that exists before this Order is made. The DIP Term Lenders' Charge shall have the priority set out in paragraphs 46, 47 and 49 hereof.

43. **THIS COURT ORDERS** that SCI's reimbursement obligation with respect to the letters of credit outstanding under the Wells Fargo Credit Agreement (as defined in the Wong Affidavit) prior to the date of this Order and which are drawn upon on or after the date of this Order shall be deemed to form part of the DIP ABL Credit Facility and shall be included as DIP ABL Obligations for the purposes of determining the amount of the DIP ABL Lenders' Charge.

44. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

- (a) the DIP ABL Agent on behalf of the DIP ABL Lenders, as applicable, may take such steps from time to time as they may deem necessary or appropriate to file, register, record or perfect the DIP ABL Lenders' Charge, the DIP ABL Credit Agreement or any of the other Definitive Documents;
- (b) the DIP Term Agent on behalf of the DIP Term Lenders, as applicable, may take such steps from time to time as they may deem necessary or appropriate to file, register, record or perfect the DIP Term Lenders' Charge, the DIP Term Credit Agreement or any of the other Definitive Documents;
- (c) upon the occurrence of an event of default under the DIP ABL Credit Agreement, the other related Definitive Documents or the DIP ABL Lenders' Charge, the DIP ABL Agent and the DIP ABL Lenders, as applicable, may, subject to the provisions of the DIP ABL Credit Agreement with respect to the giving of notice or otherwise, and in accordance with the DIP ABL Credit Agreement, the other related Definitive Documents and the DIP ABL Lenders' Charge, as applicable, cease making advances to the Sears Canada Entities, make demand, accelerate payment and give other notices; provided that, the DIP ABL Agent and the DIP ABL Lenders must apply to this Court on seven (7) days' prior written notice (which may include the service of materials in connection with such an application to this Court) to the Sears Canada Entities, the DIP Term Agent, the DIP Term Lenders and the Monitor, to enforce



against or exercise any other rights and remedies with respect to the Sears Canada Entities or any of the Property (including to set off and/or consolidate any amounts owing by the DIP ABL Agent and the DIP ABL Lenders to the Sears Canada Entities against the obligations of the Sears Canada Entities to the DIP ABL Agent and the DIP ABL Lenders under the DIP ABL Credit Agreement, the other related Definitive Documents or the DIP ABL Lenders' Charge), to appoint a receiver, receiver and manager or interim receiver, or to seek a bankruptcy order against the Sears Canada Entities and to appoint a trustee in bankruptcy of the Sears Canada Entities;

- (d) upon the occurrence of an event of default under the DIP Term Credit Agreement, the other related Definitive Documents or the DIP Term Lenders' Charge, the DIP Term Agent and the DIP Term Lenders, as applicable, may, subject to the provisions of the DIP Term Credit Agreement with respect to the giving of notice or otherwise, and in accordance with the DIP Term Credit Agreement, the other related Definitive Documents and the DIP Term Lenders' Charge, as applicable, cease making advances to the Sears Canada Entities, make demand, accelerate payment and give other notices; provided that, the DIP Term Agent and the DIP Term Lenders must apply to this Court on seven (7) days' prior written notice (which may include the service of materials in connection with such an application to this Court) to the Sears Canada Entities, the DIP ABL Agent, the DIP ABL Lenders and the Monitor, to enforce against or exercise any other rights and remedies with respect to the Sears Canada Entities or any of the Property (including to set off and/or consolidate any amounts owing by the DIP Term Agent and the DIP Term Lenders to the Sears Canada Entities against the obligations of the Sears Canada Entities to the DIP Term Agent and the DIP Term Lenders under the DIP Term Credit Agreement, the other related Definitive Documents or the DIP Term Lenders' Charge), to appoint a receiver, receiver and manager or interim receiver, or to seek a bankruptcy order against the Sears Canada Entities and to appoint a trustee in bankruptcy of the Sears Canada Entities; and
- (e) the foregoing rights and remedies of the DIP ABL Agent, the DIP ABL Lenders, the DIP Term Agent and the DIP Term Lenders shall be enforceable against any trustee

in bankruptcy, interim receiver, receiver or receiver and manager of the Sears Canada Entities or the Property.

45. **THIS COURT ORDERS AND DECLARES** that the DIP ABL Agent, the DIP ABL Lenders, the DIP Term Agent and the DIP Term Lenders shall be treated as unaffected in any plan of arrangement or compromise filed by the Sears Canada Entities or any of them under the CCAA, or any proposal filed by the Sears Canada Entities or any of them under the *Bankruptcy and Insolvency Act* of Canada (the “**BIA**”), with respect to any advances made under the DIP ABL Credit Agreement, the DIP Term Credit Agreement and the other Definitive Documents.

#### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

46. **THIS COURT ORDERS** that the priorities of the Administration Charge, the FA Charge, the DIP ABL Lenders’ Charge, the DIP Term Lenders’ Charge, the Directors’ Priority Charge, the Directors’ Subordinated Charge, the KERP Priority Charge and the KERP Subordinated Charge (collectively, the “**Charges**”), as among them, with respect to ABL Priority Collateral (as defined in the Intercreditor Agreement dated March 20, 2017 and attached as Exhibit J to the Wong Affidavit) shall be as follows:

First – Administration Charge, to the maximum amount of \$5 million, and the FA Charge, to the maximum amount of \$3.3 million, on a *pari passu* basis;

Second – KERP Priority Charge, to the maximum amount of \$4.6 million;

Third – Directors’ Priority Charge, to the maximum amount of \$44 million;

Fourth – DIP ABL Lenders’ Charge, to the maximum amount of the quantum of the DIP ABL Obligations at the relevant time;

Fifth – the DIP Term Lenders’ Charge, to the maximum amount of the quantum of the DIP Term Obligations at the relevant time;

Sixth – KERP Subordinated Charge, to the maximum amount of \$4.6 million; and

Seventh – the Directors’ Subordinated Charge, to the maximum amount of \$19.5 million.

47. **THIS COURT ORDERS** that the priorities of the Charges as among them, with respect to all Property other than the ABL Priority Collateral shall be as follows:

First – Administration Charge, to the maximum amount of \$5 million, and the FA Charge, to the maximum amount of \$3.3 million, on a *pari passu* basis;

Second – KERP Priority Charge, to the maximum amount of \$4.6 million;

Third – Directors’ Priority Charge, to the maximum amount of \$44 million;

Fourth – DIP Term Lenders’ Charge, to the maximum amount of the quantum of the DIP Term Obligations at the relevant time;

Fifth – DIP ABL Lenders’ Charge, to the maximum amount of the quantum of the DIP ABL Obligations at the relevant time;

Sixth – KERP Subordinated Charge, to the maximum amount of \$4.6 million; and

Seventh – the Directors’ Subordinated Charge, to the maximum amount of \$19.5 million.

48. **THIS COURT ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

49. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property, and such Charges shall rank in priority to all other security interests, trusts (including constructive trusts), liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (including without limitation any deemed trust that may be created under the Ontario *Pension Benefits Act*) (collectively, “**Encumbrances**”) other than (a) any Person with a properly perfected purchase money security interest under the *Personal Property Security Act* (Ontario) or such other applicable provincial legislation that has not been served with notice of this Order; and (b) statutory super-priority deemed trusts and liens for unpaid employee source deductions.

50. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Sears Canada Entities shall not grant any Encumbrances over any of the Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Sears Canada Entities also obtain the prior written consent of the Monitor, the DIP ABL Agent on behalf of the DIP ABL Lenders, the DIP Term Agent on behalf of the DIP Term Lenders and the other beneficiaries of affected Charges, or further Order of this Court.

51. **THIS COURT ORDERS** that the Charges, the DIP ABL Credit Agreement, the DIP Term Credit Agreement, and the other Definitive Documents shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the “**Chargees**”) thereunder shall not otherwise be limited or impaired in any way by: (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) that binds the Sears Canada Entities, and notwithstanding any provision to the contrary in any Agreement:

- (i) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the DIP ABL Credit Agreement, the DIP Term Credit Agreement or the other Definitive Documents shall create or be deemed to constitute a breach by the Sears Canada Entities of any Agreement to which it is a party;
- (ii) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Sears Canada Entities entering into the DIP ABL Credit Agreement and the DIP Term Credit Agreement, the creation of the Charges, or the execution, delivery or performance of the other Definitive Documents; and
- (iii) the payments made by the Sears Canada Entities pursuant to this Order, the DIP ABL Credit Agreement, the DIP Term Credit Agreement or the other Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

52. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the relevant Sears Canada Entity's interest in such real property leases.

53. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order, the L/C Collateral Account (as defined in the DIP ABL Credit Agreement) shall be deemed to be subject to a lien, security, charge and security interest in favour of the DIP ABL Agent solely for the reimbursement obligation of SCI related to the letters of credit issued under the Wells Fargo Credit Agreement which remain undrawn from and after the Comeback Motion (as defined herein). The Charges as they may attach to the L/C Collateral Account, including by operation of law or otherwise: (a) shall rank junior in priority to the lien, security, charge and security interest in favour of the DIP ABL Agent in respect of the L/C Collateral Account; and (b) shall attach to the L/C Collateral Account only to the extent of the rights, if any, of any Sears Canada Entity to the return of any cash from the L/C Collateral Account in accordance with the DIP ABL Credit Agreement.

#### **CORPORATE MATTERS**

54. **THIS COURT ORDERS** that SCI be and is hereby relieved of any obligation to call and hold an annual meeting of its shareholders until further Order of this Court.

55. **THIS COURT ORDERS** that SCI be and is hereby relieved of any obligation to appoint any new directors until further Order of this Court.

#### **SERVICE AND NOTICE**

56. **THIS COURT ORDERS** that the Monitor shall: (a) without delay, publish in The Globe and Mail (National Edition) and La Presse a notice containing the information prescribed under the CCAA; and (b) within five days after the date of this Order, (i) make this Order publicly available in the manner prescribed under the CCAA, (ii) send or cause to be sent, in the prescribed manner, a notice to every known creditor who has a claim against the Sears Canada Entities of more than \$1,000 (excluding individual employees, former employees with pension and/or retirement savings plan entitlements, and retirees and other beneficiaries who have entitlements under any pension or retirement savings plans), and (iii) prepare a list showing the

names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder, provided that the Monitor shall not make the claims, names and addresses of the individuals who are creditors publicly available.

57. **THIS COURT ORDERS** that the Monitor shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in this proceeding (the “**Service List**”). The Monitor shall post the Service List, as may be updated from time to time, on the Monitor’s Website (as defined herein) as part of the public materials to be made available thereon in relation to this proceeding. Notwithstanding the foregoing, the Monitor shall have no liability in respect of the accuracy of or the timeliness of making any changes to the Service List.

58. **THIS COURT ORDERS** that any employee of any of the Sears Canada Entities that receives a notice of termination from any of the Sears Canada Entities shall be deemed to have received such notice of termination by no more than the seventh day following the date such notice of termination is delivered, if such notice of termination is sent by ordinary mail, courier or registered mail.

59. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05, this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: [cfcanada.fticonsulting.com/searscanada](http://cfcanada.fticonsulting.com/searscanada) (the “**Monitor’s Website**”).

60. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Sears Canada Entities and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Sears Canada Entities’ creditors or other

interested parties at their respective addresses as last shown on the records of the Sears Canada Entities and that any such service or distribution by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

61. **THIS COURT ORDERS** that the Applicants, the Monitor, the Financial Advisor, the DIP Term Agent on behalf of the DIP Term Lenders and the DIP ABL Agent on behalf of the DIP ABL Lenders, and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Applicants' creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the Electronic Commerce Protection Regulations, Reg. 81000-2-175 (SOR/DORS).

#### **COMEBACK MOTION**

62. **THIS COURT ORDERS** that the comeback motion shall be heard on July 13, 2017 (the "Comeback Motion").

#### **GENERAL**

63. **THIS COURT ORDERS** that the Sears Canada Entities or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

64. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Sears Canada Entities, the Business or the Property.

65. **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 Sears Canada Entities, the Monitor 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 Sears Canada Entities and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Sears Canada Entities and the Monitor and their respective agents in carrying out the terms of this Order.

66. **THIS COURT ORDERS** that each of the Applicants and the Monitor be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada, including acting as the foreign representative of the Applicants to apply to the United States Bankruptcy Court for relief pursuant to Chapter 15 of the *United States Bankruptcy Code*, 11 U.S.C. §§ 101-1515, as amended, and to act as foreign representative in respect of any such proceedings and any ancillary relief in respect thereto, and to take such other steps as may be authorized by the Court.

67. **THIS COURT ORDERS** that any interested party (including the Sears Canada Entities and the Monitor) may apply to this Court to vary or amend this Order at the Comeback Motion on not less than seven (7) calendar days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

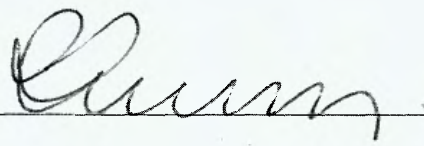
68. **THIS COURT ORDERS** that Confidential Appendix B and Confidential Appendix C to the Pre-Filing Report shall be and are hereby sealed, kept confidential and shall not form part of the public record pending further Order of this Court.

69. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

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

JUN 22 2017

PER / PAR: 

  
C. Irwin  
Registrar



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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
SEARS CANADA INC., CORBEIL ÉLECTRIQUE INC., S.L.H. TRANSPORT INC., THE  
CUT INC., SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC.,  
INITIUM COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP.,  
SEARS FLOOR COVERING CENTRES INC., 173470 CANADA INC., 2497089  
ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA INC., 1592580  
ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 168886  
CANADA INC., AND 3339611 CANADA INC. (collectively, the "Applicants")

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
(Commercial List)

Proceeding commenced at Toronto

**INITIAL ORDER**

**OSLER, HOSKIN & HARCOURT LLP**  
Box 50, 1 First Canadian Place  
Toronto, Canada M5X 1B8

Marc Wasserman (LSUC #: 44066M)  
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Michael De Lellis (LSUC #: 48038U)  
Tel: 416.862.5997

Lawyers for the Applicants

This is Exhibit "B" referred to in the Affidavit of Service of John N. Birch,  
sworn February 7, 2019

A handwritten signature in blue ink, appearing to read "A. Smith", is positioned above a horizontal line.

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Commissioner for Taking Affidavits  
(or as may be)

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

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

THE HONOURABLE

)

THURSDAY, THE 26TH

MR. JUSTICE HAINEY

)

DAY OF APRIL, 2018



|  
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.

(each, an "Applicant", and collectively, the "Applicants")

**AMENDED LITIGATION INVESTIGATOR ORDER**

**THIS MOTION**, made by Representative Counsel to the court-appointed Representatives of employees and retirees with respect to pension and post-retirement benefits of the Applicants ("**Retiree Representative Counsel**") pursuant to the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, (the "**CCAA**") for an order appointing a Litigation Investigator to identify and report on certain rights and claims of the Applicants and SearsConnect (collectively, the "**Sears Canada Entities**") and/or any creditors of the Sears Canada Entities, was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Affidavit of William Turner sworn on February 12, 2018 including the exhibits thereto, the Affidavit of William Turner sworn on August 11, 2017, including the exhibits thereto, the Affidavit of William Turner sworn on February 14, 2018 including the exhibits thereto, the Affidavit of Jules Monteyne sworn on February 14, 2018 including the exhibits thereto, the Affidavit of Leanne M. Williams sworn on February 14, 2018 including the exhibits annexed thereto, the Monitor's Fourteenth Report to the Court dated March 1, 2018, and on hearing the submissions of Retiree Representative Counsel, Representative Counsel for the employees of the Sears Canada Entities ("**Employee Representative Counsel**"), counsel for the Applicants, counsel for the Monitor, and such other counsel for various creditors and stakeholders as were present, no one else appearing although duly served as appears from the Affidavit of Service of Veronica de Leoz, sworn February 12, 2018:

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record herein 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 Lax O'Sullivan Lisus Gottlieb LLP is hereby appointed as Litigation Investigator (the "**Litigation Investigator**") in these CCAA proceedings for the benefit of the estates of the Sears Canada Entities and its creditors. The Litigation Investigator shall be an officer of this Court, and is appointed for the purpose of investigating, considering, and reporting to the Creditors' Committee (defined below), regarding any rights or claims, whether legal, equitable, statutory or otherwise, that the Sears Canada Entities and/or any creditors of any of the Sears Canada Entities may have as against any parties, including but not limited to current and former directors, officers, shareholders and advisors of any of the Sears Canada Entities (the "**Mandate**"). For greater certainty, the Litigation Investigator may

investigate any and all claims regardless of whether such claims have been included by creditors' proofs of claims filed pursuant to the Claims Procedure Order and E&R Claims Procedure Order (defined below), however, the Litigation Investigator shall have no role in determining, advising on, opposing, supporting, or articulating any claim of any creditor or stakeholder in the Claims Process, as defined in the Order of this Court dated December 8, 2017 as amended by Order dated February 22, 2018 or as further amended by Order of the Court (as amended, the "**Claims Procedure Order**") or any Claim as defined in the Employee and Retiree Claims Procedure Order dated February 22, 2018 (the "**E&R Claims Procedure Order**") and shall have no role in the distribution or allocation of estate funds.

**Litigation Investigator Reporting**

3. **THIS COURT ORDERS** that the Litigation Investigator's Mandate shall include reporting to the Creditors' Committee with such details as the Litigation Investigator considers advisable (all such reporting being collectively defined herein as the "**Report**"), taking into account any concerns of privilege and confidentiality. All Reports by the Litigation Investigator and all communications among the Creditors' Committee members and the Litigation Investigator shall be subject to common interest privilege. A Report by the Litigation Investigator will include recommendations regarding a proposed litigation plan that includes, but is not limited to:

- (a) those potential rights or claims of the Sears Canada Entities or any creditors of the Sears Canada Entities that should be pursued (if any); and
- (b) describing how and by whom such rights or claims (if any) can best be pursued or continued, including, but not limited to:

- (i) the coordination of the prosecution of such rights or claims with similar or related facts, rights or other claims that may be asserted by different parties;
- (ii) if necessary or desirable, a proposed governance structure for the Creditors' Committee created pursuant to this Order (or as same may be amended, expanded or reconstituted in future, in accordance with the terms of this Order) for the purpose of providing input to the Litigation Investigator in the prosecution of such rights, claims or causes of action; and
- (iii) consideration as to the various options available for funding the prosecution of such rights, claims or causes of action.

A confidential briefing ("**Investigator Briefing**") regarding all Reports prepared by the Litigation Investigator shall be given to the Monitor; provided that such Investigator Briefing shall be kept confidential by the Monitor and shall remain subject to privilege.

4. **THIS COURT ORDERS** that following delivery of a Report to the Creditors' Committee in accordance with its Mandate, the Litigation Investigator shall not take any further steps without a further Order of the Court. For greater certainty, nothing herein shall prevent the Litigation Investigator from seeking an Order of the Court authorizing it to pursue any claims identified pursuant to the Mandate.

*The Committee*

5. **THIS COURT ORDERS** that the Litigation Investigator shall fulfil his Mandate in consultation with a creditors' committee (the "**Creditors' Committee**") comprised of no more than eight (8) members (inclusive of two members on behalf of landlords) at any one time appointed by, or on behalf of the following creditor groups of the Sears Canada Entities: (i) Retiree Representative Counsel; (ii) Employee Representative Counsel; (iii) landlords; (iv) Hometown Dealers Class Action plaintiff counsel; (v) Morneau Shepell Ltd. in its capacity as Administrator for the Sears Canada Inc. Registered Retirement Plan; (vi) the Ontario Superintendent of Financial Services as Administrator of the Pension Benefits Guarantee Fund; and (vii) such other unsecured creditors of the Sears Canada Entities not represented in (i) through (vi) above as the majority of the Creditors' Committee may agree be included, in consultation with the Monitor, or as may be directed by the Court. The Creditors' Committee and the Litigation Investigator shall cooperate with the Monitor, and the Monitor shall cooperate with the Litigation Investigator and the Creditors' Committee in connection with the Mandate. The Creditors' Committee shall consult with and provide input to the Litigation Investigator with respect to the Mandate.

6. **THIS COURT ORDERS** that each member of the Creditors' Committee (including any alternates or replacements from the same stakeholder group as may be appointed by an existing member) may be a creditor itself or counsel/advisor representing that stakeholder interest, but in either case each member shall execute a Confidentiality Agreement in a form acceptable to the Litigation Investigator, the Sears Canada Entities and the Monitor prior to being entitled to participate in any discussions or meetings of the Creditors' Committee, receive any information from the Monitor, the Litigation Investigator or any other member of the Creditors' Committee,

or to receive the Report. The Litigation Investigator will meet with the Creditors' Committee at least monthly, or such other times as may be agreed by the Litigation Investigator and the Creditors' Committee. Meetings will only be conducted in person, to ensure the confidentiality of all discussions.

7. **THIS COURT ORDERS** that the Monitor shall provide to the Litigation Investigator (and, upon execution of appropriate Confidentiality Agreements, for delivery by the Litigation Investigator to the Creditors' Committee) a confidential briefing regarding the "Transactions of Interest" as identified in the Monitor's 11<sup>th</sup> Report to the Court (the "**Monitor Briefing**"). To the extent that the Litigation Investigator requests documents or information from the Sears Canada Entities and such requests are consistent with the Mandate (the "**Additional Company Information**"), then, subject to satisfactory resolution of issues of privilege and confidentiality (including any terms regarding sharing of information with the Creditors' Committee), the Sears Canada Entities shall cooperate with the Monitor to provide the Additional Company Information to the Litigation Investigator. The Monitor's delivery of the Monitor Briefing pursuant to the terms of this Order shall be subject to common interest privilege and strict confidentiality, and the Monitor is protected for so doing pursuant to section 142 of the *Courts of Justice Act* (Ontario). The Sears Canada Entities' delivery of the Additional Company Information pursuant to the terms of this Order shall be subject to strict confidentiality, and the Sears Canada Entities and their directors and officers are protected for so doing pursuant to section 142 of the *Courts of Justice Act* (Ontario). In the event of any concerns being raised regarding the delivery by the Monitor of any particular aspect of the Monitor Briefing that cannot be resolved without breaching the underlying basis for the concern, such concerns shall be resolved following a review by an independent party appointed by the Monitor and the



Litigation Investigator (or, absent agreement on the identity of such party, by the Court). Notwithstanding the foregoing, any document provided by the Sears Canada Entities as part of the Additional Company Information may be submitted by a party in receipt of such document to the court under seal for the purposes of resolving any dispute over whether such document should be produced in litigation.

8. **THIS COURT ORDERS** that the Monitor or the Sears Canada Entities, as the case may be, shall maintain copies and a record of all documents: (i) received by the Monitor from the Sears Canada Entities and provided to the Litigation Investigator in accordance with this Order; or (ii) provided by the Sears Canada Entities to the Litigation Investigator in accordance with this Order.

9. **THIS COURT ORDERS** that prior to any production of documents by the Monitor or the Sears Canada Entities to the Litigation Investigator to facilitate the fulfillment of the Mandate, the Monitor or Sears Canada Entities, as the case may be, shall take reasonable steps to review such documents to identify any:

- (a) documents that contain any communication that is between a lawyer and the ESL parties and/or Sears Holdings Corporation;
- (b) documents containing any communication by or to the ESL parties and/or Sears Holdings Corporation and/or any current or former directors or officers of the Sears Canada Entities (a "**Current or Former D&O**") created on or after November 26, 2013 and related to the 1291079 Ontario Ltd and Sears Canada Inc. et. al. class action of November 6, 2015 (Ontario Superior Court of Justice) File No. 4114/15); and

- (c) documents containing communications between a law firm and a Current or Former D&O for which privilege could reasonably be asserted, or documents that reflect legal advice or litigation work product prepared for the benefit of a Current or Former D&O, whether alone or as part of a joint retainer.

Hereafter, items a), b), and c) shall be referred to collectively as the “**Potentially Shared Privileged Documents**”). No waiver of any privilege shall have occurred by the inadvertent delivery of documents to the Litigation Investigator should a Potentially Shared Privileged Document not be identified or if any other document subject to privilege (including solicitor-client privilege, litigation privilege, and common interest privilege) is produced or disclosed to the Litigation Investigator.

10. **THIS COURT ORDERS** that in the event that the Monitor and/or Sears Canada Entities intend to produce any Potentially Shared Privileged Documents to the Litigation Investigator in facilitation of the fulfillment of the Mandate, the Monitor or the Sears Canada Entities, as the case may be, shall provide a list of such documents on reasonable notice, which shall be no less than seven days, to the ESL parties, Sears Holdings Corporation and/or the Current or Former D&Os to the extent that such parties may be able to assert privilege over the documents, so that any issue regarding privilege may be resolved by the parties or determined by this Court.

11. **THIS COURT ORDERS** that the Litigation Investigator shall create and maintain a detailed list (including creation date, sender, recipient and subject) of those document(s) received from the Sears Canada Entities (either directly or through the Monitor) that it provides to the Creditors’ Committee or their counsel or agents.

12. **THIS COURT ORDERS** that, for greater certainty, any right, claim or cause of action identified by the Litigation Investigator as capable of being advanced and that is advanced with approval of the Court, whether by the Litigation Investigator or otherwise, may be removed from the claims process established under the Claims Procedure Order or the E&R Claims Procedure Order.

13. **THIS COURT ORDERS** that the Claims Procedure Order is hereby amended as follows:

- (i) subparagraph (vii) in the definition of “Excluded Claim” is hereby amended to read as follows: “Claim that may be asserted by any of the Sears Canada Entities or that are advanced by the Litigation Investigator or any creditors, in each case, as may be permitted or directed by further Order of the Court, against the Sears Canada Entities or any Directors and/or Officers, which for greater certainty shall include any Claim that may be identified, reviewed or investigated as part of the Litigation Investigator’s Mandate (as defined in an Order of the Court dated March 2, 2018)”.

14. **THIS COURT ORDERS** that the E&R Claims Procedure Order is hereby amended as follows:

- (i) the definition of “Excluded Claim” is hereby amended to add a new subparagraph (vi) that shall read as follows: “Claim that is advanced by the Litigation Investigator or any creditors, in each case, as may be permitted or directed by further Order of the Court, against the Sears Canada Entities or any Directors and/or Officers, which for greater certainty shall include any Claim that may be identified, reviewed or

investigated as part of the Litigation Investigator's Mandate (as defined in an Order of the Court dated March 2, 2018)".

**Litigation Investigator Costs**

15. **THIS COURT ORDERS** that the Litigation Investigator shall be paid from the funds of the Applicants its reasonable fees and disbursements, including the fees of any counsel retained by the Litigation Investigator in respect of the Mandate, the amount of which is not to exceed a budget approved by the Creditors' Committee in consultation with the Monitor prior to the Litigation Investigator commencing work in respect of fulfilling its Mandate in accordance with this Order. The Litigation Investigator and any counsel it retains shall be paid forthwith upon rendering fully-redacted versions of their accounts to the Applicants and the Monitor. Unredacted versions of accounts rendered by the Litigation Investigator shall be made available to the Creditors' Committee and, upon request of the Court and subject to a sealing order to protect privilege and confidentiality, to the Court. In the event of any disagreement with respect to a proposed budget, any requested increased to such budget, or any accounts rendered by the Litigation Investigator, such disagreement may be remitted to this Court for determination.

16. **THIS COURT ORDERS** that the Litigation Investigator shall be entitled to the benefit of the Administrative Charge, as defined in the Initial Order issued by the Court dated June 22, 2017 as amended, for the Litigation Investigator's costs, as security for its professional fees, taxes, and disbursements reasonably incurred.

17. **THIS COURT ORDERS** that the Litigation Investigator is hereby authorized to take all appropriate steps and do all appropriate acts necessary or desirable to carry out its Mandate in accordance with the terms of this Order.

18. **THIS COURT ORDERS** that the Litigation Investigator shall be at liberty, and is hereby authorized, at any time, to apply to this Court for advice and directions in respect of its Mandate or any variation or expansion of the powers and duties of the Litigation Investigator, which shall be brought on at least seven (7) business days' notice to the Service List in these CCAA proceedings, unless time for service is otherwise abridged.

19. **THIS COURT ORDERS** that the Litigation Investigator shall have no personal liability as a result of the performance of its duties in carrying out the provisions of this Order, save and except for liability arising out of gross negligence or wilful misconduct. The Creditors' Committee members shall have no liability as a result of their participation on the Creditors' Committee or in providing input to the Litigation Investigator, save and except for liability arising out of gross negligence or wilful misconduct.

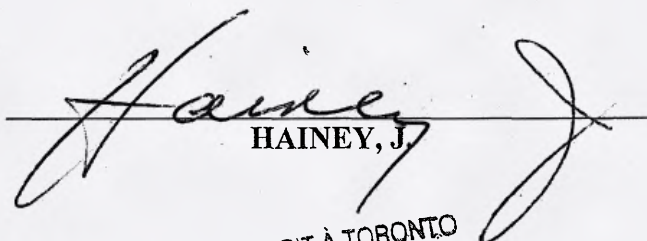
20. **THIS COURT ORDERS** that no action or proceeding may be commenced against the Litigation Investigator or any Creditors' Committee member in respect of the performance of its or their duties under this Order without leave of this Court on seven (7) business days' notice to the Litigation Investigator and the Creditors' Committee.

21. **THIS COURT ORDERS** that notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the "BIA") in respect of any of the Applicants and any bankruptcy order issued pursuant to such applications; or
- (c) any assignment in bankruptcy made in respect of any of the Applicants;

the provisions of this Order shall be binding on any Investigator in bankruptcy or receiver that may be appointed in respect of any of the Applicants and any payments of fees and disbursements made to the Litigation Investigator in accordance with this Order shall not be void or voidable by creditors of any of the Applicants, nor shall any such payments constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or any reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

22. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative bodies having jurisdiction in Canada or in the United States of America, to give effect to this Order and to assist the Litigation Investigator 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 Litigation Investigator as may be necessary or desirable to give effect to this Order, or to assist the Litigation Investigator in carrying out the terms of this Order.

  
HAINEY, J.

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

APR 26 2018

PER / PAR: NB

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.

(each, an "Applicant", and collectively, the "Applicants")

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

Proceeding commenced at Toronto

**AMENDED LITIGATION INVESTIGATOR ORDER**


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Representative Counsel for the Non-Unionized Retirees  
and Non-Unionized Active and Former Employees of the  
Sears Canada Entities

This is Exhibit "C" referred to in the Affidavit of Service of John N. Birch,  
sworn February 7, 2019



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Commissioner for Taking Affidavits  
(or as may be)



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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR.	)	MONDAY, THE 3RD
	)	
JUSTICE HAINEY	)	DAY OF DECEMBER, 2018

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

**GOVERNANCE PROTOCOL AND STAY EXTENSION ORDER**

THIS MOTION, made by FTI Consulting Canada Inc., in its capacity as monitor (the "Monitor"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA"), for an order approving the governance protocol for the Applicants and SearsConnect (collectively, the "Sears Canada Entities") attached as **Schedule "A"** to this Order (the "**Governance Protocol**") and certain other relief, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of the Monitor and the Twenty-Eighth Report of the Monitor (the "**Twenty-Eighth Report**"), filed, and on hearing the submissions of respective counsel for the Monitor, the Sears Canada Entities, and such other counsel as were present, no

one else appearing although duly served as appears from the Affidavit of Service of Catherine Ma sworn November 28, 2018, filed:

#### **SERVICE AND DEFINITIONS**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Twenty-Eighth Report, and the Motion Record herein 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 each capitalized term used and not defined herein shall have the meaning ascribed to such term in the Amended and Restated Initial Order dated June 22, 2017 (the "Initial Order") in these proceedings and in the Twenty-Eight Report.

#### **GOVERNANCE PROTOCOL**

3. **THIS COURT ORDERS** that the Governance Protocol is hereby approved and that the Monitor is authorized to take all steps necessary to implement such protocol.

4. **THIS COURT ORDERS** that, the Sears Canada Entities, their advisors and their current and former officers, directors, agents and representatives shall fully co-operate with the Monitor and any directions it may provide pursuant to this Order or the Governance Protocol, and shall provide the Monitor with such assistance as the Monitor may request from time to time to enable the Monitor to carry out and discharge its powers as set out in this Order, the Governance Protocol or any other Order of this Court.

5. **THIS COURT ORDERS** that, without limiting the provisions of the Initial Order, the Monitor shall not take possession of the Property or Business and not be deemed to have taken possession of the Property or Business, or any part thereof.

6. **THIS COURT ORDERS** that the Monitor shall be entitled to exercise any and all of the powers of the Sears Canada Entities set out herein, in the Governance Protocol and in any

other Order in these proceedings. Nothing in this Order shall derogate from the powers of the Monitor as provided for in the CCAA, the Initial Order or any other Order in these proceedings.

7. **THIS COURT ORDERS** that the Monitor be and is hereby authorized and empowered, but not obligated, without any personal liability therefor, in the name of and on behalf of the Sears Canada Entities, to:

- (a) take control of the existing bank accounts of the Sears Canada Entities listed in Schedule "B" attached hereto (the "**Bank Accounts**") and the funds credited thereto or deposited therein including, but not limited to, transferring any funds received into these bank accounts to accounts held in the name of the Monitor; provided that the Monitor shall endeavor to cause Sears Canada to perform the obligations of the Sears Canada Entities with respect to such Bank Accounts, including the payment of any fees or expenses arising in the ordinary course from the use of the accounts. Provided always that nothing in this Order or anything done by the Monitor in furtherance of its duties as Monitor shall create any obligation or liability on the part of the Monitor in respect of any amounts owing by the Sears Canada Entities on account of payment of such fees or expenses; and
- (b) the financial institutions maintaining such Bank Accounts shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken in accordance with the instructions of the Monitor or as to the use or application of funds transferred, paid, collected or otherwise dealt with in accordance with such instructions and such financial institutions shall be authorized to act in accordance with and in reliance upon such instructions without any liability in respect thereof to any person. For greater certainty and except to the extent that any of the terms of the documentation applicable to the Cash Management System (as defined in the Initial Order) are inconsistent with the authorities granted to the Monitor pursuant to this sub-paragraph 7(b) (dealing with Monitor control and access to bank accounts), nothing in this Order shall or shall be deemed to derogate from, limit, restrict or otherwise affect the protections granted pursuant to paragraph 5 of the Initial Order in favour of any bank providing Cash Management Services to the Sears Canada Entities.

## PROTECTIONS OF THE MONITOR

8. **THIS COURT ORDERS** that, without limiting the provisions of the Initial Order, all employees of the Sears Canada Entities shall remain employees of the Sears Canada Entities until such time as the employment of such employees is terminated. Nothing in this Order or the Governance Protocol shall cause the Monitor to be liable for any employee-related liabilities or duties, including, without limitation, wages, severance pay, termination pay, vacation pay and pension or benefit amounts.

9. **THIS COURT ORDERS** that nothing in this Order or the Governance Protocol and nothing done by the Monitor in carrying out its duties under the Governance Protocol or hereunder shall result in, or be deemed to result in, the Monitor being an employer, successor employer, responsible person, operator, officer, director, employee receiver, trustee, assignee, liquidator, administrator, legal representative, receiver-manager or agent of the Sears Canada Entities or in possession or control of the Property or any part thereof, in each case, within the meaning of any statute, regulation or rule of law, or equity, for any purpose whatsoever. Without limiting the foregoing, the Monitor shall not, as a result of this Order or the Governance Protocol, or anything done pursuant to its powers pursuant to this Order or the Governance Protocol, be deemed to occupy or to take control, care, charge, possession or management of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Environmental Protection Act (Ontario)*, the *Occupational Health and Safety Act (Ontario)* and each of the respective regulations thereunder; provided however, if the Monitor is nevertheless found to be in possession of any Property, then the Monitor shall be deemed to be a person who has been lawfully appointed to take, or has lawfully taken, possession or control of such

Property for the purposes of section 14.06(1.1)(c) of the *Bankruptcy and Insolvency Act* (Canada) (the "BIA") and shall be entitled to the benefits and protections in relation to the Sears Canada Entities and such Property as provided by section 14.06(2) of the BIA to a "trustee" in relation to an insolvent person and its property.

10. **THIS COURT ORDERS** that, in addition to the rights and protections afforded to the Monitor under the CCAA, as an officer of this Court, or under the Initial Order, the Monitor shall not incur any liability or obligation as a result of carrying out the provisions of this Order or the Governance Protocol, save for gross negligence or wilful misconduct on its part, and the Monitor shall not have any liability with respect to any losses, claims, damages or liabilities, of any nature or kind, to any Person from and after the date of this Order, except to the extent such losses, claims, damages or liabilities result from the gross negligence or wilful misconduct on its part.

11. **THIS COURT ORDERS** that any distribution or payment made to creditors of the Sears Canada Entities will be deemed to have been made by the Sears Canada Entities, or any one of them, as applicable.

12. **THIS COURT ORDERS** that any Authorized Representative (as such term is defined in the Governance Protocol) acting upon the direction or delegation of the Monitor shall incur no liability or obligation as a result of carrying out the provisions of the Order or the Governance Protocol, save for gross negligence or wilful misconduct on their part, and any Authorized Representative shall not have any liability with respect to any losses, claims, damages or liabilities, of any nature or kind, to any Person from and after the date of this Order, except to the extent such losses, claims, damages or liabilities result from the gross negligence or wilful misconduct on their part.

13. **THIS COURT ORDERS** that, without limiting any other provision of this Order, the Sears Canada Entities shall, jointly and severally, indemnify the Monitor and any Authorized

Representative against any and all costs, expenses, obligations and liabilities that it or any of them may incur as result of carrying out the provisions of this Order or the Governance Protocol (in the case of an Authorized Representative, at the direction or delegation of the Monitor), except to the extent that liability was incurred as a result of the gross negligence or willful misconduct on the part of the Monitor or such Authorized Representative, as the case may be.

14. **THIS COURT ORDERS** that the Monitor shall continue to have the benefit of all of the indemnities, charges, protections and priorities as set out in the Initial Order and any other Order of this Court and all such indemnities, charges, protections and priorities shall apply and extend to the Monitor in the carrying out of the provisions of this Order and the Governance Protocol and shall also apply and extend to any Authorized Representative acting upon the direction or delegation of the Monitor. For the avoidance of doubt, no Authorized Representative shall be deemed to be a director of any of the Sears Canada Entities, or any entity affiliated with any of the Sears Canada Entities, under applicable law by reason of having been designated as an Authorized Representative pursuant to this Order or the Governance Protocol and/or having acted in such capacity at the direction or delegation of the Monitor.

**EXTENSION OF THE STAY PERIOD AND DEADLINE TO ISSUE NOTICES OF REVISION OR DISALLOWANCE**

15. **THIS COURT ORDERS** that the Stay Period (as such term is defined in the Amended and Restated Initial Order dated June 22, 2017 made in these proceedings) is hereby extended from December 18, 2018 until and including May 2, 2019. Further, the Application Period for the Employee Hardship Fund (as such terms, respectively, are defined in the Employee Hardship Fund Term Sheet, approved by the Court on August 18, 2017) shall also be extended from ~~December 18, 2018 until and including May 2, 2019.~~

16. **THIS COURT ORDERS** that the deadline for the Monitor to issue Notices of Revision or Disallowance in respect of D&O Claims and claims filed by the Directors and Officers based

upon claimed indemnity obligations of the Applicants to such Directors and Officers, in each case pursuant to the Claims Procedure Orders, shall be extended until and including March 1, 2019.

#### **SEALING**

17. **THIS COURT ORDERS** that Schedule "B" to this Order shall be and is hereby sealed, kept confidential and shall not form part of the public record pending further Order of this Court.

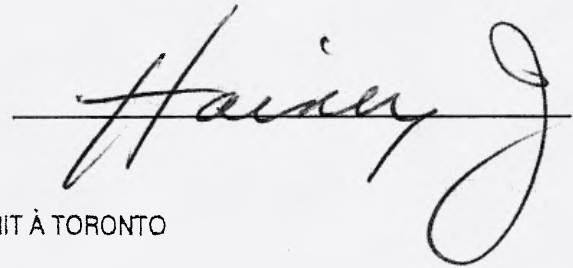
#### **GENERAL**

18. **THIS COURT ORDERS** that, except as may be necessary to give effect to this Order and the Governance Protocol, the Initial Order remains in full force and effect and in the event of a conflict between the terms of this Order and those in the Initial Order, the provisions of this Order shall govern.

19. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

20. **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 of America, to give effect to this Order and to assist the Sears Canada Entities, the Monitor and their respective agents in carrying out the terms of this Order and the Governance Protocol. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Sears Canada Entities and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order and the Governance Protocol, to grant representative status to the Monitor in any foreign proceeding, or to assist the Sears Canada Entities and the Monitor and their respective agents in carrying out the terms of this Order and the Governance Protocol. Without limiting the foregoing, in regard to any Governance Action (as such term is defined in the Governance

Protocol) taken on behalf of any of the Sears Canada Entities by the Monitor, all applicable regulatory or governmental units or agencies are hereby directed to accept any such certificates or other documents filed by the Monitor and to take all such steps necessary or appropriate to allow and effect the Governance Action in question.

A handwritten signature in cursive script, appearing to read "Hainey J.", written over a horizontal line.

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ON / BOOK NO:  
LE / DANS LE REGISTRE NO:

DEC 04 2018

PER / PAR: UM



**SCHEDULE A**  
**Governance Protocol**

**Sears Canada Inc. Governance Protocol**

All capitalized terms used herein and not otherwise defined have the meanings given to them in the Amended and Restated Initial Order dated June 22, 2017.

**WHEREAS** substantially all of the Property and assets of the Sears Canada Entities have been sold or otherwise disposed of or are the subject of a binding transaction agreement, with the exception of two remaining real property assets and other non-material assets (the "**Remaining Property**").

**WHEREAS** the Business previously carried on by the Sears Canada Entities has ceased operations.

**WHEREAS** the Applicants currently employ not more than ten individuals.

**WHEREAS** the remaining material steps to be taken in connection with these proceedings are: (i) completing the review, determination and adjudication of certain claims made against any of the Sears Canada Entities pursuant to the Claims Procedure Orders (as defined below) or otherwise (the "**Claims Resolution Process**"); (ii) monetizing the remaining real estate assets (the "**Real Estate Process**"); (iii) distributing the proceeds through a Plan if possible (the "**Distribution Process**"); and (iv) implementing a framework to proceed with certain litigation claims for the benefit of the Sears Canada Entities and their creditors (the "**Litigation Process**" and together with (i), (ii) and (iii), the "**Remaining Matters**").

**WHEREAS** no ordinary course business operations remain to be supervised and no material commercial transactions outside of the Real Estate Process remain to be implemented.

As a result of the foregoing, the following parties will oversee the Remaining Matters:

- i. the **Claims Resolution Process** has been, and will continue to be, administered by the Monitor in accordance with the Claims Procedure Order granted on December 8, 2017 and the Employee and Retiree Claims Procedure Order granted on February 22, 2018 (collectively, the "**Claims Procedure Orders**");
- ii. the **Real Estate Process** will be overseen by the Monitor. A group of stakeholders of the Sears Canada Entities has been consulted in this process and will continue to be consulted in accordance with past practice;
- iii. the **Distribution Process**, including all matters related to a Plan, including, without limitation, drafting of the Plan, and bringing of any motion to the Court in respect thereto, will be supervised and administered by the Monitor for the benefit of all creditors whose distributions will be determined in accordance with their legal entitlements or any negotiated resolutions resulting from the Claims Resolution Process; and
- iv. the **Litigation Process**, if approved by the Court, will be administered and supervised in accordance with the Order or Orders of the Court by the Court-appointed Litigation Trustee in connection with those claims it pursues on behalf of Sears Canada Inc., and by the Monitor in connection with those claims that the Monitor is empowered by statute to pursue.

In support of the foregoing, the Monitor will, to the exclusion of any other Person, and without the need for approval of the remaining directors of Sears Canada Inc. (the "**Remaining Directors**") or the remaining directors of the other Applicants:

- (a) oversee the remaining wind-down of the Sears Canada Entities, including without limitation:
  1. directing the Sears Canada Entities to preserve, protect and maintain control of the Remaining Property, or any parts thereof;

2. receiving, collecting and taking possession of all monies and accounts now owed or hereafter owing to any of the Sears Canada Entities; and
3. directing the Sears Canada Entities to file, or file on behalf of the Sears Canada Entities, any tax returns and directing the Sears Canada Entities to claim, or claim on behalf of the Sears Canada Entities, any and all rebates, refunds, and other amounts of tax (including sales taxes, capital taxes and income taxes) paid or payable by the Sears Canada Entities,

in each case on the basis that the Monitor shall incur no liability or obligation to any Person with respect to the foregoing matters.

(b) cause the Sears Canada Entities to perform such functions as the Monitor considers necessary or desirable in order to facilitate or assist the Sears Canada Entities in dealing with the Remaining Matters including the Remaining Property or operations, wind-down or other activities, including, without limitation:

1. entering into any agreements or disclaiming any agreements;
2. retaining or terminating employees or contractors, including preparing and filing the Sears Canada Entities' employee-related remittances, T4 statements and records of employment for the Sears Canada Entities' former employees based solely upon information provided by the Sears Canada Entities and on the basis that the Monitor shall incur no liability or obligation to any Person with respect to such returns, remittances, statements, records or other documentation;
3. in the event of dissolution and winding up of any of the Sears Canada Entities, executing, acknowledging and filing all necessary or appropriate certificates or other documents with the appropriate governmental agency or unit on behalf of any such Sears Canada Entity and taking any other action necessary or appropriate to effect such dissolution and wind-up of each such Sears Canada Entity and withdrawing such Sears Canada Entity from qualification in any jurisdiction it is qualified to do business, including without limitation, executing and filing certificates of dissolution and paying of any associated filing fees and the filing of any tax returns deemed necessary or appropriate (and paying the related taxes) on behalf of such entity on the basis that the Monitor shall incur no liability or obligation to any Person with respect to such matters;

(c) cause the Sears Canada Entities to administer the Remaining Property of the Sears Canada Entities as the Monitor considers necessary or desirable for the purposes of completing any transaction involving any Remaining Property or for purposes of facilitating distributions to creditors of the Sears Canada Entities, whether by way of a Plan or otherwise;

(d) cause the Sears Canada Entities to engage assistants or advisors as the Monitor deems necessary to carry out the Remaining Matters and to provide instructions and directions to any current advisors of the Sears Canada Entities;

(e) have authority to sign such agreements, instruments and other documents on behalf of each of the Sears Canada Entities as the Monitor deems appropriate, whether in the Monitor's name or in the name of and on behalf of any one of the Sears Canada Entities (including, without limitation, financial statements, tax returns and tax filings);

~~(f) as appropriate, delegate to any employee of the Sears Canada Entities (an "Authorized Representative") the authority to sign such agreements, instruments, notices, directions, settlements, regulatory and tax filings, certificates, authorizations and other documents on behalf of each of the Sears Canada Entities as the Monitor may direct;~~

(g) be authorized but not obligated to take any and all corporate actions and actions regarding the governance of the Sears Canada Entities (the "**Governance Action**"), including without limitation, authorizing and effecting:

1. amendments or updates to bylaws;
2. amendments to certificates of incorporation;
3. merger or consolidation with any entity;
4. changes to the jurisdiction of incorporation or formation; and
5. dissolution and winding up of any of the Sears Canada Entities;

provided, in each case, that such actions do not have an adverse effect on any creditors of the Applicants, and any Governance Action so taken by the Monitor is hereby authorized without requiring any further action or approval by the applicable entity or the Remaining Directors, former or existing shareholders or officers.

(h) where appropriate or necessary to conduct the administration of the estate, consult with and provide regular updates to stakeholders of the Sears Canada Entities and their advisors and report to the Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to its exercise of the enhanced powers provided herein and other matters as may be relevant to the CCAA proceedings; and

(i) be entitled to exercise any and all of the rights and powers of the Sears Canada Entities set out herein and in any other Order in the CCAA proceedings and to perform such other duties or to take any steps reasonably incidental to the exercise of the powers and obligations conferred upon the Monitor herein.

The Remaining Directors are not removed from their positions as a result of this protocol. Bennett Jones LLP will continue to advise its current clients that were directors of Sears Canada Inc. on June 22, 2017 in dealing with D&O insurers and matters relating to the CCAA proceedings. Following the approval of this protocol by the Court, the Remaining Directors (and the remaining directors of the other Applicants) will have no liability, obligation or responsibility with respect to the Remaining Matters or any other matter over which the Monitor or any other person exercises control in accordance with this protocol. For greater certainty, this specifically does not relate to any liability, obligation or responsibility of the Remaining Directors (and the remaining directors of the other Applicants) that arose prior to the Court approval of the Order related to these Governance Protocols. The payment of legal fees of counsel to the Remaining Directors shall be subject to the approval of the Monitor as to scope and reasonability.

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

**GOVERNANCE PROTOCOL AND STAY EXTENSION  
ORDER**

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Toronto, Ontario M5J 2Z4

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orestes.pasparakis@nortonrosefulbright.com

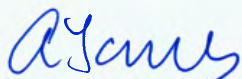
virginie.gauthier@nortonrosefulbright.com

alan.merskey@nortonrosefulbright.com

evan.cobb@nortonrosefulbright.com

Lawyers to the Monitor, FTI Consulting Canada Inc.

This is Exhibit "D" referred to in the Affidavit of Service of John N. Birch,  
sworn February 7, 2019



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Commissioner for Taking Affidavits  
(or as may be)

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE	)	MONDAY, THE 3RD
	)	
MR. JUSTICE HAINEY	)	DAY OF DECEMBER, 2018

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., 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.

(each, an “**Applicant**”, and collectively, the “**Applicants**”)

**ORDER  
(APPOINTMENT OF LITIGATION TRUSTEE,  
LIFTING OF STAY, AND OTHER RELIEF)**

THIS MOTION, made by the Litigation Investigator, for an Order pursuant to section 11 of the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36,, as amended (the “**CCAA**”) and Rule 6.01 of the *Rules of Civil Procedure*, RRO 1990, Reg. 194, as amended (the “**Rules**”) for an order, among other things, appointing a Litigation Trustee to pursue certain claims on behalf of the Applicants and/or any creditors of the Applicants and providing for the process by which a

common issues trial will be heard, was heard this day at 330 University Avenue, 8th Floor, Toronto, Ontario.

ON READING the Monitor's 27th Report to the Court dated November 5, 2018 and the Litigation Investigator's First Report to the Court dated November 5, 2018 (the "**First Report**"), and on reading and hearing the submissions of counsel for the Applicants, counsel for the Monitor, counsel for the Litigation Investigator, and such other counsel for various creditors and stakeholders as were present, no one else appearing although duly served as appears from the Affidavit of Service.

#### **SERVICE**

1. THIS COURT ORDERS that this motion is properly returnable today and hereby dispenses with further service thereof.

#### **TERMINATION OF LITIGATION INVESTIGATOR APPOINTMENT**

2. THIS COURT ORDERS that the appointment of the Litigation Investigator pursuant to the Amended Litigation Investigator Order dated April 26, 2018 (the "**Amended Litigation Investigator Order**"), is hereby terminated, effective immediately.

#### **CONTINUATION AND EXTENSION OF LITIGATION CREDITORS' COMMITTEE**

3. THIS COURT ORDERS that the Creditors' Committee established pursuant to the Amended Litigation Investigator Order dated April 26, 2018 shall continue as currently constituted thereunder to consult with and provide input to the Litigation Trustee Parties in respect of the claims brought by the Litigation Trustee in accordance with this Order.



4. THIS COURT ORDERS that the Litigation Trustee Parties shall meet with the Creditors' Committee on a monthly basis unless otherwise agreed for a particular month by said parties, and which meetings shall be subject to confidentiality and that privilege shall be maintained.

#### **APPOINTMENT OF LITIGATION TRUSTEE**

5. THIS COURT ORDERS that the Honourable J. Douglas Cunningham, Q.C. is hereby appointed as an officer of this Court to be the Litigation Trustee over and in respect of the Applicants' claims identified in the First Report of the Litigation Investigator (the "**Litigation Assets**" or the "**Claims**") on the terms described herein.

#### **LITIGATION TRUSTEE'S POWERS**

6. THIS COURT ORDERS that the Litigation Trustee is hereby empowered, authorized and directed to do all things and carry out all actions necessary to prosecute the Claims, including:

- (a) to engage, give instructions and pay counsel as well as consultants, appraisers, agents, advisors, experts, auditors, accountants, managers and such other persons from time to time on whatever basis the Litigation Trustee may agree, in consultation with the Monitor, to assist with the exercise of his powers and duties. Notwithstanding such authority, the Litigation Trustee shall be under no obligation to consult with its counsel, consultants, appraiser, agents, advisors, experts, auditors, accountants, managers and its good faith determination not to do so shall not result in the imposition of liability on the Litigation Trustee, unless such determination is based on gross negligence or willful misconduct;

-4-

- (b) to execute, assign, issue and endorse documents of whatever nature in the name of and on behalf of Sears Canada for any purpose in connection with the Claims or otherwise pursuant to this Order; and
- (c) to pursue the Claims, defend any counter claim, third party claim or other claim brought against Sears Canada, and subject to further Order of the Court, and in consultation with the Monitor, to settle or compromise, abandon, dismiss or otherwise dispose of such proceeding. The authority hereby conferred shall extend to any appeals or applications for judicial review in respect of any order or judgment pronounced in such proceeding.

7. THIS COURT ORDERS that, notwithstanding the generality of paragraph 5<sup>6(c)</sup> above, the Litigation Trustee is hereby authorized and empowered to commence claims, in his own name or on behalf of the Applicants, against ESL Investments Inc. (and certain affiliates), Edward Lampert, William C. Crowley, William R. Harker, Donald Campbell Ross, Ephraim J. Bird, Deborah E. Rosati, R. Raja Khanna, James McBurney and Douglas Campbell.

8. THIS COURT ORDERS that the stay of proceedings provided for in paragraph 25 of the Initial Order dated June 22, 2017 (the "**Initial Order**"), is hereby lifted as against William C. Crowley, William R. Harker, Donald Campbell Ross, Ephraim J. Bird, Deborah E. Rosati, R. Raja Khanna, James McBurney and Douglas Campbell for the purposes of permitting the claims referred to in the First Report, including those of the Litigation Trustee, to be commenced and pursued against those persons.

**INDEMNITY**

9. THIS COURT ORDERS that the Litigation Trustee shall incur no liability or obligation as a result of his appointment or in carrying out of any of the provisions of this Order, save and except for any gross negligence or any willful misconduct. Sears Canada shall indemnify and hold harmless the Litigation Trustee and his designated agents, representatives and professionals with respect to any liability or obligations as a result of his appointment or the fulfillment of his duties in carrying out the provisions of this Order, save and except for any gross negligence or willful misconduct. For clarity, in no event shall the Litigation Trustee be personally liable for any costs awarded against Sears Canada in the action. Any such costs awarded shall be a claim solely against Sears Canada estate. No action, application or other proceeding shall be commenced against the Litigation Trustee as a result of, or relating in any way to his appointment, the fulfillment of his duties or the carrying out of any Order of this Court except with leave of this Court being obtained. Notice of any such motion seeking leave of this Court shall be served upon Sears Canada, the Monitor and the Litigation Trustee at least seven (7) days prior to the return date of any such motion for leave.

10. THIS COURT ORDERS that the indemnity pursuant to paragraphs <sup>5-9</sup>~~4-8~~ above shall survive any termination, replacement or discharge of the Litigation Trustee. Upon any termination, replacement or discharge of the Litigation Trustee, on not less than 10 business days' notice, all claims against the Litigation Trustee, his designated agents, representatives and professionals for which leave of the Court has not already been sought and obtained shall be, and are hereby forever discharged, other than claims for which a party seeks leave prior to the discharge date to bring a claim against the Litigation Trustee and (i) such leave has been obtained; or (ii) the request for leave remains outstanding.

**LITIGATION TRUSTEE'S ACCOUNTS**

11. THIS COURT ORDERS that the Litigation Trustee and counsel to the Litigation Trustee (collectively, the "**Litigation Trustee Parties**") shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by Sears Canada as part of the costs of these proceedings. Sears Canada is authorized and directed to pay the accounts of the Litigation Trustee Parties on a bi-weekly basis (or such other interval as may be mutually agreed upon) and, in addition, Sears Canada is hereby authorized to pay to the Litigation Trustee Parties retainers not exceeding \$50,000.00 each, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

12. THIS COURT ORDERS that the Litigation Trustee Parties shall pass their accounts from time to time, and for this purpose the accounts of the Litigation Trustee Parties are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

13. THIS COURT ORDERS that the Litigation Trustee Parties shall be entitled to the benefit of and are hereby granted a charge in the maximum amount of \$500,000.00 (the "**Litigation Trustee's Charge**") on the "**Property**" of Sears Canada as defined by paragraph 4 of the Initial Order, ranking *pari passu* with the Administration Charge (as defined in the Initial Order), in priority to all other security interests, trusts (statutory or otherwise), liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any person, including all charges granted by the Initial Order (other than the Administration Charge) and all other Orders of this Court granted in these proceedings.

14. THIS COURT ORDERS that the filing, registration or perfection of the Litigation Trustee's Charge shall not be required, and that the Litigation Trustee's Charge shall be valid and enforceable for all purposes, notwithstanding any such failure to file, register, record or perfect.

15. THIS COURT ORDERS that the granting of the Litigation Trustee's Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Litigation Trustee's Charge shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declaration of insolvency herein; (b) any application(s) for bankruptcy order(s) issued pursuant to *Bankruptcy and Insolvency Act* (Canada) (the "BIA"), or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; or (d) the provisions of any federal or provincial statutes, and notwithstanding any provision to the contrary in any agreement.

16. THIS COURT ORDERS that the payments made by Sears Canada pursuant to this Order and the granting of the Litigation Trustee's Charge, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

#### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

17. THIS COURT ORDERS that nothing herein contained shall require the Litigation Trustee to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the

disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the “**Environmental Legislation**”), provided however that nothing herein shall exempt the Litigation Trustee from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Litigation Trustee shall not, as a result of this Order or anything done in pursuance of the Litigation Trustee’s duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

#### **PROCEDURE**

18. THIS COURT ORDERS that a case management judge for the claims brought by the Monitor, the Litigation Trustee, the Pension Administrator, and the Class Action plaintiffs as referred to in the First Report will be appointed as soon as possible.

19. THIS COURT ORDERS that the procedure to be followed for the claims brought by the Monitor, the Litigation Trustee, the Pension Administrator, and the Class Action plaintiffs as referred to in the First Report shall be determined by the case management judge.

#### **GENERAL**

20. THIS COURT ORDERS that, without limiting any other provisions of this Order, the Litigation Trustee may from time to time apply to this Court for advice and directions in the discharge of his powers and duties hereunder.

21. THIS COURT ORDERS that the Monitor and the Litigation Trustee may report to the Court on their activities from time to time as any of them may see fit or as this Court may direct.

22. 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 Litigation Trustee and its 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 Litigation Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Litigation Trustee and its agents in carrying out the terms of this Order.

23. THIS COURT ORDERS that the Litigation Trustee be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Litigation Trustee is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

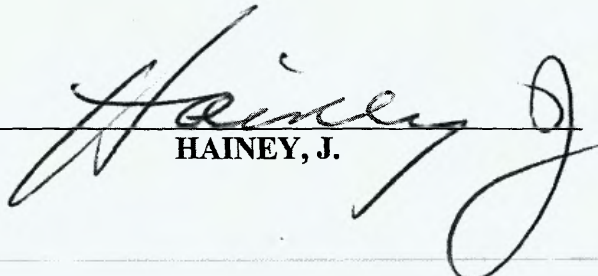
24. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Litigation Trustee and the Monitor and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

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

DEC 04 2018

PER / PAR:

UM

  
HAINES, J.

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., 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.

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

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

PROCEEDING COMMENCED AT TORONTO

**ORDER**

**(APPOINTMENT OF LITIGATION TRUSTEE,  
LIFTING OF STAY, AND OTHER RELIEF)**

**LAX O'SULLIVAN LISUS GOTTLIEB LLP**

Counsel

Suite 2750, 145 King Street West  
Toronto ON M5H 1J8

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Tel: 416 644 5353

**Andrew Winton** LSO#: 544731

[awinton@counsel-toronto.com](mailto:awinton@counsel-toronto.com)

Tel: 416 644 5342

**Philip Underwood** LSO#: 73637W

[punderwood@counsel-toronto.com](mailto:punderwood@counsel-toronto.com)

Tel: 416 645 5078

Fax: 416 598 3730

Litigation Investigator



This is Exhibit "E" referred to in the Affidavit of Service of John N. Birch,  
sworn February 7, 2019

A handwritten signature in blue ink, appearing to read "A. James".

---

Commissioner for Taking Affidavits  
(or as may be)

Court File No.

414/15

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

1291079 ONTARIO LIMITED

Plaintiff

- and -

SEARS CANADA INC., SEARS HOLDING CORPORATION, ESL  
INVESTMENTS INC., WILLIAM C. CROWLEY, WILLIAM R. HARKER,  
DONALD CAMPBELL ROSS, EPHRAIM J. BIRD, DEBORAH E. ROSATI, R.  
RAJA KHANNA, JAMES MCBURNEY and DOUGLAS CAMPBELL

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**STATEMENT OF CLAIM**

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the Rules of Civil Procedure. This

will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

October 21, 2015

Issued by

  
Local Registrar

Address of  
court office

Milton Courthouse  
491 Steeles Avenue East  
Milton, ON L9T 1Y7

**TO:** SEARS CANADA INC.  
290 Yonge Street, Suite 700  
Toronto, Ontario  
M5B 2C3

**AND TO:** SEARS HOLDING CORPORATION  
3333 Beverly Road  
Hoffman Estates, IL 60179  
United States of America

**AND TO:** ESL INVESTMENTS INC.  
200 Greenwich Avenue  
Greenwich, CT 06830  
United States of America

**AND TO: WILLIAM C. CROWLEY**  
146 Central Park West, Apartment 10E  
New York NY 10023  
United States of America

**AND TO: WILLIAM R. HARKER**  
39 Remsen Street- Apt. 1B  
Brooklyn NY 11201  
United States of America

**AND TO: DONALD CAMPBELL ROSS**  
73 Donwoods Drive  
Toronto ON M4N 2G6

**AND TO: EPHRAIM J. BIRD**  
1017 N. Ridge Road  
Salado TX 76571  
United States of America

**AND TO: DEBORAH E. ROSATI**  
11821 Lakeshore Road RR#2  
Wainfleet ON L0S 1V0

**AND TO: R. RAJA KIANNA**  
31 Delaware Avenue  
Toronto ON M6H 2S8

**AND TO: JAMES MCBURNEY**  
4 Luxemburg Gardens  
London W6 7EA  
United Kingdom

**AND TO: DOUGLAS CAMPBELL**  
13 Roxborough Street West  
Toronto ON MSR 1T9

## CLAIM

1. The plaintiff claims on behalf of itself and all members of the Proposed Class:
  - (a) a declaration that the plaintiff is a “complainant” under the *Canada Business Corporations Act*, R.S.C. 1985, c. C. 44 (the “CBCA”);
  - (b) a declaration that the plaintiff has been oppressed by the defendants under the CBCA;
  - (c) compensation pursuant to s. 241(3)(j) of the CBCA in an amount not exceeding \$100,000,000;
  - (d) pre-judgment and post-judgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43;
  - (e) costs of this action on a substantial-indemnity scale, plus applicable goods and services and harmonized sales taxes; and;
  - (f) such further and other relief as this Honourable Court deems just, including all further necessary or appropriate accounts, inquiries and directions.

## Parties

2. The plaintiff, 1291079 Ontario Limited (“129”), is incorporated under the laws of Ontario. Until December, 2013, 129 carried on business in the Town of Woodstock, Ontario, as a retailer under the “Sears Hometown” store program. 129 is the class representative in a certified class proceeding against Sears Canada Inc., bearing Court File No. CV- 3769 /13-CP (the “Class Action”) commenced in Milton, Ontario

3. The defendant, Sears Canada Inc. (“Sears”), is incorporated under the laws of Canada and has its head office in the City of Toronto, Province of Ontario. Sears’ stock is publicly traded on the Toronto Stock Exchange and on the NASDAQ.

4. The defendant, Sears Holding Corporation (“Holding”), is incorporated under the laws of the State of Delaware in the U.S.A. Until October, 2014, Holding owned 51% of the common shares of Sears, at which time its shareholdings were reduced to approximately 12% following a sale of its shares.

5. The defendant, ESL Investments Inc. (“ESL”), is incorporated under the laws of the State of Delaware in the U.S.A. ESL is a privately-owned hedge fund controlling over approximately \$9 billion in assets. Until October, 2014, ESL was a 27% shareholder of Sears, at which time it increased its shareholdings in Sears to approximately 48% through the acquisition of shares previously held by Holding.

6. The principal individual behind both Holding and ESL is hedge-fund billionaire Edward Lampert (“Lampert”). Lampert is the chairman and CEO of Holding and the founder, chairman and CEO of ESL. Lampert is also the largest individual shareholder of Holding.

7. Holding and ESL are affiliates of Sears as defined under section 2 of the CBCA.

8. The defendant, William C. Crowley (“Crowley”), is an individual residing in New York, New York in the United States of America. Crowley was a director of Sears in 2013.

9. The defendant, William R. Harker (“**Harker**”), is an individual residing in Brooklyn, New York in the United States of America. Harker was a director of Sears in 2013.

10. The defendant, Donald Campbell Ross (“**Ross**”), is an individual residing in Toronto, Ontario. Ross was a director of Sears in 2013.

11. The defendant, Ephraim J. Bird (“**Bird**”), is an individual residing in Salado, Texas in the United States of America. Bird was a director of Sears in 2013.

12. The defendant, Deborah E. Rosati (“**Rosati**”), is an individual residing in Wainfleet, Ontario. Rosati was a director of Sears in 2013.

13. The defendant, R. Raja Khanna (“**Khanna**”), is an individual residing in Toronto, Ontario. Khanna was a director of Sears in 2013.

14. The defendant, James McBurney (“**McBurney**”), is an individual residing in London, England. McBurney was a director of Sears in 2013.

15. The defendant, Douglas Campbell (“**Campbell**”), is an individual residing in Toronto, Ontario. Campbell was a director of Sears in 2013.

16. Crowley, Harker, Ross, Bird, Rosati, Khanna, McBurney and Campbell are hereinafter, collectively, referred to as the “**Directors**”.

## Background

17. 129 is a Sears Hometown store dealer. On July 5, 2013, it commenced a class proceeding against Sears on behalf of all Hometown Dealer stores operating under a Dealer Agreement with Sears at any time on or after July 5, 2011 (the “Class”). The Class Action seeks \$100 million in damages on behalf of the Class for, *inter alia*, breach of contract and breaches of the *Arthur Wishart Act (Franchise Disclosure), 2000*, S.O. 2000, c. 3 (“Wishart Act”).

18. The Class Action was certified as a class proceeding on September 8, 2014.

19. 129 proposes that the class in this action be defined in the same manner as the class in the Class Action, namely:

all corporations, partnerships, and individuals carrying on business as a Sears Hometown Store under a Dealer Agreement with Sears at any time from July 5, 2011 to the date of sending of the notice of certification

## The Beginning of the End for Sears

20. Sears is a retailer of home appliances, furnishings, mattresses, electronics and apparel, among other things. It has operated in Canada for over 60 years. Sears’ retail network includes many different channels of retail, such as full-line department stores, furniture and appliance stores, Dealer Hometown stores, catalogue selling locations, and outlet stores. Sears also sells direct to customers through its website, [www.sears.ca](http://www.sears.ca) and its 1-800 telephone number.



21. Beginning in 2011, Sears began incurring large and growing operating losses. In the most recent fiscal year, Sears reported an operating loss of over \$400 million. The table below shows Sears' growing operating losses since 2011 (in CAD millions):

Year	Operating Profit (Loss)
2011	(\$50.9)
2012	(\$82.9)
2013	(\$187.8)
2014	(\$407.3)

22. By 2013, media and analyst reports began reporting that the end was near for Sears given the increasing losses and the absence of a viable plan for turnaround.

23. Even though Sears was losing substantial amounts of money through its operations, it held valuable capital assets, particularly long-term leases in prime shopping centres that were below fair market value rental rates.

24. Beginning in 2013, Sears, at the direction and under the control of Holding and ESL, took steps and made corporate decisions to liquidate these valuable assets in order to benefit Holding and ESL at the expense of creditors. These steps included liquidating Sears' prime assets. Rather than reinvesting these funds to offset the large and growing operating losses and attempt to turn the company around, the primary purpose of these steps was to siphon money out of Canada by paying substantial dividends to Holding and ESL prior to the inevitable bankruptcy filing for Sears.

### **The Path Towards Insolvency: A Chronology of Asset Stripping**

25. In June, 2013, Sears announced that it was selling leases for two of its most prominent locations for \$191 million. The locations were in Toronto's highly-coveted Yorkdale Shopping Centre and Mississauga's Square One Shopping Centre.

26. In August, 2013, Sears announced that it was cutting 245 employees and outsourcing its information technology and financing work. This announcement followed Sears' cutting of over 700 employees earlier in 2013.

27. In September, 2013, Sears' CEO, Calvin MacDonald resigned from the company. Mr. MacDonald had become CEO in 2011 and was in the midst of a proposed three-year turnaround plan at the time of his resignation. Mr. MacDonald resigned because of disagreements with Lampert over commitment to Mr. MacDonald's turnaround plan. That same day, Sears announced that Douglas Campbell was appointed its CEO and President.

28. In October, 2013, Sears announced that it was selling five more of its prime leases, including its flagship location in Toronto's Eaton Centre, for \$400 million. At the same time, it announced the termination of 965 employees who worked at those locations.

29. In November, 2013, Sears announced that it was selling its 50% joint venture interest in eight properties for approximately \$315 million.

30. Also in November, 2013, Sears announced that it was laying off approximately 800 employees from its repair services and parts business.

#### **Sears Declares Extraordinary Dividend Despite Significant Financial Losses**

31. On November 19, 2013, Sears reported its third-quarter financial results. Sears' revenues for the third-quarter of 2013 were down 6.4% from the same quarter in 2012. Sears had a net loss of \$48.8 million for the third quarter of 2013.

32. Nevertheless, on that same day, despite these losses, the Directors declared an extraordinary cash dividend of \$5.00 per share on all common shares, or approximately \$509 million in the aggregate, to be paid on December 6, 2013 (the "**Extraordinary Dividend**"). The primary beneficiaries of the Extraordinary Dividend were Holding and ESL.

33. The Extraordinary Dividend was declared by the Directors and paid by Sears with knowledge by the defendants of the substantial claim against Sears by the Hometown dealers in the Class Action.

34. The Extraordinary Dividend was declared by the Directors and paid by Sears with knowledge by the defendants that:

- (a) Sears was aggressively liquidating its prime assets and would continue to do so in the future;

- (b) Sears was experiencing growing, unsustainable operating losses each quarter and would continue to do so in the future;
- (c) the defendants Holding and ESL were not prepared to allow Sears to commit the funds and resources necessary to implement a viable turnaround of Sears' operations, and that Mr. MacDonald and other executives had resigned as a result;
- (d) Sears was slashing its operating budget which would deprive it of the ability to effect a turnaround of its operations and would continue to do so in the future;
- (e) the Sears Hometown stores network was and would continue in the future to be abandoned by Sears. Every senior executive involved in the Sears Hometown store network either left the organization or would leave in the near future as a result of this abandonment and the growing despair of the independent dealer network; and
- (f) the class members, which are independent owner operators of Sears Hometown stores, were experiencing and would continue to experience massive, unsustainable losses which would lead to their financial demise.

35. The defendants knew that by paying the Extraordinary Dividend, they would strip the most valuable assets out of Sears and that Sears would likely be bankrupt or insolvent by the time the Class succeeded in the Class Action.

36. On November 26, 2013, after the declaration of the Extraordinary Dividend but prior to its payment, counsel for the plaintiff in the Class Action wrote to counsel for Sears requesting assurances that, having regard to the assets, liabilities (existing and contingent) and actual and likely future operating losses of Sears, it had set aside a sufficient reserve to satisfy a judgment against Sears should the Class Action be certified and succeed on the merits. No answer was provided.

37. On December 3, 2013, counsel for the plaintiff in the Class Action wrote to each Director to put them on notice that should Sears be unable to satisfy an eventual judgment against Sears in the Class Action, that each Director who authorized the Extraordinary Dividend may be jointly and severally liable with Sears for such damages. No answer was provided.

38. Sears paid the Extraordinary Dividend on December 6, 2013.

#### **The Continuing Path Towards Insolvency**

39. Following the payment of the Extraordinary Dividend on December 6, 2013, Sears continued aggressively down the path of winding-up operations in Canada and liquidating what remained of its valuable assets.

40. Having received the Extraordinary Dividend and facing its own financial issues, on May 14, 2014, Holding announced that it was exploring strategic alternatives for its shareholding in Sears, including a possible divestiture of its shares. Holding retained the firm of Bank of America Merrill Lynch for this purpose.

41. In May, 2014, Sears announced that it had sold its minority ownership interest in the Centre commercial Les Rivières shopping centre in Trois-Rivières, Quebec, for \$33.5 million.
42. In August, 2014, Sears announced that it had entered into an agreement to sell its interest in Kildonan Place, a shopping centre located in Winnipeg, for \$33.5 million.
43. In September, 2014, Sears announced that Mr. Campbell would resign as CEO by the end of the year.
44. In October, 2014, Ronald Boire was named as Mr. Campbell's replacement as CEO. Mr. Boire was Sears' third different CEO in just under two years.
45. In November, 2014, Sears and JPMorgan Chase Bank, N.A. announced that their agreement relating to the Sears-branded credit card would terminate on November 15, 2015.
46. In February, 2015, Sears released its financial results for the previous quarter and fiscal year. Sears suffered an operating loss of \$154.7 million for the last quarter of 2014. For the 2014 fiscal year, Sears suffered an operating loss of \$407.3 million.
47. In March 11, 2015, Sears announced that it had entered into an agreement to sell and lease back three of its properties for \$140 million. The locations include store space and adjacent property located at the Metropolis at Metrotown in Burnaby, British Columbia, Cottonwood Mall in Chilliwack, British Columbia and North Hill Shopping Centre in Calgary, Alberta.

48. On May 20, 2015, Sears released its financial performance for the first quarter of 2015. Sears suffered a \$59.1 million net loss for this quarter.

49. On July 2, 2015, Mr. Boire announced that he would be leaving his position as CEO of Sears by the end of the 2015 summer.

50. 25% of the Hometown Dealer stores have closed since 2013. More Hometown Dealer stores are closing weekly.

51. The value of Sears' shares has dropped significantly on the Toronto Stock Exchange and on NASDAQ in the past 24 months and there is widespread speculation that Sears will file for bankruptcy protection in the near future.

#### **Defendants Have Oppressed Class**

52. Sears' actions in paying the Extraordinary Dividend were done for the purpose of denuding Sears of its prime assets, and paying the funds from the realization of the assets to the primary benefit of Holding and ESL to the detriment of the Class.

53. At all material times, Holding and ESL controlled and directed Sears and directed the payment of the Extraordinary Dividend by Sears. The Directors voted for and consented to the resolution authorizing the payment of the Extraordinary Dividend. The defendants have interfered with the plaintiff's and the Class' rights as creditors of Sears.

54. Specifically, by directing and authorizing Sears to pay the Extraordinary Dividend and its other actions as described above, the defendants have:

- (a) effected a result;
- (b) carried on their business and affairs and those of Sears in a manner; and
- (c) exercised their powers in a manner,

that was oppressive and unfairly prejudicial to and that unfairly disregarded the interests of the Class, contrary to section 241 of the CBCA.

55. The plaintiff and the Class are complainants under ss. 238(d) of the CBCA.

56. The plaintiff pleads and relies on the CBCA, and particularly Part XX thereof.

#### *Service Ex Juris*

57. The plaintiff is entitled to serve Holding, ISL and certain of the Directors outside Ontario without a court order pursuant to the following rules of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 because:

- (a) Rule 17.02 (f)(i) – the claim relates to a contract made in Ontario;
- (b) Rule 17.02 (f)(iv) – the claim relates to a breach of a contract committed in Ontario;
- (c) Rule 17.02 (g) – the claim relates to a tort committed in Ontario;
- (d) Rule 17.02 (h) – the claim relates to damage sustained in Ontario arising from a tort and breach of contract; and
- (e) Rule 17.02 (o) – the defendants residing outside of Ontario are necessary and proper parties to this proceeding.



58. The plaintiff seeks to have this action tried immediately following the trial of the Class Action.

October 21, 2015

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Lawyers for the plaintiff

1291079 ONTARIO LIMITED  
Plaintiff

-and-

SEARS CANADA INC., et al.  
Defendants

Court File No. 4114/15

*ONTARIO*  
SUPERIOR COURT OF JUSTICE  
PROCEEDING COMMENCED AT MILTON

STATEMENT OF CLAIM

**SOTOS LLP**

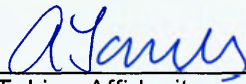
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Lawyers for the Plaintiff

This is Exhibit "F" referred to in the Affidavit of Service of John N. Birch,  
sworn February 7, 2019

A handwritten signature in blue ink, appearing to read "A. James", is written over a horizontal line.

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Commissioner for Taking Affidavits  
(or as may be)

CV-18-00611219-00CL  
Court File No.:

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

BETWEEN:



FTI CONSULTING CANADA INC.,  
in its capacity as Court-appointed monitor in proceedings  
pursuant to the *Companies' Creditors Arrangement Act*, RSC 1985, c. c-36

Plaintiff

and

ESL INVESTMENTS INC., ESL PARTNERS, LP, SPE I PARTNERS, LP, SPE MASTER I, LP,  
ESL INSTITUTIONAL PARTNERS, LP, EDWARD S. LAMPERT, WILLIAM HARKER  
and WILLIAM CROWLEY

Defendants

**STATEMENT OF CLAIM**

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff.  
The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Ray Williams, Registrar

Date: December 19, 2018

Issued by

*Ray Williams*  
Local registrar

Address of court office 330 University Avenue  
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R7

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**AND TO: SPE I Partners, LP**

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**AND TO: SPE Master I, LP**

1170 Kane Concourse, Suite 200  
Bay Harbor, FL, 33154  
U.S.A.

**AND TO: ESL Institutional Partners, LP**

1170 Kane Concourse, Suite 200  
Bay Harbor, FL, 33154  
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**CLAIM**

1 The Plaintiff, FTI Consulting Canada Inc., in its capacity as Court-appointed monitor of Sears Canada Inc. (**Sears**) in proceedings pursuant to the *Companies' Creditors Arrangement Act*, RSC 1985, c. c-36 (the **CCAA**) (the **Monitor**) claims against the Defendants:

(a) a declaration that the transfer of funds to the Defendants, ESL Investments Inc. (**ESL Investments**), ESL Partners, LP, SPE I Partners, LP, SPE Master I, LP, ESL Institutional Partners, LP, and Edward S. Lampert (**Lampert**), by means of a dividend of \$5.00 per share paid by Sears on December 6, 2013 (the **2013 Dividend**):

(i) was a transfer at undervalue for the purposes of section 96 of the *Bankruptcy and Insolvency Act*, RSC, 1985, c. B-3 (the **BIA**), as incorporated into the CCAA by section 36.1 thereof (the **Transfer at Undervalue**); and

(ii) is void as against the Monitor;

(b) an order that the Defendants, either as parties to the 2013 Dividend or as privies thereto, or both, shall jointly and severally pay to Sears the full amount of the 2013 Dividend, being approximately \$509 million in total;

(c) in the alternative, an order that the Defendants, either as parties to the 2013 Dividend or as privies thereto, or both, shall jointly and severally pay to Sears the portion of the 2013 Dividend received by the Defendants, collectively;

- (d) in the further alternative, an order that each of the Defendants, either as parties to the 2013 Dividend or as privies thereto, or both, shall pay to Sears the amount of the 2013 Dividend that such Defendant received, or directly or indirectly benefitted from;
- (e) pre and post-judgment interest in accordance with the *Courts of Justice Act*, RSO 1990, c. C.43; and
- (f) costs of this action on a substantial indemnity basis.

### The Parties

- 2 Sears and its affiliate companies obtained protection under the CCAA on June 22, 2017, and pursuant to section 11.7 of the CCAA, the Plaintiff was appointed as Monitor under the Initial Order. On December 3, 2018, the Monitor obtained authorization from the Court to bring this action.
- 3 The Defendant ESL Investments is a privately-owned hedge fund incorporated under the laws of Delaware with its principal executive offices located at 1170 Kane Concourse, Bay Harbor Islands, Florida. The Defendants ESL Partners, LP, SPE I Partners, LP, SPE Master I, LP, and ESL Institutional Partners, LP (collectively, and together with ESL Investments, **ESL**) are affiliates of ESL Investments.
- 4 The Defendant Lampert is an individual residing in Indian Creek, Florida. At all material times, Lampert controlled ESL, and has served as ESL Investments' Chairman and Chief Executive Officer since its creation in 1988.
- 5 The Defendant William Crowley was a non-independent director of Sears from March 2005 to April 2015, including at the time the 2013 Dividend was approved by the Sears Board and paid to Sears' shareholders.



- 6 The Defendant William Harker was a non-independent director of Sears from November 2008 to April 2015, including at the time the 2013 Dividend was approved by the Sears Board and paid to Sears' shareholders.
- 7 At all material times, including on November 18, 2013 through to December 3, 2013, Lampert and ESL held a controlling ownership interest in Sears Holdings Corporation (**Holdings**) and beneficially owned 55% of Holdings' outstanding shares. In turn, at all material times, Holdings held a controlling ownership interest in Sears. On October 15, 2018, Holdings filed for Chapter 11 protection from creditors with the United States Bankruptcy Court. Holdings is not a party to this action.
- 8 At all material times, including on November 18, 2013 through to December 6, 2013, Holdings and each of the Defendants other than Crowley was a direct or beneficial shareholder of Sears, and held the following ownership interests:
- (a) Holdings beneficially owned 51,962,391 shares in Sears, representing approximately 51% of the outstanding shares.
  - (b) ESL beneficially owned 17,725,280 shares in Sears, representing approximately 17.4% of the outstanding shares, which were directly held as follows:
    - (i) ESL Partners, LP: 15,821,206 shares;
    - (ii) SPE I Partners, LP: 830,852 shares;
    - (iii) SPE Master I, LP: 1,068,522 shares;
    - (iv) ESL Institutional Partners, LP: 4,381 shares; and

- (v) CRK Partners, LLC (an affiliate of ESL Investments, Inc. that was voluntarily cancelled effective June 1, 2018 and is not a party to these proceedings): 319 shares;
  - (c) Lampert owned 10,433,088 shares in Sears, representing approximately 10.2% of the outstanding shares; and
  - (d) Harker owned 4,604 shares in Sears.
- 9 In this action, the Monitor seeks a declaration that the 2013 Dividend was a transfer at undervalue pursuant to section 96 of the BIA (as incorporated into proceedings under the CCAA by section 36.1 thereof) and is therefore void as against the Monitor, and it seeks payment from the Defendants who were parties and/or privies to the Transfer at Undervalue.

### **Sears' Operational Decline**

- 10 Beginning in 2011, Sears' financial performance began to decline sharply. According to Sears' publicly-disclosed audited annual financial statements for 2010 – 2013 (as amended, in certain cases), Sears' revenues, operating profits/losses and gross margin rates were as follows:

Year	Total Revenues (\$ million)	Operating Profit (Loss) (\$ millions)	Gross Margin Rate
2010	4,938.5	196.3	39.3%
2011	4,619.3	(50.9)	36.5%
2012	4,300.7	(82.9)	36.7%
2013	3,991.8	(187.8)	36.2%

- 11 As early as 2011, Sears' management recognized that drastic, transformative action would be required for Sears to re-establish a foothold in the Canadian retail market. In the 2011 strategic plan (the **2011 Strategic Plan**) prepared for Sears' board of directors (the **Board**), then-Chief Executive Officer Calvin McDonald described the state of Sears as follows:

Sears Canada is not a good retailer. Our business is broken: trading is awkward and inefficient, we lack product and merchandising focus and we are becoming irrelevant to customers while losing touch with our core.

[...]

We lack many of the fundamental processes, structures and culture of a strong retailer. In short, we lack 'retail rhythm'. However, most of our challenges are self-induced, meaning we are in a position to fix them.

- 12 The 2011 Strategic Plan also made clear that if transformative action was not taken, Sears could not expect to re-emerge as a successful retailer: "If we do not innovate, we will cease to be relevant." More directly, the 2011 Strategic Plan warned that "the current trajectory of growth and margin decline would take EBITDA into negative territory if we do not take drastic action."

- 13 Notwithstanding the concerning operational trends identified in the 2011 Strategic Plan, Sears failed to take the necessary action to reinvigorate its business. Between 2011 and 2013, Sears consistently invested fewer resources on growth and transformational initiatives relative to its industry peers. In particular, the Board rejected multiple attempts by management, including in particular McDonald, to use Sears' capital to revitalize its business.

### **2013 Plan to Dispose of Real Estate Assets to Fund Dividends**

- 14 By 2013, ESL Investments and Lampert had an immediate need for cash from Sears. ESL Investments had raised money from investors years earlier on terms that precluded these investors from redeeming their investment for a period of time. In 2013, this holding period had expired, investors were entitled to withdraw funds and ESL Investments faced significant redemptions.
- 15 In order to satisfy its redemption obligations, ESL and Lampert devised a plan to extract cash from Sears through (a) the disposition of its most valuable real estate assets, and (b) the payment of an extraordinary dividend for the benefit of ESL and Lampert (collectively the **Monetization Plan**).
- 16 To give effect to the Monetization Plan, Lampert personally directed the disposition of Sears' real estate assets in 2013. Lampert provided specific instructions to Sears on the price sought by Sears for its dispositions. The Monitor specifically denies Lampert's public statement on February 11, 2018:

While I take no issue with the decisions that the board of Sears Canada made with regard to dividends and certain real estate sales, I have to emphasize that I have never served as a director or officer of Sears Canada, so I don't have firsthand knowledge of their internal deliberations and the alternatives considered.

17 At all materials times, Lampert directed and acted in concert with officers and directors of Sears to implement the Monetization Plan, including in particular with Crowley (then Chair of the Sears Board), Harker (then a director of Sears), and E.J. Bird (then Chief Financial Officer of Sears). Jeffrey Stollenwerck (then President, Real Estate Business Unit of Holdings) was also engaged by ESL and Lampert on these matters. Lampert had a longstanding professional and personal relationship with each of them:

- (a) Crowley had acted as President and Chief Operating Officer of ESL Investments from January 1999 to May 2012, Executive Vice-President and Chief Administrative Officer of Holdings from September 2005 to January 2011 and Chief Financial Officer of Holdings for periods in 2005-2007;
- (b) Harker was an Executive Vice-President and General Counsel of ESL Investments from February 2011 to June 2012 and an officer of Holdings from September 2005 until August 2012, during which time he acted variously as General Counsel, Corporate Secretary and Senior Vice-President, among other roles;
- (c) Bird was the Chief Financial Officer of ESL Investments from 1991 until 2002; and
- (d) Stollenwerck was the President of the Real Estate Business Unit of Holdings from February 2008 to April 2018 and a Senior Vice President, Real Estate for Holdings from March 2005 to February 2008. Before joining Holdings, Stollenwerck had acted as Vice-President, Research at ESL Investments.

18 In accordance with the Monetization Plan, Sears entered into an agreement with Oxford Properties Group on or about June 14, 2013 to terminate Sears' leases at Yorkdale Shopping Centre and Square One Mississauga in exchange for a payment to Sears of \$191 million (the **Oxford Terminations**). The Oxford Terminations closed June 24, 2013.

### **September 2013 Board Presentations**

19 On September 23, 2013, two years after the 2011 Strategic Plan, the Board received a series of management presentations directly addressing Sears' deteriorating operational and financial performance (the **2013 Board Presentations**). Among other things, the 2013 Board Presentations reported that:

- (a) sales continued to decline across Sears' business at a rate of 2.6% per year;
- (b) based on year-to-date current trends (and without appropriately accounting for stores closed in connection with the Monetization Plan), Sears' projected EBITDA by 2016 would be negative \$105 million; and
- (c) Sears was struggling operationally: "Basics not fixed".

20 Earlier that month, Board presentations had also recognized that competition in the Canadian retail space was increasing with Target's entry into the market. Target had opened 68 stores in Canada in the second quarter of 2013, and planned to open a further 124 stores in Canada by year end.

21 Following the 2013 Board Presentations, the Board knew or ought to have known that Sears' business was in decline and that its long term viability was at risk.

### Continued Disposition of Real Estate Assets

- 22 In accordance with the Monetization Plan, Sears pursued an agreement with Cadillac Fairview Corporation Limited (**Cadillac Fairview**) to terminate five additional high-value leases (Toronto Eaton Centre, Sherway Gardens, Markville Shopping Centre, Masonville Place and Richmond Centre) (the **Cadillac Terminations**).
- 23 Lampert directed the negotiating strategy in connection with the Cadillac Terminations with a view to ensuring a dividend of the proceeds before the end of 2013. Crowley and Stollenwerck negotiated directly with Cadillac Fairview, including with respect to the final price of \$400 million.
- 24 On October 28, 2013, the Board approved the Cadillac Terminations. The Board was not advised of the role that Lampert, Crowley or Stollenwerk had played in negotiating the Cadillac Terminations. The Cadillac Terminations closed on November 12, 2013.
- 25 In the same period, Sears and Stollenwerck negotiated the sale of Sears' 50% interest in eight properties jointly owned with The Westcliff Group of Companies. Sears' 50% interest was sold to Montez Income Properties Corporation in exchange for approximately \$315 million (the **Montez Sale**).
- 26 The Sears Board approved the Montez Sale on November 8, 2013. The approval was made by written resolution and without an in-person board meeting.
- 27 The Montez Sale closed in January 2014.
- 28 The assets disposed of by Sears were its "crown jewels". It was plain that the divestment of these key assets in 2013, while Sears was struggling in the face of stiffer retail competition from Target and others, would have a dramatic negative impact on Sears. The negative impact in fact unfolded:

Year	Total Revenues (\$ million)	Operating Profit (Loss) (\$ millions)	Gross Margin Rate
2012	4,300.7	(82.9)	36.7%
2013	3,991.8	(187.8)	36.2%
2014	3,424.5	(407.3)	32.6%
2015	3,145.5	(298.3)	31.8%
2016	2,613.6	(422.4)	27.3%

29 Lampert directed Sears to complete each of the Oxford Terminations, the Cadillac Terminations and the Montez Sale. These dispositions were part of the Monetization Plan, and completed in order to provide ESL Investments with funds to address its redemption obligations.

### The 2013 Dividend

30 On November 12, 2013, the same day Sears received \$400 million in proceeds from the Cadillac Terminations, Crowley directed Bird to move forward with an extraordinary dividend of between \$5.00 and \$8.00 per share.

31 On November 18 and 19, 2013, six days after the closing of the Cadillac Terminations, the Board held an in-person meeting (the **November Meeting**). Although Sears had no business operations in the United States, the November Meeting was held in New York City at the offices of Wachtell, Lipton, Rosen & Katz (**Wachtell**).

32 The November Meeting began with a short pre-dinner discussion on November 18 and continued with a full day session on November 19, 2013.



- 33 During the short pre-dinner discussion on November 18, 2013, the Board unanimously resolved to declare the 2013 Dividend, an extraordinary dividend of \$5.00 per common share, for an aggregate dividend payment of approximately \$509 million.
- 34 The circumstances surrounding the 2013 Dividend raise a series of red flags.

***Lack of Notice to the Board***

- 35 The Board had no advance notice that it would be asked to consider an extraordinary dividend at the November Meeting.
- 36 On Friday November 15, 2013, the Board was provided with a package of material for the November Meeting (the **Board Materials**). The Board Materials included a detailed agenda with 15 separate items for the Board to consider during the November Meeting.
- 37 Neither the agenda nor any of the other Board Materials made any reference to the fact that the Board would be asked to consider an extraordinary dividend or any dividend at all. Moreover, the possible payment of a dividend had not been tabled in any prior Board meeting in 2013.

***Lack of Information***

- 38 The Board was not provided with the information necessary to assess the appropriateness of an extraordinary dividend.
- 39 Unlike past instances in which the Board was asked to consider an extraordinary dividend, the Board Materials did not contain any financial or operational information regarding the payment of a proposed dividend. The Board did not receive:
- (a) any written materials regarding a proposed dividend or possible dividend structures;

- (b) any written presentation analyzing the impact the proposed dividend would have on Sears' business, including taking into account possible downside scenarios; or
  - (c) any *pro forma* assessment of Sears' liquidity and cash flows following the payment of a dividend. Rather, the *pro forma* cash flows included in the Board Materials assumed that no dividend would be paid in either 2013 or 2014.
- 40 While Sears' management had identified the need to provide the Board with various cash flow analyses covering various dividend scenarios, the limited analysis that was done by management was incomplete and never presented to the Board.
- 41 Moreover, and unlike past meetings in which the Board had considered extraordinary dividends:
- (a) management did not prepare a written presentation to the Board on the proposed dividend and there was no written recommendation or proposal from management to the Board; and
  - (b) the directors were not provided with legal advice with respect to their duties in connection with the declaration of a dividend.

### ***Financial Uncertainty***

- 42 On November 12, 2013, prior to the November Meeting, the Board received a financial update on the performance of Sears. Management reported that throughout the first three quarters of the year, Sears had negative net income of \$49 million (\$27 million worse than the same period in 2012) and negative total cash flow of \$26.3 million.

- 43 On November 14, 2013, the Investment Committee of Sears' Board was presented with material showing an estimated pension plan deficiency of \$313 million at December 2013. The members of the Investment Committee were Crowley, Harker and Bird. This fact was not presented to the Board at the November Meeting.
- 44 In advance of the November Meeting, the Board was provided with only high level *pro forma* cash flows for 2014. The cash flows were based on a 2014 Plan EBITDA of \$135 million, of which \$118 million was based on aspirational changes to the business that management hoped would result in financial improvement but that management and the Board should have known were unreasonably optimistic. Moreover, the *pro forma* cash flows presented to the Board assumed the receipt of proceeds of the Montez Sale even though the transaction had not closed. Again, no information was provided to the Board on the impact an extraordinary dividend would have on future investment opportunities and future cash flows.
- 45 The Board Materials did however include two analyst reports, both of which reviewed the financial circumstances of Sears and predicted its eventual failure:

**Desjardins Capital Markets Report (October 30, 2013)**

As long as consumers do not perceive that Sears Canada is going out of business and desert it, Sears may be able to manage its demise slowly over time, selling prime and non-core assets, and waiting for the elusive purchaser of 60–80 store locations to appear.

**CIBC Report (November 4, 2013)**

It is possible that SCC will simply operate its way into irrelevance, gradually selling off stores to stem the cash drain. That strategy would likely result in Sears occasionally cutting a special dividend cheque to all shareholders, not the worst way to create shareholder value. But that is dangerous to the operations, particularly as the primary, and most profitably flagship stores are vended.

***A Conflicted Board***

- 46 The 2013 Dividend was approved by the Board unanimously and without any abstentions.
- 47 Crowley and Harker participated in the Board's deliberations to pay the 2013 Dividend and approved the payment of the 2013 Dividend despite the fact that Sears had specifically determined that:
- (a) Crowley and Harker were not "independent" directors; and
  - (b) pursuant to National Instrument 52-110, Crowley and Harker had a material relationship with Holdings and/or ESL that could "be reasonably expected to interfere with the exercise of [their] independent judgment."
- 48 Further, Crowley did not disclose to the Board that he, Lampert and Stollenwerck were personally involved in the 2013 real estate divestitures or that the timetable and size of the proposed dividend was dictated by ESL Investment's need for funds. Rather, the Board was led to believe that Sears' management was responsible for the 2013 real estate divestitures. For example, Crowley expressly advised the independent members of the Board: "I do not think that the Board or the independents should attempt to insert themselves in the negotiations [of real estate transactions]. Bill [Harker] and I did not and do not do that."

49 Crowley and Harker in particular were focused on the interests of ESL and Lampert. Crowley and Harker failed to disclose the motivations of ESL and Lampert to the Board and the fact that both the real estate dispositions and 2013 Dividend were driven by the needs of ESL and Lampert, and not the best interests of Sears.

***Departure from Past Governance Practices***

50 The Board process for the 2013 Dividend represented a sharp departure from past practice of the Sears Board and ordinary standards of good corporate governance.

51 For example, in December 2005, the Board approved an extraordinary dividend. The process for approving that dividend included:

- (a) multiple Board meetings on September 7, 2005, September 14, 2005, and December 2, 2005 to discuss the merits and risks of a potential dividend in light of the company's operational needs;
- (b) multiple oral presentations from management and a dividend recommendation by the Chief Financial Officer;
- (c) separate meetings between the independent directors of Sears and the Chief Financial Officer to assess the company's financial state;
- (d) legal advice from both in-house and external counsel to the Board; and
- (e) review by the Board of draft press releases and an officer's certificate with respect to the dividend.

52 In May 2010, the Board approved another extraordinary dividend, again with the benefit of a robust process:

- (a) multiple meetings of the Board on April 23, 2010, May 7, 2010, and May 18, 2010 to discuss the merits and risks of a potential dividend in light of the company's operational needs;
  - (b) separate meetings of the independent directors on May 7, 2010 and May 12, 2010, with their own counsel present, to discuss the options available to Sears with respect to its excess cash and the amount of the potential dividend in light of the company's operational needs;
  - (c) multiple presentations by management, including a 40-page presentation dated April 23, 2010 and a subsequent 20-page presentation dated May 7, 2010, providing detailed analyses of excess cash and financial forecasts (with downside scenarios) for multiple dividend options;
  - (d) a dialogue between management and the Board continuing over several meetings with respect to various options for a potential dividend;
  - (e) consideration of multiple potential uses for excess cash, including cash dividends in various amounts, a substantial issuer bid and a normal course issuer bid; and
  - (f) a deferral of half the proposed dividend pending a full assessment of the company's operational needs.
- 53 In September 2010, the Board approved a second extraordinary dividend for 2010. The process for approving that dividend included:
- (a) multiple meetings of the Board on or around August 23, 2010 and September 10, 2010 to discuss the capital structure of the company and the merits and risks of a potential dividend in light of the company's operational needs;

- (b) multiple presentations by management, including a “capital structure update” dated August 3, 2010 and a 32-page presentation assessing the capital structure of the company and potential dividend options, including financial forecasts and downside scenarios, which the Board reviewed in advance of approving the dividend; and
- (c) a separate meeting of the independent directors on or around September 8, 2010, with their own counsel present, to discuss the options available to Sears with respect to its excess cash and the amount of the potential dividend in light of the company’s operational needs.

54 In December 2012, the Board approved a smaller extraordinary dividend. While not as fulsome as previous governance processes, the process for approving the 2012 dividend nonetheless included:

- (a) a meeting on December 12, 2012 which included thorough discussion and analysis of the impact of a potential dividend on available cash, EBITDA and total debt, the company’s need to retain cash for operational uses, and downside scenarios in respect of a possible dividend;
- (b) a report entitled “Dividend Discussion” which was prepared by Sears’ Chief Financial Officer and which the Board reviewed in advance of approving the dividend; and
- (c) a review of the draft officer’s certificate with respect to the dividend by external counsel to the independent directors, and a dialogue with the Chief Financial Officer of Sears addressing counsel’s comments.

- 55 In stark contrast, the 2013 Dividend was the first item of business at a pre-dinner discussion at the outset of the November Meeting and was declared without any adequate financial, operational or cash flow information upon which to exercise proper business judgment. It was dealt with before any of the planned presentations to the Board, which addressed Sears' financial results, or the reports on management priorities, asset valuations, operating efficiency and Sears' 2014 financial plan and without the benefit of any independent legal advice regarding the directors' duties in the circumstances.
- 56 The Board's inability to make a proper business decision in respect of the 2013 Dividend was apparent from the fact that one of the Board members, Ronald Weissman, had been appointed to the Board that day. Weissman, a resident of Texas, had no material prior dealings with Sears or knowledge of Sears' financial or operational circumstances upon which to base his decision to approve the 2013 Dividend.

### **The 2013 Dividend is a Transfer at Undervalue and Void**

#### ***A Transfer at Undervalue***

- 57 The 2013 Dividend provided no value to Sears and solely benefited its direct and indirect shareholders, including the Defendants ESL, Lampert and Harker. The amounts of the gratuitous benefit received by the Defendants were:
- (a) ESL : \$88,626,400;
  - (b) Lampert: \$52,165,440; and
  - (c) Harker: \$23,020.
- 58 The Defendants also caused approximately \$259 million to be paid to Holdings through the 2013 Dividend.



***Non-Arm's Length Dealings***

59 At all materials times:

- (a) Holdings was the controlling shareholder of Sears, was a related entity to Sears, and was not dealing at arm's length with Sears;
- (b) ESL and Lampert exercised both *de facto* and *de jure* control over Holdings. As Holdings stated in its 2013 Annual Report, Mr. Lampert had "substantial influence over many, if not all, actions to be taken or approved by our stockholders"; and
- (c) ESL and Lampert were not dealing at arm's length with Sears as a result of their direct and indirect beneficial control position in Holdings, which in turn held a controlling interest in Sears. Further, Holdings, ESL and Lampert collectively held more than 75% of Sears' shares. ESL, Lampert and Holdings (at the direction of ESL and Lampert) acted in concert with respect to the control of Sears, and specifically acted in concert and with a single mind to exercise influence over Sears in connection with the 2013 Dividend and the Monetization Plan.

60 As a result of these relationships, each of Holdings, ESL, Lampert, and Sears are related entities who are presumed not to have acted at arm's length in respect of the 2013 Dividend. ESL and Lampert used their position of control over Sears to direct and/or influence Sears and its directors to carry out the Monetization Plan and the 2013 Dividend.

***Intention to defraud, defeat or delay Sears' creditors***

61 The 2013 Dividend was effected by Sears for the sole purpose of satisfying the immediate financial needs of ESL Investments and Lampert and in reckless disregard of the interests of Sears' creditors. The 2013 Dividend was made with the specific intention

to prioritize the interests of Lampert and ESL over Sears' creditors and other stakeholders.

62 In particular, considering the surrounding circumstances, Sears knew but recklessly disregarded the fact that the 2013 Dividend would have a material adverse impact on its ability to continue as a viable business and pay its creditors. In particular, the 2013 Dividend was:

- (a) a non-arm's length transaction made outside the usual course of business;
- (b) paid in the face of significant outstanding indebtedness to Sears' creditors, including pensioners, in circumstances in which:
  - (i) Sears had no operating income to repay its debts, including to its pensioners and other creditors;
  - (ii) applying reasonable assumptions, the Board could only reasonably have expected Sears to be significantly cash flow negative from 2014 onwards; and
  - (iii) the Board had no real plan to repay such indebtedness;
- (c) paid in circumstances that raise a series of "red flags", including as a result of the following facts:
  - (i) the 2013 Dividend was declared with unusual haste and with no advance notice to the Board;
  - (ii) the 2013 Dividend was declared in the absence of proper Board materials and with a deficient corporate governance process;

- (iii) the Board received no independent legal advice to properly discharge its duties with respect to a material transaction involving related parties: Holdings, ESL and Lampert;
- (iv) the divestiture of Sears' crown jewel assets had an obvious negative impact on its business;
- (v) Sears had not addressed its negative cash flows or operational challenges despite years of effort;
- (vi) there were clear conflicts of interest within the Board and management at the time the 2013 Dividend was declared; and
- (vii) the 2013 Dividend was driven by Lampert, Bird as Chief Financial Officer of Sears, and Crowley and Harker as non-independent directors of Sears, in order to satisfy ESL Investments' urgent need for funds.

63 In March of 2014, the Board was presented with a proposal for a further, more modest dividend on short notice. The proposed dividend was not approved by the Board due to concerns about Sears' financial position, only three months after the payment of the 2013 Dividend.

64 Sears knew or recklessly disregarded the fact that the 2013 Dividend would defraud, defeat or delay Sears' creditors. Shortly after the 2013 Dividend, Crowley supported further dividends in an email to Harker, stating:

"... we cannot hold cash because we may watch the business spiral down and do nothing.... Keeping the cash to fund a dying business does not make sense."

65 The Transfer at Undervalue effected by means of the 2013 Dividend is therefore void as against the Monitor within the meaning of section 96 of the BIA.

***ESL, Lampert, Crowley and Harker are Liable as Privies***

66 The Defendants ESL, Lampert, Crowley and Harker were privies to the Transfer at Undervalue and are liable to Sears.

67 None of ESL, Lampert, Crowley or Harker was dealing at arm's length with Holdings or Sears. Each of them knew that the 2013 Dividend would benefit ESL and Lampert and each of them sought to cause or confer that benefit. Further, each of them received either a direct or indirect benefit from the 2013 Dividend.

***Director Indemnities***

68 In order to preserve any indemnity rights Harker or Crowley may have against Sears, the Monitor will agree that any recoveries received from Harker or Crowley in connection with this claim will be reduced by the amount of any distribution that Harker or Crowley, respectively, would have received on account of an unsecured indemnity claim from the Sears estate. The purpose of this adjustment is to make Harker and Crowley whole for any such indemnity claims while not requiring the Sears estate to reserve funds for such indemnity claims.

***Service Ex Juris, Statutes Relied Upon, and Location of Trial***

69 The Monitor is entitled to serve SPE I Partners, LP, SPE Master I, LP, and ESL Institutional Partners, LP without a court order pursuant to rule 17 of the Rules of Civil Procedure, R.R.O. 1990, Reg. 194, because the claim is authorized by statute to be made against a person outside Ontario by a proceeding commenced in Ontario (Rule 17.02(n)).

70 The Monitor pleads and relies on the BIA and the CCAA.

71 The Monitor proposes that the trial of this matter be heard in Toronto, Ontario.

December 19, 2018

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Lawyers for FTI Consulting Canada Inc.,  
as Court-Appointed Monitor

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**STATEMENT OF CLAIM**

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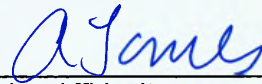
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Lawyers to FTI Consulting Canada Inc.,  
as Court-Appointed Monitor

This is Exhibit "G" referred to in the Affidavit of Service of John N. Birch, sworn February 7, 2019

A handwritten signature in blue ink, appearing to read "A. James".

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Commissioner for Taking Affidavits  
(or as may be)

CV-18-00611214-00CL

Court File No.

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

BETWEEN:



SEARS CANADA INC., by its Court-appointed Litigation Trustee,  
J. DOUGLAS CUNNINGHAM, Q.C.

Plaintiff

and

ESL INVESTMENTS INC., ESL PARTNERS LP, SPE I PARTNERS, LP,  
SPE MASTER I, LP, ESL INSTITUTIONAL PARTNERS, LP,  
EDWARD LAMPERT, EPHRAIM J. BIRD, DOUGLAS CAMPBELL,  
WILLIAM CROWLEY, WILLIAM HARKER, R. RAJA KHANNA, JAMES  
MCBURNEY, DEBORAH ROSATI, and DONALD ROSS

Defendants

**STATEMENT OF CLAIM**

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff.  
The Claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your Statement of Defence.



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IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date December 19<sup>th</sup> 2018 Issued by Ray Williams Ray Williams, Registrar  
Local Registrar

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**CLAIM**

1. The Plaintiff claims:
  - (a) damages on a joint and several basis in the amount of \$509 million,
    - (i) as against the Former Directors (as defined below) and Ephraim J. Bird (“**Bird**”) for breach of fiduciary duty, breach of the duty of care, and conspiracy;
    - (ii) as against the ESL Parties (as defined below), for inducing the Former Directors and Bird to breach their duties owed to Sears Canada Inc. (“**Sears Canada**”), knowing assistance, and conspiracy;
  - (b) in the alternative to paragraph (a) (ii) above, damages against the ESL Parties on a joint and several basis in the amount of \$402 million for inducing the Former Directors and Bird to breach their duties owed to Sears Canada, knowing assistance, and conspiracy;
  - (c) a declaration that the ESL Parties knowingly received the proceeds of a breach of fiduciary duty and/or were unjustly enriched, hold the proceeds of the Dividend (as defined below) in trust for Sears Canada and must disgorge the proceeds they received on account of the Dividend to Sears Canada;
  - (d) a declaration that the authorization and payment of the Dividend was oppressive and unfairly disregarded and was prejudicial to the interests of Sears Canada and its stakeholders and an Order setting aside the Dividend;

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- (e) punitive and exemplary damages;
- (f) pre-judgment and post-judgment interest in accordance with sections 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (g) the costs of this proceeding, plus all applicable taxes; and
- (h) such further and other relief as to this Honourable Court may seem just.

### **Overview**

2. In the early 2010s, Sears Canada was one of Canada's largest retailers. It operated more than 100 of its own full-line department stores, and had more than 25,000 employees.

3. However, Sears Canada was facing serious financial and operational challenges. Since 2007, its revenues and EBITDA had declined each year. In 2011, its management recognized that Sears Canada was falling behind its peers and identified a need to modernize its business in order to keep pace in an increasingly competitive retail environment. This required significant capital investment in order to refresh Sears Canada's stores and improve its e-commerce platform.

4. Despite these warnings, Sears Canada's board of directors ("**Board**") failed to authorize capital investments in the business. Instead, between 2005 and 2012, the company sold assets worth approximately \$2.86 billion and distributed approximately \$2.97 billion in capital to its shareholders.

5. The primary recipients of these distributions were Sears Holdings Corp. ("**Sears Holdings**"), the hedge fund ESL Investments, Inc. ("**ESL**") and its affiliates, and ESL's founder and proprietor, the billionaire investor Edward S. Lampert (collectively, the "**Significant Shareholders**").

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6. In late 2013, Sears Canada was in the midst of its worst year yet. Its revenues declined by more than \$300 million year-over-year and its operating losses reached almost \$188 million. In September, its CEO resigned in frustration at the refusal of the Board to allocate sufficient capital to implement a turnaround strategy.

7. At the same time, ESL was experiencing a liquidity crisis. Its investors had submitted billions of dollars in redemption requests, which it was having difficulty funding.

8. Over the course of the year, Sears Canada sold off a number of its most important assets (the “**Key Asset Sales**”): the leases underlying some of its largest and most lucrative stores. The Sears Canada directors involved in the Key Asset Sales included a number of former ESL employees who had been selected for their roles by Lampert. In addition, even though he was not an officer or director of Sears Canada, Lampert was personally involved in the negotiations concerning these transactions.

9. The Key Asset Sales generated extraordinary proceeds of approximately \$591 million. At a November 2013 meeting of the Board held at the offices of Sears Holdings’ lawyers in New York City, less than a week after the final sale closed (the “**November 2013 Meeting**”), Sears Canada’s management proposed a plan to distribute more than \$509 million to its shareholders through an extraordinary dividend (the “**Dividend**”).

10. The Board was not given any advance notice of the proposed Dividend: it did not even appear on the agenda for the November 2013 Meeting. Although the Board was given extensive materials by management, those materials did not address the proposed Dividend or any analysis of its potential impacts on Sears Canada’s business. Nor did the Board receive legal or financial advice in relation to it. Nevertheless, the Board authorized the payment of the Dividend.

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11. Lampert and ESL improperly used their influence with the Board to procure the Dividend, for the purpose of providing funds to the Significant Shareholders. In accordance with their shareholdings in Sears Canada, 79% of the Dividend was paid to Significant Shareholders.

12. The payment of the Dividend diverted funds from Sears Canada at a time when the Defendants knew, or ought to have known, that it would be in the best interests of Sears Canada to reinvest the funds in the business or to preserve liquidity to satisfy increasing losses and creditor claims. By mid-2017, Sears Canada had become insolvent, and, on June 22, 2017, it was granted protection under the *Companies' Creditors Arrangement Act* (the "CCAA"). Sears Canada has since liquidated its remaining assets and ceased operations, leaving massive unsatisfied debts owed to its unsecured creditors, including former employees and pensioners.

13. It was not until after the CCAA Proceeding (defined below) commenced that it was discovered that the declaration of the Dividend had taken place in improper circumstances.

14. The Plaintiff seeks to set aside the Dividend and seeks damages to compensate Sears Canada and therefore its creditors for the losses they have suffered as a result of the Dividend.

#### **The Parties**

15. The Plaintiff, Sears Canada, is a corporation incorporated under the laws of Canada, with its headquarters in Toronto.

16. Sears Canada is insolvent. It is an applicant in a CCAA proceeding commenced on June 22, 2017 (the "CCAA Proceeding"). By order dated December 3, 2018, the presiding court in that proceeding (the "CCAA Court") appointed the Honourable J. Douglas Cunningham, Q.C., as

Litigation Trustee for Sears Canada to pursue claims on behalf of Sears Canada and its creditors against third parties, including the Defendants.

17. The Defendant, ESL Investments Inc., is a corporation incorporated under the laws of Delaware, in the United States of America, with its headquarters in Bay Harbor Islands, Florida, in the United States of America. It is a hedge fund which operates through a number of subsidiary entities, namely: ESL Partners, LP, SPE I Partners, LP, SPE Master I, LP, and ESL Institutional Partners, LP. These entities are collectively referred to herein as “**ESL**”. As a whole, ESL was at all relevant times the largest shareholder of Sears Holdings.

18. The Defendant, Edward S. Lampert, is an individual residing in Indian Creek, Florida, in the United States of America. Lampert was the CEO of Sears Holdings from May 2013 to October 2018. Lampert owns and controls ESL, and has served as ESL Investments Inc.’s Chairman and Chief Executive Officer since he founded it in 1988. Collectively, ESL and Lampert are referred to herein as the “**ESL Parties**”.

19. The Defendant Ephraim J. Bird is an individual residing in Salado, Texas, in the United States of America. Bird was a director of Sears Canada between May 2006 and November 13, 2013, and its interim CFO, and later permanent CFO, from March 2013 until June 2016.

20. The Defendant Douglas Campbell (“**Campbell**”) is an individual residing in Toronto. Campbell was Sears Canada’s COO from November 2012 until September 24, 2013, and its CEO and a director from that date until October 2014.



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21. The Defendant William Crowley (“**Crowley**”) is an individual residing in New York, New York, in the United States of America. Crowley was the Chairman of Sears Canada’s Board in late 2013, and was a director of Sears from May 2005 to April 2015.

22. The Defendant William Harker (“**Harker**”) is an individual residing in New York, New York, in the United States of America. Harker was a director of Sears Canada from November 2008 to April 2015.

23. The Defendant R. Raja Khanna (“**Khanna**”) is an individual residing in Toronto. Khanna was a director of Sears Canada from October 2007 to August 2018.

24. The Defendant James McBurney (“**McBurney**”) is an individual residing in London, in the United Kingdom. McBurney was a director of Sears Canada from April 2010 until 2015.

25. The Defendant Deborah Rosati (“**Rosati**”) is an individual residing in Wainfleet, Ontario. Rosati was a director of Sears Canada from April 2007 to August 2018.

26. The Defendant Donald Ross (“**Ross**”) is an individual residing in New York, New York, in the United States of America. Ross was a director of Sears Canada from May 2012 until 2014.

27. The Defendants, other than the ESL Parties and Bird, are referred to herein as the “**Former Directors**”. All of the Former Directors were members of the Board during the November 2013 Meeting.

#### **Lampert’s Purchase of Sears Holdings**

28. In early 2005, the ESL Parties acquired a controlling share in the American retailer Sears, Roebuck & Co. (“**Sears Roebuck**”), the then-parent company of Sears Canada. After the

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acquisition, the ESL Parties established Sears Holdings to hold their stakes in Sears Roebuck and Kmart, another retailer.

29. Lampert appointed himself Chairman of Sears Holdings, and later made himself CEO. From 2005 onwards, he played a direct role in the formulation of Sears Holdings' business strategy.

30. Soon after the acquisition, Lampert replaced the existing senior management of Sears Roebuck, in many cases with former ESL executives. Appointments to key positions at Sears Holdings made by Lampert included:

- (a) Crowley, the President and COO of ESL, who became Sears Holdings' CFO;
- (b) Harker, the former General Counsel of ESL, who became Sears Holdings' General Counsel and Corporate Secretary;
- (c) Bird, the CFO of ESL from 1991 to 2002, who became a board member and the CFO of Sears Hometown and Outlet Stores, Inc., an important Sears Holdings subsidiary; and
- (d) Jeffrey Stollenwerck ("**Stollenwerck**"), a Vice President at ESL, who became Senior Vice President and then President of Sears Holdings' real estate business.

31. Over the last several years, Sears Holdings has closed hundreds of Kmart and Sears stores and laid off thousands of employees. On October 15, 2018, Sears Holdings filed for bankruptcy protection under Chapter 11 of the U.S. Bankruptcy Code.

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32. By 2013, Sears Canada was an independent public company and was no longer a Canadian operating subsidiary of Sears Holdings.

#### **Lampert's Involvement in the Operations of Sears Canada**

33. As he had at Sears Holdings, Lampert took a direct role in developing Sears Canada's business strategy.

34. The ESL Parties had significant direct shareholdings in Sears Canada. As of November 2013, the ESL Parties beneficially owned more than 28.1 million Sears Canada shares, amounting to 27.6% of its outstanding shares.

35. Lampert influenced the appointment of Sears Canada's management, including its chief executive officers. This included the appointment of Bird, a former ESL executive.

36. Crowley was appointed as the Chairman of the Board of Sears Canada in 2006, and Harker became a director in 2008. Bird was appointed as a Sears Canada director from 2006 to November 13, 2013, when he resigned from the Board but stayed on as the company's CFO.

#### **Sears Canada's Financial and Operational Problems**

37. Between 2011 and 2013, Sears Canada suffered aggregate operating losses of more than \$310 million.

38. As early as September 2011, the company's 2011-2014 Strategic Plan (the "**Strategic Plan**") explained that "Sears Canada requires a full transformation to be able to compete and win in the increasingly competitive Canadian retail environment."

39. Management provided the Board with regular updates on Sears Canada's operations, including the progress of the Strategic Plan. A March 2012 presentation to the Board noted that:

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“Customer and employee perceptions have been in decline, yet to find bottom”, “Sears is ... failing to connect with the next generation”, and “[we h]ave underinvested recently in stores”.

40. In September 2013, Sears Canada’s CEO, Calvin McDonald (“**McDonald**”), resigned. McDonald later told the press that he had left in frustration at not being able to take the steps necessary to save the company, as a result of Lampert’s refusal to authorize investments in Sears Canada’s business. McDonald stated that “there was not a real long term commitment to save this business”.

41. The minutes of Sears Canada’s September 23, 2013 Board meeting summarize a presentation given by Douglas Campbell, Sears Canada’s then-COO, which noted that “At current trends, the projection for 2016 EBITDA will be -\$105 million”, and that sales “continue to decline across the business at 2.6%”. Campbell joined the Board the following day.

42. At the same meeting, the Board received a presentation on the Strategic Plan, which explained that the company’s e-commerce system was “seriously substandard”, and advised that “To catch competitors, significant investment and transformation is required.”

43. By October 2013, the Board was well aware of the problems facing Sears Canada and that its long term viability was at risk. In the circumstances, it was obvious to the Board that Sears Canada urgently needed capital to invest in its business or to preserve value to satisfy its rapidly growing losses and liabilities.

44. However, instead of investing in Sears Canada’s business or preserving value to fund liabilities and increasing losses, the Former Directors authorized a plan under which the company sold off its most lucrative assets and sent the proceeds directly to its shareholders.

## **The Dividend Plan**

### ESL's Need for Liquidity to Satisfy Redemptions

45. In 2012, ESL received a large number of redemption requests from its investors. These requests totaled approximately \$3.5 billion (US), an amount equal to more than half of ESL's total assets under management at the time. The redemptions were payable in 2013.

46. ESL did not have sufficient cash on hand to satisfy its investors' demands. As a result, it was forced to liquidate significant portions of its portfolio and to pay in-kind redemptions, made up of shares of the companies it owned.

47. To help ESL fund the redemptions, Lampert devised a plan to cause Sears Canada to make a large dividend payment, the majority of which would go to the Significant Shareholders. ESL would use the cash it received to fund redemptions, or distribute its Sears Holdings shares, which would be increased in value as a result of the Dividend, to its own investors as in-kind redemptions.

### Sale of Sears Canada's Assets

48. As a result of its large operating losses, Sears Canada did not have sufficient cash on hand to fund a large dividend payment. The only way it could raise the necessary funds was to liquidate a number of its "crown jewels": the long-term under-market-value leases for its largest and most lucrative stores.

49. Sears Canada had liquidated many of its assets since being acquired by the ESL Parties in 2005. However, in that context, the 2013 Key Asset Sales were notable for their size and impact on Sears Canada's operations.

50. Over the course of 2013, Sears Canada sold seven of its most valuable leases for approximately \$591 million. The sales were carried out in two transactions:

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- (a) the sale of two leases – at the Yorkdale Shopping Centre in Toronto and the Square One Mall in Mississauga – to Oxford Properties Group in June 2013 for \$191 million; and
- (b) the sale of five leases – its flagship store in the Toronto Eaton Centre and four other large stores (two in the Greater Toronto Area, and one each in London, Ontario and Richmond, BC) – in November 2013 to Cadillac Fairview Corporation Limited for \$400 million (the “**Cadillac Fairview Sale**”).

51. Sears Canada also reached an agreement, in early November 2013, to sell its 50% interest in a group of eight Quebec shopping centres to Montez Income Properties Corporation for \$315 million. That transaction closed in January 2014.

52. Lampert played a direct role in negotiating the Key Asset Sales, even though he was not a director or an officer of Sears Canada. He provided direct instructions to Sears Canada on the price sought by Sears for the Key Asset Sales. Among other things, Lampert personally directed the negotiation strategy in connection with the Cadillac Fairview Sale. Stollenwerck, a senior executive at Sears Holdings’ real estate division and a former ESL employee, was the primary negotiator for Sears Canada, even though he was not a Sears Canada employee.

53. The Former Directors and Bird knew that the Key Asset Sales would significantly reduce Sears Canada’s earnings capacity, since the stores being closed were some of the company’s most valuable locations. A presentation to the Board (which at the time included Bird) at its September 2013 meeting projected a significant loss in earnings as a result of the liquidation of four of the large stores that were ultimately included in the Cadillac Fairview Sale.

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#### The Dividend Proposal

54. At the same time the Cadillac Fairview Sale was closing in November 2013, three former ESL employees – Bird, Crowley, and Harker – worked to finalize the proposal for a large extraordinary dividend. Over the course of the ten-day period from November 8 to 18, 2013, Bird, Crowley and Harker settled on a proposed dividend payment of \$5 per share, or more than \$509 million in total.

55. At the time, the Significant Shareholders owned more than 79% of Sears Canada's outstanding shares, and therefore stood to receive a total of approximately \$402 million from a \$5 per share Dividend.

#### Lack of Notice and Undue Haste

56. The Cadillac Fairview Sale closed on Tuesday, November 12, 2013. The Dividend was approved at a board meeting held less than a week later, on the following Monday and Tuesday, November 18-19, 2013.

57. No information about or notice of the proposed Dividend was provided to the Board by Sears Canada's management in the lead-up to the meeting. Indeed, the Dividend was not even referred to in the agenda for the November 2013 Meeting.

58. Approval of the Dividend was treated as a foregone conclusion by Bird, Crowley and Harker. Although, as discussed below, the Board was not presented with any financial analysis of the Dividend, the minutes of the November 2013 Meeting note that the Board was "presented [with] a draft press release relating to the dividend" at the beginning of their discussion.

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59. Notwithstanding the fact they did not receive adequate notice of the proposed Dividend before being asked to vote on it, the Former Directors did not seek any information or advice about the proposal before they approved it.

Insufficient Information Provided to the Board

60. The Board was not given sufficient information to understand the impact of the Dividend, nor did they seek additional information from management.

61. Extensive background materials (the “**Materials**”) were prepared by management and given to the Board before the November 2013 Meeting. However, the Materials did not contain any analysis of the Dividend. In fact, the Materials contained no references to the Dividend at all. The financial and operational plans included with the Materials also omitted any reference to the Dividend and failed to account for the Dividend in their calculations.

62. Even though Crowley, Bird, and Harker had previously undertaken a financial analysis of various Dividend scenarios in the weeks leading up to the declaration of the Dividend, none of their findings were presented to the Board.

63. Without even basic financial information or any professional advice, the Board was not in a position to properly assess the Dividend, even if it had tried or wanted to do so, which it did not.

Lack of Governance Procedures

64. The procedures adopted by Sears Canada’s Board at the November 2013 Meeting were manifestly insufficient for a transaction as large as the Dividend, particularly in light of Sears Canada’s precarious financial and operational position at the time.

65. The Board did not, *inter alia*:



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- (a) seek advice from outside legal counsel;
- (b) commission any analysis from financial, accounting, or other advisors; or
- (c) convene an *in camera* session of the independent directors to discuss the Dividend prior to its approval.

66. The failure to take any of these steps before approving the Dividend differed from the Board's conduct with respect to previous dividends and failed to comply with proper governance procedures.

67. For example, before authorizing the payment of two smaller dividends in 2010, the Board implemented a number of significant governance procedures.

68. In 2010, Sears Canada's management provided the Board with a series of capital structure presentations, which were updated several times. These presentations explained the benefits and risks of returning capital to the Company's shareholders and included both extensive financial analysis and in-depth discussions of potential alternatives.

69. The proposed 2010 dividends were discussed during at least five separate board meetings between April and September 2010. The independent directors held an *in camera* meeting to discuss the dividend, and asked outside counsel to attend and provide information on the implications of the payment of an extraordinary dividend, as well as other potential options for use of the company's capital.

70. In November 2013, despite Sears Canada's far worse financial and operational situation, the Board did not conduct *any* of this due diligence. Instead, it approved the Dividend proposed

by Lampert's representatives in management and on the Board without any analysis of the implications to the company itself, or its minority shareholders, employees, creditors, or other stakeholders.

### **Sears Canada's Board Rubber-Stamps the Dividend Payment**

71. After authorizing the liquidation of its most valuable assets, the Board failed to ensure that the proceeds were used for Sears Canada's benefit or to ensure that sufficient value would be available to satisfy creditor claims that would continue to accumulate as losses increased.

72. To the contrary, the Former Directors, almost immediately and without scrutiny or evaluation, decided to dividend out almost all of the money that Sears Canada earned from the Key Asset Sales.

73. The Former Directors could not have reasonably concluded that the Dividend was in Sears Canada's best interest based on the extremely limited information available to them at the time they approved the Dividend. Indeed, the Dividend was not in Sears Canada's best interest. By approving the Dividend, the Former Directors breached their common law and statutory obligations to Sears Canada.

### **Effects of the Dividend**

74. Payment of the Dividend caused serious harm to Sears Canada and its stakeholders.

75. The funds used to pay the Dividend were derived from the sale of leases for some of Sears Canada's largest and best-performing stores, which were located in some of Canada's most densely populated areas. These divestments brought about a significant decline in Sears Canada's revenue-generation capacity without any corresponding long-term investment in its operations.

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76. The main beneficiaries of the Dividend were Sears Holdings, ESL, and Lampert. Sears Canada did not receive any benefit from the Dividend.

77. After three more years of enormous losses, Sears Canada became insolvent in 2017. It has since liquidated all of its remaining inventory and assets and closed all of its stores. Sears Canada's liquidation has cost more than 15,000 employees their jobs, and has left its creditors with hundreds of millions of dollars in uncollectable debts.

#### **The CCAA Proceeding**

78. On June 22, 2017, Sears Canada and a number of its affiliates commenced the *CCAA* Proceeding.

79. Although the existence of the Dividend was known at the time it was paid, prior to the commencement of the *CCAA* Proceeding, the circumstances surrounding the Board's authorization of and the ESL Parties' involvement in the Dividend were not known to anyone other than Sears Canada's senior management and directors, and the Significant Shareholders.

80. These facts, including Lampert's involvement in the sale of the real estate assets, the non-independent Directors' role in the plan to declare the Dividend, and the absence of information and manifestly inadequate governance procedure at the November 2013 Meeting, were not known and were only uncovered after the *CCAA* Proceeding commenced.

#### **The Claims**

81. The facts surrounding the authorization and payment of the Dividend give rise to a number of claims by Sears Canada against the Former Directors, Bird, and the ESL Parties.

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The Former Directors and Bird: Breaches of Duties and Oppression

82. The Former Directors breached their common law and statutory duties of care and fiduciary duties by:

- (a) authorizing the Dividend in circumstances where it was not in the best interests of Sears Canada, thereby favouring the interests of the Significant Shareholders over those of the company and its other stakeholders; and
- (b) failing to exercise the care, diligence and skill that a reasonably prudent person would have exercised in comparable circumstances by, among other things, neglecting to obtain any information or professional advice about the impact on the business of Sears Canada in paying the Dividend, or in the alternative investing the \$509 million into its business or preserving this value to satisfy liabilities, before agreeing to authorize it.

83. Although Bird was not a director of Sears Canada at the time the November 2013 Meeting was held, he had been a director until immediately prior to the meeting. Bird attended the November 2013 Meeting in his capacity as chief financial officer of Sears Canada, and as such, he continued to owe fiduciary duties and a duty of care and loyalty to Sears Canada after his resignation from the Board.

84. Bird breached the duties he owed to Sears Canada by:

- (a) proposing the Dividend in circumstances where the Dividend was not in the best interests of Sears Canada;
- (b) proposing the Dividend for the benefit of the Significant Shareholders;

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- (c) preparing and planning for the distribution of the Dividend without providing adequate information to the Board, in the hope that the Dividend would be declared by the Board;
- (d) withholding relevant financial information from the Former Directors that they required to properly analyze the merits of the Dividend, including information about Sears Canada's pension deficit; and
- (e) proposing and recommending the Dividend and then resigning from the Board before the November 2013 Meeting.

85. As a result of the breaches referred to in paragraphs 82 to 84 above, Sears Canada seeks to unwind the Dividend and seeks damages against the Former Directors and Bird in the amount of \$509 million.

86. Further, the Former Directors and Bird acted in an oppressive manner towards Sears Canada by:

- (a) disregarding the reasonable expectation of Sears Canada that their powers would be used for the benefit of the company, rather than for that of third parties like the Significant Shareholders; and
- (b) using their powers to authorize the Dividend, which was unfairly prejudicial to and disregarded the interests of Sears Canada and its creditors.

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87. It is appropriate for Sears Canada, by way of its Litigation Trustee, to be the complainant for an oppression claim on its own behalf and on behalf of its creditors, who are all similarly affected by the oppressive conduct described above.

88. As a result of the Former Directors' and Bird's oppression Sears Canada seeks an Order:

- (a) declaring that the Former Directors and Bird, breached their duties owed to Sears Canada;
- (b) setting aside the Dividend; and
- (c) ordering the Former Directors and Bird to pay damages to Sears Canada on a joint and several basis in the amount of \$509 million.

89. An order setting aside the Dividend, imposing a constructive trust over those funds, and/or ordering compensatory payments in the same amount would remedy the Former Directors' and Bird's oppression and return to Sears Canada the funds that rightly belong to it, for the ultimate benefit of its creditors.

The ESL Parties: Inducing Breaches of Duties; Knowing Assistance, Knowing Receipt, and Unjust Enrichment

90. The ESL Parties knowingly induced, encouraged, assisted and participated in the Former Directors' and Bird's breaches of fiduciary duty. They knew of the fiduciary duties the Former Directors and Bird owed to Sears Canada, and that the Dividend would harm Sears Canada. The ESL Parties nonetheless influenced and encouraged the Former Directors to authorize the Dividend for the ESL Parties' own benefit.

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91. But for the ESL Parties' inducement of and their assistance given to the Formers Directors' and Bird's breaches of their fiduciary duties to Sears Canada, those defendants would not have been put in circumstances where the breach of their duties in this manner was possible.

92. The ESL Parties knowingly assisted the Former Directors and Bird to take the wrongful step of authorizing and encouraging the Dividend, which resulted in prejudice to Sears Canada's rights, in circumstances where there was no right in the circumstances for the Former Directors and Bird to take such steps.

93. The ESL Parties are liable to Sears Canada for damages in the amount of \$509 million for inducing breaches of fiduciary duties and knowing assistance in the Former Directors' and Bird's breaches of their duties.

94. In the alternative, the ESL Parties are liable for disgorgement in the amount of \$140.8 million for knowingly receiving the proceeds of the Former Directors' and Bird's breaches of fiduciary duty.

95. In addition, or in the further alternative, the ESL Parties were unjustly enriched by receiving \$140.8 million by way of the Dividend in circumstances where it should not have been approved. The Dividend was paid gratuitously as a benefit to the ESL Parties, and caused a corresponding deprivation to Sears Canada. There was no juristic reason for the ESL Parties to receive the Dividend.

96. The appropriate remedy for the ESL Parties' unjust enrichment is the imposition of a constructive trust in favour of Sears Canada over the portion of the Dividend received by them.

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Conspiracy By All Defendants

97. All of the Defendants acted together to generate the funds for and authorize the Dividend to the benefit of the Significant Shareholders and to the detriment of Sears Canada. This was unlawfully carried out through the Former Directors' and Bird's breaches of the duty of care, fiduciary duties, and oppressive conduct, as planned and directed by the ESL Parties. This conduct was directed at Sears Canada in circumstances where the Defendants knew, or ought to have known, that damage to Sears Canada would result.

98. The Defendants knew, or ought to have known, that it was not in the best interests of Sears Canada to distribute over half a billion dollars to its shareholders at a time when capital needed to be re-invested in the corporation to arrest its decline or to preserve value to satisfy liabilities. Instead, the distribution of the extraordinary revenues generated by the Key Asset Sales to shareholders accelerated Sears Canada's decline, thereby damaging its interests in the short-, medium-, and long-term, and ensured that \$509 million did not remain to satisfy increasing liabilities.

99. The Defendants are liable to Sears Canada for damages in the amount of \$509 million for conspiracy.

**Service *Ex Juris*, Statutes Relied Upon, and Location of Trial**

100. The Plaintiff is entitled to serve any Defendants who reside outside Ontario without a court order because this claim relates to a tort committed in Ontario, and because the Defendants carried on business in Ontario.



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101. The plaintiff pleads and relies upon the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, sections 122, 238, and 241 and Rules 17(g) and 17(p) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

102. The plaintiff proposes that this action be tried in the City of Toronto.

December 19, 2018

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J. DOUGLAS CUNNINGHAM, Q.C.

-and- ESL INVESTMENTS INC., et al.

CV-18-0061121700CL

Plaintiff

Defendants

Court File No.

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

PROCEEDING COMMENCED AT  
TORONTO

**STATEMENT OF CLAIM**

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Lawyers for the Plaintiff

This is Exhibit "H" referred to in the Affidavit of Service of John N. Birch, sworn February 7, 2019

A handwritten signature in blue ink, appearing to read "A. James", is positioned above a horizontal line.

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Commissioner for Taking Affidavits  
(or as may be)

Court File No. CV-18-00611217-00CL

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

BETWEEN:



MORNEAU SHEPELL LTD. in its capacity as administrator of the  
Sears Canada Inc. Registered Pension Plan

Plaintiff

- and -

ESL INVESTMENTS INC., ESL PARTNERS, LP, SPE I PARTNERS, LP,  
SPE MASTER I, LP, ESL INSTITUTIONAL PARTNERS, LP,  
EDWARD S. LAMPERT, WILLIAM HARKER, WILLIAM CROWLEY,  
DONALD CAMPBELL ROSS, EPHRAIM J. BIRD, DEBORAH E. ROSATI,  
R. RAJA KHANNA, JAMES MCBURNEY and DOUGLAS CAMPBELL

Defendants

**STATEMENT OF CLAIM**

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

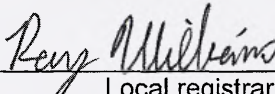
TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

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Ray Williams, Registrar

Date: December 19, 2018

Issued by

  
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AND TO: WILLIAM HARKER, WILLIAM CROWLEY, DONALD CAMPBELL ROSS,  
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AND A  
COURTESY  
COPY TO:

SUPERINTENDENT OF FINANCIAL SERVICES AS ADMINISTRATOR OF THE  
ONTARIO PENSION BENEFITS GUARANTEE FUND

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## CLAIM

1. The Plaintiff, Morneau Shepell Ltd. ("**Morneau**") in its capacity as administrator of the Sears Canada Inc. Registered Pension Plan (the "**Plan**") claims:

- (a) Damages at law and in equity payable jointly and severally in the amount of the deficiency in the Plan as determined in the actuarial wind up report, which at present is estimated at approximately \$260 million:
- (i) as against the Defendants William Harker, William Crowley, Donald Campbell Ross, Deborah E. Rosati, R. Raja Khanna, James McBurney and Douglas Campbell (collectively the "**Director Defendants**") and Ephraim J. Bird for breach of fiduciary duty and negligence;
  - (ii) as against the Director Defendants and Ephraim J. Bird for inducing Sears Canada Inc. ("**Sears Canada**") and the other Director Defendants to breach their fiduciary duties and/or for knowingly assisting Sears Canada and the other Director Defendants in breaching such fiduciary duties;
  - (iii) as against the Defendants ESL Investments Inc., ESL Partners, LP, SPE I Partners, LP, SPE Master I, LP, ESL Institutional Partners, LP, and Edward S. Lampert for inducing Sears Canada, Ephraim J. Bird and/or the Director Defendants to breach their fiduciary duties and/or for knowingly assisting Sears Canada, Ephraim J. Bird and/or the Director Defendants in breaching such fiduciary duties;
- (b) a declaration that the Defendants ESL Investments Inc., ESL Partners, LP, SPE I Partners, LP, SPE Master I, LP, ESL Institutional Partners, LP, Edward S. Lampert, William Harker, Deborah Rosati, R. Raja Khanna and James McBurney



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(collectively the "**Shareholder Defendants**") received directly or indirectly the 2013 Dividend (as defined below) with knowledge that such payment was the result of a breach of fiduciary duty by Sears Canada, Ephraim J. Bird and/or the Director Defendants and an order imposing a constructive trust on the assets of each such Shareholder Defendant equal to the value of the dividend payments directly or indirectly received by them and an order requiring such amount be remitted to the Plaintiff for the benefit of the Plan beneficiaries;

- (c) a declaration that the authorization and payment of the 2013 Dividend was oppressive and unfairly prejudicial to the interests of the Plan and its beneficiaries and unfairly disregarded their interests and orders pursuant to section 241 of the *Canada Business Corporations Act* (the "**CBCA**") setting aside the declaration and payment of the 2013 Dividend and/or requiring the Defendants to pay to the Plaintiff as compensation or restitution the amount required to fully fund the benefits promised under the Plan;
- (d) punitive and exemplary damages;
- (e) pre and post-judgment interest in accordance with the *Courts of Justice Act*; and
- (f) costs of this action on a substantial indemnity basis.

### **The Parties**

2. The Superintendent of Financial Services for Ontario (the "**Superintendent**") has declared that Ontario's Pension Benefits Guarantee Fund (the "**PBGF**") applies to the Plan in respect of Ontario Plan beneficiaries. As a result, to the extent of any payment out of the PBGF into the Plan, the Superintendent has rights of subrogation in respect of the claims outlined herein. The PBGF is administered by the Superintendent. Subject to Plan recoveries from the Sears

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Canada estates, the PBGF expects its contribution to the Plan to be material. As a result, the PBGF expects its subrogation rights in respect of these claims to be material.

3. Sears Canada is a corporation incorporated pursuant to the CBCA. Sears Canada and its affiliate companies obtained protection under the *Companies' Creditors Arrangements Act* (the "CCAA") on June 22, 2017.

4. The Plaintiff was appointed administrator of the Plan by the Superintendent effective October 16, 2017.

5. The Defendant ESL Investments Inc. ("**ESL Investments**") is a privately-owned hedge fund incorporated under the laws of Delaware. The Defendants ESL Partners, LP, SPE I Partners, LP, SPE Master I, LP, ESL Institutional Partners, LP (collectively, and together with ESL Investments, "**ESL**") are affiliates of ESL Investments.

6. The Defendant Edward S. Lampert ("**Lampert**") is an individual residing in Indian Creek, Florida. At all material times, Lampert controlled ESL, and has served as ESL Investments' Chairman and Chief Executive Officer since its creation in 1988.

7. The Director Defendants William Crowley, William Harker, Donald Campbell Ross, Deborah E. Rosati, R. Raja Khanna, James McBurney and Douglas Campbell were directors of Sears Canada at the time the 2013 Dividend was approved by the Sears Canada board of directors (the "**Board**").

8. The Defendant Ephraim J. Bird ("**Bird**") was a member of the Board until on or around November 13, 2013 and was at all material times the Chief Financial Officer of Sears Canada.

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9. At all material times, including from November 18, 2013 through to December 6, 2013, Lampert and ESL held a controlling ownership interest in Sears Holdings Corporation (“Holdings”) and beneficially owned 55% of Holdings’ outstanding shares. In turn, at all material times, Holdings held a controlling ownership interest in Sears Canada. On October 15, 2018, Holdings filed for Chapter 11 protection from creditors with the United States Bankruptcy Court. Holdings is not a party to this action.

10. At all material times, including from November 18, 2013 through to December 6, 2013, Holdings and each of the Shareholder Defendants was a direct or beneficial shareholder of Sears Canada, and held the following ownership interests:

- (a) Holdings beneficially owned 51,962,391 shares in Sears Canada, representing approximately 51% of the outstanding shares.
- (b) ESL beneficially owned 17,725,280 shares in Sears Canada, representing approximately 17.4% of the outstanding shares, which were directly held as follows:
  - (i) ESL Partners, LP: 15,821,206 shares;
  - (ii) SPE I Partners, LP: 830,852 shares;
  - (iii) SPE Master I, LP: 1,068,522 shares;
  - (iv) ESL Institutional Partners, LP: 4,381 shares; and
  - (v) CRK Partners, LLC (an affiliate of ESL Investments that was voluntarily cancelled effective June 1, 2018 and is not a party to these proceedings): 319 shares;

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- (c) Lampert owned 10,433,088 shares in Sears Canada, representing approximately 10.2% of the outstanding shares;
- (d) William Harker owned 4,604 shares in Sears Canada;
- (e) Deborah E. Rosati owned 2,600 shares in Sears Canada;
- (f) James McBurney owned 1,525 shares in Sears Canada; and
- (g) R. Raja Khanna owned 2,620 shares in Sears Canada.

### **The Plan**

11. The Plan is a registered pension plan under the *Pension Benefits Act* (Ontario) which contains a defined benefit component. Sears Canada is the principal participating employer in the Plan and is obliged to make contributions to the Plan fund sufficient to ensure that the Plan fund has enough assets to pay all promised defined benefits when due.

12. Until October 16, 2017, Sears Canada was the administrator of the Plan and, as such, owed fiduciary duties to the Plan and the Plan beneficiaries.

13. In administering the Plan, Sears Canada acted through its officers and Board. These individuals (including the Director Defendants and Bird) also owed fiduciary duties and a duty of care to the Plan and the Plan beneficiaries.

14. Since at least 2010, Sears Canada and its directors have been aware of actuarial valuations disclosing that the assets held in respect of the defined benefit component of the Plan were insufficient to pay all of the promised defined benefits and that further employer contributions to the Plan fund were required in order to permit all promised benefits to be paid to Plan beneficiaries when due. To the knowledge of Sears Canada, Bird and the Director Defendants,

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as at December 31, 2010, the Plan had a funding deficit of \$68,039,000, a solvency deficit of \$205,788,000 and a wind-up deficit of \$307,330,000.

15. During the period subsequent to December 31, 2010, Sears Canada made only the minimum contributions to the Plan fund permitted by law, even after Sears Canada, Bird and the Director Defendants knew or ought to have known that that the long-term viability of Sears Canada, and thus its ability to fully fund the Plan liabilities from future revenues, was at serious risk.

16. The Plan was wound up by order of the Superintendent effective October 1, 2017 and the Plan's wind-up deficit which crystalized on that date is currently estimated at approximately \$260 million.

17. The assets available for distribution under the CCAA to meet all of Sears Canada outstanding obligations including its obligation to fully fund the Plan's wind-up deficit is estimated to be only approximately \$155 million. Excluding claims relating to the Plan's wind-up deficit, the claims of unsecured creditors against Sears Canada total approximately \$1.5 billion.

#### **2013 Plan to Dispose of Real Estate Assets to Fund Dividends**

18. Beginning in 2011, Sears Canada's financial performance began to decline sharply.

19. By 2013, ESL Investments and Lampert had an immediate need for cash from Sears Canada. ESL Investments had raised money from investors years earlier on terms that precluded these investors from redeeming their investment for a period of time. When this holding period had expired in 2013, these investors were entitled to withdraw funds and ESL Investments faced significant redemptions.

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20. In order to satisfy its redemption obligations, ESL and Lampert devised a plan to extract cash from Sears Canada through (a) the disposition of its most valuable real estate assets, and (b) the payment of an extraordinary dividend for the benefit of ESL and Lampert (collectively the "**Monetization Plan**").

21. To give effect to the Monetization Plan, Lampert personally directed the disposition of Sears Canada's real estate assets in 2013.

22. In accordance with the Monetization Plan:

- (a) Sears Canada entered into an agreement with Oxford Properties Group on or about June 14, 2013 to terminate Sears Canada's leases at Yorkdale Shopping Centre and Square One Mississauga in exchange for a payment to Sears Canada of \$191 million (the "**Oxford Terminations**"). The Oxford Terminations closed June 24, 2013.
- (b) Sears Canada pursued an agreement with Cadillac Fairview Corporation Limited (Cadillac Fairview) to terminate five additional high-value leases (Toronto Eaton Centre, Sherway Gardens, Markville Shopping Centre, Masonville Place and Richmond Centre) (the "**Cadillac Terminations**") for a payment of \$400 million. The Cadillac Terminations were approved by the Sears Canada Board on October 28, 2013 and closed on November 12, 2013.
- (c) Sears Canada negotiated the sale of Sears Canada's 50% interest in eight properties jointly owned with The Westcliff Group of Companies. Sears Canada's 50% interest was sold to Montez Income Properties Corporation in exchange for approximately \$315 million (the "**Montez Sale**"). The Sears Canada Board

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approved the Montez Sale on November 8, 2013 and the sale closed in January 2014.

23. Lampert directed Sears Canada to complete each of the Oxford Terminations, the Cadillac Terminations and the Montez Sale. These dispositions were part of the Monetization Plan and completed in order to provide ESL Investments with funds to address its redemption obligations. The assets disposed of by Sears Canada were its "crown jewels".

24. By September 23, 2013, the Board including Bird had received management presentations directly addressing Sears Canada's deteriorating operational and financial performance which reported that:

- (a) sales continued to decline across Sears Canada's business at a rate of 2.6% per year;
- (b) based on year-to-date current trends (and without appropriately accounting for stores closed in connection with the Monetization Plan), Sears Canada's projected EBITDA by 2016 would be negative \$105 million;
- (c) Sears Canada was struggling operationally: "Basics not fixed"; and
- (d) competition in the Canadian retail space was increasing with Target's entry into the market. Target had opened 68 stores in Canada in the second quarter of 2013 and planned to open a further 124 stores in Canada by year end.

25. By September 23, 2013, the Director Defendants and Bird knew or ought to have known that Sears Canada's business was in decline, that its long-term viability was at risk, and that the divestment of these key assets in 2013 would have a dramatic negative impact on Sears Canada including its ability to fund the Plan. Despite such knowledge, neither Sears Canada nor

the Director Defendants nor Bird took any steps to ensure that the Plan was fully funded and able to satisfy the pension promise made to Plan beneficiaries.

### **The 2013 Dividend**

26. On November 18 and 19, 2013, the Board held an in-person meeting (the “**November Meeting**”) which was attended by the Director Defendants and Bird.

27. On November 12, 2013, prior to the November Meeting, the Board including Bird received a financial update on the performance of Sears Canada. Management reported that throughout the first three quarters of the year, Sears Canada had negative net income of \$49 million (\$27 million worse than the same period in 2012) and negative total cash flow of \$26.3 million.

28. On November 14, 2013, the Investment Committee of Sears Canada’s Board was presented with material showing an estimated pension plan deficiency on a wind-up basis of \$313 million as at December 2013.

29. The materials provided to the Board and Bird in advance of the November Meeting included two analyst reports which reviewed the financial circumstances of Sears Canada and predicted its eventual failure:

#### **Desjardins Capital Markets Report (October 30, 2013)**

As long as consumers do not perceive that Sears Canada is going out of business and desert it, Sears may be able to manage its demise slowly over time, selling prime and non-core assets, and waiting for the elusive purchaser of 60–80 store locations to appear.

#### **CIBC Report (November 4, 2013)**

It is possible that SCC will simply operate its way into irrelevance, gradually selling off stores to stem the cash drain. That strategy would likely result in Sears occasionally cutting a special dividend cheque to all shareholders, not the worst way to create shareholder value. But that is dangerous to the



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operations, particularly as the primary, and most profitably flagship stores are vended.

30. During the short pre-dinner discussion on November 18, 2013, the Director Defendants, at the instigation and urging of one or more of them and Bird, unanimously resolved to declare an extraordinary dividend of \$5.00 per common share, for an aggregate dividend payment of approximately \$509 million (the "2013 Dividend").

31. The Director Defendants approved the 2013 Dividend unanimously and without any abstentions despite the fact that they did not have:

- (a) any advance notice that they would be asked to consider an extraordinary dividend at the November Meeting;
- (b) any written materials regarding a proposed dividend or possible dividend structures;
- (c) any written presentation analyzing the impact the proposed dividend would have on Sears Canada including its ability to meet its pension obligations;
- (d) any pro forma assessment of Sears Canada's liquidity and cash flows following the payment of a dividend;
- (e) any management presentation or recommendation on the proposed dividend; or
- (f) any legal advice with respect to their duties in connection with the declaration of a dividend.

32. The Director Defendants approved and/or acquiesced to the 2013 Dividend and Sears Canada paid the 2013 Dividend to satisfy the immediate financial needs of ESL. The 2013

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Dividend was directed by Lampert who was at all times acting in his personal capacity and as the directing mind of ESL and who:

- (a) knew that Sears Canada, Bird and the Director Defendants owed fiduciary duties to the Plan and the Plan beneficiaries;
- (b) knew that the Plan had a large unfunded deficit and that approval and payment of the extraordinary dividend would be contrary to the interests of the Plan beneficiaries; and
- (c) intended that the Director Defendants would approve and Sears Canada would pay the 2013 Dividend without regard to its impact on the Plan or the Plan beneficiaries.

33. The Director Defendants approved and/or acquiesced to the 2013 Dividend and Sears Canada paid said dividend fraudulently and dishonestly for the purpose of benefitting Lampert and ESL and in total disregard to the interests of the Plan and its beneficiaries. When they authorized the 2013 Dividend, the Director Defendants knew or should have known that the dividend would severely prejudice the ability of Sears Canada to satisfy its pension funding obligations.

34. Sears Canada paid the 2013 Dividend on December 6, 2013 and the Shareholder Defendants received the following dividend payments:

- (a) ESL: \$88,626,400;
- (b) Lampert: \$52,165,440;
- (c) William Harker: \$23,020;

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- (d) Deborah E. Rosati: \$13,000;
- (e) James McBurney: \$7,625; and
- (f) R. Raja Khanna: \$13,100.

35. ESL and Lampert also benefited from approximately \$259 million paid to Holdings through the 2013 Dividend.

36. When the Shareholder Defendants received the above payments directly or indirectly from Sears Canada they knew or ought to have known that such payments had been authorized by the Director Defendants and paid by Sears Canada in breach of the fiduciary duties owed by them to the Plan and its beneficiaries. The Shareholder Defendants specifically knew or ought to have known that Sears Canada and the Director Defendants owed fiduciary duties to the Plan fund and the Plan beneficiaries, that the Plan was then seriously underfunded, that the long term viability of Sears Canada was then at risk and that payment of the 2013 Dividend to the Shareholder Defendants would severely prejudice the ability of Sears Canada to satisfy its pension funding obligations.

37. As a result of the 2013 Dividend, Sears Canada has insufficient assets to satisfy its obligation to fully fund all benefits accrued under the Plan with the result that Plan beneficiaries will not receive full payment of the pensions promised in the Plan.

#### **Liability of Defendants**

38. In authorizing and/or acquiescing to the 2013 Dividend in the manner and circumstances set out above, without first considering the need of Sears Canada to take steps as Administrator to provide for the Plan to be funded ahead of payments to shareholders and acting on such consideration, each Director Defendant (i) breached the fiduciary duties and duty of care he or she owed the Plan and the Plan beneficiaries and (ii) induced Sears Canada and the other

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Director Defendants to breach the fiduciary duties they owed the Plan and the Plan beneficiaries and/or knowingly assisted Sears Canada and the other Director Defendants in breaching such duties.

39. In instigating and urging the approval and payment of the 2013 Dividend in the manner and circumstances set out above, without first considering the need of Sears Canada to take steps as Administrator to provide for the Plan to be funded ahead of payments to shareholders and acting on such consideration, Bird (i) breached the fiduciary duties and duty of care he owed the Plan and the Plan beneficiaries and (ii) induced Sears Canada and the Director Defendants to breach the fiduciary duties they owed the Plan and the Plan beneficiaries and/or knowingly assisted Sears Canada and the Director Defendants in breaching such duties.

40. In causing the Director Defendants to authorize the 2013 Dividend and in causing Sears Canada to pay such dividend in the manner and circumstances set out above, without first considering and at that time providing for appropriate funding or security for the Plan, the Shareholder Defendants induced the Director Defendants, Bird and Sears Canada to breach the fiduciary duties they owed the Plan and the Plan beneficiaries and/or knowingly assisted the Director Defendants, Bird and Sears Canada in breaching such duties.

41. In receiving directly and indirectly the 2013 Dividend payments in the manner and circumstances set out above, the Shareholder Defendants are in knowing receipt of assets transferred to them in breach of fiduciary duty and were unjustly enriched at the expense of the Plan and its beneficiaries and the Shareholder Defendants are required to account for all amounts so received for the benefit of the Plan beneficiaries.

42. Authorization and payment of the 2013 Dividend in the circumstances set out above was oppressive and unfairly prejudicial to the interests of the Plan and its beneficiaries and unfairly disregarded their interests and require an order pursuant to section 241 of the CBCA

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setting aside the declaration and payment of the 2013 Dividend and requiring the Defendants to pay to the Plaintiff by way of compensation or restitution the amount required to fully fund the benefits promised under the Plan.

**Service *Ex Juris*, Statutes Relied Upon, and Location of Trial**

43. The Plaintiff relies upon paragraphs (g) and (n) and (p) of Rule 17.02 to serve this claim outside Ontario.

44. The Plaintiff relies upon the CBCA.

45. The Plaintiff proposes that the trial of this matter be heard in Toronto, Ontario.

December 19, 2018

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**STATEMENT OF CLAIM**

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Lawyers for the Plaintiff

This is Exhibit "1" referred to in the Affidavit of Service of John N. Birch, sworn February 7, 2019

A handwritten signature in blue ink, appearing to read "A. Jones", is written above a horizontal line.

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Commissioner for Taking Affidavits  
(or as may be)

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

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

**TWENTY-SEVENTH REPORT OF FTI CONSULTING CANADA INC., AS MONITOR**

**November 5, 2018**



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

**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

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

**A. INTRODUCTION**

1. On June 22, 2017, Sears Canada Inc. (“**Sears Canada**” or “**SCI**”) 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. The Initial Order, among other things:
  - (a) appointed FTI Consulting Canada Inc. as monitor of the Sears Canada Entities (the “**Monitor**”) in the CCAA Proceedings;
  - (b) granted an initial stay of proceedings against the Sears Canada Entities 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 Period. In addition, the following orders were issued:
  - (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**”);
  - (c) an order authorizing the eventual suspension of special payments under the Sears Canada Pension Plan, certain payments in connection with supplemental pension plans and certain payments under post-retirement benefit plans pursuant to a term sheet agreed to by the Ontario Superintendent of Financial Services, as Administrator of the Pension Benefits Guarantee Fund (the “**Superintendent**”), Employee Representative Counsel, Pension Representative Counsel, each of their respective representatives, and the Sears Canada Entities; 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.

4. On July 18, 2017, the Court issued an order approving an agreement and a process for the liquidation of inventory and FF&E at certain initial closing Sears Canada locations, which liquidation process is now completed.
5. On October 13, 2017, the Court issued, among other orders, an order 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 Entities 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**” and, together with the Claims Procedure Order, the “**Claims Procedure Orders**”) approving a process for the identification, determination and adjudication of claims of employees and retirees of the Sears Canada Entities.
8. On March 2, 2018, the Court issued an Order appointing Lax O’Sullivan Lisus Gottlieb LLP as litigation investigator (the “**Litigation Investigator**”) to identify and report on certain potential rights and claims of the Sears Canada Entities and/or creditors of the Sears Canada Entities. The order was amended on April 26, 2018 (the “**LI Order**”).
9. 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 surrendered back to the landlord. The major assets of the Sears Canada Entities that remain to be realized upon are the Applicants’ remaining owned real estate assets.
10. In connection with the CCAA Proceedings, the Monitor has provided twenty-six reports and fifteen 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/](http://cfcanada.fticonsulting.com/searscanada/) (the "**Monitor's Website**").

**B. PURPOSE**

11. The purpose of this twenty-seventh report of the Monitor (the "**Twenty-Seventh Report**") is to provide the Court with information regarding motions:
  - (a) by the Monitor for, among other things,
    - (i) authorization and direction to proceed, pursuant to Section 36.1 of the CCAA, to issue and pursue a claim under Section 96 of the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**") relating to the 2013 Dividend (as defined below);
    - (ii) authorization and direction to take certain ancillary steps in connection therewith

((i) and (ii), collectively, the "**TUV Claim Motion**"); and
  - (b) by the Litigation Investigator for, among other things, an order authorizing the appointment of a litigation trustee and counsel to pursue the claims recommended in the First Report of the Litigation Investigator, dated November 5, 2018 (the "**LI Motion**").
12. The TUV Claim Motion does not seek any determination of liability of any party for claims under Section 96 of the BIA. The TUV Claim Motion seeks only approval for the investment of further time and estate resources to commence and pursue these claims. This Twenty-Seventh Report does not include a summary of all evidence and arguments that would be relevant to these claims if the Monitor was authorized to pursue them.
13. A copy of the Monitor's draft statement of claim in connection with the 2013 Dividend is attached hereto as **Appendix "A"**.

**C. TERMS OF REFERENCE**

14. In preparing this Twenty-Seventh 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**").
15. Except as otherwise described in this Twenty- Seventh Report:
  - (a) the Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the *Chartered Professional Accountants of Canada Handbook*; and
  - (b) the Monitor has not examined or reviewed the financial forecasts or projections referred to in this Twenty- Seventh Report in a manner that would comply with the procedures described in the *Chartered Professional Accountants of Canada Handbook*.
16. Future-oriented financial information reported in or relied on in preparing this Twenty-Seventh Report is based on Management's assumptions regarding future events. Actual results will vary from these forecasts and such variations may be material.
17. The Monitor has prepared this Twenty-Seventh Report in connection with the TUV Claim Motion and the LI Motion. The Twenty-Seventh Report should not be relied on for any other purpose.
18. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars.
19. 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 former Chief Financial Officer of Sears Canada; (ii) the affidavit of Ms.

Becky Penrice, the former 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 Prior Reports; and (v) the First Report of the Litigation Investigator, dated November 5, 2018.

**D. MONITOR'S INVESTIGATION OF TRANSACTIONS OF INTEREST**

20. As described in the Eleventh Report of the Monitor, dated January 15, 2018, following its appointment, the Monitor commenced a review of certain material transactions, payments and dividends entered into, made or declared by the Sears Canada Entities in the period prior to their filing for protection under the CCAA. The review focused primarily on potential preference transactions and transfers at undervalue pursuant to Sections 95 and 96 of the BIA.
21. The Monitor identified the following Transactions of Interest:
- (a) the dividend paid to Sears Canada shareholders on December 31, 2012 in the amount of approximately \$102 million (the “**2012 Dividend**”);
  - (b) the dividend paid to Sears Canada shareholders on December 6, 2013 in the amount of approximately \$509 million (the “**2013 Dividend**” and, together with the 2012 Dividend, the “**Dividends**”); and
  - (c) the surrender by Sears Canada of its exclusive right to use the Craftsman trademark in Canada in connection with the sale by Sears Holdings Corporation of the Craftsman business to Stanley Black & Decker in March 2017 (the “**Craftsman Transaction**”).
22. The Monitor received over 100,000 documents and files from Sears Canada and other associated parties from the time periods relevant to these transactions and has undertaken a targeted review of these documents.

**E. MONITOR'S FINDINGS REGARDING THE CRAFTSMAN TRANSACTION**

23. Sears Canada was a party to a licence agreement with Sears Holdings Corporation (“Sears US”) entered into in 1987 (“License Agreement”). The License Agreement provided Sears Canada the right to use trademarks owned by Sears US.
24. On February 28, 2017, Sears Canada’s board was informed that Sears US was selling its Craftsman business to Stanley, Black & Decker (“SBD”). The transaction would require the termination of the existing license rights held by Sears Canada with respect to the Craftsman trademarks.
25. Ultimately, Sears Canada agreed to terminate its rights to the Craftsman trademarks under the License Agreement, facilitating the sale to SBD. Sears Canada did not receive any portion of the consideration received by Sears US under the sale to SBD. Sears Canada and SBD entered into a replacement license agreement, providing Sears Canada with a royalty free license to these trademarks for a 15 year period, with a royalty-based license thereafter.
26. Following a detailed review of the Craftsman Transaction, the process followed by Sears Canada leading to the Craftsman Transaction, the advice received from Sears Canada’s professional advisors, and the circumstances surrounding the Craftsman Transaction, the Monitor has concluded that the agreement by Sears Canada to relinquish its license rights appears to have been an arm’s length negotiated transaction. The outcome of the transaction was the result of the relative bargaining position of Sears Canada, Sears US and SBD. Sears Canada was not reasonably in a position to insist that it receive any portion of the consideration paid to Sears US under the Craftsman Transaction. The royalty free license offered by SBD provided Sears Canada with sufficient ongoing license rights at no cost. In addition, if Sears Canada refused to cooperate in this transaction, Sears US had agreed with SBD to rely upon certain unilateral termination rights under the License Agreement, which would have affected all of Sears Canada’s licensed trademark rights and placed Sears Canada in a less favourable position than was available under the Craftsman Transaction. As a result, this transaction did not require further review.



**F. MONITOR'S FINDINGS REGARDING 2012 DIVIDEND**

27. The relevant facts associated with the 2012 Dividend will be discussed in greater detail below in the section of this Twenty-Seventh Report on the 2013 Dividend.
28. Similar to the 2013 Dividend, the Monitor has identified concerns regarding the process followed to approve and pay the 2012 Dividend. However, based upon its review of the facts as applied to the relevant law, the Monitor has determined that the Monitor should not proceed with any claim in respect of the 2012 Dividend due to (i) the specific tests that the Monitor would need to satisfy under the relevant provisions of the BIA and (ii) the challenges in satisfying those tests at this time in view of available evidence of the financial position and intentions of Sears Canada in 2012.

**G. MONITOR'S FINDINGS REGARDING THE 2013 DIVIDEND**

29. The remainder of this Twenty-Seventh Report will describe the Monitor's views on the 2013 Dividend and the Monitor's request to pursue remedies in connection with the 2013 Dividend.

*Process to Approve the 2013 Dividend*

30. The Monitor has identified material concerns regarding the process followed by Sears Canada to declare and pay the 2013 Dividend.
31. Sears Canada declared and paid dividends twice in 2010 ("**2010 Dividends**"). The Monitor considered the 2010 Dividends to obtain background information on Sears Canada's past approval processes when declaring dividends and for comparison against the process undertaken by the board and management in respect of the 2012 Dividend and 2013 Dividend.
32. The process followed by the Sears Canada board to approve the 2010 Dividends appears to have been robust. In 2010, Sears Canada's net operating income was positive. Management presentations were delivered to the board well in advance of the approval and payment of these dividends. Those presentations set out multiple options to fund the payment of these dividends as well as other options to return value to shareholders. A

calculation of the excess cash that would remain following implementation of each such option was also provided to the board. Independent directors (being directors without a material connection to significant existing shareholders) met separately with external independent counsel to review and discuss the potential dividends. Ultimately, a dividend of approximately \$376.7 million was approved by the board of directors on May 18, 2010 and was paid on June 4, 2010. A second dividend of approximately \$376.7 million was approved on September 9, 2010 and paid on September 24, 2010 and the approval process for that dividend was equally thorough.

33. The Monitor's review shows that, in contrast to the 2010 Dividend, the board and management devoted significantly less time and analysis to the declaration and payment of the 2012 and 2013 Dividends.
34. The first information the Monitor has identified as being delivered to the board of Sears Canada in connection with the 2012 Dividend was delivered on December 12, 2012, in the form of a five page presentation (excluding appendices) relating to the 2012 Dividend. The presentation forecasted cash on hand at December 30, 2012 in the amount of \$430 million. A 'downside' scenario showed negative excess cash for strategic uses forecasted for 2013. The presentation did not specifically consider the impact of the 2012 Dividend on creditors or Sears Canada's apparently weaker liquidity position relative to 2010. The presentation appears to have been sent to the Board at 11:56 am on December 12, 2012, in respect of a telephone meeting which took place from 2:00 pm to 3:00 pm later that day. The 2012 Dividend was declared at that teleconference board meeting and paid in an aggregate amount of approximately \$102 million on December 31, 2012. The then CFO of Sears Canada resigned on January 24, 2013.
35. The information available to the Monitor indicates the process to approve the 2013 Dividend was more limited. On November 18 and 19, 2013, the Sears Canada board met in New York at the offices of Sears US's counsel. At that meeting, the Sears Canada board approved the 2013 Dividend of approximately \$509 million in the aggregate, which was paid on December 6, 2013. The board materials (including the agenda and management presentation) provided for this meeting make no mention of any dividend

payment or the effect it would have on Sears Canada's liquidity and operations going forward. The Monitor has requested but not received or identified any evidence of a separate meeting or prior discussion amongst the independent directors (being those directors with no association with the major shareholders of Sears Canada). Email correspondence among senior management in Sears Canada's finance division show that at least some financial analysis was undertaken at the management level in respect of the 2013 Dividend. This analysis appears to have been completed the morning of November 18, 2013. The Monitor has not identified any correspondence through which this analysis was delivered to the board. The minutes do not make reference to any management presentation. The 2013 Dividend was approved by the full board (including independent and non-independent directors).

*Significant Shareholders of Sears Canada*

36. Publicly available information indicates that ESL Investments Inc., or its affiliates (collectively, "ESL"), Edward Lampert ("**Lampert**") and Sears US were shareholders of Sears Canada at the time of the 2013 Dividend. When the 2013 Dividend was declared, public disclosures indicate Sears US held just over 50% of the common shares of Sears Canada and ESL and Lampert held approximately 17% and 10% of the common shares of Sears Canada, respectively. Publicly available disclosures suggest that Lampert is the controlling shareholder of ESL and that Lampert and ESL held over 50% of the shares of Sears US at the time the 2013 Dividend was declared.
37. Before the 2013 Dividend was paid, the shareholdings of ESL and Lampert in Sears US dropped to approximately 48%.
38. At the time of the 2013 Dividend, two of eight directors and one officer of Sears Canada were former officers of Sears US and / or ESL.
39. Based upon a media review at and around the time of the 2013 Dividend declaration and payment, ESL appears to have had an urgent liquidity need at that time to satisfy redemption requests by clients of certain of its funds. Media reports indicate that these

redemptions were paid partly in cash and partly in shares of Sears US. An example of such a media report is attached hereto as **Appendix “B”**.

40. The evidence reviewed by the Monitor indicates that Lampert and individual directors of Sears Canada who were connected with ESL and Lampert, being William Harker and William Crowley (the “**Connected Directors**”), significantly influenced the determination to monetize assets to fund the 2013 Dividend and thereafter to declare and pay the 2013 Dividend.

*Financial Circumstances of Sears Canada in 2013*

41. The Monitor has considered the solvency of Sears Canada at the time of the 2013 Dividend. Based upon information available to the Monitor from public sources and from Sears Canada, the Monitor considered the value of Sears Canada from a going concern perspective and from a liquidation perspective.
42. The Monitor is not able to conclude that as of the date of the 2013 Dividend, Sears Canada was an insolvent person, as defined in the BIA.
43. A conclusion that Sears Canada’s property was not sufficient to enable payment of all of its liabilities as of December 2013 if the assets of the business were immediately sold or liquidated at that time, would require assumptions as to the net value of real estate holdings at that time. Under certain real estate value assumptions Sears Canada would have been insolvent and under other alternative value assumptions Sears Canada would not have been insolvent. However, in the Monitor’s view, further analysis to develop such assumptions would not be justified in view of third party analyses of Sears Canada’s real estate holdings at that time and the values ultimately received for this real estate and similar properties owned by other competitors.
44. From a cash flow perspective, Sears Canada continued to operate for several years after the 2013 Dividend. Accordingly, one could not reasonably conclude that Sears Canada had ceased paying or ceased to be able to pay its obligations as they were coming due at the time of, or as a result of, the 2013 Dividend.

45. As will be discussed further below, while the Monitor cannot conclude that Sears Canada was insolvent at the time of the 2013 Dividend, the Monitor does believe that the indications of a business facing severe and likely irreversible challenges were present at the time of the 2013 Dividend.

*Relevant Law*

46. Based upon information available to the Monitor at this time, the Monitor believes it is appropriate for the Monitor to advance a claim against Lampert and ESL that the portion of the 2013 Dividend they received was a transfer at undervalue that should be remedied under Section 96 of the BIA, as incorporated into the CCAA under Section 36.1. The Monitor believes it is appropriate to also extend this claim to the Connected Directors, as parties privy to the transaction.
47. While the Monitor also believes a corresponding claim could be advanced against Sears US, the Monitor is not recommending or seeking authority to advance such claim at this time in view of the recent filing by Sears US for protection under Chapter 11 of the United States Bankruptcy Code and the stay of proceedings triggered by that filing. The Monitor is currently considering next steps regarding this claim against Sears US and will await further information from the Chapter 11 proceedings.
48. The relevant portions of Section 96 of the BIA, with required modifications pursuant to Section 36.1 of the CCAA are as follows:

**96 (1)** On application by the [Monitor], a court may declare that a transfer at undervalue is void as against ... the [Monitor] ... or order that a party to the transfer or any other person who is privy to the transfer, or all of those persons, pay to the estate the difference between the value of the consideration received by the debtor and the value of the consideration given by the debtor — if

...

(b) the party was not dealing at arm's length with the debtor and

(i) the transfer occurred during the period that begins on the day that is one year before the [day on which proceedings commence under the CCAA] and that ends on the [day on which proceedings commence under the CCAA], or

(ii) the transfer occurred during the period that begins on the day that is five years before [day on which proceedings commence under the CCAA] and ends on the day before the day on which the period referred to in subparagraph (i) begins and

(A) the debtor was insolvent at the time of the transfer or was rendered insolvent by it, or

(B) the debtor intended to defraud, defeat or delay a creditor.

...

(3) In this section, a person who is privy means a person who is not dealing at arm's length with a party to a transfer and, by reason of the transfer, directly or indirectly, receives a benefit or causes a benefit to be received by another person.

49. A 'transfer at undervalue' is defined in section 2 of the BIA as:
- a disposition of property or provision of services for which no consideration is received by the debtor or for which the consideration received by the debtor is conspicuously less than the fair market value of the consideration given by the debtor.
50. A person is privy to a transfer at undervalue if they (i) did not deal at arm's length with any party to the transfer, and (ii) by reason of the transfer, directly or indirectly, received a benefit or caused a benefit to be received by another person.
51. In the Monitor's view, the following are key considerations for a claim under Section 96 of the BIA and Section 36.1 of the CCAA to succeed in connection with the 2013 Dividend:
- (a) in addition to Section 101 of the BIA, Section 96 provides a second avenue to challenge a dividend as a reviewable transaction under the BIA;
  - (b) the 2013 Dividend meets the criteria of a transfer at undervalue;
  - (c) the parties receiving a portion of the 2013 Dividend were not dealing at arm's length with Sears Canada;

- (d) Sears Canada was either insolvent at the time of the 2013 Dividend, rendered insolvent by the 2013 Dividend or Sears Canada intended to defraud, defeat or delay creditors in connection with the 2013 Dividend; and
- (e) in the case of the Connected Directors, such directors were privy to the transfer as described above.

*Section 101 of the BIA*

- 52. Section 101 of the BIA (as modified by s. 36.1 of the CCAA) specifically addresses the payment of dividends within one year prior to the commencement of a CCAA proceeding. The Monitor has considered with its counsel whether Section 101 was intended to be the sole mechanism by which the Monitor could challenge a dividend payment under the BIA provisions.
- 53. The Monitor is of the view that there is a reasonable basis to conclude that Section 96 of the BIA can operate in combination with Section 101 of the BIA to remedy dividend transactions that adversely impact the assets of the estate available to creditors. The Monitor notes, however, that Canadian jurisprudence on this point is very limited. The only Canadian decision the Monitor has identified that deals directly with this point supports the conclusion that a dividend can be found to be a transfer at undervalue under a predecessor provision to Section 96 notwithstanding the concurrent operation of the predecessor provision to Section 101 of the BIA. The Monitor has identified no Canadian precedent addressing the application of Section 96 to the payment of shareholder dividends.
- 54. Section 101 addresses the payment of a shareholder dividend within one year before insolvency proceedings commence, unless the corporation or its shareholders can show that the corporation was not insolvent or rendered insolvent by the dividend payment. Section 96 provides additional remedies that can respond to transactions over a longer 'look-back' period if those transactions were engaged with non-arm's length parties while the debtor company was insolvent or with an intent to defraud, defeat or delay other creditors. The Monitor is of the view that, whereas Section 101 provides a

narrowly defined set of circumstances in which remedies for improper dividends will clearly be readily available, Section 96 can be interpreted to provide a broader set of protections for transactions, including dividends, where the facts, such as non-arm's length dealings, insolvency and/or intention to defraud, delay or defeat other creditors justify a remedy for the benefit of all creditors and to preserve the assets of the insolvent party's estate for the benefit of creditors.

*2013 Dividend Meets the Criteria of a Transfer at Undervalue*

55. A transfer at undervalue is (i) a disposition of property or provision of services; and (ii) for which no consideration is received by the debtor or for which the consideration received by the debtor is conspicuously less than the fair market value of the consideration given by the debtor.
56. The 2013 Dividend resulted in the disposition of approximately \$509 million in property value to shareholders.
57. Those shareholders who received the 2013 Dividend paid no direct consideration in return for that dividend. The Monitor recognizes that a dividend is, in substance, compensation for the use of the investment of shareholders. However, the Monitor also notes that, prior to a dividend being declared, a shareholder has no legally enforceable claim to any dividend funds and the debtor has no obligation to pay any such dividend funds. In receiving the dividend, a shareholder does not exchange or relinquish any valuable enforceable right it has vis-à-vis the corporation paying the dividend.

*Non-Arm's Length Recipients of Dividends*

58. Related parties are presumed, in the absence of evidence to the contrary, not to be dealing with each other at arm's length pursuant to Section 4 of the BIA. In the case of parties that were not related to each other at the time of the transaction, it is a question of fact whether they were dealing with each other at arm's length.
59. As noted above, the recipients of the 2013 Dividend would have included Sears US, as a majority holder of the shares of Sears Canada at the time of the declaration of the 2013



Dividend, ESL or its affiliates, as a direct holder of 17% of the shares of Sears Canada at that time, and Lampert, as a holder of 10% of the shares of Sears Canada at that time. As a result of Lampert's apparent control of ESL, and ESL's and Lampert's apparent control of Sears US, Sears US, ESL and Lampert, collectively, held sufficient shares to have majority ownership, as a group, of Sears Canada at the time of the declaration of the 2013 Dividend. If it is accepted that these parties operated as a group, they would be related to Sears Canada and presumed (absent evidence to the contrary) to be non-arm's length in connection with the 2013 Dividend.

60. The appointment of directors and officers of Sears Canada with material links to ESL and Sears US provides further evidence of the relationships between these parties at the relevant times.
61. The Monitor believes ESL, Lampert and Sears US, collectively, did not deal at arm's length with Sears Canada at the relevant time based upon the foregoing information.
62. The Monitor has not identified any material information to rebut this conclusion.

*Sears Canada's Insolvency or Intention to Defraud, Defeat or Delay Creditors*

63. As noted above, it is not clear from the available information that Sears Canada was an insolvent person at the time of the 2013 Dividend, within the meaning set out under the BIA.
64. The Monitor believes there is sufficient information to draw a preliminary conclusion, subject to review of further evidence as it becomes available, that at the end of 2013, Sears Canada was paying significant dividends while, at the same time, proceeding along a path to inevitable insolvency. This information includes:
  - (a) Sears Canada's policy of monetizing key assets and making significant distributions to shareholders without investing in the growth or re-alignment of the business or satisfying its obligations to material creditors;
  - (b) Sears Canada's steadily declining financial performance including negative net profitability and cash flow; and

- (c) Sears Canada's limited review, analysis and consideration of the effect of paying the 2013 Dividend upon its ability to satisfy its liabilities in the future, including the substantial pension wind-up obligations that Sears Canada had no plan to pay.

(a) Asset Monetization

65. Over 2012 and 2013, SCI engaged in several high-profile monetization transactions involving real estate assets in order to generate cash proceeds totalling in excess of \$1 billion. These transactions included key retail assets and the cessation of operations at key retail locations, namely: Yorkdale Shopping Centre; Square One Mississauga; Toronto Eaton Centre, Sherway Gardens, Markville Shopping Centre, Masonville Place and Richmond Centre. Certain parties knowledgeable about the 2013 real estate monetizations advised the Monitor that the 2013 real estate transactions appear to have been undertaken on an expedited basis, which may have materially depressed the sale values received.

(b) Declining Financial Performance

66. In 2010, Sears Canada had an operating profit of \$196.3 million.
67. 2010 was the last year Sears Canada generated a profit from operations. It experienced a steady decline in financial performance beginning in 2011. In 2011, it was operating at a loss of \$50.9 million, and by 2013 the annual operating loss was \$187.8 million.
68. The chart below illustrates the rapid deterioration of Sears Canada's financial condition immediately prior to and following the declaration of the Dividends:<sup>1</sup>

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<sup>1</sup> Sears Canada Inc.'s Annual Audited Financial Statements from 2010 – 2016.

<b>Year</b>	<b>Total Revenues (\$ million)</b>	<b>Operating Profit (Loss) (\$ millions)</b>	<b>Gross Margin Rate</b>
2010	4,938.5	196.3	39.3%
2011	4,619.3	(50.9)	36.5%
2012	4,300.7	(82.9)	36.7%
2013	3,991.8	(187.8)	36.2%
2014	3,424.5	(407.3)	32.6%
2015	3,145.5	(298.3)	31.8%
2016	2,613.6	(422.4)	27.3%

69. Analyst reports suggest that the market did not attach any material value to Sears Canada's ongoing operations in 2012 and 2013, and it should have been clear that Sears Canada would continue to experience increasing operational losses as it sold off valuable key assets.
70. FTI's review of cash flow forecasts presented by Sears Canada in early 2014 draws a similar conclusion. Once the forecast was normalized by FTI for appropriate assumptions regarding the financial performance of the business going forward based upon past trends, including store closures, preliminary conclusions indicate that Sears Canada's operations could not reasonably have been expected to be cash flow positive from 2014 onward absent a turnaround plan accompanied by substantial investment in the business, which does not appear to have been in Sears Canada's plans. If then existing trends continued during and after 2014, Sears Canada would have reasonably projected exhausting its cash reserves by 2016 (absent additional inflows from asset sales or debt financing). Even after accounting for asset realizations, available normalized projections

indicate that based upon then existing trends, Sears Canada would have forecasted to have negative cash of \$430 million by 2019.

71. In March of 2014, the Sears Canada board held a telephone meeting at which two further dividend scenarios were discussed in the amount of \$1.50 per share and \$2.50 per share. The process at this meeting was similar to the 2012 Dividend approval process as materials relating to these dividend scenarios were circulated less than one hour before the scheduled start time for the meeting. Sears Canada ultimately did not declare this dividend. Available evidence suggests this non-payment was the result of concerns about Sears Canada's financial position just three months after the 2013 Dividend was paid.

(c) Consideration of Impact on Creditors

72. From 2012 onward, Sears Canada appears to have been effectively undertaking a process of self-liquidation. The company appears to have moved quickly to monetize assets potentially at suboptimal values, which facilitated immediate payments to shareholders. In 2017, the liquidation was completed under the CCAA.
73. There is no evidence available to the Monitor at this time to show that Sears Canada considered in detail whether, after paying the dividends to shareholders in 2013, sufficient funds would remain to satisfy all liabilities. It is now clear that there would have been no reasonable basis to conclude that sufficient value would be available to pay creditors after paying this dividend, continuing to generate significant losses in future years, and after the process of liquidating all assets was complete. Monetizing assets and distributing proceeds to shareholders by means of the 2013 Dividend shifted risk to creditors and away from shareholders. It appears that payments to creditors may have been delayed for the benefit of shareholders and the 2013 Dividend could reasonably have been known to have a material and adverse impact on Sears Canada's ability to pay creditors in the future.
74. When considering the intention of Sears Canada regarding the 2013 Dividend, the Monitor believes the following factors are most relevant:
- (a) Significant portions of the dividends were paid to non-arm's length parties;

- (b) certain of these non-arm's length parties were facing their own liquidity pressures in the form of redemption requests from investors, which may have created an urgent need for the cash provided by the 2013 Dividend;
- (c) the real estate monetization transactions were undertaken at the direction of Lampert who was not a duly authorized representative of Sears Canada;
- (d) the 2013 Dividend appears to have been undertaken with undue haste and without the level of board process that one would have expected, and that was followed when the 2010 dividend was approved;
- (e) The 2013 Dividend was paid in the face of worsening financial results, significant outstanding debts, including with respect to pensions, and outstanding litigation. The Monitor notes that in a letter dated December 3, 2013, counsel to the plaintiff in a class proceeding commenced on behalf of certain Sears Hometown dealers raised the possibility that the proposed payment of the 2013 Dividend could leave Sears Canada without sufficient reserves to satisfy any judgment obtained on behalf of the Sears Hometown dealers against Sears Canada. Similar concerns regarding potential future dividends were raised by the Sears Canada Retiree Association in a letter dated January 30, 2013;
- (f) FTI's preliminary conclusions indicate that Sears Canada's operations could not reasonably have been expected to generate positive cash from 2014 onward absent a turn-around plan accompanied by substantial investment in the business, which was not planned; and
- (g) if existing trends continued during and after 2014, Sears Canada would have reasonably projected exhausting its cash reserves by 2016 (absent additional inflows from asset sales or debt financing). Even after accounting for asset realizations, FTI's projections indicate that based upon then existing trends, Sears Canada would have been forecast to have negative cash of \$430 million by 2019. Recent public statements by the then CEO of SCI in 2013 indicate that he was

denied the necessary capital to invest in initiatives to improve SCI's operational performance (including, among other things, a large-scale store refresh project).

*The Connected Directors were privy to the 2013 Dividend*

75. Both of the Connected Directors had close links to ESL and Lampert. Both were former long term officers of ESL Investments Inc. These parties, as a result of their positions, had significant influence over the decisions to monetize real estate and pay the 2013 Dividend. The Monitor has identified evidence that these parties played a material role in these transactions and may have caused the 2013 Dividend to be received by ESL, Lampert and Sears US.

**H. MONITOR'S RECOMMENDATION ON TUV CLAIM MOTION**

76. The Monitor is not in a position at this time to conclude with certainty that the 2013 Dividend is a transfer at undervalue that must be reversed. However, based upon the facts known to the Monitor at this time, the Monitor believes there is a reasonable basis for the Court to consider further, on a full record, whether:
- (a) Section 96 is available to remedy the payment of a dividend provided all requirements of that section are satisfied;
  - (b) the 2013 Dividend meets the criteria of a transfer at undervalue;
  - (c) ESL and Lampert received a significant portion of the 2013 Dividend and were not dealing at arm's length with Sears Canada;
  - (d) Sears Canada intended to defraud, defeat or delay creditors through payment of the 2013 Dividend and recklessly disregarded the fact that the payment of the 2013 Dividend would defraud, defeat or delay creditors; and
  - (e) the Connected Directors were privy to the transaction.
77. The 2013 Dividend in an aggregate amount exceeding \$500 million (a majority of which appears to have been received directly or indirectly by Sears US, Lampert and ESL) is a

very material matter for the creditors of Sears Canada. Recovery of even a portion of this amount from Lampert, ESL or the Connected Directors would materially increase the recoveries of creditors who, at this time, are projected to receive minimal or no recoveries from the Sears Canada estate.

78. The Monitor believes these arguments should be considered by the Court on a full record to determine if a claim under Section 96 of the BIA will succeed. The Monitor will provide a further update at a later date regarding any similar claim that it may seek to pursue against Sears US after further review of the implications of the Sears US insolvency and Chapter 11 proceedings.

#### **I. MONITOR'S RECOMMENDATION ON LI MOTION**

79. The Monitor and its counsel have reviewed the First Report of the Litigation Investigator and have engaged in consultation with the Litigation Investigator regarding the LI Motion and the claims proposed to be pursued thereunder.
80. The Monitor believes the appointment of a Litigation Trustee as a court officer to direct litigation on behalf of the Sears Canada Entities is appropriate in the circumstances given the current status of the Sears Canada Entities, the fact that litigation recoveries will be solely for the benefit of creditors of the Sears Canada Entities, the limited remaining employees of the Sears Canada Entities, the likelihood that the remaining employees will eventually cease to be so employed, and the possible duration of any litigation. The Monitor believes the proposed Litigation Trustee has the experience and knowledge to be properly qualified for the position.
81. In the Monitor's view, the litigation protocol proposed by the Litigation Investigator is efficient and sensible due to the overlapping facts associated with the Monitor's proposed claim under Section 36.1 of the CCAA, the Litigation Trustee's proposed claims and the other claims of third parties described in the Litigation Investigator's First Report, all of which relate to the 2013 Dividend.
82. The Monitor does not, in this Twenty-Seventh Report, provide a recommendation on the merits or likelihood of success of the claims described in the First Report of the

Litigation Investigator. However, the Monitor does believe, consistent with the Monitor's position on the TUV Claim Motion, that there is a sufficient basis to justify these claims being considered by the Court on a full record.

#### **J. DIRECTOR AND OFFICER INDEMNITY CLAIMS**

83. The claims that the Monitor and the Litigation Investigator recommend pursuing in connection with the 2013 Dividend include claims against current and former directors and officers of Sears Canada (the "**Current and Former D&Os**").
84. Those Current and Former D&Os may have valid indemnity claims against Sears Canada to the extent that such Current and Former D&Os pay costs or damages in connection with these claims that are not covered by insurance.
85. In order to preserve such Current and Former D&Os' indemnity rights while at the same time not requiring the estate to reserve funds to satisfy such potential indemnity claims in the future, the Monitor and the Litigation Investigator have agreed that any recoveries they receive from the Current and Former D&Os will be net of any distributions that would have been payable to these Current and Former D&Os from the estate on account of the Current and Former D&Os corresponding indemnity claims. Current and Former D&Os will effectively be paid their distributions on account of indemnity claims directly from the litigation proceeds that those Current and Former D&Os may contribute to the estate.
86. The Monitor recognizes that this proposal does not fully protect the Current and Former D&Os in a circumstance where the litigation is unsuccessful and the Current and Former D&Os have indemnity claims for legal costs. However, any reserve required to satisfy such an indemnity claim solely for legal costs is expected to be a manageable reserve amount.

#### **K. COST OF PURSUING CLAIMS UNDER SECTION 96**

87. As noted in the First Report of the Litigation Investigator, an aggregate amount of \$12 million is proposed to be set aside from the estate of Sears Canada to fund all litigation



proposed to be commenced by the Litigation Trustee and the Monitor in connection with the 2013 Dividend. Any other third party claims will not be funded by Sears Canada.

88. The Monitor has reviewed the proposed amount of funding with the Litigation Investigator and believes the proposed amount of funding provides sufficient resources to diligently pursue this litigation. The Monitor notes that the proposed claims are expected to be both legally and factually complex and substantial resources will need to be allocated to all aspects of these claims. The proposed funding amount is intended to be a maximum amount that could be needed for the litigation. The Monitor and the Litigation Investigator have not budgeted for the full use of all available litigation funding. In many foreseeable circumstances, there will be significant surplus funds remaining after completion of the litigation. However, setting aside this amount now will ensure that this litigation process does not experience funding shortfalls in the future, when further access to funding may not be available, and clearly signals that the estate has ample resources to pursue these claims to the fullest extent possible in this case. The Monitor will review on an ongoing basis the expenditure of this proposed funding and will ensure that surplus funding that may remain at the completion of the litigation process would be returned to the estate.
89. The Monitor understands the Creditors' Committee established under the LI Order has also reviewed the proposed funding and is supportive of the funding to be provided for this litigation.
90. The Monitor recognizes that stakeholders may have differing views on the proposed litigation and believes an opt-out mechanism is an appropriate and practical approach to protect the interests of those stakeholders who are not in favour of pursuing the litigation. The opt-out mechanism proposed by the Monitor and the Litigation Investigator would segregate costs directly related to the litigation from the normal CCAA administration costs to ensure that any creditors of Sears Canada who neither wish to fund nor recover from any claims relating to the 2013 Dividend can preserve the unsecured recoveries they would receive if this litigation were not pursued. As part of this process, the Monitor and

its counsel would record their fees and disbursements in a manner that would permit any costs associated with this litigation to be separately identified going forward.

91. To implement the opt-out mechanism, the Monitor proposes to notify all known creditors with claims in excess of \$5,000 of the opt-out process and will advise these creditors that if they wish to exercise this right to opt-out they must return a signed opt-out notice on or before sixty days following receipt of such notice from the Monitor. The Monitor proposes to establish a \$5,000 threshold for efficiency and believes such a threshold is justified in view of the costs of delivering opt-out notices and the likely recoveries of creditors with claims of less than \$5,000 (excluding possible litigation proceeds). A copy of the form of opt-out notice and creditor communication is attached hereto as **Appendix “C”**.
92. The Monitor proposes that Employee Representative Counsel and Pension Representative Counsel be authorized to exercise opt-out rights on behalf of the parties they represent both for efficiency and because the question of whether to opt-out is in large part a determination of a party's view of the legal merits of the proposed claims, for which Employee Representative Counsel and Pension Representative Counsel are well positioned to advise on behalf of their clients. The Monitor's proposed draft order also confirms that Morneau Shepell Limited, as administrator of the Sears Canada Pension Plan, is the party with authorization to elect whether to opt-out in connection with the claim arising from the wind-up deficit in the defined benefit component of the Sears Canada Pension Plan.
93. Set out below is an illustrative estimate of recoveries to unsecured creditors of SCI who elect to opt out of participation in the claims relating to the 2013 Dividend relative to the recoveries of unsecured creditors of SCI who do not opt out at various levels of litigation recovery and at various percentages of creditors electing to opt out. The recoveries of unsecured creditors of SCI who elect to opt-out are, in all cases, estimated to be 7.4%. The recoveries of unsecured creditors of SCI who do not elect to opt out are estimated to be in the range of 6.0% to 64.6% depending upon the level of recoveries from the litigation and the proportion of opt-out creditors as shown in the table below.

Opt out %	\$0 Litigation Recovery		\$50 Million Litigation Recovery		\$150 Million Litigation Recovery		\$500 Million Litigation Recovery	
	Opt-out Recovery %	Non-Opt-out Recovery %	Opt-out Recovery %	Non-Opt-out Recovery %	Opt-out Recovery %	Non-Opt-out Recovery %	Opt-out Recovery %	Non-Opt-out Recovery %
0%	-	6.9%	-	9.2%	-	13.9%	-	30.3%
10%	7.4%	6.8%	7.4%	9.4%	7.4%	14.6%	7.4%	32.8%
20%	7.4%	6.7%	7.4%	9.7%	7.4%	15.5%	7.4%	36.0%
30%	7.4%	6.6%	7.4%	10.0%	7.4%	16.7%	7.4%	40.1%
40%	7.4%	6.5%	7.4%	10.4%	7.4%	18.2%	7.4%	45.5%
50%	7.4%	6.3%	7.4%	11.0%	7.4%	20.4%	7.4%	53.2%
60%	7.4%	6.0%	7.4%	11.9%	7.4%	23.6%	7.4%	64.6%

94. This recovery analysis is based on current cash on hand and estimated cash flows until December 2018 and is used for illustrative purposes only. The recovery analysis does not reflect proceeds that would be available from future real estate transactions. The recovery analysis reflects a reserve of \$10 million for any operating costs, professional fees and contingencies associated with the wind down of the estate after December 2018. The non-opt out analysis also reflects the litigation funding budget of \$12 million. Claims have been valued based on the Notices of Revision / Disallowance sent and the Notices of Dispute received (and in the case of material claims for which Notices of Dispute have been received, the Monitor's view of a reasonable valuation thereof), and are subject to change as claims are adjudicated. The recovery analysis also assumes that the claim in respect of the wind-up deficiency against Sears Canada Entities is an unsecured claim valued at \$650.5 million<sup>2</sup>, out of which \$624.5 million relates to Sears Canada.
95. The Monitor believes there is substantial creditor support for the pursuit of the Monitor's claim to recover amounts in connection with the 2013 Dividend. However, if the extent of any opt outs from participation in the litigation is sufficient to question the overall level of creditor support for this litigation, the Monitor may return to court for further direction regarding this litigation.

<sup>2</sup> For indicative purposes only.

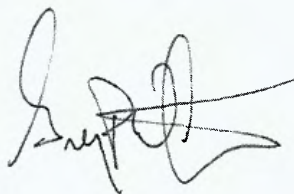
The Monitor respectfully submits to the Court this, its Twenty-Seventh Report.

Dated this 5th day of November, 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"**  
**MONITOR'S DRAFT STATEMENT OF CLAIM**

Court File No.:

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

BETWEEN:

FTI CONSULTING CANADA INC.,  
in its capacity as Court-appointed monitor in proceedings  
pursuant to the *Companies' Creditors Arrangement Act*, RSC 1985, c. c-36

Plaintiff

and

ESL INVESTMENTS INC., ESL PARTNERS, LP, SPE I PARTNERS, LP, SPE MASTER I, LP,  
ESL INSTITUTIONAL PARTNERS, LP, EDWARD S. LAMPERT, WILLIAM HARKER  
and WILLIAM CROWLEY

Defendants

**STATEMENT OF CLAIM**

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

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TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date: November , 2018

Issued by \_\_\_\_\_  
Local registrar

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AND TO: **SPE Master I, LP**  
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AND TO: **ESL Institutional Partners, LP**  
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**CLAIM**

1 The Plaintiff, FTI Consulting Canada Inc., in its capacity as Court-appointed monitor of Sears Canada Inc. (**Sears**) in proceedings pursuant to the *Companies' Creditors Arrangement Act*, RSC 1985, c. c-36 (the **CCAA**) (the **Monitor**) claims against the Defendants:

(a) a declaration that the transfer of funds to the Defendants, ESL Investments Inc. (**ESL Investments**), ESL Partners, LP, SPE I Partners, LP, SPE Master I, LP, ESL Institutional Partners, LP, and Edward S. Lampert (**Lampert**), by means of a dividend of \$5.00 per share paid by Sears on December 6, 2013 (the **2013 Dividend**):

(i) was a transfer at undervalue for the purposes of section 96 of the *Bankruptcy and Insolvency Act*, RSC, 1985, c. B-3 (the **BIA**), as incorporated into the CCAA by section 36.1 thereof (the **Transfer at Undervalue**); and

(ii) is void as against the Monitor;

(b) an order that the Defendants, either as parties to the 2013 Dividend or as privies thereto, or both, shall jointly and severally pay to Sears the full amount of the 2013 Dividend, being approximately \$509 million in total;

(c) in the alternative, an order that the Defendants, either as parties to the 2013 Dividend or as privies thereto, or both, shall jointly and severally pay to Sears the portion of the 2013 Dividend received by the Defendants, collectively;

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- (d) in the further alternative, an order that each of the Defendants, either as parties to the 2013 Dividend or as privies thereto, or both, shall pay to Sears the amount of the 2013 Dividend that such Defendant received, or directly or indirectly benefitted from;
- (e) pre and post-judgment interest in accordance with the *Courts of Justice Act*, RSO 1990, c. C.43; and
- (f) costs of this action on a substantial indemnity basis.

### The Parties

- 2 Sears and its affiliate companies obtained protection under the CCAA on June 22, 2017, and pursuant to section 11.7 of the CCAA, the Plaintiff was appointed as Monitor under the Initial Order. On November ●, 2018, the Monitor obtained authorization from the Court to bring this action.
- 3 The Defendant ESL Investments is a privately-owned hedge fund incorporated under the laws of Delaware with its principal executive offices located at 1170 Kane Concourse, Bay Harbor Islands, Florida. The Defendants ESL Partners, LP, SPE I Partners, LP, SPE Master I, LP, and ESL Institutional Partners, LP (collectively, and together with ESL Investments, **ESL**) are affiliates of ESL Investments.
- 4 The Defendant Lampert is an individual residing in Indian Creek, Florida. At all material times, Lampert controlled ESL, and has served as ESL Investments' Chairman and Chief Executive Officer since its creation in 1988.
- 5 The Defendant William Crowley was a non-independent director of Sears from March 2005 to April 2015, including at the time the 2013 Dividend was approved by the Sears Board and paid to Sears' shareholders.

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6 The Defendant William Harker was a non-independent director of Sears from November 2008 to April 2015, including at the time the 2013 Dividend was approved by the Sears Board and paid to Sears' shareholders.

7 At all material times, including on November 18, 2013 through to December 3, 2013, Lampert and ESL held a controlling ownership interest in Sears Holdings Corporation (**Holdings**) and beneficially owned 55% of Holdings' outstanding shares. In turn, at all material times, Holdings held a controlling ownership interest in Sears. On October 15, 2018, Holdings filed for Chapter 11 protection from creditors with the United States Bankruptcy Court. Holdings is not a party to this action.

8 At all material times, including on November 18, 2013 through to December 6, 2013, Holdings and each of the Defendants other than Crowley was a direct or beneficial shareholder of Sears, and held the following ownership interests:

(a) Holdings beneficially owned 51,962,391 shares in Sears, representing approximately 51% of the outstanding shares.

(b) ESL beneficially owned 17,725,280 shares in Sears, representing approximately 17.4% of the outstanding shares, which were directly held as follows:

(i) ESL Partners, LP: 15,821,206 shares;

(ii) SPE I Partners, LP: 830,852 shares;

(iii) SPE Master I, LP: 1,068,522 shares;

(iv) ESL Institutional Partners, LP: 4,381 shares; and

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- (v) CRK Partners, LLC (an affiliate of ESL Investments, Inc. that was voluntarily cancelled effective June 1, 2018 and is not a party to these proceedings): 319 shares;
- (c) Lampert owned 10,433,088 shares in Sears, representing approximately 10.2% of the outstanding shares; and
- (d) Harker owned 4,604 shares in Sears.

9 In this action, the Monitor seeks a declaration that the 2013 Dividend was a transfer at undervalue pursuant to section 96 of the BIA (as incorporated into proceedings under the CCAA by section 36.1 thereof) and is therefore void as against the Monitor, and it seeks payment from the Defendants who were parties and/or privies to the Transfer at Undervalue.

#### **Sears' Operational Decline**

10 Beginning in 2011, Sears' financial performance began to decline sharply. According to Sears' publicly-disclosed audited annual financial statements for 2010 – 2013 (as amended, in certain cases), Sears' revenues, operating profits/losses and gross margin rates were as follows:

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Year	Total Revenues (\$ million)	Operating Profit (Loss) (\$ millions)	Gross Margin Rate
2010	4,938.5	196.3	39.3%
2011	4,619.3	(50.9)	36.5%
2012	4,300.7	(82.9)	36.7%
2013	3,991.8	(187.8)	36.2%

- 11 As early as 2011, Sears' management recognized that drastic, transformative action would be required for Sears to re-establish a foothold in the Canadian retail market. In the 2011 strategic plan (the **2011 Strategic Plan**) prepared for Sears' board of directors (the **Board**), then-Chief Executive Officer Calvin McDonald described the state of Sears as follows:

Sears Canada is not a good retailer. Our business is broken: trading is awkward and inefficient, we lack product and merchandising focus and we are becoming irrelevant to customers while losing touch with our core.

[...]

We lack many of the fundamental processes, structures and culture of a strong retailer. In short, we lack 'retail rhythm'. However, most of our challenges are self-induced, meaning we are in a position to fix them.

- 12 The 2011 Strategic Plan also made clear that if transformative action was not taken, Sears could not expect to re-emerge as a successful retailer: "If we do not innovate, we will cease to be relevant." More directly, the 2011 Strategic Plan warned that "the current trajectory of growth and margin decline would take EBITDA into negative territory if we do not take drastic action."

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- 13 Notwithstanding the concerning operational trends identified in the 2011 Strategic Plan, Sears failed to take the necessary action to reinvigorate its business. Between 2011 and 2013, Sears consistently invested fewer resources on growth and transformational initiatives relative to its industry peers. In particular, the Board rejected multiple attempts by management, including in particular McDonald, to use Sears' capital to revitalize its business.

### **2013 Plan to Dispose of Real Estate Assets to Fund Dividends**

- 14 By 2013, ESL Investments and Lampert had an immediate need for cash from Sears. ESL Investments had raised money from investors years earlier on terms that precluded these investors from redeeming their investment for a period of time. In 2013, this holding period had expired, investors were entitled to withdraw funds and ESL Investments faced significant redemptions.
- 15 In order to satisfy its redemption obligations, ESL and Lampert devised a plan to extract cash from Sears through (a) the disposition of its most valuable real estate assets, and (b) the payment of an extraordinary dividend for the benefit of ESL, Lampert and Holdings (collectively the **Monetization Plan**).
- 16 To give effect to the Monetization Plan, Lampert personally directed the disposition of Sears' real estate assets in 2013. Lampert provided specific instructions to Sears on the price sought by Sears for its dispositions. The Monitor specifically denies Lampert's public statement on February 11, 2018:

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While I take no issue with the decisions that the board of Sears Canada made with regard to dividends and certain real estate sales, I have to emphasize that I have never served as a director or officer of Sears Canada, so I don't have firsthand knowledge of their internal deliberations and the alternatives considered.

17 At all materials times, Lampert directed and acted in concert with officers and directors of Sears and Holdings to implement the Monetization Plan, including in particular with Crowley (then Chair of the Sears Board), Harker (then a director of Sears), E.J. Bird (then Chief Financial Officer of Sears) and Jeffrey Stollenwerck (then President, Real Estate Business Unit of Holdings). Lampert had a longstanding professional and personal relationship with each of them:

- (a) Crowley had acted as President and Chief Operating Officer of ESL Investments from January 1999 to May 2012, Executive Vice-President and Chief Administrative Officer of Holdings from September 2005 to January 2011 and Chief Financial Officer of Holdings for periods in 2005-2007;
- (b) Harker was an Executive Vice-President and General Counsel of ESL Investments from February 2011 to June 2012 and an officer of Holdings from September 2005 until August 2012, during which time he acted variously as General Counsel, Corporate Secretary and Senior Vice-President, among other roles;
- (c) Bird was the Chief Financial Officer of ESL Investments from 1991 until 2002; and
- (d) Stollenwerck was the President of the Real Estate Business Unit of Holdings from February 2008 to April 2018 and a Senior Vice President, Real Estate for Holdings from March 2005 to February 2008. Before joining Holdings, Stollenwerck had acted as Vice-President, Research at ESL Investments.

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18 In accordance with the Monetization Plan, Sears entered into an agreement with Oxford Properties Group on or about June 14, 2013 to terminate Sears' leases at Yorkdale Shopping Centre and Square One Mississauga in exchange for a payment to Sears of \$191 million (the **Oxford Terminations**). The Oxford Terminations closed June 24, 2013.

### **September 2013 Board Presentations**

19 On September 23, 2013, two years after the 2011 Strategic Plan, the Board received a series of management presentations directly addressing Sears' deteriorating operational and financial performance (the **2013 Board Presentations**). Among other things, the 2013 Board Presentations reported that:

- (a) sales continued to decline across Sears' business at a rate of 2.6% per year;
- (b) based on year-to-date current trends (and without appropriately accounting for stores closed in connection with the Monetization Plan), Sears' projected EBITDA by 2016 would be negative \$105 million; and
- (c) Sears was struggling operationally: "Basics not fixed".

20 Earlier that month, Board presentations had also recognized that competition in the Canadian retail space was increasing with Target's entry into the market. Target had opened 68 stores in Canada in the second quarter of 2013, and planned to open a further 124 stores in Canada by year end.

21 Following the 2013 Board Presentations, the Board knew or ought to have known that Sears' business was in decline and that its long term viability was at risk.

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### Continued Disposition of Real Estate Assets

- 22 In accordance with the Monetization Plan, Sears pursued an agreement with Cadillac Fairview Corporation Limited (**Cadillac Fairview**) to terminate five additional high-value leases (Toronto Eaton Centre, Sherway Gardens, Markville Shopping Centre, Masonville Place and Richmond Centre) (the **Cadillac Terminations**).
- 23 Lampert directed the negotiating strategy in connection with the Cadillac Terminations with a view to ensuring a dividend of the proceeds before the end of 2013. Crowley and Stollenwerck negotiated directly with Cadillac Fairview, including with respect to the final price of \$400 million.
- 24 On October 28, 2013, the Board approved the Cadillac Terminations. The Board was not advised of the role that Lampert, Crowley or Stollenwerk had played in negotiating the Cadillac Terminations. The Cadillac Terminations closed on November 12, 2013.
- 25 In the same period, Sears and Stollenwerck negotiated the sale of Sears' 50% interest in eight properties jointly owned with The Westcliff Group of Companies. Sears' 50% interest was sold to Montez Income Properties Corporation in exchange for approximately \$315 million (the **Montez Sale**).
- 26 The Sears Board approved the Montez Sale on November 8, 2013. The approval was made by written resolution and without an in-person board meeting.
- 27 The Montez Sale closed in January 2014.
- 28 The assets disposed of by Sears were its "crown jewels". It was plain that the divestment of these key assets in 2013, while Sears was struggling in the face of stiffer retail competition from Target and others, would have a dramatic negative impact on Sears. The negative impact in fact unfolded:

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Year	Total Revenues (\$ million)	Operating Profit (Loss) (\$ millions)	Gross Margin Rate
2012	4,300.7	(82.9)	36.7%
2013	3,991.8	(187.8)	36.2%
2014	3,424.5	(407.3)	32.6%
2015	3,145.5	(298.3)	31.8%
2016	2,613.6	(422.4)	27.3%

29 Lampert directed Sears to complete each of the Oxford Terminations, the Cadillac Terminations and the Montez Sale. These dispositions were part of the Monetization Plan, and completed in order to provide ESL Investments with funds to address its redemption obligations.

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### The 2013 Dividend

30 On November 12, 2013, the same day Sears received \$400 million in proceeds from the Cadillac Terminations, Crowley directed Bird to move forward with an extraordinary dividend of between \$5.00 and \$8.00 per share.

31 On November 18 and 19, 2013, six days after the closing of the Cadillac Terminations, the Board held an in-person meeting (the **November Meeting**). Although Sears had no business operations in the United States, the November Meeting was held in New York City at the offices of Wachtell, Lipton, Rosen & Katz (**Wachtell**), legal counsel to Holdings.

32 The November Meeting began with a short pre-dinner discussion on November 18 and continued with a full day session on November 19, 2013.

33 During the short pre-dinner discussion on November 18, 2013, the Board unanimously resolved to declare the 2013 Dividend, an extraordinary dividend of \$5.00 per common share, for an aggregate dividend payment of approximately \$509 million.

34 The circumstances surrounding the 2013 Dividend raise a series of red flags.

***Lack of Notice to the Board***

35 The Board had no advance notice that it would be asked to consider an extraordinary dividend at the November Meeting.

36 On Friday November 15, 2013, the Board was provided with a package of material for the November Meeting (the **Board Materials**). The Board Materials included a detailed agenda with 15 separate items for the Board to consider during the November Meeting.

37 Neither the agenda nor any of the other Board Materials made any reference to the fact that the Board would be asked to consider an extraordinary dividend or any dividend at all. Moreover, the possible payment of a dividend had not been tabled in any prior Board meeting in 2013.

***Lack of Information***

38 The Board was not provided with the information necessary to assess the appropriateness of an extraordinary dividend.

39 Unlike past instances in which the Board was asked to consider an extraordinary dividend, the Board Materials did not contain any financial or operational information regarding the payment of a proposed dividend. The Board did not receive:

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- (a) any written materials regarding a proposed dividend or possible dividend structures;
- (b) any written presentation analyzing the impact the proposed dividend would have on Sears' business, including taking into account possible downside scenarios; or
- (c) any *pro forma* assessment of Sears' liquidity and cash flows following the payment of a dividend. Rather, the *pro forma* cash flows included in the Board Materials assumed that no dividend would be paid in either 2013 or 2014.

40 While Sears' management had identified the need to provide the Board with various cash flow analyses covering various dividend scenarios, the limited analysis that was done by management was incomplete and never presented to the Board.

41 Moreover, and unlike past meetings in which the Board had considered extraordinary dividends:

- (a) management did not prepare a written presentation to the Board on the proposed dividend and there was no written recommendation or proposal from management to the Board; and
- (b) the directors were not provided with legal advice with respect to their duties in connection with the declaration of a dividend.

### ***Financial Uncertainty***

42 On November 12, 2013, prior to the November Meeting, the Board received a financial update on the performance of Sears. Management reported that throughout the first

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three quarters of the year, Sears had negative net income of \$49 million (\$27 million worse than the same period in 2012) and negative total cash flow of \$26.3 million.

43 On November 14, 2013, the Investment Committee of Sears' Board was presented with material showing an estimated pension plan deficiency of \$313 million at December 2013. The members of the Investment Committee were Crowley, Harker and Bird. This fact was not presented to the Board at the November Meeting.

44 In advance of the November Meeting, the Board was provided with only high level *pro forma* cash flows for 2014. The cash flows were based on a 2014 Plan EBITDA of \$135 million, of which \$118 million was based on aspirational changes to the business that management hoped would result in financial improvement but that management and the Board should have known were *unreasonably optimistic*. Moreover, the *pro forma* cash flows presented to the Board assumed the receipt of proceeds of the Montez Sale even though the transaction had not closed. Again, no information was provided to the Board on the impact an extraordinary dividend would have on future investment opportunities and future cash flows.

45 The Board Materials did however include two analyst reports, both of which reviewed the financial circumstances of Sears and predicted its eventual failure:

**Desjardins Capital Markets Report (October 30, 2013)**

As long as consumers do not perceive that Sears Canada is going out of business and desert it, Sears may be able to manage its demise slowly over time, selling prime and non-core assets, and waiting for the elusive purchaser of 60–80 store locations to appear.

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**CIBC Report (November 4, 2013)**

It is possible that SCC will simply operate its way into irrelevance, gradually selling off stores to stem the cash drain. That strategy would likely result in Sears occasionally cutting a special dividend cheque to all shareholders, not the worst way to create shareholder value. But that is dangerous to the operations, particularly as the primary, and most profitably flagship stores are vended.

***A Conflicted Board***

- 46 The 2013 Dividend was approved by the Board unanimously and without any abstentions.
- 47 Crowley and Harker participated in the Board's deliberations to pay the 2013 Dividend and approved the payment of the 2013 Dividend despite the fact that Sears had specifically determined that:
- (a) Crowley and Harker were not "independent" directors; and
  - (b) pursuant to National Instrument 52-110, Crowley and Harker had a material relationship with Holdings and/or ESL that could "be reasonably expected to interfere with the exercise of [their] independent judgment."
- 48 Further, Crowley did not disclose to the Board that he, Lampert and Stollenwerck were personally involved in the 2013 real estate divestitures or that the timetable and size of the proposed dividend was dictated by ESL Investment's need for funds. Rather, the Board was led to believe that Sears' management was responsible for the 2013 real estate divestures. For example, Crowley expressly advised the independent members of the Board: "I do not think that the Board or the independents should attempt to insert themselves in the negotiations [of real estate transactions]. Bill [Harker] and I did not and do not do that."

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49 Crowley and Harker in particular were focused on the interests of ESL, Lampert and Holdings. Crowley and Harker failed to disclose the motivations of ESL, Lampert and Holdings to the Board and the fact that both the real estate dispositions and 2013 Dividend were driven by the needs of ESL, Lampert and Holdings, and not the best interests of Sears.

***Departure from Past Governance Practices***

50 The Board process for the 2013 Dividend represented a sharp departure from past practice of the Sears Board and ordinary standards of good corporate governance.

51 For example, in December 2005, the Board approved an extraordinary dividend. The process for approving that dividend included:

- (a) multiple Board meetings on September 7, 2005, September 14, 2005, and December 2, 2005 to discuss the merits and risks of a potential dividend in light of the company's operational needs;
- (b) multiple oral presentations from management and a dividend recommendation by the Chief Financial Officer;
- (c) separate meetings between the independent directors of Sears and the Chief Financial Officer to assess the company's financial state;
- (d) legal advice from both in-house and external counsel to the Board; and
- (e) review by the Board of draft press releases and an officer's certificate with respect to the dividend.

52 In May 2010, the Board approved another extraordinary dividend, again with the benefit of a robust process:

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- (a) multiple meetings of the Board on April 23, 2010, May 7, 2010, and May 18, 2010 to discuss the merits and risks of a potential dividend in light of the company's operational needs;
- (b) separate meetings of the independent directors on May 7, 2010 and May 12, 2010, with their own counsel present, to discuss the options available to Sears with respect to its excess cash and the amount of the potential dividend in light of the company's operational needs;
- (c) multiple presentations by management, including a 40-page presentation dated April 23, 2010 and a subsequent 20-page presentation dated May 7, 2010, providing detailed analyses of excess cash and financial forecasts (with downside scenarios) for multiple dividend options;
- (d) a dialogue between management and the Board continuing over several meetings with respect to various options for a potential dividend;
- (e) consideration of multiple potential uses for excess cash, including cash dividends in various amounts, a substantial issuer bid and a normal course issuer bid; and
- (f) a deferral of half the proposed dividend pending a full assessment of the company's operational needs.

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53 In September 2010, the Board approved a second extraordinary dividend for 2010. The process for approving that dividend included:

- (a) multiple meetings of the Board on or around August 23, 2010 and September 10, 2010 to discuss the capital structure of the company and the merits and risks of a potential dividend in light of the company's operational needs;



- (b) multiple presentations by management, including a “capital structure update” dated August 3, 2010 and a 32-page presentation assessing the capital structure of the company and potential dividend options, including financial forecasts and downside scenarios, which the Board reviewed in advance of approving the dividend; and
- (c) a separate meeting of the independent directors on or around September 8, 2010, with their own counsel present, to discuss the options available to Sears with respect to its excess cash and the amount of the potential dividend in light of the company’s operational needs.

54 In December 2012, the Board approved a smaller extraordinary dividend. While not as fulsome as previous governance processes, the process for approving the 2012 dividend nonetheless included:

- (a) a meeting on December 12, 2012 which included thorough discussion and analysis of the impact of a potential dividend on available cash, EBITDA and total debt, the company’s need to retain cash for operational uses, and downside scenarios in respect of a possible dividend;
- (b) a report entitled “Dividend Discussion” which was prepared by Sears’ Chief Financial Officer and which the Board reviewed in advance of approving the dividend; and
- (c) a review of the draft officer’s certificate with respect to the dividend by external counsel to the independent directors, and a dialogue with the Chief Financial Officer of Sears addressing counsel’s comments.

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55 In stark contrast, the 2013 Dividend was the first item of business at a pre-dinner discussion at the outset of the November Meeting and was declared without any adequate financial, operational or cash flow information upon which to exercise proper business judgment. It was dealt with before any of the planned presentations to the Board, which addressed Sears' financial results, or the reports on management priorities, asset valuations, operating efficiency and Sears' 2014 financial plan and without the benefit of any independent legal advice regarding the directors' duties in the circumstances.

56 The Board's inability to make a proper business decision in respect of the 2013 Dividend was apparent from the fact that one of the Board members, Ronald Weissman, had been appointed to the Board that day. Weissman, a resident of Texas, had no material prior dealings with Sears or knowledge of Sears' financial or operational circumstances upon which to base his decision to approve the 2013 Dividend.

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### **The 2013 Dividend is a Transfer at Undervalue and Void**

#### ***A Transfer at Undervalue***

57 The 2013 Dividend provided no value to Sears and solely benefited its direct and indirect shareholders, including Holdings, and the Defendants ESL, Lampert and Harker. The amounts of the gratuitous benefit received by Holdings and the Defendants were:

- (a) Holdings: \$259,811,955;
- (b) ESL : \$88,626,400;
- (c) Lampert: \$52,165,440; and
- (d) Harker: \$23,020.

***Non-Arm's Length Dealings***

58 At all materials times:

- (a) Holdings was the controlling shareholder of Sears, was a related entity to Sears, and was not dealing at arm's length with Sears;
- (b) ESL and Lampert exercised both *de facto* and *de jure* control over Holdings. As Holdings stated in its 2013 Annual Report, Mr. Lampert had "substantial influence over many, if not all, actions to be taken or approved by our stockholders"; and
- (c) ESL and Lampert were not dealing at arm's length with Sears as a result of their direct and indirect beneficial control position in Holdings, which in turn held a controlling interest in Sears. Further, Holdings, ESL and Lampert collectively held more than 75% of Sears' shares, acted in concert with respect to the control of Sears, and specifically acted in concert and with a single mind to exercise influence over Sears in connection with the 2013 Dividend and the Monetization Plan.

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59 As a result of these relationships, each of Holdings, ESL, Lampert, and Sears are related entities who are presumed not to have acted at arm's length in respect of the 2013 Dividend. Holdings, ESL and Lampert used their position of control over Sears to direct and/or influence Sears and its directors to carry out the Monetization Plan and the 2013 Dividend.

***Intention to defraud, defeat or delay Sears' creditors***

60 The 2013 Dividend was effected by Sears for the sole purpose of satisfying the immediate financial needs of ESL Investments, Lampert and Holdings and in reckless disregard of the interests of Sears' creditors. The 2013 Dividend was made with the

specific intention to prioritize the interests of Holdings, Lampert and ESL over Sears' creditors and other stakeholders.

61 In particular, considering the surrounding circumstances, Sears knew but recklessly disregarded the fact that the 2013 Dividend would have a material adverse impact on its ability to continue as a viable business and pay its creditors. In particular, the 2013 Dividend was:

- (a) a non-arm's length transaction made outside the usual course of business;
- (b) paid in the face of significant outstanding indebtedness to Sears' creditors, including pensioners, in circumstances in which:
  - (i) Sears had no operating income to repay its debts, including to its pensioners and other creditors;
  - (ii) applying reasonable assumptions, the Board could only reasonably have expected Sears to be significantly cash flow negative from 2014 onwards;  
and
  - (iii) the Board had no real plan to repay such indebtedness;
- (c) paid in circumstances that raise a series of "red flags", including as a result of the following facts:
  - (i) the 2013 Dividend was declared with unusual haste and with no advance notice to the Board;
  - (ii) the 2013 Dividend was declared in the absence of proper Board materials and with a deficient corporate governance process;

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- (iii) the Board received no independent legal advice to properly discharge its duties with respect to a material transaction involving related parties: Holdings, ESL and Lampert;
- (iv) the divestiture of Sears' crown jewel assets had an obvious negative impact on its business;
- (v) Sears had not addressed its negative cash flows or operational challenges despite years of effort;
- (vi) there were clear conflicts of interest within the Board and management at the time the 2013 Dividend was declared; and
- (vii) the 2013 Dividend was driven by Lampert, Bird as Chief Financial Officer of Sears, and Crowley and Harker as non-independent directors of Sears, in order to satisfy ESL Investments' urgent need for funds.

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62 In March of 2014, the Board was presented with a proposal for a further, more modest dividend on short notice. The proposed dividend was not approved by the Board due to concerns about Sears' financial position, only three months after the payment of the 2013 Dividend.

63 Sears knew or recklessly disregarded the fact that the 2013 Dividend would defraud, defeat or delay Sears' creditors.

64 The Transfer at Undervalue effected by means of the 2013 Dividend is therefore void as against the Monitor within the meaning of section 96 of the BIA.

***ESL, Lampert, Crowley and Harker are Liable as Privies***

65 The Defendants ESL, Lampert, Crowley and Harker were privies to the Transfer at Undervalue and are liable to Sears.

66 None of ESL, Lampert, Crowley or Harker was dealing at arm's length with Holdings or Sears. Each of them knew that the 2013 Dividend would benefit Holdings, ESL and Lampert and each of them sought to cause or confer that benefit. Further, each of them received either a direct or indirect benefit from the 2013 Dividend.

***Director Indemnities***

67 In order to preserve any indemnity rights Harker or Crowley may have against Sears, the Monitor will agree that any recoveries received from Harker or Crowley in connection with this claim will be reduced by the amount of any distribution that Harker or Crowley, respectively, would have received on account of an unsecured indemnity claim from the Sears estate. The purpose of this adjustment is to make Harker and Crowley whole for any such indemnity claims while not requiring the Sears estate to reserve funds for such indemnity claims.

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***Service Ex Juris, Statutes Relied Upon, and Location of Trial***

68 The Monitor is entitled to serve SPE I Partners, LP, SPE Master I, LP, and ESL Institutional Partners, LP without a court order pursuant to rule 17 of the Rules of Civil Procedure, R.R.O. 1990, Reg. 194, because the claim is authorized by statute to be made against a person outside Ontario by a proceeding commenced in Ontario (Rule 17.02(n)).

69 The Monitor pleads and relies on the BIA and the CCAA.

70 The Monitor proposes that the trial of this matter be heard in Toronto, Ontario.

November ●, 2018

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Lawyers for FTI Consulting Canada Inc.,  
as Court-Appointed Monitor

DRAFT

FTI Consulting Canada Inc.,  
in its capacity as Court-appointed monitor

Plaintiff

ESL Investments Inc. et al.

Defendants

Court File No.:

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at TORONTO

**STATEMENT OF CLAIM**

**DRAFT**

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Lawyers to FTI Consulting Canada Inc.,  
as Court-Appointed Monitor



**APPENDIX "B"**  
**SAMPLE MEDIA REPORT**

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**THE WALL STREET JOURNAL.**  
The Wall Street Journal Online

December 5, 2013  
WSJ.com Edition

**Lampert Sees Fund Investors Check Out;  
Sears CEO's Hedge Fund Is Returning Billions of Dollars to Goldman  
Clients**

**BYLINE:** Juliet Chung

**SECTION:** MARKETS

**LENGTH:** 989 words

Edward S. Lampert, struggling to stem heavy losses at Sears Holdings Corp., is facing an exodus of money from his hedge fund.

Mr. Lampert's hedge fund is returning billions to clients of Goldman Sachs Group Inc. who had invested with ESL Investments Inc. in 2007, according to people with knowledge of the matter. Under that deal, Goldman's clients, such as corporate pension plans, put roughly \$3.5 billion with Mr. Lampert, and they have asked for it back.

The investors are receiving part of their funds in stock rather than all-cash, a redemption technique Mr. Lampert has used before. In June, ESL paid departing investors in part with the stock of a small company that ESL was invested in—Orchard Supply Hardware Stores Corp., a Sears spinoff. A week later, Orchard filed for bankruptcy protection.

The recent events mark a reversal for Mr. Lampert, a lauded investor whose fund has made a huge bet that he can revive Sears. Mr. Lampert, Sears's longtime chairman, took over as the retailer's chief executive in January but hasn't been able to turn around the

company.

In 2007, when Goldman's clients were offered access to Mr. Lampert's fund, he was a star of the hedge-fund world, commanding some of its strictest terms—a minimum \$25 million investment and the ability to lock up investors' money for five years.

The redemption requests from the Goldman clients were submitted last year in advance of the expiration of the lockups. Without the money raised through Goldman, more than \$2.5 billion in outside investor money is expected to remain, the people said.

Mr. Lampert, a former Goldman trader, also invests billions of his money in ways that mirror the positions in the fund.

The exit of Goldman's investors largely returns Mr. Lampert's investor base to what it was before 2007: a core group of wealthy, individual investors who have profited handsomely by investing with him over many years.

One exception: longtime investor Michael Dell of Dell Inc., whose multibillion-dollar family office has pulled out of ESL as it sheds its outside investments in favor of putting money to work directly.

Some people said their faith in Mr. Lampert is intact.

"This might be the time people should consider investing" with Mr. Lampert, said one client on Thursday, describing Mr. Lampert as one of the most talented investors he knew.

Another person familiar with Mr. Lampert described him as an investing visionary and noted that even Steve Jobs was fired from Apple Inc. at one point.

ESL has notched annualized returns of more than 20% a year for 20 years, according to a person familiar with Mr. Lampert, one of the strongest long-term track records in the industry.

The returns of late have been volatile, including a 33% loss in 2008, then 55% and 16% gains in 2009 and 2010, and a 12% loss in 2011. ESL has posted gains this year and last, according to people familiar with the firm, who didn't provide figures.

Mr. Lampert is a so-called value investor who makes concentrated bets intended to pay out over the long-term. He has long subscribed to the philosophy that his clients were paying him to invest their money profitably, not to explain his thinking on those investments, said a person familiar with Mr. Lampert.

Goldman's clients earned profits with ESL, beating the S&P 500, according to people familiar with the matter. But they defected in part because of the fund's lower-than-expected returns during their investment period, even though Mr. Lampert had cautioned during marketing meetings in 2007 not to expect his historic high returns, the people said.

Lampert Sees Fund Investors Check Out; Sears CEO's Hedge Fund Is Returning Billions of Dollars to Goldman Clients The Wall Street Journal Online December 5, 2013

Some of the investors requested redemptions in 2008 during the financial crisis, when many institutions and individuals were strapped for cash, and they were frustrated when ESL refused, the people said.

One of his highest-profile investments was in Kmart Corp., which he helped bring out of bankruptcy proceedings in 2003 at the equivalent of \$17 a share and then helped merge with Sears, Roebuck & Co. in 2005 to create Sears Holdings.

The deal was seen as a savvy bet on the company's real estate and a short-term validation of Mr. Lampert's theories for running a retailer. Sears shares surged to \$163.50 in 2005.

Since the merger, revenue has plunged by more than \$13 billion as of the end of the company's last fiscal year, and Sears is on track to book its third consecutive year of losses. "The confidence I had over 10 years of what's possible, it has been shaken over time," Mr. Lampert said at the company's annual meeting.

Despite the weakening performance, Sears stock is up about 20.8% on the year, but is down 21.3% this week. Mr. Lampert said Tuesday that he was paying some of his departing investors in Sears stock, rather than cash. The move reduced his total stake in the company to 48.4%, and sparked a sell-off in Sears shares, which dropped 7.7% in heavy volume that day. It closed Thursday at \$49.98, down 94 cents, or 1.8%.

Fund managers typically will give back such "in-kind distributions" when doing so is either advantageous to their investors for tax reasons, lawyers say, when they are limited in what they can sell because of securities rules or when a manager is trying to meet redemption requests while avoiding a fire-sale of assets.

"In general, investors don't like in-kind distributions," said Bert Fry, a partner at Pryor Cashman LLP who focuses on hedge funds. "At a minimum, it puts them in the position of having to make the exact investment decision that they'd hired a portfolio manager to make."

In the case of Orchard, the company signaled early in June that a bankruptcy filing was possible. Its shares closed at \$2.48 June 10, the day ESL or related entities distributed them to clients "on a pro rata basis to limited partners that elected to redeem all or a portion of their interest," according to a regulatory filing.

The company filed for bankruptcy protection on June 17. Its assets were acquired by Lowe's Cos. in August.

**LOAD-DATE:** February 21, 2017

**LANGUAGE:** ENGLISH

**NOTES:**

**PUBLISHER:** Dow Jones & Company, Inc.

Lampert Sees Fund Investors Check Out; Sears CEO's Hedge Fund Is Returning Billions of Dollars to  
Goldman Clients The Wall Street Journal Online December 5, 2013

**PUBLICATION-TYPE:** Web Publication

**JOURNAL-CODE:** WSJO

**APPENDIX "C"**  
**FORM OF OPT-OUT NOTICE AND CREDITOR COMMUNICATION**

## OPT-OUT LETTER

TO: UNSECURED CREDITORS OF SEARS CANADA INC. (the “**Creditors**”)

NOTICE TO CREDITORS REGARDING CLAIMS BY DOUGLAS CUNNINGHAM, Q.C., IN HIS CAPACITY AS THE COURT-APPOINTED LITIGATION TRUSTEE FOR SEARS CANADA INC. AGAINST ESL INVESTMENTS INC., ESL PARTNERS, LP, SPE I PARTNERS, LP, SPE MASTER I, LP, ESL INSTITUTIONAL PARTNERS, LP, EDWARD LAMPERT, EPHRAIM J. BIRD, DOUGLAS CAMPBELL, WILLIAM CROWLEY, WILLIAM HARKER, R. RAJA KHANNA, JAMES MCBURNEY, DEBORAH ROSATI, AND DONALD ROSS (the “**Litigation Trustee Claim**”)

NOTICE TO CREDITORS REGARDING CLAIM BY FTI CONSULTING CANADA INC., AS COURT-APPOINTED MONITOR OF SEARS CANADA INC. AGAINST ESL INVESTMENTS INC., ESL PARTNERS, LP, SPE I PARTNERS, LP, SPE MASTER I, LP, ESL INSTITUTIONAL PARTNERS, LP, EDWARD S. LAMPERT, WILLIAM HARKER AND WILLIAM CROWLEY (the “**Monitor Claim**”)

On June 22, 2017, Sears Canada Inc., among others, commenced court-supervised restructuring proceedings under the Companies’ Creditors Arrangement Act (“**CCAA**”) pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”). FTI Consulting Canada Inc. has been appointed by the Court as monitor in the CCAA proceedings (the “**Monitor**”).

On March 2, 2018, the Court issued an Order appointing Lax O’Sullivan Lisus Gottlieb LLP as litigation investigator (the “**Litigation Investigator**”) to identify and report on certain potential rights and claims of Sears Canada Inc., among others, and/or creditors of Sears Canada Inc, among others. The order was amended on April 26, 2018.

TAKE NOTICE THAT pursuant to Orders of the Court dated November 19, 2018:

1. At the request of the Litigation Investigator, the Honourable J. Douglas Cunningham, Q.C. was appointed as Litigation Trustee (in such capacity, the “**Litigation Trustee**”) over and in respect of the Litigation Trustee Claim, as described in greater detail in the First Report of the Litigation Investigator, dated November \_\_\_, 2018, and was authorized, empowered and directed to do all things and carry out all actions necessary to prosecute the Litigation Trustee Claim.
2. The Monitor was authorized, empowered and directed to do all things and carry out all actions necessary to prosecute the Monitor Claim, which is described in greater detail in the Twenty-Seventh Report of the Monitor, dated November \_\_\_, 2018.
3. The costs of pursuing the Litigation Trustee Claim and the Monitor Claim (the “**Litigation Costs**”) shall be funded by Sears Canada Inc. from cash currently in possession of the Monitor that is not the subject of any encumbrance. The Litigation Costs are currently estimated at \$12 million.
4. Any Creditor who does not wish to have its recoveries, if any, as an unsecured creditor of Sears Canada Inc. reduced by such creditor’s pro rata share of the Litigation Costs may opt-out of participation in the Litigation Trustee Claim and the Monitor Claim (the “**Opt-out**”). As a consequence of exercising such Opt-out right, such creditor will also not receive a distribution of any portion of any recoveries of the Litigation Trustee Claim or the Monitor Claim.

Copies of the Twenty-Seventh Report of the Monitor and the First Report of the Litigation Investigator, including copies of the draft statements of claim relating to the Litigation Trustee Claim and the Monitor Claim and additional information regarding the Opt-out are available at the Monitor’s website: [www.cfcanada.fticonsulting.com/SearsCanada](http://www.cfcanada.fticonsulting.com/SearsCanada).

IF YOU WISH TO EXERCISE THE OPT-OUT, you must, before \_\_\_\_\_, 2018, provide an Opt-Out Notice (in the form attached hereto as Schedule “A”) indicating that you wish to Opt-out to:

FTI Consulting Canada Inc.,  
in its capacity as Court-appointed Monitor of Sears Canada Inc., among others  
TD Waterhouse Tower  
79 Wellington Street West  
Suite 2010, P.O. Box 104  
Toronto, ON, M4K 1G8  
Fax: 416-649-8101

Attention: Elizabeth Pearson

Persons requiring further information should review the website established by the Monitor  
<http://cfcanada.fticonsulting.com/Searscanada> or call the Monitor's Hotline at 1-855-649-8113.



**Schedule "A"**

**Opt-Out Notice**

**OPT-OUT NOTICE**

TO: **FTI CONSULTING CANADA INC.,**  
in its capacity as Court-appointed Monitor of Sears Canada Inc., among others  
TD Waterhouse Tower  
79 Wellington Street West  
Suite 2010, P.O. Box 104  
Toronto, Ontario  
M4K 1G8  
Fax: 416-649-8101

**Attention: Elizabeth Pearson**

RE: **Order Of The Ontario Superior Court of Justice (Commercial List) Granted November 19, 2018, In The Matter of Sears Canada Inc., et al. (Court File No. CV-17-11846-00CL) (the "Opt-out Order")**

Capitalized terms used herein and not otherwise defined have the meanings given to them in the Opt-out Order.

I hereby provide written notice that I wish to opt-out of participation in the Litigation Trustee Claim and the Monitor Claim.

I hereby confirm I understand that, by exercising this right to opt-out, my recoveries, if any, as an unsecured creditor of Sears Canada Inc. will not be reduced by any costs of the Litigation Trustee Claim or the Monitor Claim and will not be increased by any recoveries from the Litigation Trustee Claim or the Monitor Claim.

I hereby further confirm that I understand that this decision to exercise my opt-out right is irrevocable.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Signature

Name [please print]: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

**NOTE: TO OPT OUT, THIS FORM MUST BE COMPLETED AND RECEIVED AT THE ABOVE ADDRESS ON OR BEFORE**

\_\_\_\_\_, 2018.

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

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

**NORTON ROSE FULBRIGHT CANADA LLP**  
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Lawyers for FTI Consulting Canada Inc., in its capacity as  
Monitor

This is Exhibit "J" referred to in the Affidavit of Service of John N. Birch, sworn February 7, 2019

A handwritten signature in blue ink, appearing to read "A Jones", is written above a horizontal line.

---

Commissioner for Taking Affidavits  
(or as may be)

**INVOICE**

Invoice Number 9090028987  
 Matter Number 1000299972  
 Invoice Date April 20, 2018  
 NRF Contact Orestes Pasparakis

**NORTON ROSE FULBRIGHT**

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www.nortonrosefulbright.com

Accounts Contact:

nrcreceivables@nortonrosefulbright.com

For the attention of: Mr. Greg Watson,  
 Senior Managing Director  
 greg.watson@fticonsulting.com

**FTI CONSULTING, AS COURT APPOINTED  
 MONITOR OF SEARS CANADA**

Suite 2010  
 79 Wellington Street West  
 Toronto ON M5K 1G8  
 (LD) Sears Canada Inc. (VAN 17-3401)

Professional Services Rendered to April 01, 2018

Charges  
 CAD

**SUMMARY**

Taxable Fees	276,961.00
Taxable Disbursements	4,028.79
Taxable Amount	280,989.79
HST 13.000%	36,528.67
<b>TOTAL AMOUNT DUE AND PAYABLE</b>	<b>CAD 317,518.46</b>

Payable in 30 days  
**PAYMENT INFORMATION**

RBC Financial Group, 1 Place Ville Marie, Montreal, Québec, CANADA H3C 3B5, Bank 003, Transit 00001, A/C No. 161-327-2, Swift Code # ROYCCAT2. Include invoice number on transfer order.


**NORTON ROSE FULBRIGHT**

**Invoice Date** April 20, 2018 **Invoice Number** 9090028987 **Page 12**  
**Matter Description** (LD) Sears Canada Inc. (VAN 17-3401)  
**Matter Number** 1000299972

<u>DATE</u>	<u>NAME</u>	<u>Description</u>
03/28/2018	Gauthier, V	Review and provide comments on the intercompany claim report. Correspondence on file regarding payment of severance, extension of claims deadline, etc.
03/28/2018	Kokach, A	Updating creditor claims chart and adding corresponding memorandums.
03/28/2018	Liu, R	Researching and drafting memorandum regarding common employer test in various provinces and common law.
03/28/2018	Margoc, H	Revising D&O claims tracker. Updating claims chart. Reviewing claims.
03/28/2018	Mens, G	Coordinating with C. Ma and R. Frank for the review of emails. Preparing list of search terms to streamline the data.
03/28/2018	Mojtahedi, A	Drafting of memorandums for the claims submitted by Place Fleur de Lys and Cominar.
03/28/2018	Pasparakis, O	Follow-up on issues.
03/28/2018	Reyes, T	Office conferences with A. Schmitt regarding information to be collected with respect to director and officer claims, and notices to current and former directors and officers of each applicant. Reviewing spreadsheet of claims against directors and officers. Reviewing cross-section of D&O claims to determine language used by claimants. Office conference with A. Schmitt regarding email to Oslers, setting out both information requested and Process suggested.
03/28/2018	Schmitt, A	Continuing to coordinate data gathering on historic D&Os named in claimed. Updates to landlord claims guidance memo further to discussion with K. Galpern. Reviewing claims and preparing memoranda analyzing the same. Attending to further data cleansing/management of claims.
03/29/2018	Cobb, E	Revising Intercompany Claims Report. Stakeholder meeting regarding next steps in proceedings. Meeting with Litigation Investigator and Osler. Attending to file administration matters. Conference call with working group regarding status. Call with Lien Claimant. Conference call regarding lift stay motion.
03/29/2018	Gallop, A	Reviewing memo regarding SHS. Office conference with R. Liu regarding revisions. Reviewing revised memo and office conference with R. Liu regarding the same.
03/29/2018	Galpern, K	Reviewing and commenting on landlord claims chart prepared by A. Schmitt. Discussing same with A. Schmitt.
03/29/2018	Gauthier, V	Attendance at meetings regarding claims process and path forward. Reviewing and revising intercompany claim report. Various telephone calls and correspondence on file.
03/29/2018	Himo, J	Considering final draft of the memo prepared by A. Mojtahedi concerning the servitude issue and instructing him in this regard. Considering his

This invoice may include fees and disbursements of the member firms of Norton Rose Fulbright. Such fees and disbursements of member firms other than Norton Rose Fulbright Canada LLP are invoiced and collected by Norton Rose Fulbright Canada LLP as agent of the relevant member firm. Norton Rose Fulbright Canada LLP is a limited liability partnership established in Canada. Norton Rose Fulbright Canada LLP, Norton Rose Fulbright LLP, Norton Rose Fulbright Australia, Norton Rose Fulbright South Africa Inc. and Norton Rose Fulbright US LLP are separate legal entities and all of them are members of Norton Rose Fulbright, a Swiss Verein. Norton Rose Fulbright helps coordinate the activities of the members but does not itself provide legal services to clients. For more information, see [nortonrosefulbright.com](http://nortonrosefulbright.com).

# NORTON ROSE FULBRIGHT

Invoice Date April 20, 2018 Invoice Number 9090028987 Page 12  
 Matter Description (LD) Sears Canada Inc. (VAN 17-3401)  
 Matter Number 1000299972

DATE	NAME	Description
03/28/2018	Gauthier, V	Review and provide comments on the intercompany claim report. Correspondence on file regarding payment of severance, extension of claims deadline, etc.
03/28/2018	Kokach, A	Updating creditor claims chart and adding corresponding memorandums.
03/28/2018	Liu, R	Researching and drafting memorandum regarding common employer test in various provinces and common law.
03/28/2018	Margoc, H	Revising D&O claims tracker. Updating claims chart. Reviewing claims.
03/28/2018	Mens, G	Coordinating with C. Ma and R. Frank for the review of emails. Preparing list of search terms to streamline the data.
03/28/2018	Mojtahedi, A	Drafting of memorandums for the claims submitted by Place Fleur de Lys and Cominar.
03/28/2018	Pasparakis, O	Follow-up on issues.
03/28/2018	Reyes, T	Office conferences with A. Schmitt regarding information to be collected with respect to director and officer claims, and notices to current and former directors and officers of each applicant. Reviewing spreadsheet of claims against directors and officers. Reviewing cross-section of D&O claims to determine language used by claimants. Office conference with A. Schmitt regarding email to Oslers, setting out both information requested and Process suggested.
03/28/2018	Schmitt, A	Continuing to coordinate data gathering on historic D&Os named in claimed. Updates to landlord claims guidance memo further to discussion with K. Galpern. Reviewing claims and preparing memoranda analyzing the same. Attending to further data cleansing/management of claims.
03/29/2018	Cobb, E	Revising Intercompany Claims Report. Stakeholder meeting regarding next steps in proceedings. Meeting with Litigation Investigator and Osler. Attending to file administration matters. Conference call with working group regarding status. Call with Lien Claimant. Conference call regarding lift stay motion.
03/29/2018	Gallop, A	Reviewing memo regarding SHS. Office conference with R. Liu regarding revisions. Reviewing revised memo and office conference with R. Liu regarding the same.
03/29/2018	Galpern, K	Reviewing and commenting on landlord claims chart prepared by A. Schmitt. Discussing same with A. Schmitt.
03/29/2018	Gauthier, V	Attendance at meetings regarding claims process and path forward. Reviewing and revising intercompany claim report. Various telephone calls and correspondence on file.
03/29/2018	Himo, J	Considering final draft of the memo prepared by A. Mojtahedi concerning the servitude issue and instructing him in this regard. Considering his

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# NORTON ROSE FULBRIGHT

Invoice Date April 20, 2018 Invoice Number 9090028987 Page 13  
 Matter Description (LD) Sears Canada Inc. (VAN 17-3401)  
 Matter Number 1000299972

<u>DATE</u>	<u>NAME</u>	<u>Description</u>
		emails concerning proofs of claim.
03/29/2018	Liu, R	Revising memorandum regarding common employer.
03/29/2018	Ma, C	Email to vendor regarding ingestion of additional data for database. Discussions with G. Mens regarding search terms.
03/29/2018	Margoc, H	Reviewing claims. Preparing claim memos. Participating in meetings with client.
03/29/2018	Mojtahedi, A	Researching and drafting of memorandums for the claims submitted by Place Fleur de Lys and Cominar. Correspondence with J. Hlmo and other attorneys regarding the claims process.
03/29/2018	Moore, O	Preliminary review of Osler comments on real property purchase bids.
03/29/2018	Oliver, A	Discussions with G. Wylie regarding tax exposures.
03/29/2018	Pasparakis, O	Preparing for and attending all hands meeting. Reviewing term sheet.
03/29/2018	Reyes, T	Several pieces of email correspondence regarding construction lien claims. Reviewing summaries produced by G. Paliouras regarding APM and Traugott liens. Reviewing correspondence from counsel to Kone and Rossclair.
03/29/2018	Schmitt, A	Preparing draft reporting letter to counsel to directors and officers regarding claims made against their clients to date. Working through certain landlord claims and preparing analyses of the same. Meeting with internal primary claims process group to discuss processes to date and going forward and action items. Attending on construction claims call and reviewing preliminary analyses for certain construction claims prepared so far.
03/30/2018	Cobb, E	Reviewing additional materials served for April 13th CIG motion. Emails regarding same. Reviewing various updated Asset Purchase Agreements for real estate sale process.
03/30/2018	Gauthier, V	Correspondence on file regarding claims bar date extension.
03/30/2018	Lieberman, M	Reviewing [REDACTED] and Supplements, begin preparing Memo.
03/30/2018	Mens, G	Correspondence with R. Frank regarding document review of emails.
03/31/2018	Cobb, E	Reviewing additional updated real estate bid documents.
03/31/2018	Gauthier, V	Reviewing and providing comments on intercompany claim report and CCAA plan term sheet. Correspondence on file.
04/01/2018	Gauthier, V	Various correspondence on file.

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**INVOICE**

**Invoice Number** 9090031922  
**Matter Number** 1000299972  
**Invoice Date** April 30, 2018  
**NRF Contact** Orestes Pasparakis

**NORTON ROSE FULBRIGHT**

Norton Rose Fulbright Canada LLP  
 Royal Bank Plaza, South Tower Suite 3800  
 200 Bay Street, P.O. Box 84  
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Accounts Contact:

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For the attention of: Mr. Greg Watson,  
 Senior Managing Director  
 greg.watson@fticonsulting.com

**FTI CONSULTING, AS COURT APPOINTED  
 MONITOR OF SEARS CANADA  
 Suite 2010  
 79 Wellington Street West  
 Toronto ON M5K 1G8  
 (LD) Sears Canada Inc. (VAN 17-3401)**

Professional Services Rendered to April 22, 2018

Charges  
 CAD

**SUMMARY**

Taxable Fees	578,919.00
Taxable Disbursements	483.67
Taxable Other Charges	1,747.50
	<hr/>
Taxable Amount	581,150.17
HST 13.000%	75,549.52
	<hr/>
Non-Taxable Disbursements	275.99
	<hr/>
<b>TOTAL AMOUNT DUE AND PAYABLE</b>	<b>CAD 655,975.68</b>

Payable in 30 days  
**PAYMENT INFORMATION**

RBC Financial Group, 1 Place Ville Marie, Montreal, Québec, CANADA H3C 3B5, Bank 003, Transil 00001, ACC. No. 161-327-2, Swift Code # ROYCCAT2. Include invoice number on transfer order.


**NORTON ROSE FULBRIGHT**

Invoice Date	April 30, 2018	Invoice Number	9090031922	Page	2
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(LD) Sears Canada Inc. (VAN 17-3401)

**TIME DETAILS**

<u>DATE</u>	<u>NAME</u>	<u>Description</u>
03/26/2018	Himo, J	Reviewing notes with regard to the Cominar and Fleur de Lys proofs of claims. Final review of a draft memo by A. Mojtahedi. Meeting with A. Mojtahedi to discuss the memo and his findings with regard to the opposability rights to third parties. Considering the Notice of default sent by K. Galpern's team.
03/27/2018	Himo, J	Considering the precedents provided by S. Taylor for the proofs of claims.
03/28/2018	Kokach, A	Drafting legal analysis memoranda for tort claims against Sears.
03/29/2018	Choi, P	Reviewing Creditor Proof of Claim Forms for H. Margoc and A. Schmitt. Drafting reporting memoranda evaluating the claims for S. Taylor.
03/29/2018	Kokach, A	Drafting legal analysis memoranda for tort claims against Sears.
03/29/2018	Kokach, A	Revising Master Claims Chart and updating FTI portal.
03/29/2018	Sterie, C	Drafting memo in response to wrongful dismissal claim.
03/30/2018	Choi, P	Reviewing Creditor Proof of Claim Forms for S. Taylor.
03/30/2018	Kokach, A	Drafting legal analysis memoranda for tort claims against Sears.
03/31/2018	Kokach, A	Reviewing creditor claims submitted to FTI and revising Master Claims Chart.
04/01/2018	Cobb, E	Preparing comments on updated real estate bids.
04/02/2018	Choi, P	Reviewing Creditor Proof of Claim Forms for V. Gauthier.
04/02/2018	Cobb, E	Preparing and sending comments on real estate APAs. Reviewing and commenting on updated draft of Sixteenth Report. Reviewing Order regarding Pension Plan. Status meeting with A. Merskey. Conference call regarding real estate bids. Call re. Menkes matters. Reviewing memorandum on real estate matters. Meeting regarding CCAA Plan framework. Commenting on updated CCAA Plan framework. Reviewing research regarding Operating Agreements under Quebec Law.
04/02/2018	Frank, R	Considering issues regarding search terms for data review and analysis. Reviewing and discussing same with G. Mens.
04/02/2018	Galpern, K	Considering issues and relevant case law regarding construction lien claims. Discussing with A. Schmitt regarding same.
04/02/2018	Gauthier, V	Attendance to various matters on file re claims process, intercompany claims report, disclaimer of agreements, letter from Menkes, real estate ROFRs, CCAA plan term sheet, quebec class actions. Various meetings, telephone calls and correspondence on file.

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Invoice Date April 30, 2018 Invoice Number 9090031922 Page 3  
 Matter Description (LD) Sears Canada Inc. (VAN 17-3401)  
 Matter Number 1000299972

<u>DATE</u>	<u>NAME</u>	<u>Description</u>
04/02/2018	Kokach, A	Updating Master Claims Chart and portal.
04/02/2018	Ma, C	Reviewing G. Mens search terms. Reviewing dataset and applying search terms. Preparing report of results. Email to R. Frank, G. Mens regarding same. Email from E. Cobb regarding Sixteenth Report of the Monitor.
04/02/2018	Merskey, A	Reviewing term sheet updates. Considering next steps. Emails and follow-up on mediation. Reviewing correspondence. Working on environmental issues. Reviewing Ilen summaries. Working on related issues. Follow-up on emails from representative counsel. Reviewing FST and FSCO correspondence and Orders. Telephone call with litigation investigator.
04/02/2018	Mojtahedi, A	Finalizing and drafting of memorandum regarding claims 6160 and 6837. Responding to French voicemails with L. Shierman.
04/02/2018	Schmitt, A	Working on revising landlord claims guidance memorandum. Working on assessing claims and preparing memoranda for the same. Preparing packages of D&O claims for D&O counsel, including draft letters to the same. Working with R. Weaver to assess claims treatment issues. Correspondence with construction claimants.
04/02/2018	Taylor, S	Reviewing claims and drafting claims memoranda.
04/02/2018	Weaver, R	Revising proof of claim memorandums and emailing A. Schmitt and V. Gauthier regarding the same.
04/03/2018	Choi, P	Drafting Reporting Memoranda with respect to Creditor Claims for S. Taylor.
04/03/2018	Cobb, E	Working group status call. Drafting email regarding scheduling matters. Reviewing FTI valuations report. Conference call regarding Menkes issues. Reviewing correspondence to Menkes and commenting on same. Meeting regarding landlord claims process issues. Meeting with R. Wahl regarding FTI valuation report.
04/03/2018	Frank, R	Considering document review issues and email correspondence regarding same.
04/03/2018	Galpern, K	Reviewing landlord claims. Meeting with team regarding review of landlord claims. Preparing summary of TravelBrands Inc.'s pre- and post-filing claims.
04/03/2018	Gauthier, V	Attendance to various conference calls and meetings on file. Attendance to various matters with respect to the claims process including preliminary review of claims. Review and revise CCAA Plan Term Sheet. Attendance on board call. Numerous correspondence on file regarding claims and claims process.
04/03/2018	Kokach, A	Reviewing claims and reconciling Master Claims Chart with portal.


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Invoice Date April 30, 2018 Invoice Number 9090031922 Page 4  
 Matter Description (LD) Sears Canada Inc. (VAN 17-3401)  
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DATE	NAME	Description
04/03/2018	Lieberman, M	Meeting regarding Landlord Claims, reviewing claims treatment memo, background correspondence, receiving instructions.
04/03/2018	Ma, C	Preparing affidavit of service regarding sixteen report of the monitor. Arranging for filing of same. Email from G. Mens regarding modified search terms. Reviewing new terms, discussions with L. O'Brien regarding same.
04/03/2018	Mens, G	Confirming document review strategy with R. Frank, L. O'Brien and C. Ma.
04/03/2018	Merskey, A	Team call regarding status issues. Reviewing and evaluating landlord claims. Meeting regarding same. Reviewing interco claims report. Emails and follow-up regarding mediation.
04/03/2018	Moore, O	Reviewing draft memorandum regarding treatment of landlord claims. Preparing for and attending team meeting regarding treatment of landlord claims.
04/03/2018	Pasparakis, O	Working on mediation, plan and [REDACTED]
04/03/2018	Reyes, T	Office conference with A. Schmitt regarding claims for [REDACTED]. Additional conferencing with A. Schmitt regarding his discussions with J. Arnel.
04/03/2018	Schmitt, A	Continuing to work on and assess various claims and prepare memoranda on the same. Attending at landlord claims working group coordination meeting. Considering treatment of various heads of damages for the same. Revising guidance memoranda on the same. Preliminary review of early landlord claims further to the same. Coordinating student claims assistance teams. Helping claims teams members access documentation.
04/03/2018	Taylor, S	Attending to claims review.
04/03/2018	Weaver, R	Revising proof of claim memorandums. Emailing A. Schmitt and V. Gauthier regarding the same.
04/04/2018	Choi, P	Reviewing Creditor Proof of Claim Forms for V. Gauthier and A. Schmitt.
04/04/2018	Cobb, E	Correspondence regarding settlement of lift stay motion. Reviewing updated real estate transaction agreements circulated to BMO. Reviewing updated CCAA term sheet and commenting on same. Calls regarding post-filing receivables. Calls regarding claims process matters. Emails regarding endorsement for March 2nd hearing. Conference call regarding FTI valuation matters. Call regarding status of real estate motion.
04/04/2018	Frank, R	Considering document review issues and email correspondence regarding same.
04/04/2018	Gauthier, V	Attendance on conference call with representatives of WEPP, ERC and others. Attendance on conference call with respect to real estate.

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 Matter Description (LD) Sears Canada Inc. (VAN 17-3401)  
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<u>DATE</u>	<u>NAME</u>	<u>Description</u>
		Attendance on conference call with respect ERC. Attendance to matters on file regarding claims process, mediation, stay extension, claims against directors and officers, litigation investigator matters, WEPP, intercompany claims, CNESST, creditors' committee, claims tracker, claims review, withholding on distributions. Various telephone calls and correspondence with respect to the foregoing.
04/04/2018	Himo, J	Reviewing the draft memos on the Proof of claims for the province of Quebec.
04/04/2018	Kokach, A	Reconciling Master Claims Chart and FTI Portal.
04/04/2018	Lieberman, M	Reviewing correspondence from V. Gauthier and A. Schmitt regarding Landlord claims, responding to same, discussing with E. Reither.
04/04/2018	Ma, C	Conducting various searches of documents with search terms and analyzing results. Discussions with G. Mens regarding searches on database.
04/04/2018	Mens, G	Meetings with R. Frank, C. Ma and L. O'Brien. Call with S. Sessler to formulate document review strategy.
04/04/2018	Merskey, A	Emails and follow-up on mediation steps. Emails regarding stay extension. Emails on landlord and environmental issues. Emails regarding Creditors' Committee request. Reviewing claims analysis.
04/04/2018	O'Brien, L	Discussions with C. Ma, G. Mens and R. Frank regarding data searches and strategy. Conference call with S. Sessler to discuss document review strategy.
04/04/2018	Pasparakis, O	Working on various issues.
04/04/2018	Reyes, T	Conversation with V. Gauthier regarding claims. Preliminary review of claims forwarded by V. Gauthier.
04/04/2018	Schmitt, A	Circulating package of D&O claims to various counsel to D&Os. Working on assessing various landlord claims and memoranda for the same. Assessing operating agreement claim issues with K. Galpern. Revising landlord claims treatment guidance further to meeting. Getting dataroom access so that lease documentation can be accessed by claims teams.
04/04/2018	Taylor, S	Reviewing claims and drafting memoranda for same.
04/04/2018	Weaver, R	Reviewing proofs of claim for Things Engraved Inc.
04/05/2018	Choi, P	Reviewing Creditor Proof of Claim Forms for V. Gauthier.
04/05/2018	Cobb, E	Conference call with working group. Commenting on updated CCAA Plan Term Sheet.
04/05/2018	Frank, R	Consider issues and meeting with C. Ma regarding document review.

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**Matter Description** (LD) Sears Canada Inc. (VAN 17-3401)  
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<u>DATE</u>	<u>NAME</u>	<u>Description</u>
04/05/2018	Galpern, K	Considering issues regarding landlord claims. Discussing with R Weaver regarding various licensee claims. Discussing with A Schmitt regarding landlord claims chart. Considering issues regarding construction liens.
04/05/2018	Gauthier, V	Attendance on CBRE call. Attendance on construction lien update call. Attendance on environmental call. Attendance on matters and calls having to do with claims process. Attendance to matters and calls having to do with D&O claims. Various correspondence and calls on file.
04/05/2018	Kokach, A	Drafting legal analysis memoranda for tort claims against Sears.
04/05/2018	Kokach, A	Reconciling Master Claims Chart and FTI portal.
04/05/2018	Ma, C	Conducting further analyses of data and search results. Further discussions with R. Frank, G. Mens regarding same.
04/05/2018	Merskey, A	Team call regarding status items. Reviewing Kenny claim analysis. Emails regarding same. Emails and telephone calls regarding mediation process. Emails and follow-up regarding stay extension. Reviewing emails and follow-up regarding lift stay motion. Environmental call. Emails regarding confidentiality agreement.
04/05/2018	Mojtahedi, A	Responding to French voicemails with L. Shierman and E. Pearson. Drafting of memorandums regarding claims 7073, 7074 and 7075.
04/05/2018	Moore, O	Reviewing revisions to SSIL bid for Belleville property.
04/05/2018	O'Brien, L	Following up with C. Ma regarding searches of data and strategy.
04/05/2018	Reyes, T	Reviewing email correspondence from V. Gauthier regarding construction lien claims, and approaches to take in responding to same. Office conference with A. Schmitt and R. Weaver regarding approach to allowance/disallowance of claims where Sears disclaimed contracts that had an internal termination right (with attendant obligations). Reviewing Demandware, Inc. proof of claim and backup documents including invoices, and email to V. Gauthier regarding copies of the contracts underlying that claim. Reviewing form or review template, and other examples of completed reviews. Completing legal analysis and summary. Participating in construction lien weekly update call. Conference with A. Schmitt regarding whether Sears / the Monitor have formed a view on whether mitigation efforts are being required by contracting parties who received notices of termination. Providing form of summary to V. Gauthier. Following up on several emails especially with respect to mitigation.
04/05/2018	Schmitt, A	Continuing process of claims assessment and preparation of memoranda on same. Attending on construction lien call with regular group. Coordinating follow up research on construction claims issue. Correspondence with D&O counsel. Revisions to guidance on general

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Matter Description	(LD) Sears Canada Inc. (VAN 17-3401)			
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<u>DATE</u>	<u>NAME</u>	<u>Description</u>
		landlord claims chart.
04/05/2018	Weaver, R	Reviewing claims for Things Engraved Inc, Cherokee Brands, Dyson, and Price Point. Meeting with V. Gauthier, A. Schmitt, and K. Galpern regarding the same. Emailing V. Gauthier regarding the same. Drafting memorandums for Things Engraved Inc. and Far East Watchcases.
04/06/2018	Choi, P	Reviewing Creditor Proof of Claim Forms. Attending a meeting with V. Gauthier and A. Schmitt to discuss Creditor Claims.
04/06/2018	Cobb, E	Emails regarding March 2 Endorsement.
04/06/2018	Frank, R	Considering issue regarding document review and strategy for same. Discussions with G. Mens, L. O'Brien and C. Ma regarding same.
04/06/2018	Galpern, K	Considering issues regarding claim by Moneris. Discussing same with V Gauthier.
04/06/2018	Gauthier, V	Call to discuss CNESST with ERC. In person meeting regarding claims process. Attendance to matters regarding claims process. Telephone call with CNESST.
04/06/2018	Kokach, A	Reviewing creditor claims. Reconciling Master Chart and FTI portal. Meeting with V. Gauthier and A. Schmitt about the same.
04/06/2018	Lieberman, M	Reviewing correspondence from A. Schmitt with updated Memo and review template, drafting email reply to same with proposed next steps, considering same.
04/06/2018	Ma, C	Discussions with G. Mens regarding next steps. Preparing updated search count report. Email to vendor regarding documents for database.
04/06/2018	Merskey, A	Emails regarding and working on claims analysis. Emails regarding term sheet. Emails regarding lift stay request. Discussion with S. Taylor regarding claim mitigation principles. Reviewing confidentiality agreement drafts. Telephone calls and emails regarding mediation issues. Telephone calls regarding lien issues.
04/06/2018	Mojtahedi, A	Drafting of memorandums regarding claims 7073, 7074 and 7075.
04/06/2018	Moore, O	Reviewing landlord claims.
04/06/2018	Reyes, T	Additional information regarding mitigation provision and regarding summary of Demandware claim; emails regarding lien claims tracker; office conversation with Virginie Gauthier regarding other claims for review; review of materials with respect to \$48 million claim by VSL Logistics (for the distribution centre in Montreal), and preparing summary with respect to same.
04/06/2018	Schmitt, A	Continuing to work through and assess claims, producing memoranda on the same. Coordinating some late claim issues with FTI. Working with FTI claims team to ensure that claims addressed entered into system properly.

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<u>DATE</u>	<u>NAME</u>	<u>Description</u>
04/09/2018	Reyes, T	Completing and submitting memo regarding claim of VSL Logistics for the Montreal distribution centre. Various emails regarding claims, and discussions with A. Schmitt and V. Gauthier. Locating and reviewing disclaimer notice regarding distribution centre lease. Reviewing claim of landlord regarding Gateway Mall in Prince Albert. Conversations with Al. Schmitt and V. Gauthier regarding missing documents. Starting review and memo based on documents at hand. Reviewing rider regarding mitigation. Redrafting same and several emails regarding same.
04/09/2018	Schmitt, A	Continuing to assess claims and preparing memoranda on same. Attending to issues surrounding certain claimant who overfiled claims. Dealing with bell mobility lease termination issue and correspondence on same with Osler. Correspondence on approach regarding mitigation for claims assessments. Continuing to revise and refine master chart of claims assessments.
04/09/2018	Taylor, S	Reviewing litigation claims. Drafting memorandum on mitigation for landlord claims.
04/09/2018	Weaver, R	Drafting proof of claim memorandums for Things Engraved Inc, Far East Watchcases, and Cherokee Brands.
04/10/2018	Choi, P	Reviewing Creditor Proof of Claim Forms. Drafting Reporting Memoranda for S. Taylor.
04/10/2018	Cobb, E	Conference call with working group. Coordinating meeting on updated real estate matters. Reviewing updated real estate bld. Finalizing comments on litigation investigator documents. Emails regarding comments on same. Emails regarding Domain Names and IP Addresses. Reviewing IP Address issues raised by Sears US. Meetings with O. Pasparakis and G. Mens regarding litigation matters. Reviewing and further updating Seventeenth Report. Reviewing and reporting on professional fee matters. Discussion regarding set off issues. Drafting correspondence regarding set off issues. Meeting with R. Wahl regarding FTI cash flow analysis. Reviewing court materials for April 18 motion.
04/10/2018	Frank, R	Considering document review issues and discussion with G. Mens regarding same.
04/10/2018	Galpern, K	Preparing claims summary for Moneris claim.
04/10/2018	Gauthier, V	Attendance at group meeting. Attendance at meeting with representatives of Sears, ERC and WEPP. Meeting with respect to claims process. Attendance to matters regarding Seventeenth Report. Various telephone calls and emails on file.
04/10/2018	Himo, J	Considering the memo with respect to the proof of claims for Quebec creditors.

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**NORTON ROSE FULBRIGHT**

**Invoice Date** April 30, 2018 **Invoice Number** 9090031922 **Page** 10  
**Matter Description** (LD) Sears Canada Inc. (VAN 17-3401)  
**Matter Number** 1000299972

<u>DATE</u>	<u>NAME</u>	<u>Description</u>
04/10/2018	Kokach, A	Managing creditor claims, memoranda and Master Claims Chart and FTI portal.
04/10/2018	Kokach, A	Revising legal analysis memoranda as per S. Taylor's instructions.
04/10/2018	Lenova, O	Meeting with A. Kokach to discuss claims process. Reviewing claims on portal and updating tracker chart.
04/10/2018	Ma, C	Reviewing documents promoted to database. Conducting further searches of documents. Emails with vendor regarding same.
04/10/2018	Margoc, H	Revising court materials, Researching information with regards to D&Os. Reviewing D&O claims.
04/10/2018	Mens, G	Providing update to E. Cobb regarding document review measures undertaken to date.
04/10/2018	Merskey, A	Team calls regarding status issues. Emails regarding environmental issues. Telephone call with S. Bissell regarding same. Emails regarding litigation inspector Order. Working on mediation steps. Reviewing and commenting on individual claims analysis.
04/10/2018	Moore, O	Attending to summaries of landlord claims. Reviewing and analyzing landlord claims as required. Working session with A. Schmitt.
04/10/2018	Pasparakis, O	Follow-up on issues. Directions regarding term sheet and mediation.
04/10/2018	Reyes, T	Reviewing lease and other documents provided by counsel for 1540709 Ontario Limited (landlord of Gateway Mall in Prince Albert, Saskatchewan). Reviewing same. Telephone call with counsel for the landlord, to ask for breakdown of rental costs claimed, which do not seem to correspond to the lease. Office conference with V. Gauthier regarding mitigation approach and decisions regarding when and if the Monitor will require that a Claimant demonstrate mitigation. Reviewing additional information received from counsel to Gateway Mall landlord. Updating and completing memorandum regarding this claim. Updating VSL and Demandware memoranda to include mitigation language and to update. Meeting with FTI and NRF people involved in reconciliation of claims.
04/10/2018	Schmitt, A	Continuing to assess claims and preparing memoranda on same. Attending to issues surrounding certain claimant who overfiled claimed. Coordinating research on certain claims treatment issue arising in mitigation cases. Correspondence with some of the landlord claims team members of treatment of claims.
04/10/2018	Taylor, S	Reviewing litigation claims.
04/10/2018	Wahl, R	Reviewing additional draft analysis based on sale of significant assets in 2012 and 2013. Updating transfer at undervalue analysis and jurisprudence to incorporate additional financial information. Following up

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**NORTON ROSE FULBRIGHT**

**Invoice Date** April 30, 2018 **Invoice Number** 9090031922 **Page** 11  
**Matter Description** (LD) Sears Canada Inc. (VAN 17-3401)  
**Matter Number** 1000299972

<u>DATE</u>	<u>NAME</u>	<u>Description</u>
		on English proceedings concerning [REDACTED]
04/10/2018	Weaver, R	Drafting proof of claim memorandums for Dyson Canada and Price Point Buying. Meeting with E. Cobb regarding set-off issues.
04/11/2018	Choi, P	Reviewing Creditor Proof of Claim Forms. Drafting Reporting Memoranda for S. Taylor.
04/11/2018	Cobb, E	Meeting with Sears and FTI regarding various claim issues. Meeting with litigation team regarding document review process. Reviewing various drafts and comments on Seventeenth Report. Reviewing and considering landlord post-filing claim information. Coordinating matters with respect to amendment to Litigation Investigator Order. Reviewing and commenting on various draft orders for April 13th hearing. Various email correspondence.
04/11/2018	Frank, R	Considering [REDACTED]. Considering document review issues regarding continued investigation. Preparing for and attending team meeting regarding document review issues [REDACTED]
04/11/2018	Galpern, K	Considering issues regarding the Moneris claim. Preparing claim summary regarding same.
04/11/2018	Gauthier, V	Attendance to matters regarding Monitor's Seventeenth Report including revising and reviewing it, receiving comments from various parties, considering matters in connection with the report and correspondence with various parties in connection with the report and service thereof. Attendance to various matters with respect to the claims process including reviewing claims at high level, reviewing and revising memos in respect of claims, reviewing and considering various documents. Dealing with CNESST. Various telephone calls and emails on file. Attendance on call regarding insurance matters.
04/11/2018	Kokach, A	Managing creditor claims, Master Claims Chart and FTI portal.
04/11/2018	Kokach, A	Drafting and revising legal analysis memoranda.
04/11/2018	Lieberman, M	Continue reviewing [REDACTED] and Supplements, continuing drafting corresponding Claim Review Memo.
04/11/2018	Ma, C	Finalizing Notice of Motion regarding stay extension and Seventeenth Report of the Monitor. Emails and discussions with V. Gauthier, E. Cobb, H. Margoc regarding same. Email to service list regarding Stay Extension and Seventeenth Report.
04/11/2018	Margoc, H	Finalizing court materials and affidavits. Researching information with regards to D&O's.

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**Invoice Date** April 30, 2018 **Invoice Number** 9090031922 **Page 12**  
**Matter Description** (LD) Sears Canada Inc. (VAN 17-3401)  
**Matter Number** 1000299972

<u>DATE</u>	<u>NAME</u>	<u>Description</u>
04/11/2018	Mens, G	Meeting with L. O'Brien, E. Cobb and R. Frank regarding document review strategy.
04/11/2018	Mojtahedi, A	Correspondence with L. Shierman regarding French claims. Drafting of memorandums for the claims process advising the Monitor on whether to allow or disallow certain claims.
04/11/2018	Moore, O	Finalizing first batch of summaries of landlord claims.
04/11/2018	O'Brien, L	Meeting with E. Cobb and G. Mens to consider strategy.
04/11/2018	Pasparakis, O	Addressing mediation issues. Follow-up with clients.
04/11/2018	Reyes, T	Reviewing construction lien tracker regarding ability to pull data for negotiation purposes. Conferencing with A. Schmitt regarding John Wolff claims. Email correspondence regarding [REDACTED] claims.
04/11/2018	Schmitt, A	Reviewing claims and preparing memoranda assessing same. Meeting with S. Bissell on various claims process coordination issues, and to deal with one particular category of claimants who have over-filed claims. Dealing with claims duplication issues. Meeting with S. Bissell and Sears counsel teams to assess issue of "insured" claims and address certain D&O Claim issues.
04/11/2018	Taylor, S	Reviewing claims and drafting memoranda for same.
04/11/2018	Wahl, R	Meeting with E. Cobb, R. Frank, G. Mens and L. O'Brien re methodology for reviewing email records of Sears officers.
04/11/2018	Weaver, R	Drafting proof of claim memorandum for Dyson Canada. Emailing V. Gauthier regarding the same.
04/12/2018	Cobb, E	Correspondence with landlord regarding April 18th motion. Discussion with S. Bissell regarding April 18th motion. Reviewing financial analysis regarding April 18th motion. Reviewing updated drafts of orders for April 13th motion. Emails regarding settlement matters for April 13th motion. Confirming finalized proposed endorsement language in connection with March 2nd motion. Providing comments on Confidentiality Undertaking.
04/12/2018	Gauthier, V	Attendance to matters regarding mediation, claims received in the claims process and intercompany report. Reviewing and considering at a high level numerous claims received. Various telephone calls and emails on file.
04/12/2018	Himo, J	Considering the email by V. Gauthier and the updated template to respond to the landlord's proof of claims.

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**NORTON ROSE FULBRIGHT**

Invoice Date April 30, 2018 Invoice Number 9090031922 Page 13  
 Matter Description (LD) Sears Canada Inc. (VAN 17-3401)  
 Matter Number 1000299972

<u>DATE</u>	<u>NAME</u>	<u>Description</u>
04/12/2018	Kokach, A	Drafting legal analysis memoranda. Managing creditor claims, Master Claims Chart and FTI portal. Distributing documentation to respective reviewers.
04/12/2018	Lenova, O	Reviewing landlord claims and pulling leases and disclaimer notices for T. Reyes.
04/12/2018	Lieberman, M	Reviewing email instructions and from V. Gauthier and T. Reyes regarding Landlord claim review, discussing next steps with E. Reither.
04/12/2018	Margoc, H	Amending court materials. Reviewing D&O claims.
04/12/2018	Mens, G	Coordinating targeted search of emails to identify relevant financial presentations.
04/12/2018	Merskey, A	Emails and working on mediation steps. Reviewing claim analysis. Emails and follow-up on environmental issues. Reviewing 17th report. Considering hearing issues. Emails and follow-up regarding landlord motion and April 18 hearing. Meeting at Oslers regarding claims offer. Call regarding environmental issues.
04/12/2018	Mojtahedi, A	Correspondence with W. Zheng-Bassler regarding French claims. Drafting of memorandums for the claims process advising the Monitor on whether to allow or disallow certain claims.
04/12/2018	Moore, O	Receiving and reviewing instructions regarding review of landlord claims.
04/12/2018	Pasparakis, O	Meeting with SHL counsel. Addressing next steps and mediation issues.
04/12/2018	Reither, E	Conferencing with V. Gauthier and reviewing instructions regarding claims review process.
04/12/2018	Reyes, T	Conferencing with A. Schmitt to discuss numerous claims made by John Wolff. Meeting with V. Gauthier for same reason. Meeting with O. Lenova to set out information and documents to be collected. Reviewing some of the claims submitted by [REDACTED]. Email correspondence regarding weekly construction lien claim call. Reviewing email correspondence by V. Gauthier with respect to all memos to be prepared with respect to Landlord claims. Reviewing two Landlord claims already prepared, to identify where they need to be updated. Revising template to incorporate new requirements and data, as per email from V. Gauthier, and circulating this to review group so that our memos are consistent, and for efficiency. Reviewing prior memo to FTI regarding landlord claims. Email correspondence regarding rescheduling of bi-weekly claims call, and items for discussion. Email correspondence with O. Lenova regarding John Wolff lease documents.
04/12/2018	Schmitt, A	Reviewing claims and preparing memoranda assessing same.

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Invoice Date April 30, 2018

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Matter Description (LD) Sears Canada Inc. (VAN 17-3401)

Matter Number 1000299972

<u>DATE</u>	<u>NAME</u>	<u>Description</u>
		process, the upcoming mediation. Various telephone conferences, calls and communication on file re the foregoing.
04/17/2018	Lenova, O	Locating leases and claims documents for K. Galpern. Uploading memos to FTI portal and updating claims tracker chart.
04/17/2018	Margoc, H	Conducting claims review. Drafting claim memos.
04/17/2018	Mens, G	Updating E. Cobb regarding rationale for interviewing B. Wong. Conducting targeted review of emails.
04/17/2018	Merskey, A	Emails regarding landlord motion. Reviewing court materials. Preparing for same. Internal discussions regarding environmental claims. Working on same.
04/17/2018	Mojtahedi, A	Continued review, analysis, research and drafting of memorandums on landlord claims filed as Restructuring Period Claims. Correspondence with various team members.
04/17/2018	Pasparakis, O	Follow-up on issues.
04/17/2018	Reyes, T	Continuing review of numerous leases underlying claims made by J. Wolf. Email correspondence with V. Gauthier regarding VSL post-filing claim.
04/17/2018	Schmitt, A	Reviewing claims and preparing memoranda assessing same. Reviewing and revising previously prepared memoranda prepared by students. Continuing to coordinate claims review team members, especially on data management issues. Attending meeting with K. Hamidi to consider and assess preliminary recovery analysis and approach to the same. Reviewing high level claims analysis prior to the same.
04/17/2018	Taylor, S	Discussion with V Gauthier regarding status of claims memos. Attending to correspondence regarding same.
04/17/2018	Taylor, S	Drafting memoranda for claims process.
04/18/2018	Choi, P	Drafting a Reporting Memorandum for V. Gauthier.
04/18/2018	Cobb, E	Preparing for and attending at Court hearing on various matters. Revising Litigation Investigator Order amendments and emails regarding same. Conference calls regarding real estate bids. Reviewing updated real estate bids. Reviewing comments on Confidentiality Undertaking and emails regarding same.
04/18/2018	Galpern, K	Preparing landlord claims summaries. Considering issues regarding landlords' claims on bankruptcy. Corresponding with V Gauthier regarding same.
04/18/2018	Gauthier, V	Attendance to matters re claims process including reviewing and revising memos on claims, communication with clients. Telephone call with H. Chalton re TBI.

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# NORTON ROSE FULBRIGHT

Invoice Date April 30, 2018 Invoice Number 9090031922 Page 18  
 Matter Description (LD) Sears Canada Inc. (VAN 17-3401)  
 Matter Number 1000299972

<u>DATE</u>	<u>NAME</u>	<u>Description</u>
04/18/2018	Lenova, O	Retrieving claims documents for T. Reyes. Uploading memos to FTI portal and updating claims tracker chart. Having orders issued and entered at Commercial List.
04/18/2018	Margoc, H	Conducting claims review.
04/18/2018	Mens, G	Conducting targeted review of emails from Sears management around the [REDACTED]
04/18/2018	Merskey, A	Receiving and reviewing emails regarding settlement of rent recovery motion. Numerous emails regarding litigation investigator privilege Order. Telephone calls regarding same. Preparing for and attending at court regarding stay extension, rent recovery and Investigator Orders. Reviewing and providing guidance on analysis of various claims. Telephone call with Concord counsel regarding environmental issues. Emails and telephone calls regarding revisions to Order.
04/18/2018	Mojtahedi, A	Continued review, analysis, research and drafting of memorandums on landlord claims filed as Restructuring Period Claims. Correspondence with various team members.
04/18/2018	Oliver, A	Reviewing draft notice of appeal regarding ITC refunds.
04/18/2018	Pasparakis, O	Calls and emails throughout the day regarding next steps.
04/18/2018	Reyes, T	Conferencing with D. Papa regarding creation of Excel spreadsheet for all [REDACTED] Email correspondence to O. Lenova regarding copies of all proofs of claim, including director and officer proofs of claim, [REDACTED] [REDACTED] Reviewing VSL Logistics claim to address post-filing claim inquiry from V. Gauthier. Email correspondence regarding same. Reviewing final set of leases relating to John Wolf claims.
04/18/2018	Schmitt, A	Reviewing claims and preparing memoranda assessing same. Reviewing and revising previously prepared memoranda prepared by students. Correspondence with A. Mojtahedi regarding certain claims. Continuing to coordinate claims review team members. Categorizing NRF reviewed claims.
04/18/2018	Taylor, S	Attending to claims memoranda.
04/19/2018	Cobb, E	Reviewing updated real estate bids. Reviewing updated FTI valuations report and commenting on same. Meetings regarding mediation and commencing draft of mediation brief outline. Reviewing proposed further amendments to Litigation Investigator Order and commenting on same. Various email correspondence.
04/19/2018	Galpern, K	Preparing landlord claims summaries.
04/19/2018	Gauthier, V	Attendance on weekly environmental conference call. Attendance to

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**INVOICE**

**Invoice Number** 9090037500  
**Matter Number** 1000299872  
**Invoice Date** May 24, 2018  
**NRF Contact** Orestes Pasparakis

**NORTON ROSE FULBRIGHT**

Norton Rose Fulbright Canada LLP  
 Royal Bank Plaza, South Tower Suite 3800  
 200 Bay Street, P.O. Box 84  
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Accounts Contact:

nrcreceivables@nortonrosefulbright.com

For the attention of: Mr. Greg Watson,  
 Senior Managing Director  
 greg.watson@fticonsulting.com

**FTI CONSULTING, AS COURT APPOINTED  
 MONITOR OF SEARS CANADA**  
 Suite 2010  
 79 Wellington Street West  
 Toronto ON M5K 1G8  
 (LD) Sears Canada Inc. (VAN 17-3401)

Professional Services Rendered to May 13, 2018

Charges  
 CAD

**SUMMARY**

Taxable Fees	416,122.00
Less Agreed Discount	-1,400.00
Fees After Discount	414,722.00
Taxable Disbursements	1,029.49
Taxable Other Charges	1,557.75
	<hr/>
Taxable Amount	417,309.24
HST 13.000%	54,250.20
	<hr/>
<b>TOTAL AMOUNT DUE AND PAYABLE</b>	<b>CAD 471,559.44</b>

Payable in 30 days  
**PAYMENT INFORMATION**

RBC Financial Group, 1 Place Ville Marie, Montreal, Québec, CANADA H3C 3B6, Bank 003, Transit 00001, ACC. No. 161-327-2, Swift Code # ROYCCAT2. Include invoice number on transfer order.


**NORTON ROSE FULBRIGHT**

Invoice Date May 24, 2018 Invoice Number 9090037500 Page 2  
 Matter Description (LD) Sears Canada Inc. (VAN 17-3401)  
 Matter Number 1000299972

(LD) Sears Canada Inc. (VAN 17-3401)

**TIME DETAILS**

<u>DATE</u>	<u>NAME</u>	<u>Description</u>
04/02/2018	Wahl, R	Considering further financial analysis and recommendations. Discussing with E. Cobb.
04/04/2018	Sterie, C	Modifications to the memo following comments by A. Charette.
04/09/2018	Sterie, C	Modifications to the memo following comments by A. Charette.
04/10/2018	Sterie, C	Modifications to the memo following comments by A. Charette.
04/12/2018	Ma, C	Emails from, to K. Hamdi regarding service list. Arranging for filing of Notice of Motion regarding Stay Extension, etc. and Seventeenth Report of the Monitor.
04/13/2018	Ma, C	Attending to changes to service list. Discussions with E. Cobb regarding next steps and scheduling. Communications with Court regarding motion scheduling.
04/16/2018	Ma, C	Preparing Affidavit of Service regarding Supplement to 15th Report. Preparing Confidential Appendices Brief to the Supplement to the 15th Report.
04/17/2018	Ma, C	Attending to service list issues. Arranging for filing of Supplemental Fifteenth Report of the Monitor. Preparing Confidential Appendices Brief to the 15th Report supplement. Preparing for April 18, 2018 hearing. Email to Service List regarding draft order for April 18, 2018 motion. Receiving and reviewing Litigation Investigator motion materials.
04/19/2018	Ma, C	Communications with Court regarding attendance before Justice Hailey April 20, 2018, discussions with E. Cobb, A. Merskey regarding same.
04/20/2018	Ma, C	Conducting updated search of email collections, emails from, to G. Mens regarding same.
04/23/2018	Cobb, E	Emails regarding real estate issues list. Call regarding landlord claim issues and reviewing memorandum regarding same. Reviewing termination issues. Emails advising on same. Drafting mediation brief. Reviewing litigation document brief.
04/23/2018	Frank, R	Reviewing documents regarding 2013 dividend.
04/23/2018	Galpern, K	Preparing landlords' claims analysis.
04/23/2018	Gauthier, V	Attendance to matters regarding claims process and review of landlord claims. Correspondence on tax matters.
04/23/2018	Hjmo, J	Reviewing the various proofs of claims filed by various landlords, the attached supporting documents and commenting the memos prepared by A. Mojtahedi. Discussing these memos with A. Mojtahedi.

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**NORTON ROSE FULBRIGHT**

Invoice Date	May 24, 2018	Invoice Number	9090037500	Page	6
Matter Description	(LD) Sears Canada Inc. (VAN 17-3401)				
Matter Number	1000298972				

<u>DATE</u>	<u>NAME</u>	<u>Description</u>
04/25/2018	Smith, J	Creating landlord claims master chart.
04/26/2018	Cobb, E	Reviewing and commenting on materials for stay extension motion. Drafting mediation brief. Attending at court regarding Amended Litigation Investigator Order. Preparing for same. Call with S. Bissell regarding Concord Agreement. Conference call with CBRE.
04/26/2018	Frank, R	Consider issues regarding document production and litigation investigator. Review amended litigation investigator order.
04/26/2018	Galpern, K	Preparing landlord claims assessments.
04/26/2018	Litvinjenko, A	Analyzing lease claim summaries for O. Moore for consistency and calculation of certain amounts claimed by landlords.
04/26/2018	Ma, C	Letter from counsel regarding Notice of Change of Lawyers. Attending to changes to service list. Email from V. Gauthier regarding mediation logistics.
04/26/2018	Margoc, H	Conducting claims review. Drafting letters related to D&O claims. Updating claims chart.
04/26/2018	Merskey, A	Telephone calls and emails regarding litigation investigator Order. Emails and follow-up regarding production meeting for Investigator. Working on lien issues. Emails regarding same. Emails regarding environmental issues.
04/26/2018	Moore, O	Revising draft summaries regarding Landlord Claims. Reviewing Leases as required.
04/26/2018	Pasparakis, O	Follow-up on issues.
04/26/2018	Percival, R	Reviewing draft claims report in respect of CGI Master Services Agreement and drafting memorandum. Instructing H. Margoc in respect of contract research and office conference to discuss results of contract review.
04/26/2018	Reyes, T	Updating chart on claims to reflect gross leasable area information (and corresponding base rents and operating rents). Forwarding to A. Schmitt. Office conference with K. Galpern regarding information needed for FTI, and additional information available with respect to leases.
04/27/2018	Cobb, E	Commencing draft of Eighteenth Report. Reviewing comments on Mediation Brief. Meeting with A. Merskey. Updating Mediation Brief. Emails regarding materials for stay extension hearing. Conference call with counsel to Stanley Black & Decker and counsel to Sears Canada. Emails regarding construction lien issues. Call with J. Dacks.
04/27/2018	Frank, R	Reviewing issues regarding Litigation Investigator Order. <span style="background-color: black; color: black;">[REDACTED]</span> issues.

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Invoice Date	May 24, 2018	Invoice Number	9090037500	Page	7
Matter Description	(LD) Sears Canada Inc. (VAN 17-3401)				
Matter Number	1000299972				

<u>DATE</u>	<u>NAME</u>	<u>Description</u>
04/27/2018	Galpern, K	Preparing landlord claims analysis.
04/27/2018	Ma, C	Discussions and research regarding logistics of mediation.
04/27/2018	Margoc, H	Reviewing landlord claims.
04/27/2018	Merskey, A	Emails regarding Mediation Brief. Working on same. Working on lien issues.
04/27/2018	Mojtahedi, A	Drafting a claim memorandum for the class action claim of Chantal Gagnon.
04/29/2018	Cobb, E	Reviewing and commenting on updated liquidation investigator confidentiality agreement. Reviewing and commenting on updated motion materials for May 9th motion.
04/29/2018	Moore, O	Finalizing summaries of landlord claims.
04/29/2018	Percival, R	Completing draft claims memorandum - CGI Master Services Agreement.
04/29/2018	Schmitt, A	Drafting memoranda on assigned landlord claims.
04/30/2018	Cobb, E	Reviewing [REDACTED]. Emails regarding lease reconciliation and lien issues. Call with J. Dacks. Emails regarding Litigation Investigator NDA and call with P. Bishop on same. Call with O. Pasparakis regarding mediation brief and updating same.
04/30/2018	Frank, R	Preparing for and attending meeting with Osler and P. Mohtadi regarding document production issues. Discussing same with G. Mens and A. Merskey. Considering [REDACTED].
04/30/2018	Gauthier, V	Email correspondence on file.
04/30/2018	Lenova, O	Preparing USB of claims documents for H. Margoc.
04/30/2018	Ma, C	Discussions with E. Cobb regarding next steps. Email to Court regarding next available dates for motions. Reviewing monitor's website. Preparing list of claimants, emails from, to A. Merskey, A. Schmitt, H. Margoc regarding same.
04/30/2018	Margoc, H	Conducting claim review of landlord claims. Drafting letters to counsel re D&O claims. Updating claims documents.
04/30/2018	Mens, G	Meeting with counsel to Sears Canada to establish procedure for document production to litigation investigator.
04/30/2018	Merskey, A	Emails and follow-up on mediation steps. Meeting with counsel regarding investigator production steps. Emails regarding and working on lien issues and D&O claims. Reviewing Mohtadi Affidavit. Reviewing 18th report. Letter from T. Dunn regarding landlord representation. Follow-up on same.

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**NORTON ROSE FULBRIGHT**

Invoice Date May 24, 2018 Invoice Number 9090037500 Page 8  
 Matter Description (LD) Sears Canada Inc. (VAN 17-3401)  
 Matter Number 1000299972

<u>DATE</u>	<u>NAME</u>	<u>Description</u>
04/30/2018	Pasparakis, O	Working on mediation.
04/30/2018	Schmitt, A	Drafting assigned landlord claims memoranda. Call with L. Pearson to discuss approach on letter of credit issues and post-filing claims. Various correspondence among Osler, FTI and NRF teams on approaches to construction lien claims and reviewing reconciliations prepared by FTI/ Sears on the same. Preparing Notices of Revision and Disallowance.
04/30/2018	Wahl, R	Updating [REDACTED] based on further financial analysis by FTI.
05/01/2018	Cobb, E	Reviewing and commenting on various materials for May 9th Motion. Updating draft of 18th Report. Updating draft of Mediation Brief. Reviewing certain pension priority issues. Conference calls regarding mediation. Conference calls regarding status of proceeding. Conference call regarding real estate matters. Conference call regarding valuation matters. Various email correspondence. Conference calls and emails on construction lien issues.
05/01/2018	Frank, R	Considering issues regarding documents to be produced to Litigation Investigator. Discussion with A. Merskey and G. Mens regarding same. Email correspondence from P. Mohtadi and email to and from Osler regarding same.
05/01/2018	Gauthier, V	Attendance on conference call with clients. Correspondence on file and attendance to matters regarding mediation brief, Samsung and Chantal Gagnon, NORDs, Far east Watchcases, claims filed by pension representatives, real estate next steps, director and officer claims, meeting with stakeholders, Court materials comments, construction liens, travel brand claim.
05/01/2018	Lenova, O	Uploading memos to portal and updating tracker chart.
05/01/2018	Margoc, H	Conducting claim review of landlord claims. Drafting letters to counsel regarding D&O claims. Updating claims documents.
05/01/2018	Mens, G	Meeting with litigation investigator and counsel to company. Compiling key documents in order to provide same to litigation investigator. Reviewing key documents for privilege issues. Reviewing and revising recommendation memorandum based on new information.
05/01/2018	Merskey, A	Team status call. Working on Mediation Brief and issues. Follow-up on lien issues. Emails regarding real estate sales. Emails and follow-up on mediation participants.
05/01/2018	Pasparakis, O	Weekly call regarding status update. Follow-up on outstanding items.
05/01/2018	Percival, R	Office conference with V. Gauthier to discuss draft CGI Claim memorandum.

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**NORTON ROSE FULBRIGHT**

Invoice Date May 24, 2018 Invoice Number 9090037500 Page 9  
 Matter Description (LD) Sears Canada Inc. (VAN 17-3401)  
 Matter Number 1000299972

<u>DATE</u>	<u>NAME</u>	<u>Description</u>
05/01/2018	Reyes, T	Participating in update call regarding construction liens (with FTI, Sears and Osiers.) Email correspondence regarding same.
05/01/2018	Schnitt, A	Attending on construction lien call to discuss go-forward strategy for resolving secured claims. Drafting batches of NORDs. Revising draft letters to be sent to D&Os on D&O claims filed.
05/02/2018	Cobb, E	Various emails.
05/02/2018	Gauthier, V	Attendance to matters with respect to construction lien holders, NORDs, real estate process and related information, stay extension, pension claims, draft 18th report, review of various landlord claims, claim by concord. Telephone conference with respect to Travel Brand claim. In person meeting to discuss strategy with respect to NORDs.
05/02/2018	Lenova, O	Uploading memos to FTI portal. Updating master claims tracker chart and landlord claims chart.
05/02/2018	Margoc, H	Drafting letters to counsel regarding D&O claims. Reviewing employee & retiree D&O claims. Updating claims documents.
05/02/2018	Mens, G	Compiling key documents in order to provide same to litigation investigator. Reviewing key documents for privilege issues.
05/02/2018	Merskey, A	Reviewing 18th report. Reviewing Mediation Brief. Emails and follow-up on mediation. Emails and follow-up on lien issues.
05/02/2018	Mojtahedi, A	Filing of new stay notices for Corbell. Correspondence with client and V. Gauthier.
05/02/2018	Schnitt, A	Finalizing first batch of notices of revision or disallowance and sending to clients for review, along with compilation of all supporting backup. Attending at lengthy meeting with FTI team to brief them on the same. Reviewing and preparing further set of NORDs.
05/02/2018	Taylor, S	Analyzing Concord claim and drafting memorandum on same.
05/02/2018	Wong, M	Attendance to matters on file.
05/03/2018	Cobb, E	Reviewing and responding to various issues on Litigation Investigator NDA. Conference call on real estate matters. Call with counsel to Sears US. Updating mediation documents. Reviewing revised version of 18th Report.
05/03/2018	Frank, R	Consider issues regarding cash flow analysis. Consider pension issues. E-mail correspondence regarding same. Consider issues and e-mail correspondence regarding documents for litigation investigator.
05/03/2018	Gauthier, V	Attendance to board meeting. Attendance to call with CBRE. Attendance on call with respect to real estate. Attendance on environmental claim call. Attendance to matters regarding Concord claim. Attendance to matters

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**NORTON ROSE FULBRIGHT**

Invoice Date	May 24, 2018	Invoice Number	9090037500	Page 10
Matter Description	(LD) Sears Canada Inc. (VAN 17-3401)			
Matter Number	1000299972			

<u>DATE</u>	<u>NAME</u>	<u>Description</u>
		and correspondence on file regarding NORDs and review of landlord and other claims, 18th report, director and officer claims, letter to employees of SLH, claim filed in respect of the SRP, communication with stakeholders, real estate matters.
05/03/2018	Lenova, O	Uploading memos to FTI portal. Updating master claims tracker chart.
05/03/2018	Lieberman, M	Reviewing landlord Restructuring claim, drafting and circulating memo.
05/03/2018	Margoc, H	Conducting claims review. Updating claims chart. Drafting NORD's.
05/03/2018	Mens, G	Reviewing correspondence to provide to the Litigation Investigator. Correspondence with the Litigation Investigator and the company. Discussing with R. Frank.
05/03/2018	Merskey, A	Emails and follow-up regarding investigator requests. Working on claims analysis. Meeting regarding same. Working on Mediation Brief. Reviewing draft inspector report. Working on lien issues.
05/03/2018	Pasparakis, O	Emails and calls. Reviewing report and mediation brief.
05/03/2018	Schmitt, A	Preparing NORDs. Preparing remaining memoranda on assigned landlord claims.
05/03/2018	Smith, J	Compiling proofs of claims and leases for printing to be reviewed, and updating tracking database for memos uploaded.
05/03/2018	Taylor, S	Preparing for and attending meeting regarding Concord claim.
05/04/2018	Cobb, E	Further updates to mediation documents. Calls and updates to 18th Report. Commenting on CBRE LOI. Responding to inquiries on landlord claims from FTI. Emails regarding Victoria matters.
05/04/2018	Frank, R	Considering issues and email correspondence regarding documents for litigation investigator. Call to litigation investigator regarding same.
05/04/2018	Galpern, K	Reviewing and preparing lease claim summaries.
05/04/2018	Gauthier, V	Telephone conference in respect of SRP. In-person meeting with representative of FSCO. Attendance to matters regarding 18th report and related matters, communication with stakeholders, claim made in respect of SRP, court attendance and related materials, mediation brief, NORDs and review of multiple of claims filed.
05/04/2018	Lenova, O	Uploading memos to portal. Updating master claims tracker chart. Searching for leases in data room.
05/04/2018	Margoc, H	Conducting claims review. Updating claims chart. Drafting NORD's.
05/04/2018	Mens, G	Correspondence with the Company and the Litigation Investigator regarding providing key documents. Reviewing updated brief of key documents based on comments from the Company's counsel. Updating

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**NORTON ROSE FULBRIGHT**

Invoice Date May 24, 2018 Invoice Number 9090037500 Page 12  
 Matter Description (LD) Sears Canada Inc. (VAN 17-3401)  
 Matter Number 1000299972

<u>DATE</u>	<u>NAME</u>	<u>Description</u>
05/07/2018	Mojtahedi, A	call regarding mediation strategy procedures and issues. Emails regarding litigation investigator steps and emails with litigation investigator.
05/07/2018	Moore, O	Filing of stay notices on behalf of Corbeil. Consideration of email and correspondence with S. Vaillancourt. Contacting francophone creditors of Sears with L. Shierman and L. Pearson.
05/07/2018	Pasparakis, O	Attending to revisions to claims memos. Working sessions with A. Schmitt and V. Gauthier.
05/07/2018	Schmitt, A	Working on mediation brief and report.
05/07/2018	Schmitt, A	Preparing for and attending at briefing meeting with FTI, Osler and Sears teams to discuss proposed approach on Notices of Revision or Disallowance. Working throughout day to finalize next batch of NORDs. Preparing landlord claim memorandum.
05/08/2018	Cobb, E	Meeting regarding mediation brief with FTI. Conference call with working group. Responding to landlord issues. Call regarding constructive trust claim with claimant. Reviewing various correspondence from counsel to former directors.
05/08/2018	Frank, R	Considering [REDACTED] and issues and email correspondence regarding documents for litigation investigator.
05/08/2018	Galpern, K	Preparing lease claim summaries.
05/08/2018	Gauthier, V	Attendance to conference call with clients. Attendance to meeting with respect to upcoming mediation. Attendance on CPO call. Various telephone calls and correspondence on file with respect to NORDs, various claims filed by landlords and others. Review and provide various comments on NORDs to be issued.
05/08/2018	Margoc, H	Drafting NORD's for construction claims and conducting claims review and updating claims charts.
05/08/2018	Mens, G	Corresponding with the Litigation Investigator and the company.
05/08/2018	Merskey, A	Call with team regarding outstanding issues. Working on Mediation Brief. Meeting regarding same. Emails and letters regarding mediation. Preparing for court.
05/08/2018	Moore, O	Advising regarding landlord claims. Reviewing landlord claim and lease as applicable. Emails as required.
05/08/2018	Pasparakis, O	Meetings throughout the day. Preparing for court.
05/08/2018	Reyes, T	Office conference with A. Schmitt regarding disallowances. Office conference with H. Margoc regarding claim [REDACTED] and claims based on new [REDACTED].
05/08/2018	Schmitt, A	Revisions to next batch of NORDs. Compiling full set together with all

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**NORTON ROSE FULBRIGHT**

Invoice Date May 24, 2018 Invoice Number 9090037500 Page 13  
 Matter Description (LD) Sears Canada Inc. (VAN 17-3401)  
 Matter Number 1000299972

<u>DATE</u>	<u>NAME</u>	<u>Description</u>
05/09/2018	Cobb, E	proofs and sending package of same onto the Monitor team. Preparing next batch of NORDs. Working with K. Hamidi to finalize prior set of NORDs so that same can be sent out. Call with Monitor team and P. Mohtadi to discuss proposed set of NORDs. Call with P. Mohtadi to discuss proposed changes to current batch of NORDs. Correspondence with O. Moore and subsequently J. Bobechko on certain environmental liability matters relating to allowance of landlord claims.
05/09/2018	Frank, R	Reviewing various real estate transaction agreements. Reviewing comments on mediation summary. Call with Blakes. Call with A. Merskey. Call on construction lien issues. Reviewing Sherway issues. Calls on same.
05/09/2018	Galpern, K	Considering issues regarding [REDACTED]. Correspondence regarding documents for litigation inspector and discussion with G. Mens and C. Ma regarding same. Reviewing update recommendation memo.
05/09/2018	Gauthier, V	Preparing claims summaries and notice of disallowance of claims.
05/09/2018	Margoc, H	Attendance to conference call with respect to claim disallowance. Attendance to various matters on file with respect to claims filed in the claims process, the review and preparation of summary memos in respect of same and the preparation and review of notices of revisions and disallowances in respect of same. Various correspondence and telephone calls on file regarding the foregoing. Various comments on mediation brief.
05/09/2018	Mens, G	Drafting NORD's for construction claims and conducting claims review and updating claims charts.
05/09/2018	Merskey, A	Reviewing and revising recommendations memorandum. Inputting citations into the facts section. Supplementing the facts section based on recent email reviews. Corresponding with the Litigation Investigator regarding transfer of documents.
05/09/2018	Pasparakis, O	Preparing for and attending at court. Discussion with V. Gauthier regarding claim pool analysis. Reviewing various claims. Discussion with V. Gauthier regarding line of credit issues and recovery steps. Emails regarding environmental review. Emails and follow-up on Investigator matters.
05/09/2018	Reyes, T	Preparing for and attending at Court.
05/09/2018	Schmitt, A	Email correspondence regarding AON valuation, and providing copy of same.
05/09/2018	Schmitt, A	Drafting next batch of NORDs. Correspondence with L. Pearson on letter of credit issues and post-filing claims. Call with FTI team on certain claims to review.

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**NORTON ROSE FULBRIGHT**

Invoice Date	May 24, 2018	Invoice Number	9090037500	Page 15
Matter Description	(LD) Sears Canada Inc. (VAN 17-3401)			
Matter Number	1000299972			

<u>DATE</u>	<u>NAME</u>	<u>Description</u>
		regarding employee. Providing comments on standard answers for NORDs. Attendance to matters with respect to Concord claim. Correspondence to Osler regarding same.
05/11/2018	Lenova, O	Sending claims documents to O. Moore for review.
05/11/2018	Margoc, H	Drafting settlement letter. Conducting claims review. Drafting NORD's for construction claims.
05/11/2018	Mens, G	Reviewing key facts to draft summaries of key arguments. Coordinating the provision of documents to the Litigation Investigator.
05/11/2018	Merskey, A	Meeting with litigation investigator committee. Meeting with landlords regarding claims analysis. Reviewing Concord claim. Reviewing mediation brief issues and comments. Emails and follow-up regarding investigator documents.
05/11/2018	Pasparakis, O	Stakeholder meeting, landlord meeting, meeting with litigation inspector, preparation, calls and emails.
05/11/2018	Schmitt, A	Drafting notices of revision and disallowance. Correspondence with K. Hamidi and S. Bissell regarding various NORD issues. Reviewing and preparing markup with V. Gauthier on proposed standard NORD responses for "simple" cases.
05/11/2018	Taylor, S	Finalizing Concord memorandum.
05/13/2018	Mens, G	Preparing one page summaries of key arguments regarding dividends as transfers at undervalue.
05/13/2018	Moore, O	Reviewing leasing aspects of claim 7247.
05/13/2018	Schmitt, A	Drafting notices of revision and disallowance.

**TIME SUMMARY**

<u>NAME</u>	<u>HOURS</u>	<u>RATE</u>	<u>AMOUNT</u>
<b>Partner</b>			
Cobb, E	63.70	720.00	45,864.00
Frank, R	9.60	875.00	8,400.00
Galpern, K	37.80	945.00	35,721.00
Gauthier, V	83.70	910.00	76,167.00

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## INVOICE

Invoice Number 9090046265  
 Matter Number 1000299972  
 Invoice Date June 27, 2018  
 NRF Contact Orestes Pasparakis

## NORTON ROSE FULBRIGHT

Norton Rose Fulbright Canada L.L.P.  
 Royal Bank Plaza, South Tower Suite 3800  
 200 Bay Street, P.O. Box 84  
 Toronto ON M5J 2Z4  
 Canada

Tel: +1 416-216-4000

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www.nortonrosefulbright.com

Accounts Contact:

nrcreceivables@nortonrosefulbright.com

For the attention of: Mr. Greg Watson,  
 Senior Managing Director  
 greg.watson@fticonsulting.com

**FTI CONSULTING, AS COURT APPOINTED  
 MONITOR OF SEARS CANADA**  
 Suite 2010  
 79 Wellington Street West  
 Toronto ON M5K 1G8  
 (LD) Sears Canada Inc. (VAN 17-3401)

Professional Services Rendered to June 03, 2018

Charges  
CAD

## SUMMARY

Taxable Fees	418,588.00
Taxable Disbursements	1,057.92
Taxable Other Charges	467.75
	<hr/>
Taxable Amount	420,113.87
HST 13.000%	54,614.78
	<hr/>
Non-Taxable Disbursements	58.24
	<hr/>
<b>TOTAL AMOUNT DUE AND PAYABLE</b>	<b>CAD 474,786.69</b>

Payable in 30 days  
 PAYMENT INFORMATION

RBC Financial Group, 1 Place Ville Marie, Montreal, Québec, CANADA H3C 3B5, Bank 003, Transit 00001, ACC. No. 161-327-2, Swift Code # ROYCCAT2. Include invoice number on transfer order.

# NORTON ROSE FULBRIGHT

Invoice Date June 27, 2018 Invoice Number 9090046285 Page 2  
 Matter Description (LD) Sears Canada Inc. (VAN 17-3401)  
 Matter Number 1000299972

(LD) Sears Canada Inc. (VAN 17-3401)

## TIME DETAILS

<u>DATE</u>	<u>NAME</u>	<u>Description</u>
05/14/2018	Cobb, E	Reviewing comments on Mediation Brief and updated term sheet. Conference call with Osler regarding same. Emails regarding TM license termination. Advising on landlord matters. Reviewing litigation facts summary and commenting on same. Reviewing letter re. Ontrea issues.
05/14/2018	Frank, R	Reviewing draft strategy memo regarding [REDACTED]. Considering new document request from Litigation Investigator and discussions regarding same.
05/14/2018	Galpern, K	Preparing Notices of Disallowance.
05/14/2018	Gauthier, V	Attendance to various matters with respect to claims filed in the process, summaries of same, and notices of revision and disallowance. Attendance to matters with respect to the upcoming mediation. Attendance to various other matters re real estate process, questions from stakeholders, SRP. Correspondence and telephone calls with respect to matters on file. Telephone conference with working group on next steps.
05/14/2018	Lenova, O	Emailing memo for claim 7247 to O. Moore. Reviewing claims 7247 and 7081. Retrieving leases and emailing them to E. Reither for review.
05/14/2018	Ma, C	Discussions with O. Pasparakis regarding [REDACTED] correspondence.
05/14/2018	Margoc, H	Drafting NORD's. Updating claim charts. Drafting settlement letter.
05/14/2018	Merskey, A	Telephone call regarding term sheet and Mediation Brief. Working on same. Telephone call from L. Brzezinski. Emails regarding trademark termination. Follow-up on same. Telephone call with D. Gruber regarding Concord claim. Reviewing pension issues.
05/14/2018	Mojtahedi, A	Filing of stay notices on behalf of Corbeil. Consideration of email and correspondence with S. Vaillancourt. Contacting francophone creditors and ex-employees of Sears with L. Shierman and E. Pearson.
05/14/2018	Moore, O	Attending to review and summaries of Concord claims. Working with student as required.
05/14/2018	Pasparakis, O	Working on [REDACTED]
05/14/2018	Reither, E	Reviewing Landlord claims and preparing summary regarding same.
05/14/2018	Reyes, T	Email correspondence regarding John Wolf lease claims. Office conference with A. Schmitt regarding same.
05/14/2018	Rochette, M	Follow-up of V. Gauthier email with respect to the methodology to calculate the SRPP loss.

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**NORTON ROSE FULBRIGHT**

Invoice Date	June 27, 2018	Invoice Number	9090046265	Page 3
Matter Description	(LD) Sears Canada Inc. (VAN 17-3401)			
Matter Number	1000299972			

<u>DATE</u>	<u>NAME</u>	<u>Description</u>
05/14/2018	Saint-Pierre, R	Translation of a Letter (of FTI Consulting to Bonnie Medernach)
05/14/2018	Schmitt, A	Reviewing claims and related memos and preparing next batch of NORDs. In contact with K. Hamidi over course of day on various NORD related matters. Preparing some revisions to prior set.
05/14/2018	Taylor, S	Preparing Concord claim.
05/14/2018	Wahl, R	Considering high-level summary of [REDACTED] discussing with O. Pasparakis.
05/15/2018	Cobb, E	Conference call with working group. Call regarding Ontrea matters. Meeting with O. Pasparakis on litigation issues. Conference call regarding real estate matters with Osler.
05/15/2018	Fioriello, A	Reviewing translation from English into French of a letter to SK and SLH.
05/15/2018	Frank, R	Considering and reviewing draft strategy memo regarding [REDACTED] email to and from E. Cobb regarding same. Considering privilege issues regarding documents to be provided to Litigation Investigator and email correspondence regarding same. Considering new document request from Litigation Investigator and discussions regarding same.
05/15/2018	Galpern, K	Preparing Notices of Disallowance.
05/15/2018	Gauthier, V	Conference call with clients. Attendance on board meeting. Attendance on conference call on claims process. Attendance on conference call regarding real estate matters. Attendance to various matters on file with respect to claims process, mediation and questions from and information to stakeholders. Attendance to various matters regarding notices of revisions and disallowance and various claims. Attendance to administrative matters on file.
05/15/2018	Ma, C	Conducting search of documents regarding [REDACTED] and meeting packages, discussions with O. Pasparakis regarding same.
05/15/2018	Margoc, H	Drafting NORD's. Updating claim charts. Drafting settlement letter.
05/15/2018	Mens, G	Call with R. Frank regarding document requests from the litigation Investigator.
05/15/2018	Merskey, A	Team call regarding status issues. Emails regarding license termination. Follow-up on environmental proceeding mediation. Telephone call with Oslers regarding term sheet. Working on mediation issues and preparation. Related e-mails. Receiving and reviewing request from investigator regarding document searches. Conferring with R. Frank regarding next steps.
05/15/2018	Mojtahedi, A	Correspondence with V. Gauthier regarding the Chantal Gagnon class action claim.

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 Matter Description (LD) Sears Canada Inc. (VAN 17-3401)  
 Matter Number 1000299972

<u>DATE</u>	<u>NAME</u>	<u>Description</u>
05/15/2018	Pasparakis, O	Attending Board Meeting. Attending Client Meeting. Preparing outline of [REDACTED]
05/15/2018	Reither, E	Reviewing leases and claims. Conferencing with A. Schmitt regarding same. Preparing memos.
05/15/2018	Reyes, T	Office conference with A. Schmitt regarding status of chart and status of disallowances with respect to each of the [REDACTED]. Conferencing with V. Gauthier. Beginning preparation of claims.
05/15/2018	Schmitt, A	Reviewing claims and related memos and preparing next batch of NORDs. In contact with K. Hamidi over course of day on various NORD related matters. Preparing some revisions to prior set.
05/15/2018	Taylor, S	Drafting Concord NORD.
05/15/2018	Wong, M	Conducting research for O. Pasparakis.
05/16/2018	Cobb, E	Reviewing and commenting on LG agreement and considering issues with S. Bissell. Reviewing and advising on contract termination issues. Commenting on litigation strategy memo. Reviewing and advising on NORD. Conference calls on various real estate transactions and preparing for same. Reviewing and commenting on Lien Claim letter. Reviewing and advising on Real Estate APA issues. Reviewing and commenting on SBD agreement.
05/16/2018	Frank, R	Considering memo regarding [REDACTED] email to and from E. Cobb and O. Pasparakis regarding same. Considering privilege issues and call with S. Irving regarding same. Considering document request by Litigation Investigator. Considering Craftsman issues and email correspondence with E. Cobb regarding same.
05/16/2018	Galpern, K	Preparing Notices of Disallowance.
05/16/2018	Galpern, K	Considering issues regarding claim by B. Stranzl.
05/16/2018	Gauthier, V	Attendance to conference call on matters relating to SRP. Attendance in person for meeting regarding mediation. Attendance at Board meeting. Attendance to matters relating to upcoming mediation, claims matters, disclaimer of agreements, SRP deficit calculation. Various correspondence and emails on file.
05/16/2018	Ma, C	Discussions with O. Pasparakis regarding [REDACTED]. Conducting search of database regarding [REDACTED] materials.
05/16/2018	Margoc, H	Drafting NORD's. Updating claim charts. Revising settlement letter.
05/16/2018	Merskey, A	Reviewing Concord claim and NORDs. Emails regarding mediation request. Reviewing and considering [REDACTED]. Follow-up on mediation steps.

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<u>DATE</u>	<u>NAME</u>	<u>Description</u>
05/16/2018	Pasparakis, O	Working on summary.
05/16/2018	Reither, E	Conferencing with A. Schmitt regarding reviews and preparation of Notice of Revisions or Disallowance.
05/16/2018	Reyes, T	Preparing summaries of [REDACTED]
05/16/2018	Schmitt, A	Preparing last batch of NORDs. In contact with K. Hamidi over course of day on various NORD related matters. Preparing some revisions to prior set. Attending on NORD review call and presenting summary of current next batch to FTI team.
05/17/2018	Cobb, E	Calls regarding Real Estate transactions. Reviewing updated APA language.
05/17/2018	Frank, R	Considering issues regarding document request by Litigation Investigator. Emails to and from Osler and P. Mohtadi regarding same. Considering Craftsman issues and email correspondence with E. Cobb and G. Mens regarding same. Considering [REDACTED] and memo regarding strategy for same. Discussions with O. Pasparakis regarding same. Considering privilege issues and discussion with S. Irving regarding same.
05/17/2018	Galpern, K	Considering issues regarding disallowance of Stranzyl employee claim. Preparing notice of disallowance regarding same.
05/17/2018	Gauthier, V	Attendance to conference call regarding sale of ancillary real estate. Attendance to in person meeting regarding mediation. Attendance at conference calls regarding environmental matters and claims process updates. Attendance to various matters regarding notices of revisions and disallowances and notices of disputes, reviewing and providing comments on same and on summary memos relating to claims, CCAA Plan term sheet, letters of credit application and landlord claims, claim filed by Brandon Stranzl, real estate sale transactions. Various correspondence and telephone calls on file.
05/17/2018	Ma, C	Email and discussions with R. Frank regarding Litigation Investigator document request and next steps. Discussions with A. Merskey, R. Frank regarding same.
05/17/2018	Margoc, H	Drafting NORD's. Updating claim charts. Creating landlord related chart.
05/17/2018	Mens, G	Call with R. Frank and E. Cobb regarding document investigation.
05/17/2018	Merskey, A	Emails regarding license agreement issues. Follow-up on investigator production steps. Follow-up on mediation issues. Emails regarding landlord summary and environmental call.
05/17/2018	Mojtahedi, A	Calling with E. Pearson and L. Shierman to employees and creditors located in Quebec.

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<u>DATE</u>	<u>NAME</u>	<u>Description</u>
05/17/2018	Pasparakis, O	Preparing for and meeting with litigation inspector. Attending meeting with representative counsel.
05/17/2018	Reyes, T	Continued work on summaries for all John Wolf leases (26 of them).
05/17/2018	Schmitt, A	Preparing further set of NORDs
05/17/2018	Taylor, S	Revising Concord claims memorandum.
05/17/2018	Weaver, R	Preparing for meeting and meeting with O. Pasparakis and Litigation Investigator.
05/18/2018	Cobb, E	Meeting with Litigation Investigator. Call with D. Ullmann. Call with K. Hamidi. Commenting on CIT Agreement. Commenting on waiver document. Call with BMO.
05/18/2018	Frank, R	Discussion with P. Mohtadi regarding document request from Litigation Investigator and consider issues regarding same, Consider [REDACTED]
05/18/2018	Galpern, K	Preparing Notice of Disallowance for B. Stanzi claim.
05/18/2018	Gauthier, V	Meeting regarding mediation. Correspondence on file regarding mediation.
05/18/2018	Ma, C	Reviewing litigation investigator document request. Attending to searches of database. Preparing preliminary report of findings. Emails from, to R. Frank regarding same.
05/18/2018	Margoc, H	Revising landlord related chart and reviewing NORD's.
05/18/2018	Merskey, A	Emails and follow-up on Concord request. Emails and follow-up regarding Board materials. Considering mediation issues. Working on same.
05/18/2018	Reither, E	Finalizing and providing Notice of Revisions or Disallowance.
05/18/2018	Reyes, T	Finalizing summaries for [REDACTED]
05/18/2018	Weaver, R	Preparing for meeting and meeting with O. Pasparakis, E. Cobb and Litigation Investigator.
05/19/2018	Cobb, E	Conference call regarding real estate transactions. Emails regarding same.
05/20/2018	Cobb, E	Reviewing revisions to real estate documents and commenting on same. Considering issues regarding trademark license termination.
05/21/2018	Cobb, E	Reviewing [REDACTED]
05/21/2018	Cobb, E	Reviewing and commenting on revised CCAA Term Sheet. Updating Mediation Brief. Reviewing draft Affidavits.
05/22/2018	Cobb, E	Conference call with working group. Email [REDACTED] Providing comments on Affidavits. Call with Osler regarding same. Updating mediation brief. Attending board conference call regarding real

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<u>DATE</u>	<u>NAME</u>	<u>Description</u>
		estate matters. Email correspondence on real estate matters.
05/22/2018	Frank, R	Considering issues regarding initial document request by Litigation Investigator and reviewing search results prepared by C. Ma.
05/22/2018	Gauthier, V	Attendance to weekly conference call with FTI. Attendance to pre-meeting conference call on tax matters. Attendance to board meeting. Attendance to various matters on file regarding claims process, claims received and memos in respect thereon, NORDs, mediation brief and recovery analysis, WEP. Various conference calls and correspondence on file.
05/22/2018	Ma, C	Conducting various searches of documents with respect to litigation investigator request. Preparing summary of preliminary search results. Emails from, to R. Frank regarding same.
05/22/2018	Margoc, H	Drafting settlement letter. Conducting claims review and updating claims chart. Drafting NORD's.
05/22/2018	Merskey, A	Team call regarding status items. Considering issues regarding mediation and Mediation Brief. Working on same. Emails and follow-up regarding environmental mediation.
05/22/2018	Mojtahadi, A	Phone call with L. Kelly to hardship fund applicant in Quebec.
05/22/2018	Oliver, A	Call to prepare for meeting with CRA.
05/22/2018	Reyes, T	Final revisions to [REDACTED] summaries. Email correspondence with V. Gauthier. Forwarding copies of all summaries to V. Gauthier. Several pieces of email correspondence from V. Gauthier, with questions regarding summaries and claims.
05/22/2018	Schmitt, A	Attending to revisions and changes to newest set of NORDs and preparing more. Dealing with follow up on outstanding items with G. Pallouras and P. Mohtadi on certain operating agreement claims. Various claims-related management task, including pulling large volume of claims material support for analysis for NORDs.
05/23/2018	Cobb, E	Discussions and updates to Mediation Brief. Calls and emails on construction lien matters. Reviewing real estate bids received from CBRE.
05/23/2018	Frank, R	Considering issues regarding initial document request by Litigation Investigator and steps regarding response to same.
05/23/2018	Galpern, K	Preparing landlord claims memoranda.
05/23/2018	Gauthier, V	Attendance to conference call with respect to WEPP update. Attendance to follow-up conference calls with Employee Representatives Advisors. Attendance at in-person tax meeting. Attendance to matters re mediation brief, claims received, NORDs, recovery analysis, requests from stakeholders, CCAA Plan Term Sheet. Correspondence and telephone calls on file with respect to the foregoing matters.

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<u>DATE</u>	<u>NAME</u>	<u>Description</u>
05/23/2018	Margoc, H	Drafting settlement letter. Conducting claims review and updating claims chart. Drafting NORD's.
05/23/2018	Merskey, A	Emails regarding Mediation Brief and term sheet. Working on same.
05/23/2018	Oliver, A	Meeting regarding CRA claims. Reviewing intergovernmental set-off issues.
05/23/2018	Pasparakis, O	Working on mediation brief.
05/23/2018	Reyes, T	Reviewing additional issues regarding [REDACTED] at V. Gauthier's request.
05/23/2018	Schmitt, A	Attending to revisions to Notices of Disallowance.
05/24/2018	Cobb, E	Meeting regarding recovery analysis. Call regarding CBRE sale process. Calls with Osler regarding mediation brief and CCAA term sheet. Advising on construction lien issues and calls with construction lien counsel. Responding to inquiry from L'Oreal. Reviewing and further revising mediation brief. Providing comments on various real property sale motion materials. Reviewing updated real property transaction documents. Emails regarding license termination request.
05/24/2018	Frank, R	Discussion with G. Mens and call to P. Mohtadi regarding document review and collection issues. Considering issues regarding same.
05/24/2018	Galpern, K	Preparing landlord claims memoranda.
05/24/2018	Gauthier, V	Attendance at in-person meetings with respect to recovery analysis. Attendance to advancing and finalizing the mediation brief and all matters that relate to same. Various calls and correspondence on file regarding same. Attendance to matters regarding Concord claim. Reviewing and revising various documents in connection with the mediation brief.
05/24/2018	Ma, C	Emails from, to creditor regarding mediation process, email to A. Merskey regarding same. Email from E. Cobb regarding scheduling of motion. Preparing scheduling form.
05/24/2018	Margoc, H	Drafting settlement letter. Conducting claims review. Preparing landlord chart.
05/24/2018	Merskey, A	Numerous emails and follow-up regarding construction lien issues. Meeting with FTI regarding recovery analysis. Reviewing and revising mediation brief and working on mediation issues and steps. Call regarding environmental issues and emails regarding Alta regulatory process.
05/24/2018	Pasparakis, O	Call on recovery analysis. Working on mediation brief.
05/24/2018	Reyes, T	Reviewing additional questions regarding Vaughan Mills (Corbeil transaction) and settlement offers regarding same. Revising summary of the claim (No. 8220) to reflect additional information and corresponding with V. Gauthier regarding same. Reviewing Operating Agreement relating

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<u>DATE</u>	<u>NAME</u>	<u>Description</u>
		to Place Vertu, to answer various inquiries by V. Gauthier. Providing additional information with respect to the provisions of the Operating Agreement and whether they support the John Wolf claim relating to Place Vertu.
05/24/2018	Schmitt, A	Attending to revisions to batch of NORDs. Confirming various datapoints for the same and finalizing same. Attending on regular claims call.
05/25/2018	Cobb, E	Calls regarding construction lien issues. Various calls and revisions to mediation materials. Conference call with CBRE on real estate matters. Reviewing updated agreement for real estate assets.
05/25/2018	Frank, R	Considering document review and collection issues. Email to P. Mohtadi regarding same.
05/25/2018	Gallop, A	Various exchanges of emails with V. Gauthier regarding employee seeking information on 2015 T4.
05/25/2018	Galpern, K	Discussing with V. Gauthier regarding claim by BI Stranzyl. Discussing with V. Gauthier and A. Merskey regarding common employer argument being advanced with respect to pension responsibility. Considering issues and relevant case law regarding same. Preparing memoranda regarding landlord claims.
05/25/2018	Gauthier, V	Correspondence on file regarding WEPPA, Employee Claims Question, various claim matters. Attendance to matters regarding claims process.
05/25/2018	Ma, C	Attending to motion scheduling for June 5, 2018.
05/25/2018	Margoc, H	Retrieving claim documents and memos. Drafting letter to landlords. Conducting claims review.
05/25/2018	Merskey, A	Reviewing and working on Mediation Brief update. Considering common employee claim issues. Working on same.
05/25/2018	Reyes, T	Email correspondence regarding master chart (and model for calculation purposes) of landlord claims. Amending Place Vertu summary as per request of V. Gauthier.
05/25/2018	Sandhu, B	Searching for offer email.
05/25/2018	Schmitt, A	Completing review of leases for accelerated rent inputs further to analysis of landlord claims and further to mediation. Confirming various research points on preference claim inclusions and considering same with V, Gauthier and K. Galpern. Preparing revisions to claims memoranda.
05/26/2018	Cobb, E	Reviewing and commenting on Real Estate Sale Process affidavit. Drafting materials for Construction Lien Motion.
05/27/2018	Cobb, E	Reviewing TM License Termination Letter received from Sears US.
05/28/2018	Cobb, E	Updating court materials-construction lien materials. Drafting portions of

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<u>DATE</u>	<u>NAME</u>	<u>Description</u>
		report regarding construction lien matters. Conference calls regarding various real estate properties. Various email correspondence.
05/28/2018	Frank, R	Considering issues regarding document gathering and review regarding [REDACTED]. Meeting with O. Pasparakis, G. Mens, L. O'Brien and C. Ma and reviewing memoranda and email correspondence regarding same. Email to Litigation Investigator regarding initial document request. Email to and from P. Mohtadi regarding document review issues.
05/28/2018	Gallop, A	Office conference with K. Galpern regarding B. Stranzl's severance claim.
05/28/2018	Galpern, K	Discussing with A. Gallop regarding Stranzyl claim. Considering issues and relevant case law regarding same. Preparing memorandum regarding same. Considering issues and relevant case law regarding common employer doctrine. Considering issues and relevant case law regarding landlords' preferred claim for rent and meaning of rent.
05/28/2018	Gauthier, V	Attendance at in person meeting with respect to calculation of SRP deficit. Preparation for that meeting. Attendance to matters with respect to certain claims made by landlords and by former employees. Follow-up on certain matters with respect to mediation documents. Attendance to matters with respect to letter to employees with defined contribution entitlement. Providing advice with respect to landlord claim and letter of credit (VSL). Attendance to matters regarding bankruptcy chart. Attendance to matters with respect to T4s.
05/28/2018	Hunter, C	Attending to issues relating to trademark licences.
05/28/2018	Ma, C	Receiving and reviewing mediation brief. Preparing for meeting. Attending meeting with O. Pasparakis, R. Frank, L. O'Brien, G. Mens regarding strategy for potential [REDACTED] and next steps.
05/28/2018	Margoc, H	Conducting lease review. Drafting letter agreement. Reviewing claims.
05/28/2018	Mens, G	Compiling information in preparation for document collection meeting. Revising memorandum setting out document review process to date.
05/28/2018	Merskey, A	Emails regarding license agreement. Emails regarding real estate motion. Follow-up on same. Emails regarding Mediation Brief. Working on same. Follow-up on investigator production requests. Emails regarding same. Call with litigation creditor regarding claim.
05/28/2018	O'Brien, L	Attending team meeting to consider document collection and reviewing strategy. Reviewing memo regarding overview of claim.
05/28/2018	Oliver, A	Email correspondence regarding employee tax reporting.
05/28/2018	Pasparakis, O	Meeting regarding next steps and mediation.
05/28/2018	Schmitt, A	Completing review of leases for accelerated rent inputs further to analysis

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05/29/2018	Cobb, E	of landlord claims and further to mediation. Review of certain construction claims settlement materials. Conference call with working group. Drafting report regarding Place Vertu transaction. Calls regarding real estate transactions. Emails regarding lift stay matters. Emails and conference calls regarding Trademark License. Updating materials regarding construction liens. Commenting on listing agreement.
05/29/2018	Frank, R	Meeting with L. O'Brien, G. Mens and C. Ma regarding document collection and review and collection issues and consider same. Considering privilege issues. Considering initial document request from Litigation Investigator.
05/29/2018	Galpern, K	Discussing with A. Schmitt regarding meaning of rent for accelerated rent claims. Considering issues and relevant case law regarding employee claim by B. Stranzyl. Preparing memorandum regarding same.
05/29/2018	Gauthier, V	Attendance to weekly status update call. Attendance to certain logistics issue with respect to the mediation. Coordination of the mediation. Attendance to certain matters with respect to NORDs and deadline to file NODs. Provide advice with respect to indemnification. Telephone call with N. Levine. Correspondence on file. Follow-up on matters with respect to the bankruptcy file. Follow-up on matters with respect to certain outstanding claims. Follow-up on matters with respect to the SRP. Long telephone conference with clients to discuss mediation. Follow-up on investigator budget matters. Follow-up on various claim memos. Various correspondence and telephone calls on file.
05/29/2018	Ma, C	Discussions with L. O'Brien regarding strategy and next steps. Preparing draft custodian list and data collection log. Conducting additional searches of data. Meeting with R. Frank, G. Mens, L. O'Brien regarding document collection and reviewing strategy. Conducting further searches of database. Further discussions with G. Mens regarding strategy. Arranging for delivery of mediation brief to Morawetz, R.S.J. Receiving and reviewing motion record regarding stay. Call with E. Cobb regarding steps for upcoming hearing on June 5, 2018. Email from L. Kelly (FTI) regarding data for monitor website.
05/29/2018	Margoc, H	Conducting lease review. Compiling case law. Drafting letter.
05/29/2018	Mens, G	Meeting with R. Frank, L. O'Brien and C. Ma regarding document collection strategy. Updating and revising list of custodians from whom to collect emails. Revising list of all directors and officers of Sears Canada since 2010.
05/29/2018	Merskey, A	Team call regarding status claims. Follow-up on creditor inquiry. Emails from landlord counsel regarding mediation. Emails regarding insurance claims. Considering same.

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05/29/2018	O'Brien, L	Reviewing information. Discussions with C. Ma regarding data. Meeting with team to discuss plan for collecting and reviewing data.
05/29/2018	Pasparakis, O	Weekly conference call with client. Follow-up on real estate, mediation and real estate issues.
05/29/2018	Reyes, T	Questions from V. Gauthier and A. Schmitt regarding [REDACTED].
05/29/2018	Schmitt, A	Completing review of leases for accelerated rent inputs further to analysis of landlord claims and further to mediation. Attending on regular claims process and mediation preparation call. Follow up on various outstanding lease materials with A. Short at Sears.
05/29/2018	Weaver, R	Researching the law regarding conflicts of laws. Meeting with O. Pasparakis regarding the same.
05/30/2018	Cobb, E	Conference calls regarding real estate transactions. Continuing drafts of Reports regarding Place Vertu sale and Construction Lien matters. Continuing drafts of motion materials for construction lien matters. Emails regarding director indemnity issues.
05/30/2018	Frank, R	Considering document review and collection issues. Meeting with L. O'Brien, G. Mens and C. Ma regarding same. Emails from and to and call with Osler regarding privilege issues. Reviewing redactions by Osler regarding privilege.
05/30/2018	Galpern, K	Preparing claims memoranda. Considering issues and relevant case law regarding common employer doctrine.
05/30/2018	Gauthier, V	Reviewing and providing comments on report regarding Place Vertu. Correspondence on file.
05/30/2018	Lenova, O	Reviewing D&O claims for indemnity agreements.
05/30/2018	Ma, C	Reviewing and gathering information for document collection and custodian log. Meeting with R. Frank, L. O'Brien, G. Mens regarding strategy. Email summarizing points from meeting.
05/30/2018	Margoc, H	Conducting lease review.
05/30/2018	Mens, G	Reviewing list of custodians in respect of whom to collect data. Meeting with R. Frank, L. O'Brien and C. Ma to go over strategy. Attending at the office of the Litigation Investigator with O. Pasparakis.
05/30/2018	Merskey, A	Telephone calls and working on mediation issues. Emails and follow-up on claims issues. Emails and follow-up on litigation investigator productions.
05/30/2018	O'Brien, L	Meetings with R. Frank, G. Mens and C. Ma to review issues in connection with collection and review of documents. Various emails regarding budgets.
05/30/2018	Pasparakis, O	Addressing mediation issues. Meeting with litigation trustee.

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05/30/2018	Schmitt, A	Completing review of leases for accelerated rent inputs further to analysis of landlord claims and further to mediation. Revising certain memos analyzing claims. Reviewing construction lien materials and preparing markup of elements of the same.
05/30/2018	Taylor, S	Drafting memoranda for claims process.
05/30/2018	Weaver, R	Preparing for meeting and meeting with O. Pasparakis and Litigation Investigator.
05/31/2018	Cobb, E	Attending to various real estate matters. Correspondence regarding construction lien issues. Continuing work on motion materials for June 5th motions.
05/31/2018	Frank, R	Considering document review issues. Preparing for and attending meeting at Sears regarding document collection and review issues. Emails from and to Osler regarding privilege issues. Meetings with O. Pasparakis, L. O'Brien, G. Mens and C. Ma regarding same. Call with FTI regarding same. Reviewing redactions by Osler regarding privilege. Meeting with L. O'Brien and G. Mens regarding response to document request by Litigation Investigator.
05/31/2018	Galpern, K	Preparing memorandum regarding common employer doctrine.
05/31/2018	Ma, C	Attending at Sears offices and meeting with R. Frank, G. Mens, L. O'Brien, P. Mohtadi, IT group regarding storage and access of archival data. Conducting further searches of documents and discussions regarding next steps.
05/31/2018	Margoc, H	Conducting lease review.
05/31/2018	Mens, G	Attending at the office of Sears to discuss document collection. Reviewing past correspondence to determine what protocols were in place for document preservation. Call with S. Bissell and L. O'Brien.
05/31/2018	Merskey, A	Emails and working on mediation preparations. Reviewing and revising claims analysis. Emails and discussions regarding litigation inspector issues. Emails regarding construction lien claim issues. Reviewing draft Monitor reports. Working on review of environmental claims. Telephone call regarding Alberta environmental Order. Emails regarding Mercury Jewellery claim.
05/31/2018	O'Brien, L	Preparing for and attending meeting with Sears IT and counsel to review documents. Follow-up discussions with respect to document collection and response to request for documents. Telephone communication with FTI regarding document issues.
05/31/2018	Pasparakis, O	Addressing document issues. Attending on Board call.
05/31/2018	Reyes, T	Discussion with A. Schmitt regarding The Village at Vaughan Mills

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**NORTON ROSE FULBRIGHT**

**Invoice Date** June 27, 2018 **Invoice Number** 9090046265 **Page** 14  
**Matter Description** (LD) Sears Canada Inc. (VAN 17-3401)  
**Matter Number** 1000299972

<u>DATE</u>	<u>NAME</u>	<u>Description</u>
		summary and drafting additions to same. Discussion with A. Schmitt regarding Orchard Park summary.
05/31/2018	Schmitt, A	Reviewing leases for accelerated rent inputs further to analysis of landlord claims and further to mediation.
06/01/2018	Cobb, E	Conference call regarding Belleville FF&E matters. Updating drafts of various court materials and reports. Finalizing Nineteenth Report. Reviewing factum of Applicants. Attending to court scheduling matters. Emails regarding lift stay motion. Commenting on draft license termination agreement.
06/01/2018	Frank, R	Considering privilege issues and reviewing proposed redactions. Preparing for and attending call with Osler regarding same. Discussion with A. Merskey regarding privilege issues. Reviewing order regarding litigation investigator and considering privilege issues. Considering issues regarding document collection and review. Preparing for and attending call with Osler and Lax O'Sullivan regarding privilege and production issues. Reviewing issues regarding response to Litigation Investigator's production request. Discussions with L. O'Brien, G. Mens and C. Ma regarding document collection and reviewing issues.
06/01/2018	Galpern, K	Preparing memorandum regarding common employer doctrine. Discussing with E Cobb regarding Place Vertu agreement of purchase and sale. Considering issues regarding same.
06/01/2018	Gauthier, V	Attendance to various matters on file in advance of mediation. Various correspondence on file.
06/01/2018	Ma, C	Various communications with court regarding scheduling. Discussions with E. Cobb regarding same. Assisting E. Cobb regarding finalizing 19th Report of the Monitor. Email to service list regarding 19th Report of the Monitor. Arranging for filing of the 19th Report of the Monitor.
06/01/2018	Margoc, H	Conducting lease review. Drafting letter to counsel.
06/01/2018	Mens, G	Determining next steps in document review. Drafting correspondence to litigation investigator.
06/01/2018	Merskey, A	Emails and discussions regarding litigation inspector production steps. Working on same. Emails, telephone calls and working on mediation issues. Working on claims review.
06/01/2018	O'Brien, L	Drafting response to Litigation Investigator request. Reviewing Litigation Investigator Order. Various discussions with R. Frank and C. Ma. Following up on various issues regarding document collection.
06/01/2018	Pasparakis, O	Addressing mediation, real estate and government issues.

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**INVOICE**

Invoice Number 9090048634  
 Matter Number 1000299972  
 Invoice Date July 05, 2018  
 NRF Contact Orastes Pasparakis

**NORTON ROSE FULBRIGHT**

Norton Rose Fulbright Canada LLP  
 Royal Bank Plaza, South Tower Suite 3800  
 200 Bay Street, P.O. Box 84  
 Toronto ON M5J 2Z4  
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For the attention of: Mr. Greg Watson,  
 Senior Managing Director  
 greg.watson@fticonsulting.com

**FTI CONSULTING, AS COURT APPOINTED  
 MONITOR OF SEARS CANADA**

Suite 2010  
 79 Wellington Street West  
 Toronto ON M5K 1G8  
 (LD) Sears Canada Inc. (VAN 17-3401)

Professional Services Rendered to June 24, 2018


Charges  
 CAD

**SUMMARY**

Taxable Fees	573,910.00
Taxable Disbursements	7,787.19
Taxable Other Charges	1,893.75
	<hr/>
Taxable Amount	583,590.94
HST 13.000%	75,866.82
	<hr/>
Non-Taxable Disbursements	361.36
	<hr/>
<b>TOTAL AMOUNT DUE AND PAYABLE</b>	<b>CAD 659,819.12</b>

Payable in 30 days  
**PAYMENT INFORMATION**

RBC Financial Group, 1 Place Ville Marie, Montreal, Québec, CANADA H3C 3B5, Bank 003, Transit 00001, ACC. No. 161-327-2, Swift Code # ROYCCAT2. Include Invoice number on transfer order.


**NORTON ROSE FULBRIGHT**

**Invoice Date** July 05, 2018 **Invoice Number** 9090048634 **Page** 2  
**Matter Description** (LD) Sears Canada Inc. (VAN 17-3401)  
**Matter Number** 1000299972

(LD) Sears Canada Inc. (VAN 17-3401)

**TIME DETAILS**

<u>DATE</u>	<u>NAME</u>	<u>Description</u>
06/04/2018	Cobb, E	Reviewing Assignment Agreement regarding Place Vertu APS. Reviewing matters in connection with additional real estate sale transactions and operating agreements. Further revising court materials in connection with construction lien issues. Emails regarding trademark license termination. Reviewing mediation briefs. Responding to trademark license termination issues. Emails regarding construction lien resolution matters.
06/04/2018	Frank, R	Discussion with Osler regarding privilege issues and discussion with A. Merskey and email correspondence regarding same. Discussion with Litigation Investigator regarding privilege and production issues. Considering issues regarding document collection and production and meeting with L. O'Brien, G. Mens and C. Ma regarding same. Email correspondence with FTI regarding document collection issues.
06/04/2018	Galpern, K	Considering issues and relevant case law regarding common employer doctrine. Preparing memorandum regarding same.
06/04/2018	Gauthier, V	Various correspondence on file. Follow-up on various claims issues.
06/04/2018	Ma, C	Attending to service list issues. Emails with client regarding access to custodial data. Reviewing client custodial data. and email to team regarding preliminary assessment of data. Various discussions regarding strategy and next steps.
06/04/2018	Margoc, H	Conducting claims review. Meeting with V. Gauthier and A. Schmitt regarding same.
06/04/2018	Mens, G	Meeting with L. O'Brien and document review team to determine document review strategy.
06/04/2018	Merskey, A	Emails regarding Craftsman/Sears US license issues. Working on claims analysis and mediation preparation. Emails and discussions regarding production steps.
06/04/2018	O'Brien, L	Revising memo regarding document collection and review plan. Meeting with team to discuss document review and plan. Reviewing documents in database and information relating to budgets.
06/04/2018	Pasparakis, O	Addressing documentary production issues.
06/04/2018	Reyes, T	Conversation with A. Schmitt regarding Orchard Park claim.
06/05/2018	Cobb, E	Preparing for and attending at sale approval hearing. Conference call with working group. Conference call with counsel to Sears US. Meeting regarding mediation matters with Osler. Further updating materials for June 15th motions. Reviewing and considering correspondence from Cadillac Fairview. Reviewing additional mediation briefs.

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# NORTON ROSE FULBRIGHT

Invoice Date July 05, 2018 Invoice Number 9090048634 Page 4  
 Matter Description (LD) Sears Canada Inc. (VAN 17-3401)  
 Matter Number 1000299972

<u>DATE</u>	<u>NAME</u>	<u>Description</u>
06/05/2018	Morrison, T	Assembling book of authorities for mediation of pension claims.
06/05/2018	O'Brien, L	Drafting memo regarding document collection and review. Meeting O. Pasparakis, R. Frank, G. Mens and C. Ma regarding status. Revising memo. Telephone communication with B. Penrice and FTI with respect to document preservation steps. Attending to various issues regarding document collection and review.
06/05/2018	Pasparakis, O	Reviewing Mediation Brief. Meeting with company counsel. Meeting with Litigation Trustee. Call with Litigation Trustee. Preparing for meeting.
06/05/2018	Schmitt, A	Assisting with review of all leases further to definition of "accelerated" rent for claims modelling. Assisting L. Pearson extensively with landlord claims database.
06/06/2018	Bianchi, G	Reviewing the Sears AWS server and preparing a top level summary of the contents in preparation for upcoming team meeting.
06/06/2018	Cobb, E	Working group meeting regarding mediation. Final review of Cominar court materials. Conference call regarding CBRE bids. Updating court materials for construction lien motion.
06/06/2018	Frank, R	Considering privilege and preservation issues and email correspondence regarding same. Email to and from Osler regarding privilege issues. Considering issues regarding production of documents to Litigation Investigator and discussions and email correspondence with C. Ma and G. Mens regarding same. Considering issues regarding document initial request from Litigation Investigator and response to same.
06/06/2018	Galpern, K	Considering issues and relevant case law regarding pension mediation briefs. Call with T. Devir regarding pension issues. Considering issues and relevant case law regarding landlord mediation brief.
06/06/2018	Gauthier, V	Attendance to numerous matters in preparation for the mediation. Attendance to miscellaneous matters regarding Litigation Investigator, counsel to AIG, WEPPA. Various correspondence and telephone calls on file.
06/06/2018	Ma, C	Reviewing documents delivered to litigation investigator and preparing updated briefs. Various emails with G. Mens regarding same. Preparing additional documents for production to Litigation Investigator. Discussions with R. Frank regarding same. Email to Litigation Investigator with additional documents brief.
06/06/2018	Margoc, H	Conducting review of leases for certain clauses in preparation for mediation.
06/06/2018	Mens, G	Providing update to team regarding meeting with Litigation Investigator. Meeting with L. O'Brien and C. Ma regarding collection of documents. Reaching out to Torsy regarding native documents.

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**NORTON ROSE FULBRIGHT**

Invoice Date July 05, 2018 Invoice Number 9090048634 Page 6  
 Matter Description (LD) Sears Canada Inc. (VAN 17-3401)  
 Matter Number 1000299972

<u>DATE</u>	<u>NAME</u>	<u>Description</u>
06/07/2018	Mens, G	Meeting with R. Frank, L. O'Brien and C. Ma regarding document collection workflows.
06/07/2018	Merskey, A	Investigator meeting. Working on mediation issues and related research. Reviewing and working on claims. Environmental call.
06/07/2018	Mojtahedi, A	Preparing for and calls to applicants for the Hardship Fund and reporting back to L. Kelly. Drafting a response letter to a potential creditor of Sears located in Quebec.
06/07/2018	O'Brien, L	Team meeting to discuss status of various matters related to document review. Various emails relating to AWS and discussions with respect to searches in AWS.
06/07/2018	Pasparakis, O	Attending Litigation Trustee meeting. Discussions with stakeholders.
06/07/2018	Schmitt, A	Assisting with review of all leases further to definition of "accelerated" rent for claims modelling. Assisting L. Pearson with landlord claims database. Preparing remaining landlord claim memos.
06/08/2018	Cobb, E	Further updates to construction lien court materials. Meeting with FTI regarding mediation matters. Meeting with Rossclair regarding lien claim. Preparing Rossclair settlement documents. Reviewing mediation brief of Pension Representative Counsel. Emails regarding Sherway Gardens matter. Emails regarding D&O indemnities.
06/08/2018	Frank, R	Considering privilege issues and discussion with Osler regarding same. Considering document review and collection issues.
06/08/2018	Galpern, K	Preparing claims summaries. Considering issues and relevant case law regarding accelerated rent. Preparing brief note regarding same. Discussing same with A, Merskey.
06/08/2018	Gauthier, V	In person meeting to prepare for the mediation. Follow-up on claims by landlords and by pension parties.
06/08/2018	Ma, C	Attending to further mediation arrangements. Continuing to review mediation briefs and preparing consolidated book of authorities for mediation.
06/08/2018	Margoc, H	Conducting lease review and liaising with client with respect to acceleration rights.
06/08/2018	Merskey, A	Meeting with FTI team regarding production preparations. Working on same. Emails regarding construction lien motion. Working on same. Emails regarding pension issues. Working on same. Working on claims review.
06/08/2018	O'Brien, L	Following up on various issues with team and management of document collection and review. Drafting preservation notice.
06/08/2018	Pasparakis, O	Preparing for mediation.

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Invoice Date July 05, 2018 Invoice Number 9090048634 Page 7  
 Matter Description (LD) Sears Canada Inc. (VAN 17-3401)  
 Matter Number 1000298972

<u>DATE</u>	<u>NAME</u>	<u>Description</u>
06/08/2018	Schmitt, A	Assisting with review of all leases further to definition of "accelerated" rent for claims modelling. Assisting L. Pearson with landlord claims database. Preparing remaining landlord claim memos.
06/09/2018	Cobb, E	Preparing summary of settlement analysis for mediation. Drafting Supplement to Nineteenth Report and appendices. Reviewing law regarding monitor's capacity.
06/09/2018	Schmitt, A	Assisting L. Pearson with data point confirmation requests further to completion of certain claim analysis charts.
06/10/2018	Cobb, E	Reviewing additional mediation brief.
06/10/2018	Cobb, E	Responding to inquiries on Construction Lien motion and updating materials regarding same.
06/10/2018	Ma, C	Discussions with E. Cobb regarding upcoming June 15 and 19 motions and mediation. Finalizing consolidated brief of authorities regarding mediation, email to A. Merskey regarding same.
06/10/2018	Mojtahedi, A	Correspondence with L. Pearson and L. Kelly and drafting response letters to claimants of Sears located in Quebec. Correspondence with V. Gauthier regarding the claims process.
06/11/2018	Bianchi, G	Continuing review of AWS server and preparing chart of important custodian data identified.
06/11/2018	Cobb, E	Conference call regarding Sherway Gardens matters. Resolving issues regarding June 15th hearing. Finalizing draft settlement documentation for certain construction contractors. Updating Construction Lien Claim materials. Resolving construction lien issues.
06/11/2018	Frank, R	Considering issues regarding document collection and review. Discussions with L. O'Brien and G. Mens regarding same. Email to and from Litigation Investigator. Considering privilege issues and discussion with C. Ma regarding document production and bates numbering.
06/11/2018	Galpern, K	Considering issues and relevant case law regarding landlord claims. Preparing claims summaries. Considering issues regarding pension liability. Discussing same with M Rochette. Reporting to A Merskey regarding same.
06/11/2018	Gauthier, V	Discussion following Ursei Phillips' Letter. Mediation Meeting. Attendance to various matters in connection with the mediation, SRP, other pension issues, claim by Concord, memos in respect of certain claims, Samsung, landlord claim questions.
06/11/2018	Ma, C	Various emails from team regarding document collection and strategy. Receiving and reviewing additional mediation statements. Preparing supplementary consolidated brief of mediation statements and finalizing consolidated authorities. Arranging for delivery of additional mediation

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**NORTON ROSE FULBRIGHT**

Invoice Date July 05, 2018 Invoice Number 9090048634 Page 8  
 Matter Description (LD) Sears Canada Inc. (VAN 17-3401)  
 Matter Number 1000299972

<u>DATE</u>	<u>NAME</u>	<u>Description</u>
		materials to Morawetz, RSJ. Attending to scheduling matters. Attending to mediation logistics, various emails with V. Gauthier, A. Merskey regarding same.
06/11/2018	Margoc, H	Reviewing documents and assessing claims with respect to mediation.
06/11/2018	Mens, G	Discussions with R. Frank and C. Ma regarding document collection. Reviewing legal shared drive to determine relevance of folders for promotion.
06/11/2018	Merskey, A	Reviewing CG Landlords Mediation Brief. Reviewing Retirees Mediation Brief. Reviewing related case law. Reviewing financial analysis regarding claims. Emails regarding mediation preparation. Working on same. Conference call with mediation regarding logistics. Meeting with litigation investigator (continued).
06/11/2018	Morrison, T	Searching through claims to make list of all environmental claims in preparation for mediation.
06/11/2018	O'Brien, L	Email communication with O. Pasparakis regarding documents. Discussion with R. Frank and team with respect to document collection.
06/11/2018	Pasparakis, O	Calls with Justice Morawetz. Meeting with litigation trustee and stakeholders.
06/11/2018	Reither, E	Reviewing leases and claims and preparing and providing summaries to A. Schmitt.
06/11/2018	Schmitt, A	Assisting with review of all leases further to definition of "accelerated" rent for claims modelling. Assisting L. Pearson with landlord claims database. Preparing remaining landlord claim memos. Research on treatment of certain rent-type claims under BIA proposals. General preparations for mediation. Assisting with construction claims issues prior to upcoming payout motion on certain such claims.
06/11/2018	Taylor, S	Drafting claims memoranda for claims process.
06/12/2018	Bianchi, G	Reviewing AWS server inventory for relevant custodian data and updating chart.
06/12/2018	Bianchi, G	Attending weekly team meeting to discuss current status of matter and next steps.
06/12/2018	Cobb, E	Reviewing and commenting on draft Levis Motion Materials. Finalizing Construction Lien Motion materials. Construction Lien settlement discussions. Reviewing and commenting on acknowledgment for RBC re. pension funds. Call with counsel to Ontrea Inc. Emails regarding mediation matters. Considering potential mediated settlement structures for material creditor claims.
06/12/2018	Frank, R	Considering issues regarding document collection and review. Email

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**NORTON ROSE FULBRIGHT**

Invoice Date July 05, 2018 Invoice Number 9090048634 Page 9  
 Matter Description (LD) Sears Canada Inc. (VAN 17-3401)  
 Matter Number 1000299972

<u>DATE</u>	<u>NAME</u>	<u>Description</u>
		correspondence with Litigation Investigator regarding same. Reviewing report on documents located in AWS and discussion with L. O'Brien regarding same. Preparing for and attending meeting with document collection and review team.
06/12/2018	Galpern, K	Preparing note regarding discussion with M Rochette regarding joint and several pension liability. Preparing landlord claims summaries.
08/12/2018	Gauthier, V	Attending on board call. Attending to matters regarding D&O indemnity agreements, new retainer for D&O counsel, upcoming mediation. Various correspondence and telephone calls on file.
06/12/2018	Latuskie, K	Meeting with S. Taylor to discuss research for litigation.
06/12/2018	Ma, C	Preparing motion record regarding Construction Lien Claims. Finalizing the Twentieth Report of the Monitor. Various emails with E. Cobb regarding same. Email to service list regarding motion materials returnable June 15, 2018, arranging for filing of same. Various discussions with team regarding document collection status and next steps. Email to vendor regarding upcoming data ingestion and timelines. Attending to preparation of further documents for delivery to Litigation investigator, discussions with R. Frank regarding same. Finalizing arrangements for mediation and preparing updated attendee list and floorplans. Meeting with V. Gauthier regarding mediation arrangements.
06/12/2018	Margoc, H	Engaging in mediation preparation. Conducting claims review.
06/12/2018	Mens, G	Meeting with document collection team and reviewing contents of legal shared drive for relevance.
06/12/2018	Merskey, A	Working on mediation preparations. Reviewing class action claim. Discussion with S. Taylor.
06/12/2018	Mojtahedi, A	Correspondence with V. Gauthier and P. Mohtadi regarding the Chantal Gagnon Class Action. Drafting an amended memorandum for the Chantal Gagnon Class Action. Correspondence with E. Pearson and L. Kelly and drafting response letters to claimants and recipients of hardship fund located in Quebec.
06/12/2018	O'Brien, L	Various discussions with R. Frank, C. Ma, G. Bianchi and G. Mens regarding document collection and review. Email O. Pasparakis. Email Sears to follow up. Team meeting to discuss status.
06/12/2018	Pasparakis, O	Addressing mediation issues. Addressing litigation trustee inquiries. Reviewing mediation materials.
06/12/2018	Pooransingh, R	Office conference with L. O'Brien and G. Bianchi regarding data collection and attending to same.
06/12/2018	Reyes, T	Office conference with A. Schmitt regarding claim of VSL Logistics.

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**Invoice Date** July 05, 2018 **Invoice Number** 9090048634 **Page** 10  
**Matter Description** (LD) Sears Canada Inc. (VAN 17-3401)  
**Matter Number** 1000299972

<u>DATE</u>	<u>NAME</u>	<u>Description</u>
06/12/2018	Schmitt, A	Continuing to assist with running down of pre-mediation datapoint for claims modelling. Assisting E. Cobb with Construction Claims reconciliations.
06/12/2018	Taylor, S	Reviewing and discussing claims relating to Dealer class action.
06/13/2018	Bianchi, G	Continuing review of AWS server inventory for relevant custodian data, updating chart, and downloading relevant identified custodian data from server.
06/13/2018	Campbell, A	Meeting with litigation team to discuss document review; reviewing background materials in preparation for document review.
06/13/2018	Cobb, E	Resolving construction lien issues. Drafting Second Supplement to Nineteenth Report. Revising and finalizing First Supplement to Nineteenth Report. Attending to various mediation matters. Considering and meetings regarding constructive trust claim. Reviewing correspondence on Newmarket Property.
06/13/2018	Desroches, A	Discussion and emails with A. Oliver. Meeting with V. Dionne regarding offset of provincial income tax receivable against federal GST payable. Considering same.
06/13/2018	Frank, R	Consider document review issues. Team meeting regarding same. Review of memo regarding key words and other protocols. Prepare for and attend call with Litigation Investigator regarding document collection/review and privilege issues. Review document database.
06/13/2018	Galpern, K	Discussing with V Gauthier and A Merskey regarding pension deemed trust issues. Considering issues regarding same. Corresponding with M Rochette regarding same. Preparing landlord claims summaries.
06/13/2018	Gauthier, V	Attendance to Court-ordered mediation.
06/13/2018	Latuskie, K	Researching and writing a memo regarding litigation.
06/13/2018	Lenova, O	Attending mediation.
06/13/2018	Ma, C	Attending mediation. Various discussions with team regarding document collection status and next steps. Email to team regarding coding panel. Emails with vendor regarding upcoming delivery of custodial data.
06/13/2018	Margoc, H	Drafting letter with D&O claims. Drafting NORD's. Conducting claims review.
06/13/2018	Mens, G	Meeting with R. Frank and L. O'Brien regarding document collection. Call with the litigation investigator regarding same. Documentary review and development of key words accordingly for large scale review.
06/13/2018	Merskey, A	Preparing for and attending at mediation. Working on pension analysis subsequent to mediation.

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**NORTON ROSE FULBRIGHT**

Invoice Date July 05, 2018 Invoice Number 9090048634 Page 11  
 Matter Description (LD) Sears Canada Inc. (VAN 17-3401)  
 Matter Number 1000299972

DATE	NAME	Description
06/13/2018	O'Brien, L	Various discussions with team regarding document collection and review. Telephone communication with A. Winton at Lax O'Sullivan regarding status of document collection and review. Attending to various issues with database and review.
06/13/2018	Pasparakis, O	Preparing for and attending mediation.
06/13/2018	Reither, E	Preparing and providing landlord claim memos and corresponding with and providing same to A. Schmitt.
06/13/2018	Schmitt, A	Assisting with various claims data requests further to pension/landlords mediation.
06/13/2018	Taylor, S	Drafting claims memoranda.
06/14/2018	Bianchi, G	Completing review of AWS server inventory, updating chart, downloading further relevant custodian data from server, and preparing data for delivery to document management host for ingestion and processing.
06/14/2018	Cobb, E	Emails regarding Newmarket Property. Resolving various issues regarding Construction Lien Motion. Advising on mediation issues. Discussions regarding disputed construction claims with construction claimants' counsel.
06/14/2018	Dionne, V	Research regarding inter-governmental agreements between Quebec and the federal government in order to determine if Revenue Quebec may set-off a provincial income tax reimbursement against GST owed. Review the agreements, the Taxation Act and the Tax Administration Act regarding right of set-off for tax owed to Canada Revenue Agency. E-mail to A. Oliver. Discussion with A. Desroches.
06/14/2018	Frank, R	Consider document review issues, including key words and other protocols, and meetings and discussion with L. O'Brien and G. Mens regarding same. Privilege issues and discussion with Litigation Investigator regarding same.
06/14/2018	Galpern, K	Considering issues regarding deemed trusts. Discussing deemed trust issues with M Rochette and S Rigaud. Corresponding with A Merskey and V Gauthier regarding same. Preparing landlord claims memos. Discussing with A Schmitt regarding TravelBrands NORD.
06/14/2018	Gauthier, V	Attendance to Court ordered mediation.
06/14/2018	Lenova, O	Attending mediation. Uploading memos to FTI portal.
06/14/2018	Ma, C	Attending mediation. Discussions with L. O'Brien regarding status of data processing and timelines and strategies regarding upcoming document review. Discussions with G. Bianchi regarding custodial data and delivery to vendor. Emails with vendor regarding processing of data and next steps. Attending to updates to service list.

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# NORTON ROSE FULBRIGHT

Invoice Date July 05, 2018 Invoice Number 9090048634 Page 12  
 Matter Description (LD) Sears Canada Inc. (VAN 17-3401)  
 Matter Number 1000299972

<u>DATE</u>	<u>NAME</u>	<u>Description</u>
06/14/2018	Margoc, H	Assessing claims. Drafting NORD's.
06/14/2018	Mens, G	Discussions with L. O'Brien and R. Frank regarding key words for documentary review and analysis of key documents.
06/14/2018	Merskey, A	Preparing for and attending at mediation. Follow-up steps. Preparing for court.
06/14/2018	Mojtahedi, A	Responding to former employees of Sears on behalf of L. Pearson and L. Kelly. Correspondence with V. Gauthier and legal analysis regarding claims filed against Sears.
06/14/2018	O'Brien, L	Attending team meeting. Drafting preservation notice. Various emails and discussions regarding collection of data.
06/14/2018	Pasparakis, O	Preparing for and attending mediation.
06/14/2018	Reyes, T	Office conference with A. Schmitt regarding claim by Thomas Cook Travel.
06/14/2018	Rigaud, S	Consideration and review of questions from K. Galpern and discussion concerning same M. Rochetta. Telephone conversation with K. Galpern to review and discuss possible extension of OPBA wind-up deemed trust to employees reporting to work in other provinces and scope of federal PBSA deemed trust upon termination or wind-up.
06/14/2018	Rochetta, M	Follow-up of questions relating to the application of the deemed trust to pension plan wind up deficiency.
06/14/2018	Schmitt, A	Drafting Notices of Revision or disallowance for certain high value claims. Correspondence with certain construction lien claimant. Reviewing certain draft landlord claims memoranda. Follow-up with claimant for specific post-filing claim. Call with L. Pearson regarding consignee/trust claimant.
06/14/2018	Taylor, S	Review of Sears Home Dealers' class action claim material.
06/15/2018	Cobb, E	Finalizing Second Supplement to 19th Report and attending to service of same. Call regarding Newmarket property. Reviewing Levis Assignment Agreement. Emails regarding Morneau acknowledgment.
06/15/2018	Frank, R	Document review issues and discussions with L. O'Brien, G. Blanchi and G. Mens regarding same. E-mail to Litigation Investigator regarding additional documents.
06/15/2018	Gauthier, V	Sears Canada: Monitor Team Circle Up. Call with Monitor Team and SRJ Morawetz. Call re Sunlife Retiree conversion charge claim. Call with Osler. Attendance to various matters on file including landlord formula, pension matters, landlord claims, intergovernmental tax set-off, Sun Life Insurance Policy. Various calls and correspondence on file.
06/15/2018	Ma, C	Preparing confidential appendices brief to 2nd supplement to 19th Report. Preparing memo regarding strategy for document review. Email to service

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**NORTON ROSE FULBRIGHT**

Invoice Date July 05, 2018 Invoice Number 9090048634 Page 13  
 Matter Description (LD) Sears Canada Inc. (VAN 17-3401)  
 Matter Number 1000299972

<u>DATE</u>	<u>NAME</u>	<u>Description</u>
		list regarding Construction Lien Claims Order and Endorsement.
06/15/2018	Ma, C	Discussions with L. O'Brien regarding document review strategy. Discussions with G. Bianchi regarding document collection. Emails with vendor regarding status of data processing. Discussions with E. Cobb regarding preparation of 2nd Supplement to 19th Report of the Monitor. Email to Service List regarding same. Arrangements regarding mediation June 21, 2018.
06/15/2018	Margoc, H	Drafting NORD's. Conducting claims review. Researching case law for Court Order.
06/15/2018	Merskey, A	Preparing for and attending at court. Emails and telephone calls regarding [REDACTED] Emails regarding lien matters. Telephone call regarding Sun Life claim.
06/15/2018	O'Brien, L	Discussion with C. Ma regarding coding palette for review. Discussions with R. Frank and G. Mens with respect to various issues with document review. Revising preservation letter.
06/15/2018	Pasparakis, O	Calls with Justice Morawetz and various stakeholders. Planning mediation continuance. Addressing next steps.
06/15/2018	Schmitt, A	Preparing detailed NORD for large claim. Call with L. Pearson on certain rent database matters. Responding to certain construction lien claimant on claim reconciliations. Call with FTI team regarding post-mediation next steps. Responding to purported consignee creditor. Reviewing draft memoranda.
06/18/2018	Bianchi, G	Reviewing memorandum in preparation for meeting to discuss overview of matter.
06/18/2018	Bianchi, G	Attending meeting with R. Frank, A. Campbell, D. Urquhart, and G. Mens regarding overview of matter.
06/18/2018	Campbell, A	Meeting with litigation team to discuss document review.
06/18/2018	Cobb, E	Revising contractor settlement agreement. Conference call regarding Newmarket property.
06/18/2018	Frank, R	Document review and analysis. Consider production issues.
06/18/2018	Gauthier, V	Call to discuss Notices of Dispute received to date. Attendance to matters re: continuation of discussions following mediation, Travel Brands, extension of time to file NORDs, CHUBB, landlord formula, employee notices of dispute. Various correspondence and telephone calls on file.
06/18/2018	Lenova, O	Uploading memo to FTI portal and updating claims master tracker.

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**NORTON ROSE FULBRIGHT**

**Invoice Date** July 05, 2018 **Invoice Number** 9090048634 **Page 14**  
**Matter Description** (LD) Sears Canada Inc. (VAN 17-3401)  
**Matter Number** 1000299972

<u>DATE</u>	<u>NAME</u>	<u>Description</u>
06/18/2018	Ma, C	Emails from, to E. Cobb regarding logistics of June 19, 2018 hearing. Email to service list regarding same. Emails from, to vendor regarding data processing status. Discussions with team regarding same.
06/18/2018	Margoc, H	Conducting claims review and analysis. Reviewing leases for landlord claims.
06/18/2018	Mens, G	Meeting with document review team to convey key factual background about the case.
06/18/2018	Merskey, A	Telephone calls and emails regarding next mediation steps. Emails and follow-up regarding [REDACTED]. Reviewing various individual claims and correspondence with creditors on same.
06/18/2018	Mojtahedi, A	Responding to Quebec employees questions and concerns; correspondence with V. Gauthier regarding the classification of certain claims against Sears.
06/18/2018	Pasparakis, O	Addressing mediation issues with numerous stakeholders. Addressing [REDACTED]
06/18/2018	Schmitt, A	Drafting large claim NORD. Correspondence regarding certain alleged consignment arrangements. Attending to certain construction lien claim payout matters. Reviewing termination fee issue re certain claimant.
06/18/2018	Weaver, R	Researching the law regarding constructive trusts. Speaking with E. Cobb by telephone regarding the same.
06/19/2018	Blanchi, G	Discussing data ingestion issue with C. Ma and L. O'Brien, drafting email to team, and preparing data at issue for analysis and processing.
06/19/2018	Cobb, E	Working group conference call. Attending at chambers appointment on [REDACTED]. Drafting 21st Report. Reviewing and commenting on Place Vertu closing documents. Responding to inquiries from [REDACTED] regarding offer from [REDACTED].
06/19/2018	Frank, R	Document review and analysis. Consider production issues.
06/19/2018	Gauthier, V	Weekly Conference Calls. Attendance to matters re landlord claims, Sun Life NORD, alleged trust claims, insurance related claim discussion, review of certain memos in respect of claims. Review and provide comments on memos. Communication with certain stakeholders. Contract with CHUBB. Attendance to matters re Eco Enterprise Quebec, Mercury Jewellery, path forward, extension of time to file NORDs, [REDACTED]. Various correspondence on file.
06/19/2018	Lenova, O	Uploading memos to FTI portal and updating master claims tracker chart.
06/19/2018	Ma, C	Various emails with vendor regarding ingestion of data. Discussions with team regarding same.

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Invoice Date July 05, 2018 Invoice Number 9090048634 Page 15  
 Matter Description (LD) Sears Canada Inc. (VAN 17-3401)  
 Matter Number 1000299972

<u>DATE</u>	<u>NAME</u>	<u>Description</u>
06/19/2018	Margoc, H	Conducting claims review. Drafting claims memos. Meeting with J. Garnett regarding possible settlement.
06/19/2018	Merskey, A	Team call regarding status items. Emails and updates regarding ██████████ Working on same. Follow-up on mediation steps. Reviewing ██████████ Maximum Outdoor claim and meeting with principal. Emails regarding Hometown Dealers claim review. Reviewing analysis of various creditor claims. Commenting on same.
06/19/2018	Mojtahedi, A	Contacting a retired ex-employee of Sears with L. Shierman regarding her pension questions.
06/19/2018	O'Brien, L	Revising preservation notices. Various discussions and emails regarding document collection and processing. Attending team meeting.
06/19/2018	Pasparakis, O	Addressing ██████████ Numerous calls. Court attendance. Gathering and reviewing information. Addressing mediation issues with stakeholders.
06/19/2018	Schlitt, A	Assisting L. Pearson with Landlord settlement issues and datapoints. Reviewing and finalizing claims memos. Correspondence with Osler team regarding section 44 orders for payment of certain lien claims. Reviewing certain large scale claim analysis. Correspondence with A. Short regarding remaining lease fee issue.
06/19/2018	Weaver, R	Researching the law regarding constructive trusts.
06/20/2018	Bianchi, G	Discussing status of data ingestion issues with L. O'Brien and C. Ma and sending update to team regarding same.
06/20/2018	Cobb, E	Continuing draft of 21st Report. Reviewing motion record ██████████ Preparing responses to inquiries ██████████ Meeting regarding claim resolution and settlement matters. Meeting regarding insurance claims. Attending to closing matters in connection with Trois Rivières transaction.
06/20/2018	Frank, R	Document review and analysis. Consider key word issues. Meeting with L. O'Brien and C. Ma regarding same. Meeting with G. Mens regarding document review.
06/20/2018	Gauthier, V	Meeting to review landlord claims. Meeting with ERC. Meeting to discuss Insurance Related Claims Matters. Meeting to Discuss Formulae. Attendance to various matters on file.
06/20/2018	Ma, C	Discussions with team regarding ingestion of data and next steps. Email to vendor regarding additional instructions for processing of data. Reviewing draft search terms, reviewing and preparing preliminary searches in database. Preparing draft manuals. Discussions with L. O'Brien, G. Mens regarding document review and coding panel next steps.
06/20/2018	Margoc, H	Drafting Court Order. Conducting claims review. Updating claims chart.

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**NORTON ROSE FULBRIGHT**

Invoice Date July 05, 2018 Invoice Number 9090048634 Page 16  
 Matter Description (LD) Sears Canada Inc. (VAN 17-3401)  
 Matter Number 1000299972

<u>DATE</u>	<u>NAME</u>	<u>Description</u>
06/20/2018	Mens, G	Meeting with C. Ma and L. O'Brien to determine methodology for conducting review of privileged documents.
06/20/2018	Merskey, A	Emails and telephone calls regarding responses for [REDACTED] Emails and telephone calls regarding landlord claims. Working on review of class action claim. Follow-up on mediation steps. Follow-up on [REDACTED] steps. Reviewing environmental claims. Telephone call [REDACTED]
06/20/2018	Morrison, T	Updating memo binder with new memos and NORD's for V.Gauthier.
06/20/2018	O'Brien, L	Revising preservation letters and discussion with R. Frank. Discussions with team regarding status of data ingestion. Email communication with Sears with respect to data ingestion. Reviewing search terms and considering approach to search terms with R. Frank. Various discussions with C. Ma. Reviewing search results. Considering issues with document review. Discussions with C. Ma and G. Mens.
06/20/2018	Pasparakis, O	Meeting with pension counsel. Meeting with employee counsel. Call with class action counsel. Meeting on landlord claim. Reviewing [REDACTED] [REDACTED] Preparing response. Meeting with Litigation Inspector.
06/20/2018	Schmitt, A	Meetings to review certain settlement formulae. Assisting L. Pearson with certain claims analyses. Finalizing various claims memoranda. Coordinating payment of certain construction claims. Meeting to discuss certain high value NORD. Further meetings to discuss settlement formula with P. Bishop and O. Pasparakis. Reviewing trust claim approaches.
06/20/2018	Taylor, S	Reviewing and discussing dealer's class action claim. Drafting memo on same.
06/20/2018	Weaver, R	Researching the law regarding constructive trusts. Reviewing the Wildwood Nurseries license agreement. Emailing V. Gauthier and A. Schmitt regarding the same. Meeting with A. Schmitt regarding the same.
06/21/2018	Cobb, E	Preparing for and attending at chambers appointment. Reviewing [REDACTED] [REDACTED]. Drafting correspondence in response to [REDACTED] [REDACTED]. Reviewing closing documents for Levis transaction and commenting on same. Calls with Osler. Emails regarding construction lien settlements. Advising on Chubb agreement matters. Considering [REDACTED] [REDACTED]
06/21/2018	Frank, R	Document review issues.
06/21/2018	Gauthier, V	Attendance to various matters and meetings on file. Various correspondence with respect to the mediation and claims filed.
06/21/2018	Ma, C	Receiving and reviewing motion materials of [REDACTED]. Emails from, to vendor regarding processing of data. Emails with Court regarding scheduling. Emails with team regarding document review next steps. Reviewing updated list of search terms and preparing updated

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# NORTON ROSE FULBRIGHT

Invoice Date July 05, 2018 Invoice Number 9090048634 Page 17  
 Matter Description (LD) Sears Canada Inc. (VAN 17-3401)  
 Matter Number 1000299972

<u>DATE</u>	<u>NAME</u>	<u>Description</u>
		searches.
06/21/2018	Margoc, H	Drafting Court Order. Updating claim chart and claim memos.
06/21/2018	McCoomb, A	Reviewing [REDACTED] motion materials. Considering issues and next steps. Discussing same with O. Pasparakis.
06/21/2018	Mens, G	Meeting with document review team to review search terms and review strategy, including devising protocol for random sampling to assess search term validity.
06/21/2018	Mojtahedi, A	Research and correspondence with V. Gauthier about whether Éco Entreprises Québec's claim is a pre-filing or a post-filing claim.
06/21/2018	Morrison, T	Updating memo binder with new memos and NORD's for V.Gauthier.
06/21/2018	O'Brien, L	Reviewing and revising search terms and discussion with team on search results.
06/21/2018	Pasparakis, O	Numerous meetings to address landlord and cross action claims. Attending court and addressing Ms. Miller's motion.
06/21/2018	Schmitt, A	Coordinating payment of allowed secured construction claims. Assisting E. Cobb with response [REDACTED] Correspondence regarding certain post-filing amounts.
06/22/2018	Cobb, E	Emails regarding resolution [REDACTED] Attending to matters in connection with closing of [REDACTED] Calls and emails regarding certain construction lien claims. Drafting settlement agreement. Calls regarding Fleur De Lys property.
06/22/2018	Cobb, E	Meeting regarding constructive trust claims. Call with C. Hunter regarding trademark license.
06/22/2018	Frank, R.	Document review issues and e-mail correspondence regarding same.
06/22/2018	Gauthier, V	Meeting with ERC. Conference call on Morneau- Potential \$31M in Deficit. Meeting with L Galissiere on Mediation. Conference call re Éco Entreprises Québec. Follow-up work on claims filed and issuance of NORDs. Work on various claims filed and related notices and correspondence. Various telephone conferences, telephone calls and correspondence on file.
06/22/2018	Hunter, C	Assessing trademark licenses for Sears Canada trademarks and related amendments. Follow up with E. Cobb regarding same.
06/22/2018	Ma, C	Preparing search term results report and discussions with team regarding same. Reviewing and preparing updated search terms report for discussion. Meeting with team regarding same. Preparing final set of search terms. Email to vendor regarding additional documents for promotion to review. Email from vendor regarding update on data

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Invoice Date July 05, 2018 Invoice Number 9090048634 Page 18  
 Matter Description (LD) Sears Canada Inc. (VAN 17-3401)  
 Matter Number 1000299972

DATE	NAME	Description
		ingestion, discussions with L. O'Brien regarding same.
06/22/2018	McCoomb, A	Reviewing [REDACTED] motion materials.
06/22/2018	Mens, G	Meeting with document review team to review search terms and review strategy.
06/22/2018	Merskey, A	Working on Hometown Dealers store claim analysis. Emails regarding same. Emails and follow-up on [REDACTED]. Reviewing issues regarding pension claim additions. Telephone call regarding same. Telephone calls with litigation investigator. Emails and follow-up on landlord class proposal. Emails and follow-up on Kenny claim analysis.
06/22/2018	Mojtahedi, A	Analysis and correspondence with counsel to Éco Entreprises Québec.
06/22/2018	O'Brien, L	Reviewing and revising search terms. Various discussions with C. Ma and G. Mens. Email communications with FTI and OpenText. Reporting email to R. Frank and O. Pasparakis.
06/22/2018	Pasparakis, O	Meeting with Employee Rep Counsel. Meeting with Ms. Galessiere. Addressing mediation issues. Addressing motion [REDACTED].
06/22/2018	Reyes, T	Office conference with A. Schmitt regarding gross leaseable area of certain premises, for calculation of landlord claims.
06/22/2018	Schmitt, A	Considering and discussing trust law considerations regarding certain claim. Continuing to correspond with counsel to various allowed secured lien claimants regarding payouts. Coordinating with M. Shakra of Osler regarding the same. Dealing with a considering response to certain extremely large claim. Confirming pension law details. Continuing to consider and discuss large value notice of revision and disallowance.
06/22/2018	Weaver, R	Preparing for and attending meeting with E. Cobb and A. Schmitt regarding constructive trusts.
06/23/2018	Cobb, E	Commenting on release and settlement document with vendor.

## TIME SUMMARY

NAME	HOURS	RATE	AMOUNT
Partner			
Cobb, E	72.40	720.00	52,128.00
Desroches, A	1.00	590.00	590.00

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**INVOICE**

Invoice Number 9090056973  
 Matter Number 1000299972  
 Invoice Date August 07, 2018  
 NRF Contact Orestes Pasparakis

**NORTON ROSE FULBRIGHT**

Norton Rose Fulbright Canada LLP  
 Royal Bank Plaza, South Tower Suite 3800  
 200 Bay Street, P.O. Box 84  
 Toronto ON M5J 2Z4  
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For the attention of: Mr. Greg Watson,  
 Senior Managing Director  
 greg.watson@fticonsulting.com

**FTI CONSULTING, AS COURT APPOINTED  
 MONITOR OF SEARS CANADA  
 Suite 2010  
 79 Wellington Street West  
 Toronto ON M5K 1G8  
 (LD) Sears Canada Inc. (VAN 17-3401)**

Professional Services Rendered to July 22, 2018

Charges  
 CAD

**SUMMARY**

Taxable Fees	582,545.00
Taxable Disbursements	2,800.90
Taxable Other Charges	900.05
	<hr/>
Taxable Amount	586,245.95
HST 13.000%	76,211.97
	<hr/>
Non-Taxable Disbursements	320.00
	<hr/>
<b>TOTAL AMOUNT DUE AND PAYABLE</b>	<b>CAD 662,777.92</b>
	<hr/>

Payable in 30 days  
**PAYMENT INFORMATION**

RBC Financial Group, 1 Place Ville Marie, Montreal, Québec, CANADA H3C 3B5, Bank 003, Transit 00001, ACC. No. 161-327-2, Swift Code # ROYCCAT2. Include invoice number on transfer order.



Invoice Date August 07, 2018 Invoice Number 9090056973 Page 2  
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(LD) Sears Canada Inc. (VAN 17-3401)

TIME DETAILS

DATE	NAME	Description
08/18/2018	Urquhart, D	Reviewing backgrounder memos and attending meeting with R. Frank, G. Mens, A. Campbell and G. Bianchi.
06/25/2018	Bianchi, G	Attending meeting regarding status of document universe and loading further Amazon S3 server directories into document database.
06/25/2018	Cobb, E	Meeting regarding Construction Lien Motion. Call with J. Dacks and S. Irving regarding ROFR matters. Reviewing APA for PEI property and providing comments on same. Emails regarding Trademark License. Providing comments on vendor release document. Drafting Third Supplement to Nineteenth Report. Reviewing legal issues in connection with constructive trust questions and meeting with R. Weaver on same.
06/25/2018	Frank, R	Considering issues regarding document collection and review. Emailing correspondence regarding document request from Litigation Investigator and discussion with L. O'Brien regarding same. Meetings with L. O'Brien, G. Mens and M. Brown regarding document review protocol. Status update meeting with document review team. Discussions with O. Pasparakis regarding document review issues. Document review.
06/25/2018	Gauthier, V	Meeting with FSCO counsel re mediation. Meeting with Edmond Lamek and Natasha McParland. Conference call on DB Pension Joint & Several waivers. Attendance to matters re various claims filed by landlords, litigation parties, etc. Attendance to matters re Order to enhance Monitor's powers. Various correspondence and telephone calls on file.
06/25/2018	Ma, C	Team meeting regarding next steps and strategy for document review. Conducting further searches of data. Attending meeting with R. Frank, L. O'Brien, M. Brown, G. Mens regarding strategy for review. Further discussions with L. O'Brien regarding additional data for publication to review database. Conducting further searches of data. Email to vendor regarding promotion of additional data.
06/25/2018	Margoc, H	Drafting NORD's. Updating claims chart. Drafting court Order and other documents.
06/25/2018	Mens, G	Meeting with team internally regarding document review and deciding how to conduct random sampling.
06/25/2018	O'Brien, L	Drafting coding panel. Updating reviewing numbers. Meeting with team on status of data and next steps. Updating memo on document collection and review. Telephone communication with A. Winton. Various discussions with team. Drafting preservation notices.
06/25/2018	Pasparakis, O	Meetings with various stakeholders. Numerous calls and emails throughout the day.

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<u>DATE</u>	<u>NAME</u>	<u>Description</u>
06/25/2018	Rochette, M	(Pension Spousal Waiver) Analysis of the issues raised by Morneau with respect to spousal waivers outside Ontario, including the review of applicable legislative provisions. Answering questions asked by V. Gauthier regarding same.
06/25/2018	Schmitt, A	Reviewing claims and preparing NORDS. Various correspondence with Sears and FTI personnel to review and prepare NORDs. Dealing with treatment of particularly large claim and discussing elements of the same with Osler team.
06/25/2018	Taylor, S	Reviewing Concord response to NORD.
06/25/2018	Weaver, R	Meeting with E. Cobb regarding research regarding constructive trusts. Reviewing claim by Price Point. Meeting with V. Gauthier regarding the same.
06/26/2018	Cobb, E	Reviewing assignment documents and court materials in connection with Fleur De Lys transaction. Finalizing supplemental report on Fleur De Lys transaction. Conference call regarding Newmarket property. Drafting letter regarding Newmarket property. Considering issues raised in letter regarding ██████████. Calls regarding trademark license termination issues and revising drafts of same. Reviewing and commenting on APA for additional real property. Emails regarding director indemnities. Conference call with working group.
06/26/2018	Frank, R	Considering issues regarding document collection and review. Email to and from Litigation Investigator. Meetings with L. O'Brien and G. Mens regarding same. Brief discussion with O. Pasparakis regarding document review issues. Document review. Review preservation letter.
06/26/2018	Gauthier, V	Weekly Conference Calls with FTI. Conference call on Pension Joint and Survivor Waiver Form. Attendance to matters re foregoing. Various correspondence on file.
06/26/2018	Ma, C	Emails from, to vendor regarding status of data processing. Emails from, to S. Bissell regarding data, discussions with L. O'Brien regarding same. Conducting various searches of data. Emails with court regarding scheduling, email with E. Cobb regarding same.
06/26/2018	Margoc, H	Drafting NORD's. Updating claims chart. Drafting court Order and other documents.
06/26/2018	Mens, G	Meeting internally with document review team. Reviewing and revising preservation notice letters.
06/26/2018	Merskey, A	Team call regarding outstanding issues. Emails and follow-up on class action claim. Reviewing analysis regarding pension claims. Considering same. Telephone calls regarding same.

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<u>DATE</u>	<u>NAME</u>	<u>Description</u>
06/26/2018	Mojtahedi, A	Correspondence with V. Gauthier and A. Schmitt and preparing the claim memo for the NORD to be submitted in response to Claim Number 5960.
06/26/2018	Morrison, T	Meeting with H. Margoc to discuss finding landlord claims who have made mitigation assessments.
06/26/2018	Morrison, T	Reviewing landlord claims to determine if they have taken any acts of mitigation.
06/26/2018	O'Brien, L	Discussions with R. Frank and further revisions to preservation notices. Attending to issues with data. Telephone communication with FTI regarding document collection. Various discussions with team and emails with OpenText.
06/26/2018	Oliver, A	Reviewing memo regarding inter-governmental set-off. Discussion with A. Desroches.
06/26/2018	Pasparakis, O	Calls with various stakeholders. Addressing [REDACTED]
06/26/2018	Percival, R	Consultations with H. Margoc concerning CGI contract.
06/26/2018	Rochette, M	(Pension Spousal Waiver Issue) Conference call with A. Merskey and V. Gauthier to assess the situation and discuss next steps.
06/26/2018	Schmitt, A	Reviewing claims and preparing NORDS. Various correspondence with Sears and FTI personnel to review and prepare NORDs. Attending at Sears offices with FTI and Sears teams for extended claims review meeting and kick-off on NORDS for certain specialized types of claim.
06/28/2018	Taylor, S	Drafting claims memoranda for claims process.
06/27/2018	Bianchi, G	Attending call with Axcelerate project manager regarding next steps in document review process.
06/27/2018	Bianchi, G	Attending meeting with L. O'Brien, R. Frank, G. Mens, and C. Ma regarding strategy for document sampling and review process.
06/27/2018	Cobb, E	Reviewing drafts of construction lien claim materials. Emails regarding construction lien settlements. Call with counsel to personal injury plaintiff regarding lift stay request.
06/27/2018	Frank, R	Considering issues regarding document collection and review. Reviewing materials regarding potential additional collections. Team meeting regarding review protocol issues. Preparing for and attending call with Axcelerate regarding same. Discussions with G. Mens and L. O'Brien regarding same. Preparing for and attending call with Litigation Investigator. Considering issues regarding preservation letters and discussion with G. Mens regarding same.
06/27/2018	Galpern, K	Considering issues and relevant case law regarding waiver of joint and survivor pensions. Preparing note regarding same. Considering issues

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<u>DATE</u>	<u>NAME</u>	<u>Description</u>
06/27/2018	Gauthier, V	Meeting regarding mitigation Approaches for Claims Process. Meeting regarding Claims Process. Meeting to Discuss Dispute Resolution Options and Timeline. Various correspondence with stakeholders and emails and telephone calls on file.
06/27/2018	Ma, C	Attending call with vendor, R. Frank, G. Mens, L. O'Brien, G. Bianchi regarding possible document review strategies. Conducting various searches of documents. Attending further team meeting regarding document review strategy.
06/27/2018	Margoc, H	Drafting NORD's. Updating claim charts. Drafting court Order and other documents.
06/27/2018	Mens, G	Examining the folder directory of the "Corporate Secretariat" legal shared drive in order to determine the appropriate folders for promotion into the review tool. Call with Recommend Axcelerate and internal meetings to determine protocol for privilege review, random sampling, etc.
06/27/2018	Merskey, A	Meeting with V. Gauthier regarding claims analysis and planning. Analyzing claim mitigation issues. Reviewing expanded pension claims and related issues. Reviewing class action claim analysis. Emails regarding supplemental report. Reviewing environmental claims.
06/27/2018	O'Brien, L	Telephone communication with OpenText to discuss review approach. Updating call with A. Winton. Attending team meeting to discuss next steps.
06/27/2018	Pasparakis, O	Calls and emails with various stakeholders.
06/27/2018	Schmitt, A	Reviewing claims and preparing NORDS. Extended discussion and consideration regarding mitigation approaches for claims with significant "mitigatable" damages. Reviewing and revising various NORDs further to the same. Considering certain trust claims.
06/27/2018	Taylor, S	Internal meeting to discuss claims process and Concord claim notice of objection.
06/27/2018	Taylor, S	Reviewing claim and drafting NORDs for claim process.
06/27/2018	Weaver, R	Drafting a memorandum regarding constructive trusts. Preparing for and participating in team call regarding mitigation strategy with A. Schmitt, A. Merskey and V. Gauthier.
06/28/2018	Cobb, E	Conference calls regarding [REDACTED]. Reviewing issues in connection with [REDACTED].
06/28/2018	Frank, R	Considering issues regarding document collection and review. Reviewing

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<u>DATE</u>	<u>NAME</u>	<u>Description</u>
		materials regarding potential additional collections. Discussions with G. Mens regarding same. Preparing for and attending call with Litigation Investigator.
06/28/2018	Galpern, K	Considering issues and relevant case law regarding joint and survivor pension. Discussing issues regarding potential set-off regarding same with A. Merskey.
06/28/2018	Gauthier, V	Sears Canada NRFC/FTI Touch Base. Pension Discussion. Attendance to matters regarding Environmental claims, Landlord Claims, Pension request for a meeting, proposal to pension parties, construction lien claimants, litigation claims, enhancement of Monitor's powers, ERC notice of motion. Various telephone calls and correspondence on file.
06/28/2018	Ma, C	Preparing draft motion record regarding second construction lien claims. Discussions with A. Schmitt regarding same.
06/28/2018	Margoc, H	Drafting NORD. Drafting court Order. Reviewing environmental claims.
06/28/2018	Mens, G	Reviewing shared drive directory to determine appropriate folders to promote into review universe.
06/28/2018	Merskey, A	Emails and follow up regarding Investigator meeting. Work on pension claim issues. Emails with hearings officers regarding claims schedule. Emails regarding environmental claims and consider same. Telephone call with Steve Bissell regarding remediation steps. Emails and telephone call regarding ██████████ for extension.
06/28/2018	Mojtahedi, A	Responding to claimant inquiries with E. Pearson.
06/28/2018	Pasparakis, O	Follow-up on various issues with various stakeholders regarding next steps. Addressing ██████████
06/28/2018	Schmitt, A	Reviewing claims and preparing NORDS. Various correspondence with Sears and FTI personnel to review and prepare NORDs.
06/29/2018	Blanchi, G	Continuing preparation of chronologies by issue of documents in disclosure DP16.
06/29/2018	Cobb, E	Conference call regarding Newmarket option. Reviewing construction lien letter. Coordinating court attendance. Conference call regarding real property. Completing final review of Nineteenth Report Supplement. Completing final review of Construction Lien Motion. Reviewing notice of Motion of Employee Representative Counsel. Reviewing draft order. Commenting on vendor release.
06/29/2018	Frank, R	Considering issues regarding document collection and review. Discussions with G. Mens and L. O'Brien regarding same. Document review.
06/29/2018	Gauthier, V	Call with Pension Parties. Call with ██████████. Review and provide comments on ERC notice of motion. Circulate for of order.

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06/29/2018	Ma, C	Attendance to matters re proposed process for claim resolution, environmental claims, certain notice of disallowance, pension "formula", information request from landlord counsel. Various correspondence on file.
06/29/2018	Margoc, H	Attending to service list update. Finalizing draft Third Supplement to Nineteenth Report of Monitor. Preparing confidential appendices to Third Supplement to Nineteenth Report. Preparing First Supplement to the Twentieth Report of the Monitor. Finalizing motion record regarding construction lien claims. Email to service list regarding service of Third Supplement to Nineteenth Report and motion materials regarding second construction lien claims order.
06/29/2018	Mens, G	Reviewing claims.
06/29/2018	Merskey, A	Finalizing the promotion of relevant documents. Meeting with R. Frank and L. O'Brien. Providing internal update to document review team. Reviewing documents on Axcelerate database.
06/29/2018	Merskey, A	Emails and follow up regarding [REDACTED] Emails regarding ERL motion and review issues regarding same. Emails regarding various Orders and materials for July 4 motions and working on same. Attendance on [REDACTED] Further calls and follow up regarding same.
06/29/2018	Pasparakis, O	Meetings with various stakeholders. Discussions regarding [REDACTED] landlord claims and pension claims.
06/29/2018	Schmitt, A	Coordinating finalization of all lien settlement agreements, and court materials relating to the same. Coordinating final comments and attending to service and filing of the same.
07/02/2018	Cobb, E	Considering matters in connection with [REDACTED] Commenting on draft court order. Various email correspondence.
07/02/2018	Galpern, K	Considering issues and relevant case law regarding resolution of third party claims by claims officer.
07/02/2018	Mojtahedi, A	Drafting of Notices of Revision or Disallowance in the context of the claim process.
07/03/2018	Bianchi, G	Preparing search of documents to be promoted to the review platform from the Sears Legal Shared Drive, discussing same with L. O'Brien.
07/03/2018	Chahal, A	Delivering court documents to the Commercial List.
07/03/2018	Cobb, E	Conference calls on various matters. Working group meeting. Emails regarding D&O policies. Commenting on further vendor release document. Coordinating matters for July 4th court hearing. Emails regarding construction lien issues.
07/03/2018	Frank, R	Considering issues regarding document collection and review and meeting

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<u>DATE</u>	<u>NAME</u>	<u>Description</u>
		with L. O'Brien regarding same. Call from Litigation Investigator. Document production issues.
07/03/2018	Galpern, K	Considering issues and relevant case law regarding the right of claims officer to decide a dispute involving third parties.
07/03/2018	Gauthier, V	Weekly Conference Calls. Internal meeting to discuss status of proceedings. Attendance to matters with respect to Order regarding Monitor's Powers, pension proposal, next day hearing. Various correspondence on file.
07/03/2018	Ma, C	Emails with L. O'Brien regarding status of documents.
07/03/2018	Margoc, H	Conducting claims review. Drafting NORD's.
07/03/2018	Mens, G	Coordinating document review with L. O'Brien and G. Bianchi
07/03/2018	Merskey, A	Emails and follow-up on [REDACTED] Reviewing materials. Preparing for July 3rd court hearing. Working on claims issues. Team meeting regarding same.
07/03/2018	Mojtahedi, A	Drafting a letter to counsel for Éco Entreprises Québec in response to his inquiry about their claim. Drafting of Notices of Revision or Disallowance in the context of the claim process.
07/03/2018	O'Brien, L	Various discussions with R. Frank regarding status. Preparing estimate of time and cost for document review. Telephone communication to M. Gottlieb. Email communication with O. Pasparakis and R. Frank. Various emails with OpenText with respect to document collection and processing. Email communication with document review team regarding potential review.
07/03/2018	Pasparakis, O	Meetings to address next steps including [REDACTED] unsecured claims, deemed trusts and other matters.
07/03/2018	Schmitt, A	Reviewing claims and preparing NORDS. Various correspondence with Sears and FTI personnel to review and prepare NORDs. Attendance on regular claims call.
07/03/2018	Weaver, R	Researching and drafting a memorandum regarding constructive trust claims.
07/04/2018	Bianchi, G	Discussing with G. Mens potential issue with documents loaded into database from Sears Legal Shared Drive, performing searches in database and on Sears Legal Shared Drive regarding same.
07/04/2018	Cobb, E	Conference call with FTI regarding various matters. Conference call with Osler regarding [REDACTED] Reviewing updated transaction documents on [REDACTED] Reviewing updated CIT letter agreement and commenting on same. Calls with plaintiff's counsel regarding a lift stay request.

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DATE	NAME	Description
07/04/2018	Frank, R	Considering document review plan and review same with L. O'Brien. Considering [REDACTED]
07/04/2018	Galpern, K	Considering issues and relevant case law regarding the Concord and Ivanhoe claims. Reviewing and commenting on the memorandum regarding constructive trust prepared by R. Weaver.
07/04/2018	Gauthier, V	Meeting NRFC and FTI to discuss various matters relating to the settlement of various claims. Attendance to matters regarding Kone, Order regarding Powers of the Monitor, Recovery Analysis, Vaughan Mills, NORD, employee matters, indemnity claims by directors, claims against directors and corresponding NORDs, Eco Enterprise, Chantal Gagnon. Various correspondence on file with stakeholders.
07/04/2018	Margoc, H	Conducting claims review. Drafting NORD's. Updating claims chart.
07/04/2018	Mens, G	Reviewing legal shared drive to troubleshoot issues with ingestion of certain documents into the review platform. Discussions with G. Bianchi.
07/04/2018	Merskey, A	Emails regarding scheduling and court hearing. Preparing for and attending on same. Emails regarding recovery analysis and claim issues. Working on same. Emails regarding lien steps. Emails and follow-up on [REDACTED]
07/04/2018	O'Brien, L	Preparing estimate of costs for document review. Various emails regarding documents in legal shared drive.
07/04/2018	Pasparakis, O	Working on next steps regarding landlord claims, deemed trust, class action, claims process, joint and several.
07/04/2018	Reyes, T	Office conference with A. Schmitt regarding message to be sent back to those claimants whose claims are being disallowed pending proof of mitigation.
07/04/2018	Schmitt, A	Reviewing claims and preparing NORDS. Various correspondence with Sears and FTI personnel to review and prepare NORDs. Meeting with S. Bissell and K. Hamidii regarding claims process.
07/04/2018	Taylor, S	Consideration of construction lien claims.
07/04/2018	Weaver, R	Drafting a memorandum regarding constructive trust claims. Emailing E. Cobb regarding the same.
07/05/2018	Cobb, E	Reviewing and considering analysis of constructive trust issue. Calls and emails regarding [REDACTED]. Reviewing and commenting on closing documents for Fleur De Lys transaction. Calls regarding construction lien issues. Emails regarding trademark license matters. Commenting on acknowledgment regarding real property.
07/05/2018	Frank, R	Considering document review plan and review same with L. O'Brien. Email to S. Irving regarding document production to Litigation Investigator and

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<u>DATE</u>	<u>NAME</u>	<u>Description</u>
		brief review of documents regarding same.
07/05/2018	Galpern, K	Considering issues and relevant case law regarding Concord and Ivanhoe claims.
07/05/2018	Gauthier, V	Conference calls regarding Pension Formula. Regular CPO/NORD Call. Call regarding various matters on file. Attendance to matters regarding landlord claim valuation, various NORDs, valuation of pension claims, indemnity claims, [REDACTED] NORd for director claims, co-tenancy claims. Various correspondence and telephone calls on file.
07/05/2018	I.enova, O	Meeting with H. Margoc to discuss drafting NORDs for D&O claims.
07/05/2018	Margoc, H	Reviewing construction lien and D&O claims. Drafting documents. Review D&O claims. Telephone call with client.
07/05/2018	Mens, G	Reviewing potential issue with document ingestion. Discussions with L. O'Brien regarding next steps in review process. Retrieving precedents for coding manuals.
07/05/2018	Merskey, A	Attending at litigation investigator meeting. Emails and follow-up regarding July 24th case conference. Emails and follow-up regarding claim extension. Emails and follow-up regarding stay extension and Board motion. Emails and follow-up regarding pension claim issues. Conference call with pension counsel.
07/05/2018	Mojtahedi, A	Contacting certain creditors of Sears with E. Pearson in response to their inquiries.
07/05/2018	O'Brien, L	Discussion with R. Frank regarding review plan and budget and revising same. Emails regarding data promotion.
07/05/2018	Pasparakis, O	Calls with Pension group. Working on an offer to solve the deemed trust. Internal meeting regarding claims process and landlord position. Litigation Inspector meeting.
07/05/2018	Schmitt, A	Reviewing claims and preparing NORDS. Various correspondence with Sears and FTI personnel to review and prepare NORDs. Dealing with R. Harason in attempt to settle clients' claims.
07/06/2018	Cobb, E	Conference calls and emails regarding [REDACTED]
07/06/2018	Frank, R	Email from and to S. Irving and Litigation Investigator regarding document production. Considering issues regarding document review plan.
07/06/2018	Galpern, K	Meeting with A. Merskey regarding claims by Concord and Ivanhoe against Sears. Discussing conclusions regarding same with A. Merskey and V. Gauthier. Further considering issues and relevant case law regarding same.
07/06/2018	Gauthier, V	Call re Claims Process in the CCAA Proceedings of Sears Canada.

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<u>DATE</u>	<u>NAME</u>	<u>Description</u>
		Correspondence on file. Review and provide advice with respect to proposed landlord formula. Attendance to various matters on file.
07/06/2018	Mens, G	Discussions with R. Frank regarding key documents and organization.
07/06/2018	Merskey, A	Reviewing [REDACTED] regarding claims process. Telephone calls regarding and considering same. Reviewing Concord claim issues. Discussion with K. Galpern. Reviewing draft construction lien discharge materials. Guidance to A. Schmitt regarding same.
07/06/2018	O'Brien, L	Telephone communication with J. Zhiu at Lax O'Sullivan regarding document review plan and status. Revising budget.
07/06/2018	Penslar, R	Determining applicable notice period in an automatically renewing contract term under [REDACTED]
07/06/2018	Schmitt, A	Reviewing claims and preparing NORDS. Various correspondence with Sears and FTI personnel to review and prepare NORDS. Reviewing approach to certain trust claims. Coordinating wire payments to various lien claimants. Correspondence with certain lien claimant in attempt to settle claim.
07/06/2018	Weaver, R	Meeting with R. Penslar regarding research regarding New York law in respect of Price Point proof of claim. Emailing A. Schmitt and V. Gauthier regarding the same.
07/07/2018	Cobb, E	Commenting on closing documents for Vertu transaction. Emails regarding same. Coordinating Vertu closing matters.
07/07/2018	Gauthier, V	Attendance to matters re valuation of landlord claims.
07/09/2018	Cobb, E	Conference call with FTI and Osler. Attending to closing matters on Place Fleur De Lys transaction. Considering issues on constructive trust claims and emails regarding same. Reviewing claim issues on [REDACTED] property. Responding to inquiries on closing documents for a Place Vertu matter. Advising on construction lien issues.
07/09/2018	Frank, R	Consider issues regarding [REDACTED], including governance issues. Discussion with G. Mens regarding same.
07/09/2018	Gauthier, V	Call with Osler. Call with counsel for co-tenant. Call regarding Master Claims List as received by FTI. Call to Follow up on certain matters. Correspondence on file and attendance to matters regarding landlord claim analysis, NORDS in respect of director claims, NORDS generally, preparing term sheet for landlord valuation. Various correspondence on file and drafting documents regarding landlord claims.
07/09/2018	Latuskie, K	Attending to signing of documents.
07/09/2018	Lenova, O	Meeting with V. Gauthier and A. Schmitt to discuss D&O claims. Reviewing

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<u>DATE</u>	<u>NAME</u>	<u>Description</u>
		D&O claims and emailing a list of which require reclassification to A. Schmitt.
07/09/2018	Ma, C	Preparing additional documents for production to litigation investigator. Attending to changes to service list. Reviewing list of motion materials and reports on monitor website. Emails with Court regarding scheduling logistics.
07/09/2018	Merskey, A	Call with Osiers regarding stay extension and related matters. Emails and follow-up on landlord claims. Reviewing [REDACTED] issues. Working on same. Emails regarding Board matters.
07/09/2018	Pasparakis, O	Telephone calls regarding landlord's claims and next steps.
07/09/2018	Schmitt, A	Reviewing claims and preparing NORDS. Various correspondence with Sears and FTI personnel to review and prepare NORDs. Coordinating wire payments to lien claimants. Correspondence with K. Hamidi regarding claims forms.
07/09/2018	Weaver, R	Meeting with E. Cobb regarding memorandum regarding constructive trust claims. Revising proof of claim memo for Price Point to reflect New York law. Researching the law regarding treatment of option agreements, set-off and the sale of property subject to section 36 of the CCAA.
07/10/2018	Cobb, E	Reviewing updated APA for additional real property sale. Conference calls regarding [REDACTED]. Reviewing updated closing documents for Place a Vertu transaction. Working group conference call. Drafting response email regarding trademark matters. Conference call with stakeholders regarding remaining real properties. Conference call with CBRE regarding status of various issues. Calls regarding landlord claim resolutions. Emails to service list.
07/10/2018	Fioriello, A	Reviewing translation from English into French of Notice of Revision or Disallowance.
07/10/2018	Frank, R	Considering issues regarding [REDACTED], including governance issues. Discussion with O. Pasparakis regarding same. Email to Litigation Investigator regarding document production.
07/10/2018	Gauthier, V	Weekly Conference Calls, Call to Discuss L/C Application, Call to discuss Landlord Formula. Update on Owned Real Properties, Landlord Analysis, Regular CPO/NORD Call. Attendance to various matters on landlord valuation formula and term sheet, NORDs, letters of credit, SRP, constructive claim questions. Follow-up on various matters.
07/10/2018	Latuskle, K	Attending to the Monitor's Certificate.
07/10/2018	Lieberman, M	Call and corresponding with E. Cobb regarding property appraisers, engagement considerations.

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**Invoice Date** August 07, 2018 **Invoice Number** 9090056973 **Page 13**  
**Matter Description** (LD) Sears Canada Inc. (VAN 17-3401)  
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<u>DATE</u>	<u>NAME</u>	<u>Description</u>
07/10/2018	Ma, C	Attending to service list issues. Preparing additional brief of documents for delivery to litigation investigator.
07/10/2018	Merskey, A	Emails and follow-up regarding ██████████ class action claim meeting, bond motion, pension matters and Kenny claim.
07/10/2018	Mojtahedi, A	Reviewing Notices of Revision for the claims submitted in Quebec.
07/10/2018	Parenteau, A	Translation of a Notice of Revision or Disallowance.
07/10/2018	Pasparakis, O	Calls and emails throughout the day.
07/10/2018	Schmitt, A	Reviewing claims and preparing NORDS. Various correspondence with Sears personnel to review and prepare NORDS. Attending on regular claims procedure call.
07/10/2018	Weaver, R	Researching the law regarding disclaimer of option agreements, the law of set-off and section 36 of the Companies' Creditors Arrangement Act.
07/11/2018	Cobb, E	Conference call regarding ██████████ matters. Drafting proposal on ██████████. Meeting with R. Weaver regarding set-off issues. Commenting on additional vendor release document. Responding to inquiries on excise tax issue. Attending to closing matters on Place Vertu.
07/11/2018	Frank, R	Considering issues and email correspondence regarding request for production from counsel for directors. Discussion with L. O'Brien regarding workflows for document review process.
07/11/2018	Galpern, K	Discussing with A. Schmitt regarding claim by CGI. Considering issues and relevant case law regarding joint survivor pension and rights and duties of the administrator regarding same.
07/11/2018	Gauthier, V	Follow-up on matters re claims procedure order deadline, deal with ██████████. Call with L. Galissiere. Call with counsel to co-tenant. Revise landlord term sheet. Correspondence on file.
07/11/2018	Lenova, O	Preparing NORD for D&O claims. Meeting with A. Schmitt to discuss new NORD formatting.
07/11/2018	Ma, C	Various discussions with L. O'Brien regarding document review strategy. Preparing estimate.
07/11/2018	Mens, G	Reviewing precedent coding manuals and completing preliminary steps for current coding manual.
07/11/2018	Merskey, A	Telephone calls and considering issues regarding ██████████. Emails and follow-up on ██████████ matters. Reviewing emails regarding Barrie property. Emails and follow-up regarding Board motion. Emails and follow-up on co-tenancy issues.
07/11/2018	Mojtahedi, A	Organizing the closing of the Sears/LaSalle transaction.

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 Matter Description (LD) Sears Canada Inc. (VAN 17-3401)  
 Matter Number 1000299972

<u>DATE</u>	<u>NAME</u>	<u>Description</u>
07/11/2018	Pasparakis, O	Addressing landlord, pension and board issues.
07/11/2018	Reyes, T	Office conference with A. Schmitt regarding allowance of claim disallowed by FTI and revising same.
07/11/2018	Schmitt, A	Reviewing claims and preparing NORDS. Call with FTI/Sears team to review approach to certain NORDs. Various correspondence with Sears personnel to review and prepare NORDs. Correspondence with counsel to certain lien claimants and coordinating wire payments to certain of the same.
07/11/2018	Weaver, R	Researching the law regarding disclaimer of option agreements, the law of set-off and section 36 of the Companies' Creditors Arrangement Act. Meeting with E. Cobb regarding the same. Meeting with A. Schmitt regarding drafting notices of revision and disallowance.
07/12/2018	Bourque, H	Receipt of four judgments for translation. Discussion with Mtre.Lafrance.
07/12/2018	Cobb, E	Reviewing revised draft of expanded powers order and commenting on same. Reviewing and commenting on appraiser engagement letter. Reviewing revised APAs for multiple real property assets. Emails regarding construction lien claim issues. Call regarding lift stay request. Preparing lift stay consent. Updating FTI on lift stay consents. Reviewing issues on Chicoutimi property. Various email correspondence.
07/12/2018	Fioriello, A	Reviewing translation from English into French of two Notices of Revision and Disallowance.
07/12/2018	Frank, R	Email correspondence from Osler and to Litigation Investigator regarding production issues.
07/12/2018	Galpern, K	Considering issues and relevant case law regarding joint and survivor pension. Preparing memorandum regarding same. Considering issues regarding CGI claim. Discussing same with A. Schmitt.
07/12/2018	Gauthier, V	Attendance to many issues in connection with Notices of Revision or Disallowance. Conference call regarding same. Attendance to matters regarding motion to remove directors. certain real estate issues, pension matters, co-tenancy issues, stay extension. Reviewing and providing comments on documents regarding ERC motion. Reviewing and revising landlord formula term sheet. Receiving and reviewing revised landlord term sheet from [REDACTED] others. Various correspondence and telephone calls on file.
07/12/2018	Lenova, O	Drafting NORD and emailing to V. Gauthier along with proof of claim documents.
07/12/2018	Ma, C	Attending to changes to draft document review strategy and estimate. Attending to service list issues.

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<u>DATE</u>	<u>NAME</u>	<u>Description</u>
07/12/2018	Mens, G	Drafting document review coding manual.
07/12/2018	Merskey, A	Meeting with FSCO, Momeau Shepell. Telephone call regarding Kenny claim backup. Emails and follow-up on landlord negotiations. Emails regarding ██████████. Working on claims process steps. Discussion with V. Gauthier. Reviewing assessor terms.
07/12/2018	Parenteau, A	Translation of a Notice of Revision or Disallowance.
07/12/2018	Pasparakis, O	Working on resolving issues. Attending pension meeting. Telephone communication with landlords. Following up on next steps.
07/12/2018	Schmitt, A	Reviewing claims and preparing NORDS. Call with counsel to Sears on outstanding litigation matter, further to assessment of filed claim. Coordinating finalization of various NORDs. Various correspondence with Sears personnel to review and prepare NORDs.
07/12/2018	Weaver, R	Meeting with A. Schmitt regarding drafting Notices of Refusal and Disallowance.
07/13/2018	Cobb, E	Reviewing draft affidavit regarding Stay Extension Order. Commenting on updated landlord term sheet. Commenting on updated draft of expanded powers order. Calls with Osler. Various email correspondence. Working group meeting on various file matters.
07/13/2018	Galpern, K	Preparing memorandum regarding joint and survivor pension.
07/13/2018	Gauthier, V	Attendance to matters regarding motion of ERC. Attendance to matters regarding landlord claim formula. In person meeting with FTI. Attendance to matters regarding various claims filed. Reviewing and revising landlord claim term sheet and attendance to matters and correspondence regarding same. Various correspondence on file.
07/13/2018	Ma, C	Preparing additional brief of documents for delivery to Litigation Investigator. Emails with G. Mens regarding same. Receiving and reviewing motion materials regarding removal of board of directors.
07/13/2018	Merskey, A	Emails regarding valuation issues. Reviewing Home stores class action claim. Meeting with L. Brzezinski, D. Sterns regarding same. Reviewing proposed Board Order.
07/13/2018	Mojtahedi, A	Reviewing Notices of Review or Disallowance. Contacting employees of Sears in Quebec with L. Shierman.
07/13/2018	Pasparakis, O	Stakeholders meetings, letters and emails. Team meeting.
07/13/2018	Schmitt, A	Reviewing Construction Lien s. 44 order materials and providing comments to Osler. Sending same to counsel to lien claimant. Correspondence relating to same. Correspondence and meeting with S. Bissell to review newest batch of NORDs.

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Invoice Date August 07, 2018 Invoice Number 9090056973 Page 16  
 Matter Description (LD) Sears Canada Inc. (VAN 17-3401)  
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<u>DATE</u>	<u>NAME</u>	<u>Description</u>
07/13/2018	Segal, B	Discuss tax issue on break fees with E. Cobb and H. Kutsenko.
07/14/2018	Cobb, E	Reviewing comments on factoring settlement agreement. Reviewing comments on vendor settlement agreement. Advising on same.
07/14/2018	Schmitt, A	Reviewing Claims and administering NORD issuance process.
07/15/2018	Cobb, E	Emails on various matters. Considering and commenting on various documents.
07/15/2018	Gauthier, V	Attendance to matters on file regarding landlord claims.
07/15/2018	Schmitt, A	Reviewing Claims and drafting NORDs. Correspondence with K. Hamidi regarding the same.
07/16/2018	Cobb, E	Commenting on motion materials for July 24th hearing. Calls and emails regarding [REDACTED]. Responding to CIT issues and vendor issues. Commenting on recommendation regarding additional real property sale. Calls and emails regarding lift stay consent. Commenting on affidavit for additional real property sale. Meeting regarding claim review issues.
07/16/2018	Galpern, K	Considering issues regarding CGI claim. Discussing same with R. Percival. Corresponding with A. Schmitt regarding same.
07/16/2018	Gauthier, V	Attendance to various matters on file with respect to landlords and landlord claims and with respect to notices of revision or disallowance. Various telephone conversations and emails on file.
07/16/2018	Lenova, D	Reviewing correspondence to check for letters sent to counsel regarding Employee and Retiree Claims. Emailing claims document to A. Merskey.
07/16/2018	Mens, G	Receiving instructions from A. Schmitt regarding Notices of Revision or Disallowance and reviewing claims portal.
07/16/2018	Merskey, A	Emails regarding landlord proposals. Reviewing stay extension materials. Emails regarding [REDACTED]. Team meeting regarding class process. Telephone call with Board counsel. Telephone call with representative counsel.
07/16/2018	O'Brien, L	Revising cost estimate. Discussions regarding review strategy.
07/16/2018	Pasparakis, O	Addressing various issues throughout the day.
07/16/2018	Percival, R	Consult with K Galpern on CGI contract claims analysis and Sears comments concerning damages.
07/16/2018	Reyes, T	Searching for a forwarding additional information to Alex Schmitt regarding Vaughan Mills claim; discussion with Alex regarding form of response to Vaughan Mills claim.
07/16/2018	Schmitt, A	Reviewing Claims filed and drafted NORDs. Attending to organization and

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**Matter Description** (LD) Sears Canada Inc. (VAN 17-3401)  
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<u>DATE</u>	<u>NAME</u>	<u>Description</u>
		set up of certain NORD prep teams. Coordinating work for same.
07/17/2018	Anschuetz, E	Discussions with A. Schmitt and D. Urquhart regarding preparation of Notices of Revision or Disallowance. Preparing Notices of Revision or Disallowance.
07/17/2018	Cobb, E	Working group conference call. Conference call with landlord group. Drafting correspondence regarding [REDACTED]. Considering NORD extension issues and commenting on motion materials to include same. Calls regarding same. Drafting 21st Report.
07/17/2018	Frank, R	E-mail from Sears regarding document preservation issues and consider issues regarding same. Discussion with FTI regarding same.
07/17/2018	Galpern, K	Considering issues regarding Stranzyl D&O Claim. Discussing same with V. Gauthier. Considering issues regarding Maximum claim. Preparing NORD regarding same.
07/17/2018	Gauthier, V	Attendance to various matters on file with respect to stay extension materials, notices of revision or disallowance, claims filed against directors or officers, landlord claims, motion by ERC, various claims filed, etc. Various correspondence and telephone calls on file. Status call with Monitor. Status call with landlord counsel. Conference call on Claims matters. Various calls with counsel to landlords.
07/17/2018	Kutsenko, H	Researching GST/HST issues, discussing with B. Segal, emailing E. Cobb.
07/17/2018	Lenova, O	Preparing D&O NORDs. Phone discussion with FTI regarding Employee & Retiree-Related D&O claims. Preparing memo for A. Merskey.
07/17/2018	Ma, C	Further discussions with L. O'Brien regarding document review budget. Attending to changes to draft budget. Meeting with L. O'Brien, R. Cardillo regarding review budget.
07/17/2018	Mens, G	Drafting NORDs for A. Schmitt.
07/17/2018	Merskey, A	Telephone call with team regarding current matters. Emails regarding Newmarket property. Emails regarding landlord claims. Working on NORDs. Working on claim management steps.
07/17/2018	Mojtahedi, A	Responding to questions by former employees of Sears.
07/17/2018	O'Brien, L	Reviewing and revising document. Reviewing plan. Discussion with C. Ma.
07/17/2018	Pasparakis, O	Addressing various issues. Calls with landlords, Emails and meeting on claims, pension, directors.
07/17/2018	Raco, T	Creating chart of denied claims in NORD.
07/17/2018	Schmitt, A	Reviewing claims and preparing NORDs. Extensive correspondence throughout day with various FTI team members and S. Binder and D.

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Invoice Date August 07, 2018 Invoice Number 9090056973 Page 18  
 Matter Description (LD) Sears Canada Inc. (VAN 17-3401)  
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DATE	NAME	Description
		Westreich at Sears to expedite NORD issues and claim questions.
07/17/2018	Segal, B	Considering issues regarding HST and QST on break fees.
07/17/2018	Taylor, S	Preparation of NORDs and discussions regarding same.
07/17/2018	Urquhart, D	Drafting landlord NORDs.
07/18/2018	Anschuetz, E	Meeting with V. Gauthier and A. Schmitt regarding NORDs. Drafting NORDs.
07/18/2018	Black, S	Preparing "Schedule A" for letters to opposing counsel on behalf of our client.
07/18/2018	Cobb, E	Drafting materials for third construction lien claims order. Continuing draft of Twenty First Report. Reviewing updated APA for certain real properties. Advising on various notices of revision and disallowance. Considering issues regarding appraisals. Reviewing and responding on tax issues regarding break fees. Reviewing updated engagement letter. Telephone call with CBRE.
07/18/2018	Galpern, K	Reviewing Maximum claim materials. Preparing Maximum NORD
07/18/2018	Gauthier, V	Attendance to various matters on file regarding stay extension, claims process, landlord issues. Various correspondence on file. Conference call regarding pension claim. Conference call on claims process.
07/18/2018	Lenova, O	Preparing letters to D&O counsel. Phone call with FTI to discuss marker claims.
07/18/2018	Ma, C	Discussions with L. O'Brien regarding potential document review budget.
07/18/2018	Mens, G	Drafting NORDs for A. Schmitt.
07/18/2018	Merskey, A	Reviewing and considering Kenny NORD. Emails regarding Newmarket. Reviewing and considering draft Monitor report. Discussion with E. Cobb regarding [REDACTED] demands. Reviewing environmental NORD. Emails regarding same.
07/18/2018	O'Brien, L	Preparing analysis of costs.
07/18/2018	Schmitt, A	Attending call on Sears pension claim and D&O claim issues. Reviewing claims and preparing NORDs. Attending to construction lien claim payout issues and settlement. Extensive correspondence with landlord NORD team and FTI team on the same. Coordinating preparation of uninsured litigation claims.
07/18/2018	Urquhart, D	Drafting landlord NORDs.
07/19/2018	Black, S	Preparing "Schedule A" for opposing counsel on behalf of our client.
07/19/2018	Cobb, E	Meetings regarding disputed claims. Completing drafts of construction

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This is Exhibit "K" referred to in the Affidavit of Service of John N. Birch, sworn February 7, 2019

A handwritten signature in blue ink, appearing to read "A. Jones", is positioned above a horizontal line.

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Commissioner for Taking Affidavits  
(or as may be)

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

**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

**FIRST REPORT OF LAX O'SULLIVAN LISUS GOTTLIEB LLP  
IN ITS CAPACITY AS LITIGATION INVESTIGATOR  
NOVEMBER 5, 2018**

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Litigation Investigator

TO: **THE SERVICE LIST**

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## I. OVERVIEW

1. This is the first report of Lax O’Sullivan Lisus Gottlieb LLP (“**LOLG**”), in its capacity as Litigation Investigator (“**LI**”). It outlines the background to its appointment, the terms of the LI Order (defined below), the work done by the LI, and relief sought by the LI pursuant to the LI’s recommendation.

## II. BACKGROUND TO APPOINTMENT

2. 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 (“**CCAA**”). The relief granted under the Initial Order was later extended to SearsConnect, a partnership forming part of the operations of the Applicants (together with the Applicants, the “**Sears Canada Entities**”). The proceeding commenced under the CCAA by the Applicants are referred to in this report as the “**CCAA Proceeding**”.

3. Among other things, the Initial Order:

- (a) appointed FTI Consulting Canada Inc. as monitor of the Sears Canada Entities (the “**Monitor**”) in the CCAA Proceeding; and
- (b) granted an initial stay of proceedings against the Sears Canada Entities until July 22, 2017.

4. The Court has subsequently extended the stay period, most recently by order dated July 24, 2018, to December 18, 2018.

5. Pursuant to an order of this Court dated March 2, 2018, LOLG was appointed as LI to investigate, identify and report on certain potential rights and claims of the Sears Canada Entities and/or creditors of the Sears Canada Entities. The order was amended on April 26, 2018 (the “**LI Order**”).

6. The LI Order provides, among other things, that the LI shall be an officer of this Court.

### **III. PURPOSE OF THIS REPORT**

7. The purpose of this first report is to provide the Court with information regarding:
- (a) the work done by the LI to discharge its Mandate under the LI Order;
  - (b) the LI’s recommendation of a course of action in accordance with its Report to the Creditors’ Committee (the “**Report**”) provided pursuant to the LI Order; and
  - (c) the LI’s request for an order authorizing the appointment of a litigation trustee to pursue the relief recommended in the Report, and related relief.

### **IV. LI’S MANDATE AND REPORT UNDER THE LI ORDER**

8. The LI Order required the LI to do the following:
- (a) Investigate claims and possible claims that the Sears Canada Entities and/or their creditors may have against any parties (“**Mandate**”); and
  - (b) Report to the Creditors’ Committee with such details as the LI considers advisable, with such reporting to include recommendations regarding a proposed litigation plan that includes (but is not limited to):
    - (i) the potential rights or claims of Sears Canada Entities or their creditors that should be pursued, if any; and
    - (ii) a description of how and by whom such rights and claims, if any, can best be pursued or continued, including:

- (1) the coordination of the prosecution of such rights or claims with other rights or claims that may be asserted by different parties;
- (2) if necessary or desirable, a proposed governance structure for the Creditors' Committee for the purpose of providing input to the LI in the prosecution of such rights, claims or causes of action; and
- (3) consideration of various options for funding the prosecution of such rights, claims or causes of action.

9. As set out below, the LI has now completed its Mandate and the Report.

#### **V. THE WORK OF THE LI**

10. Pursuant to the LI Order, a Creditors' Committee was established. The members of the Creditors' Committee executed confidentiality agreements and the persons to whom they reported signed non-disclosure agreements.

11. Following its appointment, and in accordance with the LI Order and the Mandate, the LI investigated claims and possible claims of the Sears Canada Entities and/or their creditors and the Monitor. During the course of this investigation, the LI:

- (a) met with the Monitor and its counsel for the purpose of receiving a confidential briefing from the Monitor, as contemplated in the LI Order;
- (b) reviewed documents provided to it by the Applicants concerning possible claims the Sears Canada Entities may have against various potential defendants;
- (c) met with the Applicants and their counsel;
- (d) conducted extensive legal research;

- (e) met with members of the Creditors' Committee, both individually and as a group, to discuss the members' views of possible claims the Applicants or creditors might advance;
- (f) met with the Creditors' Committee, the Monitor and the Monitor's counsel on multiple occasions to keep them apprised of the progress of the LI's investigation; and
- (g) considered how claims and possible claims may best be pursued, and how to coordinate various streams of potentially overlapping claims by different claimants.

12. On July 5, 2018, the LI presented a confidential interim report to the Creditors' Committee. On September 11, 2018, the LI presented a confidential final report to the Creditors' Committee ("**Report to Committee**"). At these meetings, the LI provided recommendations, discussed the basis for those recommendations, and answered questions. The members of the Creditors' Committee also discussed the recommendations and Report to Committee.

13. The Creditors' Committee unanimously accepted the LI's recommendation as set out in its Report to Committee.

## **VI. LI'S RECOMMENDATION CONCERNING FURTHER STEPS**

### **A. The LI Order Contemplates Further Steps**

14. The LI Order expressly provides that the LI shall be at liberty, and is authorized, at any time, to apply to the Court for advice and directions in respect of its Mandate or any variation or expansion of the powers and duties of the LI.

15. The LI Order also provides that, following delivery of a Report to the Creditors' Committee in accordance with its Mandate, the LI shall not take any further steps without a further order of



the Court. The LI Order expressly provides that nothing in it shall prevent the LI from seeking an order of the Court authorizing it to pursue any claims identified pursuant to the Mandate.

**B. Litigation Should Be Pursued on Behalf of the Sears Canada Entities and Their Creditors**

16. The LI recommends that litigation should be pursued on behalf of and for the benefit of the Sears Canada Entities and their creditors. As set out below, it is recommended that the defendants to the claims be the members of the Sears Canada Board of Directors as of November 2013 (the “**Directors**”), Edward Lampert (“**Lampert**”) and ESL Investments Inc., and certain of its affiliates who were shareholders of Sears Canada (collectively, “**ESL**”). But for the recent Chapter 11 filing of Sears Holdings Corp. (“**Holdings**”), the LI would recommend that Holdings also be a defendant in the litigation. Given the filing, the LI recommends that, at this time, litigation not be commenced against Holdings but that the Monitor consider the steps that should or could be taken regarding Holdings in the Chapter 11 proceeding or otherwise.

17. The LI’s view is that this litigation should be co-ordinated with the parties and counsel, to the extent practicable, for the sake of fairness to the parties, including the proposed defendants, and efficiency.

18. As a result of the recommendations contained herein, the LI believes and recommends that its mandate as LI should come to an end.

**1. Appointment of Litigation Trustee to Pursue Sears Canada Claims**

19. The LI recommends that a litigation trustee should be appointed with a mandate to pursue certain claims on behalf of and for the benefit of the Sears Canada Entities and their creditors (the “**LT Claims**”) with respect to the \$509 million dividend declared by Sears Canada’s Board of

Directors in November 2013 and paid to its shareholders, including Holdings and ESL, in December 2013 (the “**Dividend**”).

20. The LT Claims would be for oppression, breach of fiduciary duty and breach of the standard of care (against the Directors), conspiracy (against the Directors, ESL and Lampert, the principal of ESL), and unjust enrichment, knowing assistance, and knowing receipt.

21. In the LI’s view, appointment of an experienced litigation trustee would likely facilitate the efficient management and prosecution of litigation for the benefit of the Sears Canada Entities and their creditors.

22. The litigation trustee would be a court officer whose role would be to act on behalf of the Sears Canada Entities to prosecute and, where appropriate, resolve claims. The litigation trustee would also coordinate with other stakeholders.

23. The LI recommends that the Honourable J. Douglas Cunningham, Q.C. be appointed as the litigation trustee. The Creditors’ Committee and the Monitor support this recommendation.

24. The LI further recommends that LOLG be appointed as counsel to the LT to pursue the LT Claims and to co-ordinate the pursuit of claims with other counsel. The Creditors’ Committee and the Monitor also support this recommendation.

25. The reasonable fees and disbursements of the LT and his counsel would be paid by the Sears Canada Entities from the fund described below.

## **2. The Monitor Should Pursue a Transfer at Undervalue Claim**

26. The LI recommends that the Monitor pursue a transfer at undervalue (“**TUV**”) claim under section 96 of the *Bankruptcy and Insolvency Act*, as incorporated into the CCAA pursuant to

section 36.1 with the respect to the CCAA (the “**Monitor’s Claim**”). Through this Claim, the Monitor would seek to set aside the Dividend on the basis that it was a gratuitous transfer to non-arm’s-length parties (specifically, ESL, Lampert, and Holdings) and that Sears Canada intended to defraud, defeat or delay creditors by paying it.

### **3. Pension Administrator and Superintendent of FSCO to Pursue Pension Claims**

27. The LI recommends that certain creditors pursue claims directly. In particular, the LI understands that the Pension Administrator (defined below) and the Superintendent of the Financial Services Commission of Ontario wish to and intend to pursue pension claims, as follows:

- (a) A claim by Sears Canada’s pension administrator, Morneau Shepell Ltd. (the “**Pension Administrator**”) for breach of fiduciary duty, knowing assistance, knowing receipt and conspiracy. This claim would be brought against those persons who were directors of Sears Canada at the time the Dividend was declared, for breach of their obligations in their capacity as directors of the pension administrator of the Sears Canada pension plan at that time. The claim against ESL and Lampert would be for knowing assistance, knowing receipt and conspiracy; and
- (b) A claim for oppression, breach of fiduciary duty, breach of standard of care, knowing assistance, knowing receipt and conspiracy to be brought by Sears Canada’s Pensioners against the directors of Sears Canada at the time the 2013 Dividend was declared. The claim against ESL and Lampert would be for knowing assistance, knowing receipt and conspiracy.

28. The LI recommends that these claims be pursued in concert with the LT Claims and the Monitor’s Claim.

#### 4. Franchisee Class Action Should be Transferred to the Commercial List

29. The LI recommends that an existing proposed class proceeding commenced in October 2015 by former “Sears Hometown” store franchisees (the “**Proposed Class Action**”) for oppression on the basis of the payment of the Dividend in the face of their previous suit for breaches of contract and the *Arthur Wishart Act (Franchise Disclosure)*, 2000, S.O. 2000, c. 3, for damages continue. It is recommended that Sotos LLP/Blaney McMurtry LLP, as class action counsel, in conjunction with the recommendation and the support of the LI, and with the support of the Monitor, seek an order of the Court transferring the Proposed Class Action (Court File No. 4114/15 commenced in Milton, Ontario) to the Commercial List and promptly seek an Order certifying the action as a class action under the *Class Proceedings Act, 1992*, S.O. 1992, c. 6.

30. The LI believes that it is important to co-ordinate the Proposed Class Action with the other proposed proceedings referred to herein as all of the proceedings deal with a significant overlap of critical facts. It would be inefficient for the Proposed Class Action to proceed in a different forum and could potentially lead to inconsistent findings on the same issues.

#### C. Claims Should Be Pursued in a Common Issues Trial

31. The LI recommends that the claims listed above (the “**Claims**”) be heard by this Court—to the extent possible—in a single joint issues trial to ensure efficiency in cost and time.

32. The LI proposes that the Claims be pursued through four separate actions (i.e., separate statements of claim), in which the Monitor, Pension Administrator, Litigation Trustee and the representative plaintiff are the respective plaintiffs, each to be represented by separate counsel. It is recommended that the Pension Administrator and Pensioners have one counsel appointed to deal with pension claims, with an assignment of claims being made as necessary.

33. Because an overwhelming majority of the facts and legal issues in the Claims overlap, the Claims should be joined into a single “common issues trial” to be case managed by a single judge on the Commercial List of the Superior Court of Justice. The LI’s proposed order seeks this relief.

34. It is recommended that meetings be convened by the Litigation Trustee on a periodic basis with the Creditor’s Committee and the Monitor to discuss the progress of the Claims and matters related to the Claims.

35. Other elements of the Claims which are specific to particular claims, claimants, or defendants should be heard separately as required.

**D. LT Claims and Monitor’s Claim to be Funded by the Estate**

36. The LI recommends that the LT Claims and the Monitor’s Claim be funded by the Estate, and that a fund totalling \$12 million be established for this purpose. The LI and the Monitor both agree that this amount represents a conservative estimate, including a buffer, for the contemplated fees and disbursements to be incurred by the LI, the Litigation Trustee, and the Monitor.

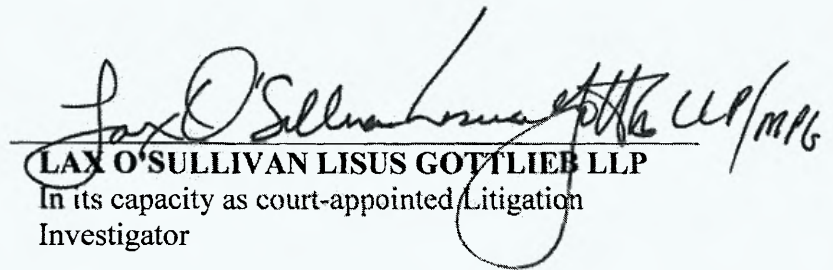
37. Management of Sears Canada, with oversight by the Monitor, would review the accounts and arrange for payment of those accounts.

38. This would necessarily include a mechanism to allow creditors to opt out of litigation funding. The Litigation Investigator has reviewed and supports the Monitor’s proposed opt-out mechanism.

39. The LI recommends that the remaining claims *not* be funded by the estate.

40. The LI respectfully submits to the Court this, its First Report.

Dated this 5th day of November, 2018.

CP/MPLG  
**LAX O'SULLIVAN LISUS GOTTLIEB LLP**  
In its capacity as court-appointed Litigation  
Investigator

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., 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.

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

**FIRST REPORT TO THE COURT  
OF LAX O'SULLIVAN LISUS GOTTLIEB LLP  
IN ITS CAPACITY AS LITIGATION INVESTIGATOR  
NOVEMBER 5, 2018**

**LAX O'SULLIVAN LISUS GOTTLIEB LLP**

Counsel

Suite 2750, 145 King Street West

Toronto, ON M5H 1J8

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Tel: 416 644 5353

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Tel: 416 644 5342

**Philip Underwood** LSO#: 73637W

punderwood@counsel-toronto.com

Tel: 416 645 5078

Fax: 416 598 3730

Litigation Investigator

This is Exhibit "L" referred to in the Affidavit of Service of John N. Birch, sworn February 7, 2019

A handwritten signature in blue ink, appearing to read "A. Jones", is written above a horizontal line.

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Commissioner for Taking Affidavits  
(or as may be)



**INDEMNIFICATION AGREEMENT**

**THIS AGREEMENT** is made as of this 19<sup>th</sup> day of February, 2006.

**B E T W E E N:**

**Sears Canada Inc.**, a corporation incorporated under the *Canada Business Corporations Act*

(the "Corporation")

- and -

**William C. Crowley**, Director, Sears Canada Inc.

(the "Indemnified Party")

**RECITALS:**

- A. The *Canada Business Corporations Act* (the "**CBCA**") permits, and in some cases requires, the Corporation to indemnify individuals who are or were directors and/or officers of the Corporation, or who act or acted at the Corporation's request as directors and/or officers or in a similar capacity of other entities (an "**Other Entity**", a term which, for the purposes of this indemnification agreement (the "**Agreement**") shall include a corporation or other entity that becomes an Other Entity in the future). In this Agreement:
- (i) each such individual, duly elected or appointed as a director and/or officer, including acting in a capacity similar to director and/or officer of an Other Entity and including an individual who has ceased to be a director and/or officer or to act in any such capacity, is referred to as a "Director" and/or "Officer", as appropriate;
  - (ii) unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders; and
  - (iii) unless otherwise indicated, references to sections are to sections in this Agreement;
- B. The Indemnified Party is at present a Director or Officer or both of the Corporation;
- C. Accordingly, the Corporation and the Indemnified Party wish to enter into this Agreement, and in so doing affirm that they intend that all the provisions of this Agreement be given legal effect to the full extent permitted by applicable law.

**NOW THEREFORE** in consideration of the sum of \$1.00 now given by the Indemnified Party to the Corporation, and of the mutual covenants and agreements contained in this Agreement and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties agree as follows:

1. Subject to sections 2 and 3, the Corporation agrees to indemnify and save harmless the Indemnified Party:

- 1.1 from and against all costs, charges and expenses reasonably incurred by the Indemnified Party in respect of any civil, criminal, administrative, investigative or other proceeding to which the Indemnified Party is involved by reason of being or having been a Director and or Officer; and

- 1.2 to the extent such costs, charges and expenses are not otherwise paid by the Corporation or Other Entity, as appropriate, from and against all costs, charges and expenses that the Indemnified Party may reasonably incur as a result of carrying out the Indemnified Party's duties as a Director and or Officer in respect of the Indemnified Party's reasonable and necessary travel, lodging or accommodation costs, charges or expenses.

2. Indemnification under section 1 shall be made only if the Indemnified Party:

- 2.1 acted honestly and in good faith with a view to the best interests of either the Corporation or the Other Entity, as the case may be; and

- 2.2 in the case of a criminal or administrative proceeding that is enforced by a monetary penalty, the Indemnified Party had reasonable grounds for believing that the Indemnified Party's conduct was lawful.

Sections 2.1 and 2.2 are referred to in this Agreement as the "**Standards of Conduct**".

3. In respect of an action by or on behalf of the Corporation or an Other Entity to procure a judgment in its favour to which the Indemnified Party is made a party by reason of being or having been a Director and/or Officer, indemnification under section 1 shall be made only after obtaining approval of the court having jurisdiction.

4. For the purposes of this Agreement:

- 4.1 "**proceeding**" shall include a claim, demand, suit, action, proceeding or investigation, whether threatened in writing, pending, commenced, continuing or completed, and any appeal or appeals therefrom;

- 4.2 "**costs, charges and expenses**" shall include:

- 4.2.1 subject to section 9, an amount paid to settle an action or satisfy a judgment, except in respect of an action to which section 3, above, is applicable;

4.2.2 a fine, penalty, levy or charge paid to any domestic or foreign government (federal, provincial, municipal or otherwise) or to any regulatory authority, agency, commission or board of any domestic or foreign government, or imposed by any court or any other law, regulation or rule-making entity having jurisdiction in the relevant circumstances (collectively, a “**Governmental Authority**”), including as a result of a breach or alleged breach of any statutory or common law duty imposed on directors or officers or of any law, statute, rule or regulation or of any provision of the articles, by-laws or any resolution of the Corporation or an Other Entity;

4.2.3 an amount paid to satisfy a liability arising as a result of the failure of the Corporation or an Other Entity to pay wages, vacation pay and any other amounts that may be owing to employees or to make contributions that may be required to be made to any pension plan, retirement income plan or other benefit plan for employees or to remit to any Governmental Authority payroll deductions, income taxes or other taxes, or any other amounts payable by the Corporation or an Other Entity; and

4.2.4 reasonable legal costs on a solicitor and his own client basis, including those incurred in enforcing the Indemnified Party’s rights under this Agreement; and

4.3 the Indemnified Party shall be considered to be “**involved**” in any proceeding if the Indemnified Party has any participation whatsoever in such proceeding, including merely as a witness.

5. Upon the Indemnified Party becoming aware of any proceeding which may give rise to indemnification under this Agreement, the Indemnified Party shall give written notice to the Corporation, directed to its (a) Chief Executive Officer or President and (b) General Counsel, as soon as is practicable, provided however that failure to give notice in a timely fashion shall not disentitle the Indemnified Party to indemnification unless the Corporation suffers actual prejudice by reason of the delay.
6. The Corporation may conduct any investigation it considers appropriate of any proceeding of which it receives notice under section 5, and shall pay all costs of that investigation.
7. The parties wish to facilitate the payment by the Indemnified Party of ongoing costs in connection with matters for which indemnification under this Agreement is provided. Accordingly, the parties agree as follows:

7.1 subject to section 7.2, the Corporation shall, upon demand, make advances (“**Expense Advances**”) to the Indemnified Party of all reasonable amounts for which the Indemnified Party seeks indemnification under this Agreement before the final disposition of the relevant proceeding. In connection with such demand, the Indemnified Party shall provide the Corporation with a written affirmation of the Indemnified Party’s

good faith belief that the Indemnified Party has met the Standards of Conduct, along with sufficient particulars of the costs, charges and expenses to be covered by the proposed Expense Advance to enable the Corporation to make an assessment of their reasonableness;

7.2 the Corporation shall make Expense Advances to the Indemnified Party in accordance with the provisions of the CBCA; and

7. 7.3 the Indemnified Party shall execute a separate undertaking which shall set out the Indemnified Party's acknowledgement and agreement to repay to the Corporation, upon demand, all Expense Advances in the event the Indemnified Party has not met the Standards of Conduct.

8. The indemnities in section 1 shall not apply in respect of any proceeding initiated by the Indemnified Party:

8.1 against the Corporation or an Other Entity, unless it is brought to establish or enforce any right under this Agreement;

8.2 against any Director or Officer unless the Corporation or the Other Entity, as the case may be, has joined in or consented to the initiation of such proceeding; or

8.3 against any other corporation, partnership, trust, joint venture, unincorporated entity or person, unless it is a counterclaim.

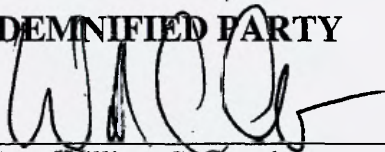
9. The Corporation shall be entitled to participate, at its own expense, in the defence of the Indemnified Party in any proceeding. If the Corporation so elects after receipt of notice of a proceeding, or the Indemnified Party in that notice so directs, the Corporation shall assume control of the negotiation, settlement or defence of the proceeding, in which case the defence shall be conducted by counsel chosen by the Corporation and reasonably satisfactory to the Indemnified Party. If the Corporation elects to assume control of the defence, the Indemnified Party shall have the right to participate in the negotiation, settlement or defence of the proceeding and to retain counsel to act on the Indemnified Party's behalf, in which case the Corporation shall reimburse the Indemnified Party for any fees and disbursements of that counsel if a conflict of interests has arisen between the Corporation and the Indemnified Party. Notwithstanding anything contained herein, the Corporation shall not be responsible for fees and expenses of more than one counsel separate from counsel for the Corporation for all Directors and Officers in connection with any action or separate but similar or related actions arising out of the same general allegations or circumstances. The Indemnified Party and the Corporation shall cooperate fully with each other and their respective counsel in the investigation related to, and defence of, any proceeding and shall make available to each other all relevant books, records, documents and files and shall otherwise use their best efforts to assist each other's counsel to conduct a proper and adequate defence.

10. In respect of the settlement of any proceeding, the parties agree as follows:
  - 10.1 the Corporation may not, without the prior written consent of the Indemnified Party (which consent shall not be unreasonably withheld or delayed) enter into an agreement to settle any proceeding involving the Indemnified Party;
  - 10.2 if the Indemnified Party refuses after requested by the Corporation, acting reasonably, to give consent to the terms of a proposed settlement in accordance with section 10.1 which is otherwise acceptable to the Corporation, the Corporation may require the Indemnified Party to negotiate or defend the Claim independently of the Corporation. In that case, any amount recovered by the claimant in excess of the amount for which settlement could have been made by the Corporation shall not be recoverable under this Agreement, and the Corporation will only be responsible for costs, charges and expenses up to the time at which settlement could have been made;
  - 10.3 the Corporation shall not be liable for any settlement of any proceeding effected without its prior written consent (which consent shall not be unreasonably withheld or delayed);
  - 10.4 the Indemnified Party shall have the right to negotiate a settlement in respect of any proceeding, provided that unless the Corporation has approved the settlement, the Indemnified Party shall pay any compensation or other payment to be made under the settlement and the costs of negotiating and implementing the settlement, and shall not seek indemnity from the Corporation in respect of such compensation, payment or costs; and
  - 10.5 the settlement of a proceeding shall not create a presumption that the Indemnified Party did not meet or would not have met the Standards of Conduct.
11. Should any payment made pursuant to this Agreement, including the payment of insurance premiums or any payment made by an insurer under an insurance policy, be deemed to constitute a taxable benefit or otherwise be or become subject to any tax or levy, then the Corporation shall pay any amount as may be necessary to ensure that the amount received by or on behalf of the Indemnified Party, after the payment of or withholding for such tax, fully reimburses the Indemnified Party for the actual cost, expense or liability incurred by or on behalf of the Indemnified Party.
12. Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect. The parties shall engage in good faith negotiations to replace any provision which is declared invalid or unenforceable with a valid and enforceable provision, the economic effect of which comes as close as possible to that of the invalid or unenforceable provision which it replaces.

13. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.
14. This Agreement shall survive until six years after the Indemnified Party has ceased to be a Director or Officer.
15. Except as expressly provided in this Agreement, no amendment or waiver of this Agreement shall be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement shall constitute a waiver of any other provision nor shall any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided.
16. This Agreement shall enure to the benefit of the Indemnified Party and the Indemnified Party's heirs, administrators, executors and personal representatives and shall be binding upon the Corporation and its successors.

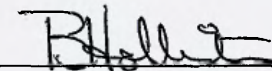
**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement.

**INDEMNIFIED PARTY**



\_\_\_\_\_  
Name: William C. Crowley  
Position: Director, Sears Canada Inc.

**SEARS CANADA INC.**

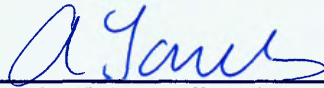
by: 

\_\_\_\_\_  
Name: Brent Hollister  
Title: President and Chief Executive  
Officer

by: 

\_\_\_\_\_  
Name: Rudolph R. Vezér  
Title: Senior Vice-President and Chief  
Legal Officer

This is Exhibit "M" referred to in the Affidavit of Service of John N. Birch, sworn February 7, 2019

A handwritten signature in blue ink, appearing to read "A. Jones", is written over a horizontal line.

Commissioner for Taking Affidavits  
(or as may be)

**AMENDED AND RESTATED INDEMNIFICATION AGREEMENT**

**THIS AGREEMENT** is made as of this 4<sup>th</sup> day of July, 2014.

**B E T W E E N:**

**Sears Canada Inc.**, a corporation incorporated under the *Canada Business Corporations Act*

(the "Corporation")

- and -

William R. Harker

(the "Indemnified Party")

**RECITALS:**

- A. The *Canada Business Corporations Act* (the "CBCA") permits, and in some cases requires, the Corporation to indemnify individuals who are or were directors and/or officers of the Corporation, or who act or acted at the Corporation's request as directors and/or officers or in a similar capacity of other entities (an "Other Entity", a term which, for the purposes of this indemnification agreement (the "Agreement") shall include a corporation or other entity that becomes an Other Entity in the future). In this Agreement:
- (i) each such individual, duly elected or appointed as a director and/or officer, including acting in a capacity similar to director and/or officer of an Other Entity and including an individual who has ceased to be a director and/or officer or to act in any such capacity, is referred to as a "Director" and/or "Officer", as appropriate;
  - (ii) unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders; and
  - (iii) unless otherwise indicated, references to sections are to sections in this Agreement;
- B. The Indemnified Party is at present a Director or Officer or both of the Corporation;
- C. The Indemnified Party and the Corporation entered into an Indemnification Agreement as of November 21<sup>st</sup>, 2008 (the "Original Agreement"), which they wish to amend and restate;
- D. Accordingly, the Corporation and the Indemnified Party wish to enter into this Agreement, and in so doing affirm that they intend that all the provisions of this Agreement be given legal effect to the full extent permitted by applicable law.



**NOW THEREFORE** in consideration of the sum of \$1.00 now given by the Indemnified Party to the Corporation, and of the mutual covenants and agreements contained in this Agreement and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties agree as follows:

1. Subject to sections 2 and 3, the Corporation agrees to indemnify and save harmless the Indemnified Party:

- 1.1 from and against all costs, charges and expenses reasonably incurred by the Indemnified Party in respect of any civil, criminal, administrative, investigative or other proceeding to which the Indemnified Party is involved by reason of being or having been a Director and or Officer; and

- 1.2 to the extent such costs, charges and expenses are not otherwise paid by the Corporation or Other Entity, as appropriate, from and against all costs, charges and expenses that the Indemnified Party may reasonably incur as a result of carrying out the Indemnified Party's duties as a Director and or Officer in respect of the Indemnified Party's reasonable and necessary travel, lodging or accommodation costs, charges or expenses.

2. Indemnification under section 1 shall be made only if the Indemnified Party:

- 2.1 acted honestly and in good faith with a view to the best interests of either the Corporation or the Other Entity, as the case may be; and

- 2.2 in the case of a criminal or administrative proceeding that is enforced by a monetary penalty, the Indemnified Party had reasonable grounds for believing that the Indemnified Party's conduct was lawful.

Sections 2.1 and 2.2 are referred to in this Agreement as the "**Standards of Conduct**". For the purposes of the Standards of Conduct and this Agreement generally:

- (a) for purposes of any determination hereunder, the Indemnified Party will be deemed, subject to compelling evidence to the contrary, to have acted in good faith and in the best interests of the Corporation or any Other Entity. The Corporation will have the burden of establishing the absence thereof;
- (b) the knowledge and/or actions, or failure to act, of any other director, officer, agent or employee of the Corporation or any Other Entity will not be imputed to the Indemnified Party for purposes of determining the right to indemnification under this Agreement;
- (c) the Corporation will have the burden of establishing that any amount it wishes to challenge is not reasonable; and
- (d) the termination of any proceeding by judgment, order, settlement, conviction or upon a plea of *nolo contendere* or its equivalent shall not, of itself, create a

presumption that the Indemnified Party is not entitled to indemnification under this Agreement.

3. In respect of an action by or on behalf of the Corporation or an Other Entity to procure a judgment in its favour to which the Indemnified Party is made a party by reason of being or having been a Director and/or Officer, indemnification under section 1 shall be made only after obtaining approval of the court having jurisdiction, provided that the Corporation shall or shall cause such Other Entity to seek and use all reasonable efforts to obtain that approval as soon as reasonably possible in the circumstances.

4. For the purposes of this Agreement:

4.1 “proceeding” shall include a claim, demand, suit, action, proceeding or investigation, whether threatened in writing, pending, commenced, continuing or completed, and any appeal or appeals therefrom;

4.2 “costs, charges and expenses” shall include:

4.2.1 subject to section 9, an amount paid to settle an action or satisfy a judgment, except in respect of an action to which section 3, above, is applicable;

4.2.2 a fine, penalty, levy or charge paid to any domestic or foreign government (federal, provincial, municipal or otherwise) or to any regulatory authority, agency, commission or board of any domestic or foreign government, or imposed by any court or any other law, regulation or rule-making entity having jurisdiction in the relevant circumstances (collectively, a “**Governmental Authority**”), including as a result of a breach or alleged breach of any statutory or common law duty imposed on directors or officers or of any law, statute, rule or regulation or of any provision of the articles, by-laws or any resolution of the Corporation or an Other Entity;

4.2.3 an amount paid to satisfy a liability arising as a result of the failure of the Corporation or an Other Entity to pay wages, vacation pay and any other amounts that may be owing to employees or to make contributions that may be required to be made to any pension plan, retirement income plan or other benefit plan for employees or to remit to any Governmental Authority payroll deductions, income taxes or other taxes, or any other amounts payable by the Corporation or an Other Entity; and

4.2.4 reasonable legal costs on a solicitor and his own client basis, including those incurred in enforcing the Indemnified Party’s rights under this Agreement; and

4.3 the Indemnified Party shall be considered to be “involved” in any proceeding if the Indemnified Party has any participation whatsoever in such proceeding, including merely as a witness.

5. Upon the Indemnified Party becoming aware of any proceeding which may give rise to indemnification under this Agreement, the Indemnified Party shall give written notice to the Corporation, directed to its (a) Chief Executive Officer or President and (b) General Counsel, as soon as is practicable, provided however that failure to give notice in a timely fashion shall not disentitle the Indemnified Party to indemnification unless the Corporation suffers actual prejudice by reason of the delay.
6. The Corporation may conduct any investigation it considers appropriate of any proceeding of which it receives notice under section 5, and shall pay all costs of that investigation.
7. The parties wish to facilitate the payment by the Indemnified Party of ongoing costs in connection with matters for which indemnification under this Agreement is provided. Accordingly, the parties agree as follows:

7.1 subject to section 7.2, the Corporation shall, upon demand, make advances (“Expense Advances”) to the Indemnified Party of all reasonable amounts for which the Indemnified Party seeks indemnification under this Agreement before the final disposition of the relevant proceeding. In connection with such demand, the Indemnified Party shall provide the Corporation with a written affirmation of the Indemnified Party’s good faith belief that the Indemnified Party has met the Standards of Conduct, along with sufficient particulars of the costs, charges and expenses to be covered by the proposed Expense Advance to enable the Corporation to make an assessment of their reasonableness;

7.2 the Corporation shall make Expense Advances to the Indemnified Party in accordance with the provisions of the CBCA; and

7.3 the Indemnified Party shall execute a separate undertaking which shall set out the Indemnified Party’s acknowledgement and agreement to repay to the Corporation, upon demand, all Expense Advances in the event that it is subsequently determined that the Indemnified Party has not met the Standards of Conduct.

8. The indemnities in section 1 shall not apply in respect of any proceeding initiated by the Indemnified Party:
  - 8.1 against the Corporation or an Other Entity, unless it is brought to establish or enforce any right under this Agreement, any other right of indemnity or in connection with any directors’ and officers’ liability insurance or similar policy;
  - 8.2 against any Director or Officer unless the Corporation or the Other Entity, as the case may be, has joined in or consented to the initiation of such proceeding; or

- 8.3 against any other corporation, partnership, trust, joint venture, unincorporated entity or person, unless it is a counterclaim.
9. The Corporation shall be entitled to participate, at its own expense, in the defence of the Indemnified Party in any proceeding. If the Corporation so elects after receipt of notice of a proceeding, or the Indemnified Party in that notice so directs, the Corporation shall assume control of the negotiation, settlement or defence of the proceeding, in which case the defence shall be conducted by counsel chosen by the Corporation and reasonably satisfactory to the Indemnified Party. If the Corporation elects to assume control of the defence, the Indemnified Party shall have the right to participate in the negotiation, settlement or defence of the proceeding and to retain counsel to act on the Indemnified Party's behalf, in which case the Corporation shall reimburse the Indemnified Party for any fees and disbursements of that counsel if a conflict of interests has arisen between the Corporation and the Indemnified Party. Notwithstanding anything contained herein, the Corporation shall not be responsible for fees and expenses of more than one counsel in each applicable jurisdiction separate from counsel for the Corporation for all Directors and Officers in connection with any action or separate but similar or related actions arising out of the same general allegations or circumstances. The Indemnified Party and the Corporation shall cooperate fully with each other and their respective counsel in the investigation related to, and defence of, any proceeding and shall make available to each other all relevant books, records, documents and files and shall otherwise use their best efforts to assist each other's counsel to conduct a proper and adequate defence.
10. In respect of the settlement of any proceeding, the parties agree as follows:
- 10.1 the Corporation may not, without the prior written consent of the Indemnified Party (which consent shall not be unreasonably withheld or delayed) enter into an agreement to settle any proceeding involving the Indemnified Party;
- 10.2 if the Indemnified Party refuses after requested by the Corporation, acting reasonably, to give consent to the terms of a proposed settlement in accordance with section 10.1 which is otherwise acceptable to the Corporation, the Corporation may require the Indemnified Party to negotiate or defend the Claim independently of the Corporation. In that case, any amount recovered by the claimant in excess of the amount for which settlement could have been made by the Corporation shall not be recoverable under this Agreement, and the Corporation will only be responsible for costs, charges and expenses up to the time at which settlement could have been made;
- 10.3 the Corporation shall not be liable for any settlement of any proceeding effected without its prior written consent (which consent shall not be unreasonably withheld or delayed);
- 10.4 the Indemnified Party shall have the right to negotiate a settlement in respect of any proceeding, provided that unless the Corporation has approved the settlement, the Indemnified Party shall pay any compensation or other payment to be made under the settlement and the costs of negotiating and implementing the settlement, and shall not

seek indemnity from the Corporation in respect of such compensation, payment or costs; and

10.5 the settlement of a proceeding shall not create a presumption that the Indemnified Party did not meet or would not have met the Standards of Conduct.

11. Should any payment made pursuant to this Agreement, including the payment of insurance premiums or any payment made by an insurer under an insurance policy, be deemed to constitute a taxable benefit or otherwise be or become subject to any tax or levy, then the Corporation shall pay any amount as may be necessary to ensure that the amount received by or on behalf of the Indemnified Party, after the payment of or withholding for such tax, fully reimburses the Indemnified Party for the actual cost, expense or liability incurred by or on behalf of the Indemnified Party.
12. Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect. The parties shall engage in good faith negotiations to replace any provision which is declared invalid or unenforceable with a valid and enforceable provision, the economic effect of which comes as close as possible to that of the invalid or unenforceable provision which it replaces.
13. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.
14. The obligations of the Corporation under this Agreement, other than under Section 15, shall continue until the later of:
  - (i) six (6) years after the Indemnified Party ceases to be a director or officer of the Corporation or any Other Entity; and
  - (ii) one (1) year after the final termination of all proceedings with respect to which the Indemnified Party is entitled to claim indemnification under this Agreement.
15. (a) The Corporation shall use its reasonable best efforts to ensure that it has in place at all times a directors' and officers' liability insurance policy no less favourable to the Indemnified Party under which the Indemnified Party is covered in his or her capacity as a current or former director or officer of the Corporation or its subsidiaries. In the event the Corporation is sold or enters into any business combination as a result of which the directors' and officers' liability insurance policy is terminated and not replaced with a substantially similar policy applicable to the Indemnified Party, the Corporation shall use its reasonable best efforts to cause run off "tail" insurance to be purchased for the benefit of the Indemnified Party with substantially the same coverage for not less than a six (6) year term following such termination. The Corporation shall provide to the Indemnified Party a certificate of insurance of each

insurance providing the coverages contemplated by this section forthwith after coverage is obtained, and shall forthwith notify the Indemnified Party if the insurer cancels, makes material changes to coverage or refuses to renew coverage (or any part of the coverage). In the event that an Indemnified Party is subject to a deductible under any insurance policy contemplated by this Section 15(a), the Corporation shall pay such deductible for and on behalf of the Indemnified Party.

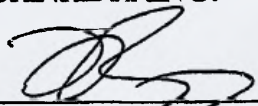
- (b) In the event that the director is covered under a Sears Holding Corporation policy, that shall not avoid the need for a Corporation policy under Section 15(a), but the Corporation shall provide to the Indemnified Party a certificate of insurance forthwith after coverage is obtained, and shall forthwith notify the Indemnified Party if the insurer cancels, makes material changes to coverage or refuses to renew coverage (or any part of the coverage). In the event that an Indemnified Party is subject to a deductible under any such insurance policy contemplated by this Section 15(b), the Corporation shall pay such deductible for and on behalf of the Indemnified Party.
16. Except as expressly provided in this Agreement, no amendment or waiver of this Agreement shall be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement shall constitute a waiver of any other provision nor shall any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided.
  17. This Agreement shall enure to the benefit of the Indemnified Party and the Indemnified Party's heirs, administrators, executors and personal representatives and shall be binding upon the Corporation and its successors.
  18. This Agreement shall supersede and replace the Original Agreement. Subject to the foregoing, this Agreement shall not operate to abridge or exclude any other rights, in law or in equity, to which the Indemnified Party or the Corporation may be entitled. This Agreement shall be deemed effective as and from the date on which the Indemnified Party first became a director or officer of the Corporation or any Other Entity.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

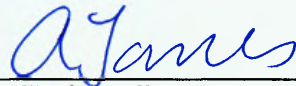
**INDEMNIFIED PARTY**

**SEARS CANADA INC.**

\_\_\_\_\_  
Name: William R. Harker  
Position: Director

by:   
\_\_\_\_\_  
Name: Franco Perugini  
Title: Corporate Secretary

This is Exhibit "N" referred to in the Affidavit of Service of John N. Birch, sworn February 7, 2019

A handwritten signature in blue ink, appearing to read "A. James".

---

Commissioner for Taking Affidavits  
(or as may be)



## INDEMNIFICATION AGREEMENT

THIS AGREEMENT is made as of this 4<sup>th</sup> day of July, 2014.

### BETWEEN:

Sears Canada Inc., a corporation incorporated under the *Canada Business Corporations Act*

(the "Corporation")

- and -

Douglas C. Campbell

(the "Indemnified Party")

### RECITALS:

- A. The *Canada Business Corporations Act* (the "CBCA") permits, and in some cases requires, the Corporation to indemnify individuals who are or were directors and/or officers of the Corporation, or who act or acted at the Corporation's request as directors and/or officers or in a similar capacity of other entities (an "Other Entity", a term which, for the purposes of this indemnification agreement (the "Agreement") shall include a corporation or other entity that becomes an Other Entity in the future). In this Agreement:
- (i) each such individual, duly elected or appointed as a director and/or officer, including acting in a capacity similar to director and/or officer of an Other Entity and including an individual who has ceased to be a director and/or officer or to act in any such capacity, is referred to as a "Director" and/or "Officer", as appropriate;
  - (ii) unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders; and
  - (iii) unless otherwise indicated, references to sections are to sections in this Agreement;
- B. The Indemnified Party is at present a Director or Officer or both of the Corporation;
- C. Accordingly, the Corporation and the Indemnified Party wish to enter into this Agreement, and in so doing affirm that they intend that all the provisions of this Agreement be given legal effect to the full extent permitted by applicable law.

NOW THEREFORE in consideration of the sum of \$1.00 now given by the Indemnified Party to the Corporation, and of the mutual covenants and agreements contained in

this Agreement and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties agree as follows:

1. Subject to sections 2 and 3, the Corporation agrees to indemnify and save harmless the Indemnified Party:
  - 1.1 from and against all costs, charges and expenses reasonably incurred by the Indemnified Party in respect of any civil, criminal, administrative, investigative or other proceeding to which the Indemnified Party is involved by reason of being or having been a Director and or Officer; and
  - 1.2 to the extent such costs, charges and expenses are not otherwise paid by the Corporation or Other Entity, as appropriate, from and against all costs, charges and expenses that the Indemnified Party may reasonably incur as a result of carrying out the Indemnified Party's duties as a Director and or Officer in respect of the Indemnified Party's reasonable and necessary travel, lodging or accommodation costs, charges or expenses.
2. Indemnification under section 1 shall be made only if the Indemnified Party:
  - 2.1 acted honestly and in good faith with a view to the best interests of either the Corporation or the Other Entity, as the case may be; and
  - 2.2 in the case of a criminal or administrative proceeding that is enforced by a monetary penalty, the Indemnified Party had reasonable grounds for believing that the Indemnified Party's conduct was lawful.

Sections 2.1 and 2.2 are referred to in this Agreement as the "**Standards of Conduct**". For the purposes of the Standards of Conduct and this Agreement generally:

- (a) for purposes of any determination hereunder, the Indemnified Party will be deemed, subject to compelling evidence to the contrary, to have acted in good faith and in the best interests of the Corporation or any Other Entity. The Corporation will have the burden of establishing the absence thereof;
- (b) the knowledge and/or actions, or failure to act, of any other director, officer, agent or employee of the Corporation or any Other Entity will not be imputed to the Indemnified Party for purposes of determining the right to indemnification under this Agreement;
- (c) the Corporation will have the burden of establishing that any amount it wishes to challenge is not reasonable; and
- (d) the termination of any proceeding by judgment, order, settlement, conviction or upon a plea of *nolo contendere* or its equivalent shall not, of itself, create a presumption that the Indemnified Party is not entitled to indemnification under this Agreement.

3. In respect of an action by or on behalf of the Corporation or an Other Entity to procure a judgment in its favour to which the Indemnified Party is made a party by reason of being or having been a Director and/or Officer, indemnification under section 1 shall be made only after obtaining approval of the court having jurisdiction, provided that the Corporation shall or shall cause such Other Entity to seek and use all reasonable efforts to obtain that approval as soon as reasonably possible in the circumstances.
4. For the purposes of this Agreement:
  - 4.1 “proceeding” shall include a claim, demand, suit, action, proceeding or investigation, whether threatened in writing, pending, commenced, continuing or completed, and any appeal or appeals therefrom;
  - 4.2 “costs, charges and expenses” shall include:
    - 4.2.1 subject to section 9, an amount paid to settle an action or satisfy a judgment, except in respect of an action to which section 3, above, is applicable;
    - 4.2.2 a fine, penalty, levy or charge paid to any domestic or foreign government (federal, provincial, municipal or otherwise) or to any regulatory authority, agency, commission or board of any domestic or foreign government, or imposed by any court or any other law, regulation or rule-making entity having jurisdiction in the relevant circumstances (collectively, a “**Governmental Authority**”), including as a result of a breach or alleged breach of any statutory or common law duty imposed on directors or officers or of any law, statute, rule or regulation or of any provision of the articles, by-laws or any resolution of the Corporation or an Other Entity;
    - 4.2.3 an amount paid to satisfy a liability arising as a result of the failure of the Corporation or an Other Entity to pay wages, vacation pay and any other amounts that may be owing to employees or to make contributions that may be required to be made to any pension plan, retirement income plan or other benefit plan for employees or to remit to any Governmental Authority payroll deductions, income taxes or other taxes, or any other amounts payable by the Corporation or an Other Entity; and
    - 4.2.4 reasonable legal costs on a solicitor and his own client basis, including those incurred in enforcing the Indemnified Party’s rights under this Agreement; and
  - 4.3 the Indemnified Party shall be considered to be “**involved**” in any proceeding if the Indemnified Party has any participation whatsoever in such proceeding, including merely as a witness.

5. Upon the Indemnified Party becoming aware of any proceeding which may give rise to indemnification under this Agreement, the Indemnified Party shall give written notice to the Corporation, directed to its (a) Chief Executive Officer or President and (b) General Counsel, as soon as is practicable, provided however that failure to give notice in a timely fashion shall not disentitle the Indemnified Party to indemnification unless the Corporation suffers actual prejudice by reason of the delay.
6. The Corporation may conduct any investigation it considers appropriate of any proceeding of which it receives notice under section 5, and shall pay all costs of that investigation.
7. The parties wish to facilitate the payment by the Indemnified Party of ongoing costs in connection with matters for which indemnification under this Agreement is provided. Accordingly, the parties agree as follows:
  - 7.1 subject to section 7.2, the Corporation shall, upon demand, make advances (“**Expense Advances**”) to the Indemnified Party of all reasonable amounts for which the Indemnified Party seeks indemnification under this Agreement before the final disposition of the relevant proceeding. In connection with such demand, the Indemnified Party shall provide the Corporation with a written affirmation of the Indemnified Party’s good faith belief that the Indemnified Party has met the Standards of Conduct, along with sufficient particulars of the costs, charges and expenses to be covered by the proposed Expense Advance to enable the Corporation to make an assessment of their reasonableness;
  - 7.2 the Corporation shall make Expense Advances to the Indemnified Party in accordance with the provisions of the CBCA; and
  - 7.3 the Indemnified Party shall execute a separate undertaking which shall set out the Indemnified Party’s acknowledgement and agreement to repay to the Corporation, upon demand, all Expense Advances in the event that it is subsequently determined that the Indemnified Party has not met the Standards of Conduct.
8. The indemnities in section 1 shall not apply in respect of any proceeding initiated by the Indemnified Party:
  - 8.1 against the Corporation or an Other Entity, unless it is brought to establish or enforce any right under this Agreement, any other right of indemnity or in connection with any directors’ and officers’ liability insurance or similar policy;
  - 8.2 against any Director or Officer unless the Corporation or the Other Entity, as the case may be, has joined in or consented to the initiation of such proceeding; or
  - 8.3 against any other corporation, partnership, trust, joint venture, unincorporated entity or person, unless it is a counterclaim.
9. The Corporation shall be entitled to participate, at its own expense, in the defence of the Indemnified Party in any proceeding. If the Corporation so elects after receipt of

notice of a proceeding, or the Indemnified Party in that notice so directs, the Corporation shall assume control of the negotiation, settlement or defence of the proceeding, in which case the defence shall be conducted by counsel chosen by the Corporation and reasonably satisfactory to the Indemnified Party. If the Corporation elects to assume control of the defence, the Indemnified Party shall have the right to participate in the negotiation, settlement or defence of the proceeding and to retain counsel to act on the Indemnified Party's behalf, in which case the Corporation shall reimburse the Indemnified Party for any fees and disbursements of that counsel if a conflict of interests has arisen between the Corporation and the Indemnified Party. Notwithstanding anything contained herein, the Corporation shall not be responsible for fees and expenses of more than one counsel in each applicable jurisdiction separate from counsel for the Corporation for all Directors and Officers in connection with any action or separate but similar or related actions arising out of the same general allegations or circumstances. The Indemnified Party and the Corporation shall cooperate fully with each other and their respective counsel in the investigation related to, and defence of, any proceeding and shall make available to each other all relevant books, records, documents and files and shall otherwise use their best efforts to assist each other's counsel to conduct a proper and adequate defence.

10. In respect of the settlement of any proceeding, the parties agree as follows:

10.1 the Corporation may not, without the prior written consent of the Indemnified Party (which consent shall not be unreasonably withheld or delayed) enter into an agreement to settle any proceeding involving the Indemnified Party;

10.2 if the Indemnified Party refuses after requested by the Corporation, acting reasonably, to give consent to the terms of a proposed settlement in accordance with section 10.1 which is otherwise acceptable to the Corporation, the Corporation may require the Indemnified Party to negotiate or defend the Claim independently of the Corporation. In that case, any amount recovered by the claimant in excess of the amount for which settlement could have been made by the Corporation shall not be recoverable under this Agreement, and the Corporation will only be responsible for costs, charges and expenses up to the time at which settlement could have been made;

10.3 the Corporation shall not be liable for any settlement of any proceeding effected without its prior written consent (which consent shall not be unreasonably withheld or delayed);

10.4 the Indemnified Party shall have the right to negotiate a settlement in respect of any proceeding, provided that unless the Corporation has approved the settlement, the Indemnified Party shall pay any compensation or other payment to be made under the settlement and the costs of negotiating and implementing the settlement, and shall not seek indemnity from the Corporation in respect of such compensation, payment or costs; and

10.5 the settlement of a proceeding shall not create a presumption that the Indemnified Party did not meet or would not have met the Standards of Conduct.

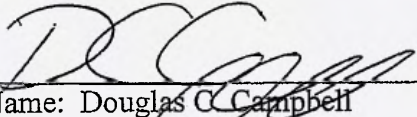
11. Should any payment made pursuant to this Agreement, including the payment of insurance premiums or any payment made by an insurer under an insurance policy, be deemed to constitute a taxable benefit or otherwise be or become subject to any tax or levy, then the Corporation shall pay any amount as may be necessary to ensure that the amount received by or on behalf of the Indemnified Party, after the payment of or withholding for such tax, fully reimburses the Indemnified Party for the actual cost, expense or liability incurred by or on behalf of the Indemnified Party.
12. Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect. The parties shall engage in good faith negotiations to replace any provision which is declared invalid or unenforceable with a valid and enforceable provision, the economic effect of which comes as close as possible to that of the invalid or unenforceable provision which it replaces.
13. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.
14. The obligations of the Corporation under this Agreement, other than under Section 15, shall continue until the later of:
  - (i) six (6) years after the Indemnified Party ceases to be a director or officer of the Corporation or any Other Entity; and
  - (ii) one (1) year after the final termination of all proceedings with respect to which the Indemnified Party is entitled to claim indemnification under this Agreement.
15. (a) The Corporation shall use its reasonable best efforts to ensure that it has in place at all times a directors' and officers' liability insurance policy no less favourable to the Indemnified Party under which the Indemnified Party is covered in his or her capacity as a current or former director or officer of the Corporation or its subsidiaries. In the event the Corporation is sold or enters into any business combination as a result of which the directors' and officers' liability insurance policy is terminated and not replaced with a substantially similar policy applicable to the Indemnified Party, the Corporation shall use its reasonable best efforts to cause run off "tail" insurance to be purchased for the benefit of the Indemnified Party with substantially the same coverage for not less than a six (6) year term following such termination. The Corporation shall provide to the Indemnified Party a certificate of insurance of each insurance providing the coverages contemplated by this section forthwith after coverage is obtained, and shall forthwith notify the Indemnified Party if the insurer cancels, makes material changes to coverage or refuses to renew coverage (or any part of the coverage). In the event that an Indemnified Party is subject to a deductible

under any insurance policy contemplated by this Section 15(a), the Corporation shall pay such deductible for and on behalf of the Indemnified Party.

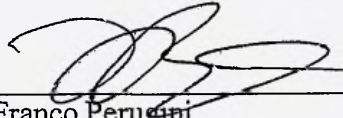
- (b) In the event that the director is covered under a Sears Holding Corporation policy, that shall not avoid the need for a Corporation policy under Section 15(a), but the Corporation shall provide to the Indemnified Party a certificate of insurance forthwith after coverage is obtained, and shall forthwith notify the Indemnified Party if the insurer cancels, makes material changes to coverage or refuses to renew coverage (or any part of the coverage). In the event that an Indemnified Party is subject to a deductible under any such insurance policy contemplated by this Section 15(b), the Corporation shall pay such deductible for and on behalf of the Indemnified Party.
16. Except as expressly provided in this Agreement, no amendment or waiver of this Agreement shall be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement shall constitute a waiver of any other provision nor shall any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided.
17. This Agreement shall enure to the benefit of the Indemnified Party and the Indemnified Party's heirs, administrators, executors and personal representatives and shall be binding upon the Corporation and its successors.
18. Subject to the foregoing, this Agreement shall not operate to abridge or exclude any other rights, in law or in equity, to which the Indemnified Party or the Corporation may be entitled. This Agreement shall be deemed effective as and from the date on which the Indemnified Party first became a director or officer of the Corporation or any Other Entity.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

**INDEMNIFIED PARTY**

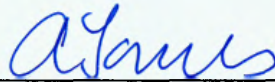
  
\_\_\_\_\_  
Name: Douglas G. Campbell  
Position: Director and Officer

**SEARS CANADA INC.**

by:   
\_\_\_\_\_  
Name: Franco Perugini  
Title: Corporate Secretary



This is Exhibit "O" referred to in the Affidavit of Service of John N. Birch, sworn February 7, 2019

A handwritten signature in blue ink, appearing to read "A. Jones", is written above a horizontal line.

---

Commissioner for Taking Affidavits  
(or as may be)

## INDEMNIFICATION AGREEMENT

THIS AGREEMENT is made as of this 4<sup>th</sup> day of July, 2014.

## BETWEEN:

Sears Canada Inc., a corporation incorporated under the *Canada Business Corporations Act*

(the "Corporation")

- and -

E.J. Bird

(the "Indemnified Party")

## RECITALS:

- A. The *Canada Business Corporations Act* (the "CBCA") permits, and in some cases requires, the Corporation to indemnify individuals who are or were directors and/or officers of the Corporation, or who act or acted at the Corporation's request as directors and/or officers or in a similar capacity of other entities (an "Other Entity", a term which, for the purposes of this indemnification agreement (the "Agreement") shall include a corporation or other entity that becomes an Other Entity in the future). In this Agreement:
- (i) each such individual, duly elected or appointed as a director and/or officer, including acting in a capacity similar to director and/or officer of an Other Entity and including an individual who has ceased to be a director and/or officer or to act in any such capacity, is referred to as a "Director" and/or "Officer", as appropriate;
  - (ii) unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders; and
  - (iii) unless otherwise indicated, references to sections are to sections in this Agreement;
- B. The Indemnified Party is at present a Director or Officer or both of the Corporation;
- C. Accordingly, the Corporation and the Indemnified Party wish to enter into this Agreement, and in so doing affirm that they intend that all the provisions of this Agreement be given legal effect to the full extent permitted by applicable law.

**NOW THEREFORE** in consideration of the sum of \$1.00 now given by the Indemnified Party to the Corporation, and of the mutual covenants and agreements contained in

this Agreement and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties agree as follows:

1. Subject to sections 2 and 3, the Corporation agrees to indemnify and save harmless the Indemnified Party:

- 1.1 from and against all costs, charges and expenses reasonably incurred by the Indemnified Party in respect of any civil, criminal, administrative, investigative or other proceeding to which the Indemnified Party is involved by reason of being or having been a Director and or Officer; and

- 1.2 to the extent such costs, charges and expenses are not otherwise paid by the Corporation or Other Entity, as appropriate, from and against all costs, charges and expenses that the Indemnified Party may reasonably incur as a result of carrying out the Indemnified Party's duties as a Director and or Officer in respect of the Indemnified Party's reasonable and necessary travel, lodging or accommodation costs, charges or expenses.

2. Indemnification under section 1 shall be made only if the Indemnified Party:

- 2.1 acted honestly and in good faith with a view to the best interests of either the Corporation or the Other Entity, as the case may be; and

- 2.2 in the case of a criminal or administrative proceeding that is enforced by a monetary penalty, the Indemnified Party had reasonable grounds for believing that the Indemnified Party's conduct was lawful.

Sections 2.1 and 2.2 are referred to in this Agreement as the "**Standards of Conduct**". For the purposes of the Standards of Conduct and this Agreement generally:

- (a) for purposes of any determination hereunder, the Indemnified Party will be deemed, subject to compelling evidence to the contrary, to have acted in good faith and in the best interests of the Corporation or any Other Entity. The Corporation will have the burden of establishing the absence thereof;
- (b) the knowledge and/or actions, or failure to act, of any other director, officer, agent or employee of the Corporation or any Other Entity will not be imputed to the Indemnified Party for purposes of determining the right to indemnification under this Agreement;
- (c) the Corporation will have the burden of establishing that any amount it wishes to challenge is not reasonable; and
- (d) the termination of any proceeding by judgment, order, settlement, conviction or upon a plea of *nolo contendere* or its equivalent shall not, of itself, create a presumption that the Indemnified Party is not entitled to indemnification under this Agreement.

3. In respect of an action by or on behalf of the Corporation or an Other Entity to procure a judgment in its favour to which the Indemnified Party is made a party by reason of being or having been a Director and/or Officer, indemnification under section 1 shall be made only after obtaining approval of the court having jurisdiction, provided that the Corporation shall or shall cause such Other Entity to seek and use all reasonable efforts to obtain that approval as soon as reasonably possible in the circumstances.
4. For the purposes of this Agreement:
  - 4.1 “**proceeding**” shall include a claim, demand, suit, action, proceeding or investigation, whether threatened in writing, pending, commenced, continuing or completed, and any appeal or appeals therefrom;
  - 4.2 “**costs, charges and expenses**” shall include:
    - 4.2.1 subject to section 9, an amount paid to settle an action or satisfy a judgment, except in respect of an action to which section 3, above, is applicable;
    - 4.2.2 a fine, penalty, levy or charge paid to any domestic or foreign government (federal, provincial, municipal or otherwise) or to any regulatory authority, agency, commission or board of any domestic or foreign government, or imposed by any court or any other law, regulation or rule-making entity having jurisdiction in the relevant circumstances (collectively, a “**Governmental Authority**”), including as a result of a breach or alleged breach of any statutory or common law duty imposed on directors or officers or of any law, statute, rule or regulation or of any provision of the articles, by-laws or any resolution of the Corporation or an Other Entity;
    - 4.2.3 an amount paid to satisfy a liability arising as a result of the failure of the Corporation or an Other Entity to pay wages, vacation pay and any other amounts that may be owing to employees or to make contributions that may be required to be made to any pension plan, retirement income plan or other benefit plan for employees or to remit to any Governmental Authority payroll deductions, income taxes or other taxes, or any other amounts payable by the Corporation or an Other Entity; and
    - 4.2.4 reasonable legal costs on a solicitor and his own client basis, including those incurred in enforcing the Indemnified Party’s rights under this Agreement; and
  - 4.3 the Indemnified Party shall be considered to be “**involved**” in any proceeding if the Indemnified Party has any participation whatsoever in such proceeding, including merely as a witness.

5. Upon the Indemnified Party becoming aware of any proceeding which may give rise to indemnification under this Agreement, the Indemnified Party shall give written notice to the Corporation, directed to its (a) Chief Executive Officer or President and (b) General Counsel, as soon as is practicable, provided however that failure to give notice in a timely fashion shall not disentitle the Indemnified Party to indemnification unless the Corporation suffers actual prejudice by reason of the delay.
6. The Corporation may conduct any investigation it considers appropriate of any proceeding of which it receives notice under section 5, and shall pay all costs of that investigation.
7. The parties wish to facilitate the payment by the Indemnified Party of ongoing costs in connection with matters for which indemnification under this Agreement is provided. Accordingly, the parties agree as follows:
  - 7.1 subject to section 7.2, the Corporation shall, upon demand, make advances (“Expense Advances”) to the Indemnified Party of all reasonable amounts for which the Indemnified Party seeks indemnification under this Agreement before the final disposition of the relevant proceeding. In connection with such demand, the Indemnified Party shall provide the Corporation with a written affirmation of the Indemnified Party’s good faith belief that the Indemnified Party has met the Standards of Conduct, along with sufficient particulars of the costs, charges and expenses to be covered by the proposed Expense Advance to enable the Corporation to make an assessment of their reasonableness;
  - 7.2 the Corporation shall make Expense Advances to the Indemnified Party in accordance with the provisions of the CBCA; and
  - 7.3 the Indemnified Party shall execute a separate undertaking which shall set out the Indemnified Party’s acknowledgement and agreement to repay to the Corporation, upon demand, all Expense Advances in the event that it is subsequently determined that the Indemnified Party has not met the Standards of Conduct.
8. The indemnities in section 1 shall not apply in respect of any proceeding initiated by the Indemnified Party:
  - 8.1 against the Corporation or an Other Entity, unless it is brought to establish or enforce any right under this Agreement, any other right of indemnity or in connection with any directors’ and officers’ liability insurance or similar policy;
  - 8.2 against any Director or Officer unless the Corporation or the Other Entity, as the case may be, has joined in or consented to the initiation of such proceeding; or
  - 8.3 against any other corporation, partnership, trust, joint venture, unincorporated entity or person, unless it is a counterclaim.
9. The Corporation shall be entitled to participate, at its own expense, in the defence of the Indemnified Party in any proceeding. If the Corporation so elects after receipt of

notice of a proceeding, or the Indemnified Party in that notice so directs, the Corporation shall assume control of the negotiation, settlement or defence of the proceeding, in which case the defence shall be conducted by counsel chosen by the Corporation and reasonably satisfactory to the Indemnified Party. If the Corporation elects to assume control of the defence, the Indemnified Party shall have the right to participate in the negotiation, settlement or defence of the proceeding and to retain counsel to act on the Indemnified Party's behalf, in which case the Corporation shall reimburse the Indemnified Party for any fees and disbursements of that counsel if a conflict of interests has arisen between the Corporation and the Indemnified Party. Notwithstanding anything contained herein, the Corporation shall not be responsible for fees and expenses of more than one counsel in each applicable jurisdiction separate from counsel for the Corporation for all Directors and Officers in connection with any action or separate but similar or related actions arising out of the same general allegations or circumstances. The Indemnified Party and the Corporation shall cooperate fully with each other and their respective counsel in the investigation related to, and defence of, any proceeding and shall make available to each other all relevant books, records, documents and files and shall otherwise use their best efforts to assist each other's counsel to conduct a proper and adequate defence.

10. In respect of the settlement of any proceeding, the parties agree as follows:

10.1 the Corporation may not, without the prior written consent of the Indemnified Party (which consent shall not be unreasonably withheld or delayed) enter into an agreement to settle any proceeding involving the Indemnified Party;

10.2 if the Indemnified Party refuses after requested by the Corporation, acting reasonably, to give consent to the terms of a proposed settlement in accordance with section 10.1 which is otherwise acceptable to the Corporation, the Corporation may require the Indemnified Party to negotiate or defend the Claim independently of the Corporation. In that case, any amount recovered by the claimant in excess of the amount for which settlement could have been made by the Corporation shall not be recoverable under this Agreement, and the Corporation will only be responsible for costs, charges and expenses up to the time at which settlement could have been made;

10.3 the Corporation shall not be liable for any settlement of any proceeding effected without its prior written consent (which consent shall not be unreasonably withheld or delayed);

10.4 the Indemnified Party shall have the right to negotiate a settlement in respect of any proceeding, provided that unless the Corporation has approved the settlement, the Indemnified Party shall pay any compensation or other payment to be made under the settlement and the costs of negotiating and implementing the settlement, and shall not seek indemnity from the Corporation in respect of such compensation, payment or costs; and

10.5 the settlement of a proceeding shall not create a presumption that the Indemnified Party did not meet or would not have met the Standards of Conduct.

11. Should any payment made pursuant to this Agreement, including the payment of insurance premiums or any payment made by an insurer under an insurance policy, be deemed to constitute a taxable benefit or otherwise be or become subject to any tax or levy, then the Corporation shall pay any amount as may be necessary to ensure that the amount received by or on behalf of the Indemnified Party, after the payment of or withholding for such tax, fully reimburses the Indemnified Party for the actual cost, expense or liability incurred by or on behalf of the Indemnified Party.
12. Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect. The parties shall engage in good faith negotiations to replace any provision which is declared invalid or unenforceable with a valid and enforceable provision, the economic effect of which comes as close as possible to that of the invalid or unenforceable provision which it replaces.
13. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.
14. The obligations of the Corporation under this Agreement, other than under Section 15, shall continue until the later of:
  - (i) six (6) years after the Indemnified Party ceases to be a director or officer of the Corporation or any Other Entity; and
  - (ii) one (1) year after the final termination of all proceedings with respect to which the Indemnified Party is entitled to claim indemnification under this Agreement.
15. (a) The Corporation shall use its reasonable best efforts to ensure that it has in place at all times a directors' and officers' liability insurance policy no less favourable to the Indemnified Party under which the Indemnified Party is covered in his or her capacity as a current or former director or officer of the Corporation or its subsidiaries. In the event the Corporation is sold or enters into any business combination as a result of which the directors' and officers' liability insurance policy is terminated and not replaced with a substantially similar policy applicable to the Indemnified Party, the Corporation shall use its reasonable best efforts to cause run off "tail" insurance to be purchased for the benefit of the Indemnified Party with substantially the same coverage for not less than a six (6) year term following such termination. The Corporation shall provide to the Indemnified Party a certificate of insurance of each insurance providing the coverages contemplated by this section forthwith after coverage is obtained, and shall forthwith notify the Indemnified Party if the insurer cancels, makes material changes to coverage or refuses to renew coverage (or any part of the coverage). In the event that an Indemnified Party is subject to a deductible

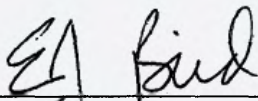
under any insurance policy contemplated by this Section 15(a), the Corporation shall pay such deductible for and on behalf of the Indemnified Party.

- (b) In the event that the director is covered under a Sears Holding Corporation policy, that shall not avoid the need for a Corporation policy under Section 15(a), but the Corporation shall provide to the Indemnified Party a certificate of insurance forthwith after coverage is obtained, and shall forthwith notify the Indemnified Party if the insurer cancels, makes material changes to coverage or refuses to renew coverage (or any part of the coverage). In the event that an Indemnified Party is subject to a deductible under any such insurance policy contemplated by this Section 15(b), the Corporation shall pay such deductible for and on behalf of the Indemnified Party.
16. Except as expressly provided in this Agreement, no amendment or waiver of this Agreement shall be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement shall constitute a waiver of any other provision nor shall any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided.
17. This Agreement shall enure to the benefit of the Indemnified Party and the Indemnified Party's heirs, administrators, executors and personal representatives and shall be binding upon the Corporation and its successors.
18. Subject to the foregoing, this Agreement shall not operate to abridge or exclude any other rights, in law or in equity, to which the Indemnified Party or the Corporation may be entitled. This Agreement shall be deemed effective as and from the date on which the Indemnified Party first became a director or officer of the Corporation or any Other Entity.



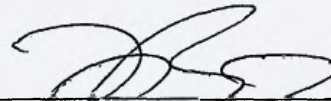
IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

**INDEMNIFIED PARTY**



\_\_\_\_\_  
Name: E.J. Bird  
Position: Officer

**SEARS CANADA INC.**



by: \_\_\_\_\_  
Name: Franco Perugini  
Title: Corporate Secretary

This is Exhibit "P" referred to in the Affidavit of Service of John N. Birch, sworn February 7, 2019

A handwritten signature in blue ink, appearing to read "A. Jones", is written above a horizontal line.

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Commissioner for Taking Affidavits  
(or as may be)

**AMENDED AND RESTATED INDEMNIFICATION AGREEMENT**

**THIS AGREEMENT** is made as of this 4<sup>th</sup> day of July, 2014.

**B E T W E E N:**

**Sears Canada Inc.**, a corporation incorporated under the *Canada Business Corporations Act*

(the “Corporation”)

- and -

James McBurney

(the “Indemnified Party”)

**RECITALS:**

- A. The *Canada Business Corporations Act* (the “CBCA”) permits, and in some cases requires, the Corporation to indemnify individuals who are or were directors and/or officers of the Corporation, or who act or acted at the Corporation’s request as directors and/or officers or in a similar capacity of other entities (an “**Other Entity**”, a term which, for the purposes of this indemnification agreement (the “**Agreement**”) shall include a corporation or other entity that becomes an Other Entity in the future). In this Agreement:
- (i) each such individual, duly elected or appointed as a director and/or officer, including acting in a capacity similar to director and/or officer of an Other Entity and including an individual who has ceased to be a director and/or officer or to act in any such capacity, is referred to as a “Director” and/or “Officer”, as appropriate;
  - (ii) unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders; and
  - (iii) unless otherwise indicated, references to sections are to sections in this Agreement;
- B. The Indemnified Party is at present a Director or Officer or both of the Corporation;
- C. The Indemnified Party and the Corporation entered into an Indemnification Agreement as of April 23<sup>rd</sup>, 2010 (the “**Original Agreement**”), which they wish to amend and restate;
- D. Accordingly, the Corporation and the Indemnified Party wish to enter into this Agreement, and in so doing affirm that they intend that all the provisions of this Agreement be given legal effect to the full extent permitted by applicable law.

**NOW THEREFORE** in consideration of the sum of \$1.00 now given by the Indemnified Party to the Corporation, and of the mutual covenants and agreements contained in this Agreement and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties agree as follows:

1. Subject to sections 2 and 3, the Corporation agrees to indemnify and save harmless the Indemnified Party:
  - 1.1 from and against all costs, charges and expenses reasonably incurred by the Indemnified Party in respect of any civil, criminal, administrative, investigative or other proceeding to which the Indemnified Party is involved by reason of being or having been a Director and or Officer; and
  - 1.2 to the extent such costs, charges and expenses are not otherwise paid by the Corporation or Other Entity, as appropriate, from and against all costs, charges and expenses that the Indemnified Party may reasonably incur as a result of carrying out the Indemnified Party's duties as a Director and or Officer in respect of the Indemnified Party's reasonable and necessary travel, lodging or accommodation costs, charges or expenses.
2. Indemnification under section 1 shall be made only if the Indemnified Party:
  - 2.1 acted honestly and in good faith with a view to the best interests of either the Corporation or the Other Entity, as the case may be; and
  - 2.2 in the case of a criminal or administrative proceeding that is enforced by a monetary penalty, the Indemnified Party had reasonable grounds for believing that the Indemnified Party's conduct was lawful.

Sections 2.1 and 2.2 are referred to in this Agreement as the "**Standards of Conduct**". For the purposes of the Standards of Conduct and this Agreement generally:

- (a) for purposes of any determination hereunder, the Indemnified Party will be deemed, subject to compelling evidence to the contrary, to have acted in good faith and in the best interests of the Corporation or any Other Entity. The Corporation will have the burden of establishing the absence thereof;
- (b) the knowledge and/or actions, or failure to act, of any other director, officer, agent or employee of the Corporation or any Other Entity will not be imputed to the Indemnified Party for purposes of determining the right to indemnification under this Agreement;
- (c) the Corporation will have the burden of establishing that any amount it wishes to challenge is not reasonable; and
- (d) the termination of any proceeding by judgment, order, settlement, conviction or upon a plea of *nolo contendere* or its equivalent shall not, of itself, create a

presumption that the Indemnified Party is not entitled to indemnification under this Agreement.

3. In respect of an action by or on behalf of the Corporation or an Other Entity to procure a judgment in its favour to which the Indemnified Party is made a party by reason of being or having been a Director and/or Officer, indemnification under section 1 shall be made only after obtaining approval of the court having jurisdiction, provided that the Corporation shall or shall cause such Other Entity to seek and use all reasonable efforts to obtain that approval as soon as reasonably possible in the circumstances.
4. For the purposes of this Agreement:
  - 4.1 “**proceeding**” shall include a claim, demand, suit, action, proceeding or investigation, whether threatened in writing, pending, commenced, continuing or completed, and any appeal or appeals therefrom;
  - 4.2 “**costs, charges and expenses**” shall include:
    - 4.2.1 subject to section 9, an amount paid to settle an action or satisfy a judgment, except in respect of an action to which section 3, above, is applicable;
    - 4.2.2 a fine, penalty, levy or charge paid to any domestic or foreign government (federal, provincial, municipal or otherwise) or to any regulatory authority, agency, commission or board of any domestic or foreign government, or imposed by any court or any other law, regulation or rule-making entity having jurisdiction in the relevant circumstances (collectively, a “**Governmental Authority**”), including as a result of a breach or alleged breach of any statutory or common law duty imposed on directors or officers or of any law, statute, rule or regulation or of any provision of the articles, by-laws or any resolution of the Corporation or an Other Entity;
    - 4.2.3 an amount paid to satisfy a liability arising as a result of the failure of the Corporation or an Other Entity to pay wages, vacation pay and any other amounts that may be owing to employees or to make contributions that may be required to be made to any pension plan, retirement income plan or other benefit plan for employees or to remit to any Governmental Authority payroll deductions, income taxes or other taxes, or any other amounts payable by the Corporation or an Other Entity; and
    - 4.2.4 reasonable legal costs on a solicitor and his own client basis, including those incurred in enforcing the Indemnified Party’s rights under this Agreement; and

4.3 the Indemnified Party shall be considered to be “**involved**” in any proceeding if the Indemnified Party has any participation whatsoever in such proceeding, including merely as a witness.

5. Upon the Indemnified Party becoming aware of any proceeding which may give rise to indemnification under this Agreement, the Indemnified Party shall give written notice to the Corporation, directed to its (a) Chief Executive Officer or President and (b) General Counsel, as soon as is practicable, provided however that failure to give notice in a timely fashion shall not disentitle the Indemnified Party to indemnification unless the Corporation suffers actual prejudice by reason of the delay.
6. The Corporation may conduct any investigation it considers appropriate of any proceeding of which it receives notice under section 5, and shall pay all costs of that investigation.
7. The parties wish to facilitate the payment by the Indemnified Party of ongoing costs in connection with matters for which indemnification under this Agreement is provided. Accordingly, the parties agree as follows:

7.1 subject to section 7.2, the Corporation shall, upon demand, make advances (“**Expense Advances**”) to the Indemnified Party of all reasonable amounts for which the Indemnified Party seeks indemnification under this Agreement before the final disposition of the relevant proceeding. In connection with such demand, the Indemnified Party shall provide the Corporation with a written affirmation of the Indemnified Party’s good faith belief that the Indemnified Party has met the Standards of Conduct, along with sufficient particulars of the costs, charges and expenses to be covered by the proposed Expense Advance to enable the Corporation to make an assessment of their reasonableness;

7.2 the Corporation shall make Expense Advances to the Indemnified Party in accordance with the provisions of the CBCA; and

7.3 the Indemnified Party shall execute a separate undertaking which shall set out the Indemnified Party’s acknowledgement and agreement to repay to the Corporation, upon demand, all Expense Advances in the event that it is subsequently determined that the Indemnified Party has not met the Standards of Conduct.

8. The indemnities in section 1 shall not apply in respect of any proceeding initiated by the Indemnified Party:
  - 8.1 against the Corporation or an Other Entity, unless it is brought to establish or enforce any right under this Agreement, any other right of indemnity or in connection with any directors’ and officers’ liability insurance or similar policy;
  - 8.2 against any Director or Officer unless the Corporation or the Other Entity, as the case may be, has joined in or consented to the initiation of such proceeding; or

- 8.3 against any other corporation, partnership, trust, joint venture, unincorporated entity or person, unless it is a counterclaim.
9. The Corporation shall be entitled to participate, at its own expense, in the defence of the Indemnified Party in any proceeding. If the Corporation so elects after receipt of notice of a proceeding, or the Indemnified Party in that notice so directs, the Corporation shall assume control of the negotiation, settlement or defence of the proceeding, in which case the defence shall be conducted by counsel chosen by the Corporation and reasonably satisfactory to the Indemnified Party. If the Corporation elects to assume control of the defence, the Indemnified Party shall have the right to participate in the negotiation, settlement or defence of the proceeding and to retain counsel to act on the Indemnified Party's behalf, in which case the Corporation shall reimburse the Indemnified Party for any fees and disbursements of that counsel if a conflict of interests has arisen between the Corporation and the Indemnified Party. Notwithstanding anything contained herein, the Corporation shall not be responsible for fees and expenses of more than one counsel in each applicable jurisdiction separate from counsel for the Corporation for all Directors and Officers in connection with any action or separate but similar or related actions arising out of the same general allegations or circumstances. The Indemnified Party and the Corporation shall cooperate fully with each other and their respective counsel in the investigation related to, and defence of, any proceeding and shall make available to each other all relevant books, records, documents and files and shall otherwise use their best efforts to assist each other's counsel to conduct a proper and adequate defence.
10. In respect of the settlement of any proceeding, the parties agree as follows:
- 10.1 the Corporation may not, without the prior written consent of the Indemnified Party (which consent shall not be unreasonably withheld or delayed) enter into an agreement to settle any proceeding involving the Indemnified Party;
- 10.2 if the Indemnified Party refuses after requested by the Corporation, acting reasonably, to give consent to the terms of a proposed settlement in accordance with section 10.1 which is otherwise acceptable to the Corporation, the Corporation may require the Indemnified Party to negotiate or defend the Claim independently of the Corporation. In that case, any amount recovered by the claimant in excess of the amount for which settlement could have been made by the Corporation shall not be recoverable under this Agreement, and the Corporation will only be responsible for costs, charges and expenses up to the time at which settlement could have been made;
- 10.3 the Corporation shall not be liable for any settlement of any proceeding effected without its prior written consent (which consent shall not be unreasonably withheld or delayed);
- 10.4 the Indemnified Party shall have the right to negotiate a settlement in respect of any proceeding, provided that unless the Corporation has approved the settlement, the Indemnified Party shall pay any compensation or other payment to be made under the settlement and the costs of negotiating and implementing the settlement, and shall not

seek indemnity from the Corporation in respect of such compensation, payment or costs; and

10.5 the settlement of a proceeding shall not create a presumption that the Indemnified Party did not meet or would not have met the Standards of Conduct.

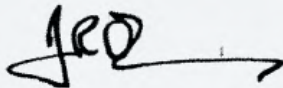
11. Should any payment made pursuant to this Agreement, including the payment of insurance premiums or any payment made by an insurer under an insurance policy, be deemed to constitute a taxable benefit or otherwise be or become subject to any tax or levy, then the Corporation shall pay any amount as may be necessary to ensure that the amount received by or on behalf of the Indemnified Party, after the payment of or withholding for such tax, fully reimburses the Indemnified Party for the actual cost, expense or liability incurred by or on behalf of the Indemnified Party.
12. Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect. The parties shall engage in good faith negotiations to replace any provision which is declared invalid or unenforceable with a valid and enforceable provision, the economic effect of which comes as close as possible to that of the invalid or unenforceable provision which it replaces.
13. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.
14. The obligations of the Corporation under this Agreement, other than under Section 15, shall continue until the later of:
  - (i) six (6) years after the Indemnified Party ceases to be a director or officer of the Corporation or any Other Entity; and
  - (ii) one (1) year after the final termination of all proceedings with respect to which the Indemnified Party is entitled to claim indemnification under this Agreement.
15. (a) The Corporation shall use its reasonable best efforts to ensure that it has in place at all times a directors' and officers' liability insurance policy no less favourable to the Indemnified Party under which the Indemnified Party is covered in his or her capacity as a current or former director or officer of the Corporation or its subsidiaries. In the event the Corporation is sold or enters into any business combination as a result of which the directors' and officers' liability insurance policy is terminated and not replaced with a substantially similar policy applicable to the Indemnified Party, the Corporation shall use its reasonable best efforts to cause run off "tail" insurance to be purchased for the benefit of the Indemnified Party with substantially the same coverage for not less than a six (6) year term following such termination. The Corporation shall provide to the Indemnified Party a certificate of insurance of each



- insurance providing the coverages contemplated by this section forthwith after coverage is obtained, and shall forthwith notify the Indemnified Party if the insurer cancels, makes material changes to coverage or refuses to renew coverage (or any part of the coverage). In the event that an Indemnified Party is subject to a deductible under any insurance policy contemplated by this Section 15(a), the Corporation shall pay such deductible for and on behalf of the Indemnified Party.
- (b) In the event that the director is covered under a Sears Holding Corporation policy, that shall not avoid the need for a Corporation policy under Section 15(a), but the Corporation shall provide to the Indemnified Party a certificate of insurance forthwith after coverage is obtained, and shall forthwith notify the Indemnified Party if the insurer cancels, makes material changes to coverage or refuses to renew coverage (or any part of the coverage). In the event that an Indemnified Party is subject to a deductible under any such insurance policy contemplated by this Section 15(b), the Corporation shall pay such deductible for and on behalf of the Indemnified Party.
16. Except as expressly provided in this Agreement, no amendment or waiver of this Agreement shall be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement shall constitute a waiver of any other provision nor shall any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided.
17. This Agreement shall enure to the benefit of the Indemnified Party and the Indemnified Party's heirs, administrators, executors and personal representatives and shall be binding upon the Corporation and its successors.
18. This Agreement shall supersede and replace the Original Agreement. Subject to the foregoing, this Agreement shall not operate to abridge or exclude any other rights, in law or in equity, to which the Indemnified Party or the Corporation may be entitled. This Agreement shall be deemed effective as and from the date on which the Indemnified Party first became a director or officer of the Corporation or any Other Entity.

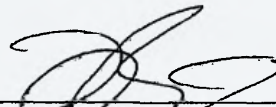
IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

**INDEMNIFIED PARTY**



\_\_\_\_\_  
Name: James McBurney  
Position: Director

**SEARS CANADA INC.**



by: \_\_\_\_\_  
Name: Franco Perugini  
Title: Corporate Secretary

This is Exhibit "Q" referred to in the Affidavit of Service of John N. Birch, sworn February 7, 2019



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Commissioner for Taking Affidavits  
(or as may be)

## INDEMNIFICATION AGREEMENT

THIS AGREEMENT is made as of this 18<sup>th</sup> day of May, 2012.

### BETWEEN:

**Sears Canada Inc.**, a corporation incorporated under the *Canada Business Corporations Act*

(the "Corporation")

- and -

**DON ROSS**

(the "Indemnified Party")

### RECITALS:

- A. The *Canada Business Corporations Act* (the "**CBCA**") permits, and in some cases requires, the Corporation to indemnify individuals who are or were directors and/or officers of the Corporation, or who act or acted at the Corporation's request as directors and/or officers or in a similar capacity of other entities (an "**Other Entity**", a term which, for the purposes of this indemnification agreement (the "**Agreement**") shall include a corporation or other entity that becomes an Other Entity in the future). In this Agreement:
- (i) each such individual, duly elected or appointed as a director and/or officer, including acting in a capacity similar to director and/or officer of an Other Entity and including an individual who has ceased to be a director and/or officer or to act in any such capacity, is referred to as a "Director" and/or "Officer", as appropriate;
  - (ii) unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders; and
  - (iii) unless otherwise indicated, references to sections are to sections in this Agreement;
- B. The Indemnified Party is at present a Director or Officer or both of the Corporation;
- C. Accordingly, the Corporation and the Indemnified Party wish to enter into this Agreement, and in so doing affirm that they intend that all the provisions of this Agreement be given legal effect to the full extent permitted by applicable law.

**NOW THEREFORE** in consideration of the sum of \$1.00 now given by the Indemnified Party to the Corporation, and of the mutual covenants and agreements contained in

this Agreement and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties agree as follows:

1. Subject to sections 2 and 3, the Corporation agrees to indemnify and save harmless the Indemnified Party:

- 1.1 from and against all costs, charges and expenses reasonably incurred by the Indemnified Party in respect of any civil, criminal, administrative, investigative or other proceeding to which the Indemnified Party is involved by reason of being or having been a Director and or Officer; and

- 1.2 to the extent such costs, charges and expenses are not otherwise paid by the Corporation or Other Entity, as appropriate, from and against all costs, charges and expenses that the Indemnified Party may reasonably incur as a result of carrying out the Indemnified Party's duties as a Director and or Officer in respect of the Indemnified Party's reasonable and necessary travel, lodging or accommodation costs, charges or expenses.

2. Indemnification under section 1 shall be made only if the Indemnified Party:

- 2.1 acted honestly and in good faith with a view to the best interests of either the Corporation or the Other Entity, as the case may be; and

- 2.2 in the case of a criminal or administrative proceeding that is enforced by a monetary penalty, the Indemnified Party had reasonable grounds for believing that the Indemnified Party's conduct was lawful.

Sections 2.1 and 2.2 are referred to in this Agreement as the "**Standards of Conduct**".

3. In respect of an action by or on behalf of the Corporation or an Other Entity to procure a judgment in its favour to which the Indemnified Party is made a party by reason of being or having been a Director and/or Officer, indemnification under section 1 shall be made only after obtaining approval of the court having jurisdiction.

4. For the purposes of this Agreement:

- 4.1 "**proceeding**" shall include a claim, demand, suit, action, proceeding or investigation, whether threatened in writing, pending, commenced, continuing or completed, and any appeal or appeals therefrom;

- 4.2 "**costs, charges and expenses**" shall include:

- 4.2.1 subject to section 9, an amount paid to settle an action or satisfy a judgment, except in respect of an action to which section 3, above, is applicable;

- 4.2.2 a fine, penalty, levy or charge paid to any domestic or foreign government (federal, provincial, municipal or otherwise) or to any

regulatory authority, agency, commission or board of any domestic or foreign government, or imposed by any court or any other law, regulation or rule-making entity having jurisdiction in the relevant circumstances (collectively, a “**Governmental Authority**”), including as a result of a breach or alleged breach of any statutory or common law duty imposed on directors or officers or of any law, statute, rule or regulation or of any provision of the articles, by-laws or any resolution of the Corporation or an Other Entity;

4.2.3 an amount paid to satisfy a liability arising as a result of the failure of the Corporation or an Other Entity to pay wages, vacation pay and any other amounts that may be owing to employees or to make contributions that may be required to be made to any pension plan, retirement income plan or other benefit plan for employees or to remit to any Governmental Authority payroll deductions, income taxes or other taxes, or any other amounts payable by the Corporation or an Other Entity; and

4.2.4 reasonable legal costs on a solicitor and his own client basis, including those incurred in enforcing the Indemnified Party’s rights under this Agreement; and

4.3 the Indemnified Party shall be considered to be “**involved**” in any proceeding if the Indemnified Party has any participation whatsoever in such proceeding, including merely as a witness.

5. Upon the Indemnified Party becoming aware of any proceeding which may give rise to indemnification under this Agreement, the Indemnified Party shall give written notice to the Corporation, directed to its (a) Chief Executive Officer or President and (b) General Counsel, as soon as is practicable, provided however that failure to give notice in a timely fashion shall not disentitle the Indemnified Party to indemnification unless the Corporation suffers actual prejudice by reason of the delay.
6. The Corporation may conduct any investigation it considers appropriate of any proceeding of which it receives notice under section 5, and shall pay all costs of that investigation.
7. The parties wish to facilitate the payment by the Indemnified Party of ongoing costs in connection with matters for which indemnification under this Agreement is provided. Accordingly, the parties agree as follows:

7.1 subject to section 7.2, the Corporation shall, upon demand, make advances (“**Expense Advances**”) to the Indemnified Party of all reasonable amounts for which the Indemnified Party seeks indemnification under this Agreement before the final disposition of the relevant proceeding. In connection with such demand, the Indemnified Party shall provide the Corporation with a written affirmation of the Indemnified Party’s good faith belief that the Indemnified Party has met the Standards of Conduct, along with sufficient particulars of the costs, charges and expenses to be covered by the proposed

Expense Advance to enable the Corporation to make an assessment of their reasonableness;

7.2 the Corporation shall make Expense Advances to the Indemnified Party in accordance with the provisions of the CBCA; and

7. 7.3 the Indemnified Party shall execute a separate undertaking which shall set out the Indemnified Party's acknowledgement and agreement to repay to the Corporation, upon demand, all Expense Advances in the event the Indemnified Party has not met the Standards of Conduct.
8. The indemnities in section 1 shall not apply in respect of any proceeding initiated by the Indemnified Party:
- 8.1 against the Corporation or an Other Entity, unless it is brought to establish or enforce any right under this Agreement;
- 8.2 against any Director or Officer unless the Corporation or the Other Entity, as the case may be, has joined in or consented to the initiation of such proceeding; or
- 8.3 against any other corporation, partnership, trust, joint venture, unincorporated entity or person, unless it is a counterclaim.
9. The Corporation shall be entitled to participate, at its own expense, in the defence of the Indemnified Party in any proceeding. If the Corporation so elects after receipt of notice of a proceeding, or the Indemnified Party in that notice so directs, the Corporation shall assume control of the negotiation, settlement or defence of the proceeding, in which case the defence shall be conducted by counsel chosen by the Corporation and reasonably satisfactory to the Indemnified Party. If the Corporation elects to assume control of the defence, the Indemnified Party shall have the right to participate in the negotiation, settlement or defence of the proceeding and to retain counsel to act on the Indemnified Party's behalf, in which case the Corporation shall reimburse the Indemnified Party for any fees and disbursements of that counsel if a conflict of interests has arisen between the Corporation and the Indemnified Party. Notwithstanding anything contained herein, the Corporation shall not be responsible for fees and expenses of more than one counsel separate from counsel for the Corporation for all Directors and Officers in connection with any action or separate but similar or related actions arising out of the same general allegations or circumstances. The Indemnified Party and the Corporation shall cooperate fully with each other and their respective counsel in the investigation related to, and defence of, any proceeding and shall make available to each other all relevant books, records, documents and files and shall otherwise use their best efforts to assist each other's counsel to conduct a proper and adequate defence.

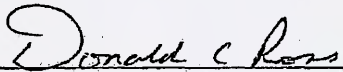
10. In respect of the settlement of any proceeding, the parties agree as follows:
  - 10.1 the Corporation may not, without the prior written consent of the Indemnified Party (which consent shall not be unreasonably withheld or delayed) enter into an agreement to settle any proceeding involving the Indemnified Party;
  - 10.2 if the Indemnified Party refuses after being requested by the Corporation, acting reasonably, to give consent to the terms of a proposed settlement in accordance with section 10.1 which is otherwise acceptable to the Corporation, the Corporation may require the Indemnified Party to negotiate or defend the Claim independently of the Corporation. In that case, any amount recovered by the claimant in excess of the amount for which settlement could have been made by the Corporation shall not be recoverable under this Agreement, and the Corporation will only be responsible for costs, charges and expenses up to the time at which settlement could have been made;
  - 10.3 the Corporation shall not be liable for any settlement of any proceeding effected without its prior written consent (which consent shall not be unreasonably withheld or delayed);
  - 10.4 the Indemnified Party shall have the right to negotiate a settlement in respect of any proceeding, provided that unless the Corporation has approved the settlement, the Indemnified Party shall pay any compensation or other payment to be made under the settlement and the costs of negotiating and implementing the settlement, and shall not seek indemnity from the Corporation in respect of such compensation, payment or costs; and
  - 10.5 the settlement of a proceeding shall not create a presumption that the Indemnified Party did not meet or would not have met the Standards of Conduct.
11. Should any payment made pursuant to this Agreement, including the payment of insurance premiums or any payment made by an insurer under an insurance policy, be deemed to constitute a taxable benefit or otherwise be or become subject to any tax or levy, then the Corporation shall pay any amount as may be necessary to ensure that the amount received by or on behalf of the Indemnified Party, after the payment of or withholding for such tax, fully reimburses the Indemnified Party for the actual cost, expense or liability incurred by or on behalf of the Indemnified Party.
12. Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect. The parties shall engage in good faith negotiations to replace any provision which is declared invalid or unenforceable with a valid and enforceable provision, the economic effect of which comes as close as possible to that of the invalid or unenforceable provision which it replaces.



13. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.
14. This Agreement shall survive until six years after the Indemnified Party has ceased to be a Director or Officer.
15. Except as expressly provided in this Agreement, no amendment or waiver of this Agreement shall be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement shall constitute a waiver of any other provision nor shall any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided.
16. This Agreement shall enure to the benefit of the Indemnified Party and the Indemnified Party's heirs, administrators, executors and personal representatives and shall be binding upon the Corporation and its successors.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.


**INDEMNIFIED PARTY**



Name: DON ROSS  
Position: Director

**SEARS CANADA INC.**

by:



Name: Franco Perugini  
Title: Corporate Secretary

This is Exhibit "R" referred to in the Affidavit of Service of John N. Birch,  
sworn February 7, 2019

A handwritten signature in blue ink, appearing to read "A. Jones", is written above a horizontal line.

---

Commissioner for Taking Affidavits  
(or as may be)



CASSELS BROCK  
LAWYERS

October 19, 2018

By E-mail

Mr. Jeremy Dacks  
Osler, Hoskin & Harcourt LLP  
100 King Street West, First Canadian Place  
Suite 6200, P.O. Box 50  
Toronto ON, M5X 1B8

jbirch@casselsbrock.com  
tel: (416) 860-5225  
fax: (416) 640-3057  
file # 51243-1

Mr. Alan B. Merskey  
Norton Rose Fulbright Canada LLP  
Suite 3800, Royal Bank Plaza, South Tower  
200 Bay Street, P.P. Box 84  
Toronto, ON M5J2Z4

Dear Sirs:

**Re: Claims Against Certain Officers and Directors of Sears Canada Inc. ("Sears Canada")**

We are writing to you in your respective capacities as counsel for Sears Canada and for the Monitor of Sears Canada in the proceedings brought by Sears Canada under the *Companies' Creditors Arrangement Act* ("CCAA").

As you know, we are counsel to certain former directors and officers of Sears Canada (the "**Directors**"), namely Klaudio Leshnjani, William (Bill) C. Crowley, William (Bill) R. Harker, James R.G. McBurney, Ephraim J. (EJ) Bird, Calvin McDonald, , Ronald Boire, Deidra Cheeks Merriwether, Donald C. Ross, and Douglas Campbell. Now that the CCAA proceeding has been underway for more than 15 months, Sears Canada has shut down all stores, and a claims process is underway, we write with respect to documentation preservation. This is a particularly important issue given that

- (a) numerous claims have been asserted against the Directors in the CCAA claims process;
- (b) there was already litigation against Sears Canada and some of the Directors at the time that the CCAA proceedings commenced, which is only temporarily stayed and which could well continue against the Directors in the near future; and
- (c) in March 2018, the Litigation Investigator was appointed and it is likely that it will recommend the pursuit of at least some material claims against the Directors, presumably by way of proceedings outside the CCAA process.

In general terms, the actual and threatened claims against Directors ("**Claims**") relate to (i) unpaid wages and benefits to former Sears Canada employees and other employee-related liabilities; (ii) potential pension claims by former Sears Canada employees, the pension



administrator, and the pension guarantee fund; (iii) alleged breach of fiduciary duties to various stakeholders concerning Sears Canada's inability to remain solvent; (iv) potential "oppression" claims from stakeholders alleging that Sears Canada disregarded their respective interests; and (v) environmental contamination. Depending on the outcome of the Litigation Investigator's investigation, additional Claims may be asserted.

Given the nature of the allegations that have been made, and are likely to be made, against the Directors, our clients believe that thousands of documents in the possession of Sears Canada will be vital to the defence of the Directors. Those documents should be preserved and their integrity maintained. The Directors have very few documents in their possession relating to their work at Sears Canada, given that our clients ceased to hold positions at Sears Canada many years ago.

The Directors are confident that they will be able to defend themselves on the merits. However, preservation of the documents currently in Sears Canada's possession is essential to such defence.

We therefore request, as a protective measure, that Sears Canada ensure that any documents (in whatever medium or form) currently in its power, possession, and control, and which are relevant to Claims, be preserved. We also ask that such documents be provided to our firm, as counsel to the Directors. The types of relevant documents that should be preserved and provided to the Directors include, but are not limited to, the following:

1. Board packages;
2. Board minutes and resolutions;
3. Legal, accounting and other professional advice and opinions about corporate/board decisions and or steps that are the subject of the Claims;
4. Advice and information provided to the Directors by Sears Canada management relating to the decisions and steps that are the subject of the Claims;
5. Emails relating to the subject of the Claims;
6. Records showing the financial state of Sears Canada during the Directors' tenure at Sears Canada, including financial analysis performed in support of dividend payments;
7. Internal Sears Canada memoranda showing the role of management and the board of directors in making key decisions about the subject of the Claims; and
8. Documents which demonstrate the relationship between Sears Canada, Sears Holdings Corporation, and ESL Investments Inc. and that Sears Canada acted appropriately and its own best interests without any improper influence of outside parties.

We are prepared to meet with you to discuss the preservation and collection of documents relevant to the Claims. We also ask, prior to commencing the document collection process, that you provide the particulars of the volume and format of documents that exist and are currently in Sears Canada's possession. Given that there is a risk that key records of Sears Canada (especially documents stored on computers and computer servers) may be destroyed, misplaced, altered or lost, we would like to work with Sears Canada as soon as possible to undertake document preservation and, when required, document gathering. Our firm has a well

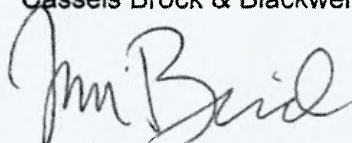


Page 3

recognized discovery management practice that can work with your law firms and Sears Canada to ensure that any documentary discovery obligations are fulfilled.

We look forward to hearing from you.

Yours truly,  
Cassels Brock & Blackwell LLP



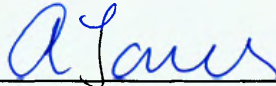
John N. Birch  
Services provided by a Professional Corporation

JB/am

cc:

Mary I.A. Buttery and Natalie E. Levine, *Cassels Brock & Blackwell LLP*

This is Exhibit "S" referred to in the Affidavit of Service of John N. Birch,  
sworn February 7, 2019

A handwritten signature in blue ink, appearing to read "A. Jones", is written above a horizontal line.

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Commissioner for Taking Affidavits  
(or as may be)

November 16, 2018

# NORTON ROSE FULBRIGHT

Barristers & Solicitors / Patent & Trade-mark Agents

## Sent By E-mail

Mr. John N. Birch  
Cassels Brock & Blackwell LLP  
2100 Scotia Plaza  
40 King Street West  
Toronto, Ontario M5H 3C2

Norton Rose Fulbright Canada LLP  
Royal Bank Plaza, South Tower, Suite 3800  
200 Bay Street, P.O. Box 84  
Toronto, Ontario M5J 2Z4 CANADA

F: +1 416.216.3930  
[nortonrosefulbright.com](http://nortonrosefulbright.com)

Lynne O'Brien  
+1 416.216.3923  
[Lynne.O'Brien@nortonrosefulbright.com](mailto:Lynne.O'Brien@nortonrosefulbright.com)

Your reference  
51243-1

Our reference  
1000299972

Dear Mr. Birch:

## Claims against certain officers and directors of Sears Canada Inc.

We are in receipt of your October 19, 2018 letter. We confirm that the Monitor is mindful of preservation issues relating to Sears Canada Inc. documents. The Monitor has worked, and continues to work, with Sears Canada Inc. to ensure that reasonable steps have been taken to preserve the available potentially relevant data.

We note that each of your clients also have obligations to preserve documents. Please ensure that your clients have taken reasonable steps to preserve all documents (paper and electronic) in their possession. This includes, but is not limited to:

- all data that may be on any computer, hard drive, phone or other device (personal and/or work);
- emails from any of their email accounts (personal and/or work);
- text messages or any other form of electronic communication they may have used during the time they were directors or officers of Sears Canada Inc.

Finally, your request for production of documents and a meeting to discuss documents is premature. We will be happy to arrange a meeting at the appropriate time.

Yours very truly,



Lynne O'Brien

MLO/tl

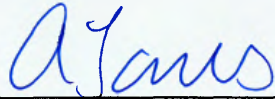
Copy to: Alan B. Merskey, *Norton Rose Fulbright*  
Evan Cobb, *Norton Rose Fulbright*

CAN\_DMS: \124025235

Norton Rose Fulbright Canada LLP is a limited liability partnership established in Canada.

Norton Rose Fulbright Canada LLP, Norton Rose Fulbright LLP, Norton Rose Fulbright Australia, Norton Rose Fulbright South Africa Inc and Norton Rose Fulbright US LLP are separate legal entities and all of them are members of Norton Rose Fulbright Verein, a Swiss verein. Norton Rose Fulbright Verein helps coordinate the activities of the members but does not itself provide legal services to clients. Details of each entity, with certain regulatory information, are at [nortonrosefulbright.com](http://nortonrosefulbright.com).

This is Exhibit "T" referred to in the Affidavit of Service of John N. Birch,  
sworn February 7, 2019

A handwritten signature in blue ink, appearing to read "A. Jones", is positioned above a horizontal line.

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Commissioner for Taking Affidavits  
(or as may be)





CASSELS BROCK  
LAWYERS

November 20, 2018

By E-mail mgottlieb@counsel-toronto.com;  
orestes.pasparakis@nortonrosefulbright.com

jbirch@casselsbrock.com  
tel: (416) 860-5225  
fax: (416) 640-3057  
file # 51243-1

Matthew Gottlieb  
Lax O'Sullivan Lisus Gottlieb LLP  
145 King St W., Suite 2750  
Toronto, ON M5H 1J8

Orestes Pasparakis  
Norton Rose Fulbright Canada LLP  
200 Bay Street, Suite 3800  
Toronto, ON M5J 2Z4

Dear Mr. Gottlieb and Mr. Pasparakis:

**Re: Anticipated Litigation against Former Directors and Officers of Sears Canada Inc.  
("Sears Canada")**

As you are aware, our firm is counsel to 10 former directors and officers of Sears Canada (the "Directors").

Based on the motion materials served by each of your firms in relation to the motion scheduled for December 3, 2018, it is apparent that both the Monitor and the Litigation Investigator intend to pursue "fast track" litigation against our clients and others if the relief being sought on that date is granted. Such litigation is very material and important to our clients and the other defendants given that damages of \$509 million will be sought. The motion materials also suggest that additional claims are currently being investigated and could later be pursued.

In the process undertaken by the Litigation Investigator and Monitor to date, there is clearly both an imbalance and some unfairness relating to relevant documents. Paragraph 22 of the 27th Report of the Monitor indicates that the Monitor received over 100,000 documents and files from Sears Canada and related companies and undertook a targeted review in relation to the contemplated claims against the Directors and others. Paragraph 11(b) of the First Report of the Litigation Investigator acknowledges that the Litigation Investigator reviewed documents provided to it by the Applicants concerning possible claims against the Directors and other defendants. However, none of these documents was provided to the Directors.

The information that we have received indicates that overall, one or more of our various clients sat on the board of Sears Canada between June 2001 and August 2015. As a result of their role as directors (and, in some cases, officers) of Sears Canada, our clients had the right to access corporate documents of Sears Canada at any time during their tenure, including, without



limitation, board packages, legal and other professional opinions and analysis, and other materials underpinning decisions made by the board.

On October 19, 2018, I wrote to Jeremy Dacks of Osler, Hoskin & Harcourt LLP and Alan Merskey of Norton Rose Fulbright Canada LLP asking them to ensure that Sears Canada documents were gathered and preserved. The letter also indicated that our firm wanted to work with Sears Canada "as soon as possible" to undertake document preservation and gathering.

On November 16, 2018, I received a response from Lynne O'Brien of Norton Rose Fulbright Canada LLP indicating, among other things, that "your request for production of documents and a meeting to discuss documents is premature". We wholeheartedly disagree with this position being taken by the Monitor, a party that is supposed to be neutral and act in the interests of all stakeholders (which include the Directors, who are creditors of Sears Canada). It is of serious concern to our firm and our clients that the Monitor and the Litigation Investigator have apparently accessed and reviewed numerous documents for the purposes of determining that claims should be asserted against the Directors and then preparing the draft Statement of Claim found in the Motion Record. As directors, our clients have an entitlement to access documents of Sears Canada covering the period when they sat on the board.

Accordingly, we immediately seek the cooperation of the Monitor and the Litigation Investigator to allow our clients access to two sets of items. First, please provide immediate access to all records of Sears Canada relating to any actual or possible claims being asserted, including those arising out of the payment of any dividends. This would have to include the full 100,000 documents referred to in the Monitor's Report, as well as any documents provided to the Litigation Investigator. We infer that these documents exist in electronic form and therefore it should be a simple matter for the Monitor to simply provide a copy (including an index) that our firm can load into its litigation support software, iPro.

Second, as you are aware, Sears Canada and the Directors jointly retained Stikeman Elliott LLP to represent them in defending the 2013 and 2015 actions brought by Hometown Sears dealers. In light of that joint retainer, our clients are entitled to obtain a full copy of the files (including documents gathered for and/or produced in those actions) held by that firm. We have spoken to Sam Hosseini of that firm who advises that she is prepared to immediately release the files to our firm as soon as the Monitor provides its approval. There is no basis on which the Monitor could withhold its approval given that the Directors are joint clients of that firm. We ask the Monitor to provide the required consent to Stikeman Elliott LLP immediately.

As I indicated in my letter dated October 19, 2018, since our clients left the board of Sears Canada many years ago (in some cases as far back as May 2012), they do not currently have anywhere near a complete set of documents relating to their work as directors. That is one key reason why it is vitally important for our firm to obtain immediate access to Sears Canada documents. Having had the advantage of those documents for the purposes of preparing a Statement of Claim, the Monitor and the Litigation Investigator can hardly take the position that they can withhold documents from the Directors. Such withholding is all the more of concern given that the proposed litigation being brought by the Monitor and the Litigation Investigator will



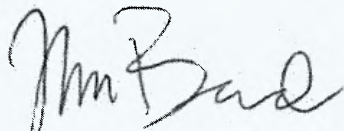
Page 3

be on behalf of creditors of Sears Canada and it would be incongruous for the representative(s) of creditors bringing the litigation to have access to documents while withholding them from the very individuals that had access as part of their tenure on the board.

In conclusion, we also emphasize that to the extent that there is any delay in providing documents to the Directors, that will delay the litigation given that our firm will need to fully review those items before filing its defence and moving forward with documentary and oral discovery (in the event the court authorizes proceedings to be brought). Since it apparently took the Litigation Investigator and the Monitor more than eight months to review the documents and consider potential claims, those parties can hardly take the position that the Directors should be stuck with some much shorter, arbitrary time frame to do their own analysis.

We await your confirmation that the Directors will be immediately provided with the Sears Canada documents and a copy of the Stikeman Elliott LLP file.

Yours truly,  
Cassels Brock & Blackwell LLP



John N. Birch  
Services provided by a Professional Corporation  
JNB/ah

cc: Mary Buttery and Natalie Levine

This is Exhibit "U" referred to in the Affidavit of Service of John N. Birch,  
sworn February 7, 2019

A handwritten signature in blue ink, appearing to read "A. J. ...", positioned above a horizontal line.

---

Commissioner for Taking Affidavits  
(or as may be)

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**From:** Cobb, Evan [evan.cobb@nortonrosefulbright.com]  
**Sent:** Thursday, November 22, 2018 11:16 AM  
**To:** Birch, John  
**Cc:** Pasparakis, Orestes; Matt Gottlieb; Helen Osijczuk-Pawlyk  
**Subject:** RE: Sears Canada Inc. - sent on behalf of Matthew P. Gottlieb

John,  
We have your letter of November 20, 2018. We agree with the Litigation Inspector's response below. In addition, we note the Monitor is aware of its obligations in these proceedings, including to stakeholders. Your letter appears to suggest that the Monitor has some specific duty to act in the interests of your clients in their capacities as proposed defendants to the Monitor's claim. The Monitor does not agree. The Monitor is of the view that it is in the interest of all stakeholders that any litigation that is authorized by the Court proceed in an orderly and efficient manner. The Monitor does not believe the expenditure of estate funds responding to broad document requests is justified unless and until the Court grants an order allowing the Monitor's claim to proceed, at which time a coordinated and expedited process for relevant document production can be established. Documents would need to be reviewed for relevance and privilege, keeping in mind the interests of all stakeholders. Further, it is not reasonable, proportionate or in the interests of stakeholders for the Monitor to simply provide all of the documents in its possession to your clients. The Monitor has contacted Stikeman Elliott and will obtain the documents in their possession that were received from Sears Canada. We cannot provide the Monitor's position on releasing those documents until we have an understanding of their contents. However, we should note that we understand the documents were collected, and in some cases produced, only in connection with the franchise class action proceedings to which the directors were not parties.

Regards,

**Evan Cobb**

Partner

Norton Rose Fulbright Canada LLP / S.E.N.C.R.L., s.r.l.  
Royal Bank Plaza, South Tower, Suite 3800  
200 Bay Street, P.O. Box 84, Toronto, ON M5J 2Z4 Canada

T: +1 416.216.1929 | F: +1 416.216.3930

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

**NORTON ROSE FULBRIGHT**

---

**From:** Helen Osijczuk-Pawlyk [<mailto:hosijczuk@counsel-toronto.com>]

**Sent:** November-22-18 10:20 AM

**To:** 'Birch, John'

**Cc:** Cobb, Evan; Pasparakis, Orestes; Matt Gottlieb

**Subject:** Sears Canada Inc. - sent on behalf of Matthew P. Gottlieb

Please see attached.

**Helen Osijczuk-Pawlyk**

Sent on behalf of Matthew P. Gottlieb

Direct: (416) 598-5759

[hosijczuk@counsel-toronto.com](mailto:hosijczuk@counsel-toronto.com)



**Lax O'Sullivan Lisus Gottlieb LLP**

Suite 2750, 145 King Street West

Toronto ON M5H 1J8 Canada

T 416 598 1744 F 416 598 3730

[counsel-toronto.com](http://counsel-toronto.com)

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Law around the world

[nortonrosefulbright.com](http://nortonrosefulbright.com)


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**Matthew P. Gottlieb**

Direct 416 644 5353 mgottlieb@counsel-toronto.com  
File No. 14282

**Lax O'Sullivan Lisus Gottlieb LLP**

Suite 2750, 145 King Street W, Toronto ON M5H 1J8 Canada  
T 416 598 1744 F 416 598 3730 www.counsel-toronto.com

The logo for Lax O'Sullivan Lisus Gottlieb is a black square with the firm's name in white, stacked vertically: "Lax", "O'Sullivan", "Lisus", and "Gottlieb".

Lax  
O'Sullivan  
Lisus  
Gottlieb

November 22, 2018

**BY EMAIL**

John N. Birch  
Cassels Brock & Blackwell LLP  
2100 Scotia Plaza  
40 King Street West  
Toronto, ON M5H 3C2

Dear Mr. Birch:

**Re: Sears Canada Inc.**

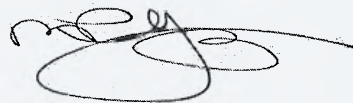
Thank you for your letter dated November 20, 2018.

We respectfully disagree with the content of the letter and in particular disagree that former directors of a company are entitled to access company documents at this time or are otherwise entitled to be provided with documents/production outside of a discovery process. Further, there is no unfairness or impropriety regarding the Litigation Inspector's review of documents in order to fulfil its mandate (pursuant to the Amended Litigation Investigator Order of the Court dated April 26, 2018). As you know, it is always the case that a potential plaintiff reviews the documents in its possession to determine whether to commence a claim. It does not have the obligation to provide those documents to prospective defendants or defendants outside of the discovery process.

- 2 -

Finally, in addition to what is set out above, the Litigation Investigator is not authorized under the Order to provide documents to you or your clients. In any event, as we note above, we would not comply with your request – it should be dealt with in a discovery process should proceedings be commenced.

Yours truly,

A handwritten signature in black ink, appearing to read 'Matthew P. Gottlieb', with a long horizontal flourish extending to the right.

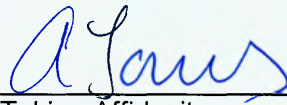
Matthew P. Gottlieb

MPG/hop

Copy to: Orestes Pasparakis (Norton Rose)  
Evan Cobb (Norton Rose)



This is Exhibit "V" referred to in the Affidavit of Service of John N. Birch,  
sworn February 7, 2019

A handwritten signature in blue ink, appearing to read "A. Jones", is written over a horizontal line.

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Commissioner for Taking Affidavits  
(or as may be)

Court File Number: CV-18-00611214-000

Superior Court of Justice & related actions  
Commercial List

**FILE/DIRECTION/ORDER**

Slars Canada Inc

Plaintiff(s)

AND

ESL Investments Inc et al

Defendant(s)

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

Counsel	Telephone No:	Facsimile No:
<u>See attached</u>		

- 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):

Timetable shall go as per Schedule A attached.

Also, I will raise w Justice Gray with respect to the transfer of Class Action # 4114/15CP to Toronto.

25 Jan 19.  
Date

[Signature]  
Judge's Signature

Additional Pages \_\_\_\_\_

Feb 7:  $\Delta$ s - serve motions for production  
Mon - serve motion for order re  
waiver of priv

Feb 21 - Mon/LT serve responding material

March 20 - hearing - motions  
case conference re discovery plan

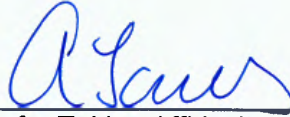
March 15:  $\Delta$  to serve motions to strike  
 $\Delta$  to serve response to certifier motion

April 17/18: hearing of motions to strike and for  
certification

Spt 2019 (tentative) - E/Ds

Feb 3, 2020 - Trial commences for 8 weeks

This is Exhibit "W" referred to in the Affidavit of Service of John N. Birch,  
sworn February 7, 2019

A handwritten signature in blue ink, appearing to read "A. Law", is written above a horizontal line.

---

Commissioner for Taking Affidavits  
(or as may be)



January 28, 2019

By E-mail

wberman@casselsbrock.com

tel: 416.860.2926

fax: 416.640.3107

Orestes Pasparakis, Robert Frank, Evan Cobb  
Norton Rose Fulbright Canada LLP  
Suite 3800, Royal Bank Plaza  
South Tower, 200 Bay Street  
P.O. Box 84  
Toronto Ontario M5J 2Z4

Dear Counsel:

**Re: William Harker et al. ats FTI Consulting Canada Inc.  
Court File No.: CV-18-00611219-00CL  
Production of Relevant Documents**

We write further to our letter dated November 20, 2018, in which we requested that FTI Consulting Canada Inc. (the "Monitor") provide immediate access to all records of Sears Canada Inc. relating to the claims being asserted in the above action, including, among other things, the allegations relating to the divestiture of real estate assets and the consideration or payment of any dividends during the period 2010 to 2014.

These documents are necessary for our clients (the "Former Directors") to provide a meaningful response to the action, including to deliver their statement of defence. Further, the Former Directors are entitled to access such documents and information in respect of potential or pending claims contractually and as a matter of corporate law. Despite our letter, and despite our subsequent requests for production of these documents, the Monitor has failed or refused to provide such access.

As you know, we intend to seek an order that the Monitor produce these documents at the hearing scheduled for March 20, 2019. Given the compressed timelines in this matter, we request confirmation that you have begun the process of compiling all relevant non-privileged documents so that, in the event such documents are ordered to be produced, they can be produced without any delay due to your collection and review efforts. Since these documents must be produced in the ordinary course in any event, we trust that you will not raise any objection to compiling them now.

We appreciate your prompt response.



Yours truly,

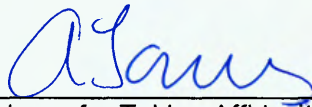
Cassels Brock & Blackwell LLP

A handwritten signature in dark ink, appearing to read "W Berman", with a long horizontal flourish extending to the right.

Wendy Berman  
WB/iv

cc: Harry Underwood, Andrew Faith, Jeffrey Haylock, Sandy Lockhart, *Polley Faith LLP*  
Richard Swan, Sean Zweig, *Bennett Jones LLP*

This is Exhibit "X" referred to in the Affidavit of Service of John N. Birch,  
sworn February 7, 2019

A handwritten signature in blue ink, appearing to read "A. Law", is positioned above a horizontal line.

---

Commissioner for Taking Affidavits  
(or as may be)



January 31, 2019

**By E-mail**

Matthew P. Gottlieb, Andrew Winton, Philip Underwood  
Lax O'Sullivan Lisus Gottlieb LLP  
Suite 2750, 145 King Street W.  
Toronto, ON M5H 1J8

wberman@casselsbrock.com

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fax: 416.640.3107

Dear Counsel:

**Re: Ephraim J. Bird *et al.* ats Sears Canada Inc.  
Court File No.: CV-18-00611214-00CL  
Production of Relevant Documents**

We write further to our letter dated November 20, 2018, in which we requested that FTI Consulting Canada Inc. and your firm, then litigation investigator, provide immediate access to all records of Sears Canada Inc. relating to the claims now being asserted in the above action, including, among other things, the allegations relating to the divestiture of real estate assets and the consideration or payment of any dividends during the period 2010 to 2014.

These documents are necessary for our clients (the "Former Directors") to provide a meaningful response to the action, including to deliver their statement of defence. Further, the Former Directors are entitled to access such documents and information in respect of potential or pending claims contractually and as a matter of corporate law. Despite our letter, and despite our subsequent requests for production of these documents, your firm and now your client have failed or refused to provide such access.

As you know, we intend to seek an order that the litigation trustee produce these documents at the hearing scheduled for March 20, 2019. Given the compressed timelines in this matter, we request confirmation that you have begun the process of compiling all relevant non-privileged documents so that, in the event such documents are ordered to be produced, they can be produced without any delay due to your collection and review efforts. Since these documents must be produced in the ordinary course in any event, we trust that you will not raise any objection to compiling them now.





We appreciate your prompt response.

Yours truly,

Cassels Brock & Blackwell LLP

A handwritten signature in black ink, appearing to read "W. Berman", followed by a horizontal line.

Wendy Berman  
WB/iv

cc: Harry Underwood, Andrew Faith, Jeffrey Haylock, Sandy Lockhart, *Polley Faith LLP*  
Richard Swan, Sean Zweig, *Bennett Jones LLP*

FTI CONSULTING CANADA INC. -and-  
Plaintiffs

ESL INVESTMENTS INC *et al.*  
Defendants

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

PROCEEDING COMMENCED AT  
TORONTO

**MOTION RECORD  
RETURNABLE MARCH 20, 2019**

**CASSELS BROCK & BLACKWELL LLP**

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Lawyers for the Defendants  
William Harker and William Crowley