

**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.

**MOTION RECORD OF THE MONITOR
(returnable August 7, 2020)**

July 29, 2020

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TO: THE SERVICE LIST

**ONTARIO
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TABLE OF CONTENTS

TAB	DESCRIPTION	PAGE NO.
1	Notice of Motion dated July 29, 2020	1 – 11
2	Thirty-Seventh Report of the Monitor dated July 29, 2020	12 – 23
A.	Appendix "A" – Thirty-Third Report of the Monitor dated October 23, 2019, without appendices	24 – 38
B.	Appendix "B" – Thirty-Sixth Report of the Monitor dated March 24, 2020, without appendices	39 – 65
C.	Appendix "C" – Release and Settlement Agreement	66 – 87
3	Draft Order	88 – 90

TAB 1

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

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LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC.,
168886 CANADA INC., AND 3339611 CANADA INC.

APPLICANTS

NOTICE OF MOTION
(Calgary Environmental Settlement)
(returnable August 7, 2020)

FTI Consulting Canada Inc., in its capacity as Monitor in these proceedings (the "**Monitor**"), will make a motion before a judge of the Ontario Superior Court of Justice (Commercial List) on August 7, 2020, at 12:00 pm (Toronto time), or as soon after that time as the motion can be heard, by teleconference via Zoom at Toronto, Ontario. Please refer to the conference details attached as Schedule "A" hereto in order to attend the motion and advise if you intend to join the motion by emailing Peter Choi at peter.choi@nortonrosefulbright.com.

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

THE MOTION IS FOR:

1. An Order substantially in the form attached hereto as Schedule "B", *inter alia*:
 - (a) if necessary, abridging the time for service of this Notice of Motion and the Motion Record and dispensing with service on any person other than those served;
 - (b) approving the release and settlement agreement between Sears Canada Inc. ("**Sears Canada**"), Suncor Energy Inc. ("**Suncor**") and Her Majesty the Queen in

Right of Alberta, as represented by the Director, Regional Compliance, South Saskatchewan Region, Alberta Environment and Parks (“**AEP**”) (the “**Release and Settlement Agreement**”), a copy of which is attached to the Thirty-Seventh Report of the Monitor at Appendix C; and

- (c) permitting the release of the remainder of the Reserve Amount (as defined below), to be available for any other estate purpose, including distribution to the creditors;
2. Such further and other relief as this Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

1. The Applicants were granted protection from their creditors under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985 c. C-36, as amended (the “**CCAA**”) pursuant to the Initial Order of the Ontario Superior Court of Justice (Commercial List) dated June 22, 2017, as amended and restated;
2. FTI Consulting Canada Inc. was appointed to act as the Monitor in the CCAA proceedings;

The Environmental Protection Order

3. On February 28, 2018, the AEP issued Environmental Protection Order No. EPO2018/01-SSR (the “**EPO**”) under the *Environmental Protection and Enhancement Act*, RSA 2000 C-E12 (the “**EPEA**”) to Sears Canada and Concord North Hill GP Ltd. (“**Concord**”) in respect of the alleged release of a substance which allegedly caused, is causing or may cause an adverse effect on the environment in relation to lands located at Plan 8210266, Block 21, in the City of Calgary;
4. Sears Canada appealed the EPO to the Alberta Environmental Appeals Board (the “**EAB**”);
5. The EPO was amended on March 29, 2018 and October 11, 2018. The second amendment added Suncor Energy Inc. (“**Suncor**”) as a party to the EPO;
6. An appeal of the EPO was taken to the EAB on December 3-5, 2019. At issue on the appeal, among other things, were the appropriate persons responsible under the EPO. Also at

issue were the parameters of the EPO and remediation plan to be established pursuant and responsive to the EPO;

7. The EAB released a report and recommendations dated February 3, 2020. Those recommendations were implemented into a ministerial order dated February 5, 2020, by the AEP. In brief, the effects of those recommendations and order are to:

- (a) Maintain the general parameters of the remediation plan under the EPO, subject to enhanced reporting and monitoring requirements;
- (b) Remove Concord as a party to the EPO; and
- (c) maintain Suncor as a party to the EPO, with equal obligations for conduct of the remediation plan;

8. The EPO is now final. Concord is no longer a person responsible under the EPO and the parameters of the EPO have been set;

9. Prior to the EAB hearing, Concord and Suncor had alleged that the Supreme Court of Canada decision in *Orphan Well Association v. Grant Thornton Ltd* (“**Redwater**”) had the effect of precluding the distribution of funds that would otherwise be required for the conduct of the EPO. AEP also expressed a similar position. The Monitor and the Applicants disagreed;

The Reserve Amount

10. As a result of these allegations, the Monitor brought a motion to set a reserve amount (the “**Reserve Amount**”) for the EPO activities to allow for a distribution from the estate, which was adjourned to a date to be scheduled following the hearing and determination of the EPO appeal proceedings described above, which could have an impact on the appropriate reserve amount for the EPO activities;

11. As a result of the conclusion of the EAB proceedings, the Monitor, in consultation with Sears Canada’s environmental consultant, updated and finalized the Reserve Amount. The final amount was fixed by order of the Honourable Justice Hainey on March 31, 2020, in the amount of \$8,433,000;

The Release and Settlement Agreement

12. Following the conclusion of the EAB proceedings, the Monitor entered into negotiations with Suncor and AEP to resolve the Redwater dispute. Those negotiations were successful and resulted in the Release and Settlement Agreement;

13. In brief, the Release and Settlement Agreement provides for payment to Suncor of half of the Reserve Amount by Sears Canada. In return, Suncor takes over the obligations of Sears Canada under the EPO, and Suncor and AEP release any CCAA claims and do not oppose the distribution or any other use of the remainder of the Reserve Amount, after payment to Suncor;

14. Litigation over the Reserve amount and the Redwater dispute would have been complex, time-consuming and unpredictable. Given the evolving nature of environmental insolvency issues, it could also have entailed one or even two rounds of further appeals. In the circumstances, the Monitor regards entry into the Release and Settlement Agreement as an appropriate resolution of the Redwater dispute. The Monitor therefore seeks an order approving the Release and Settlement Agreement;

15. Correspondingly, if the Release and Settlement Agreement is approved, there is no longer any purpose for the Reserve Amount, as it exists only to permit future distributions while securing the Redwater claim. The Monitor therefore also seeks an order permitting the release of the remainder of the Reserve Amount, to be available for any other estate purpose, including distribution to the creditors;

General

16. The provisions of the CCAA, including section 11 thereof, and the inherent and equitable jurisdiction of this Court;

17. Rules 1.04, 1.05, 2.03, 3.02, 16 and 37 of the *Rules of Civil Procedure* (Ontario), R.R.O. 1990, Reg. 194, as amended; and

18. Such further and other grounds as counsel may advise and this Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of this motion:

1. The Thirty-Seventh Report of the Monitor, dated July 29, 2020; and

2. Such further and other evidence as counsel may advise and this Court may permit.

- 5 -

July 29, 2020

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

TO: SERVICE LIST

SCHEDULE "A"
ZOOM CONFERENCE DETAILS

Join Zoom Meeting

<https://nortonrosefulbright.zoom.us/j/98308745335?pwd=MiswRUxQOTNKZmNhL0prZVd6OWp4dz09>

Meeting ID: 983 0874 5335

Password: 998101

One tap mobile

+17789072071,,98308745335# Canada

+12042727920,,98308745335# Canada

Dial by your location:

+1 778 907 2071 Canada

+1 204 272 7920 Canada

+1 438 809 7799 Canada

+1 587 328 1099 Canada

+1 647 374 4685 Canada

+1 647 558 0588 Canada

+1 669 900 9128 US (San Jose)

+1 253 215 8782 US (Tacoma)

+1 301 715 8592 US (Germantown)

+1 312 626 6799 US (Chicago)

+1 346 248 7799 US (Houston)

+1 646 558 8656 US (New York)

+43 120 609 3072 Austria

+43 12 535 501 Austria

+43 12 535 502 Austria

+43 670 309 0165 Austria

+43 72 011 5988 Austria

Meeting ID: 983 0874 5335

Find your local number: <https://nortonrosefulbright.zoom.us/u/acBpKXviJe>

Join by Skype for Business

<https://nortonrosefulbright.zoom.us/skype/98308745335>

SCHEDULE "B"
Form of Draft Order

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE)	FRIDAY, THE 7TH
)	
JUSTICE HAINEY)	DAY OF AUGUST, 2020
)	

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF SEARS CANADA INC., 9370-2751
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LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC.,
168886 CANADA INC., AND 3339611 CANADA INC.

(the "**Applicants**")

ORDER

THIS MOTION made by FTI Consulting Canada Inc., in its capacity as Court-appointed monitor (the "**Monitor**") in the proceedings of the Applicants pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. c-36 as amended (the "**CCAA**"), was heard this day by way of Zoom videoconference due to the COVID-19 crisis.

ON READING the Notice of Motion of the Monitor and the Thirty-Seventh Report of the Monitor dated July 29, 2020 (the "**Thirty-Seventh Report**"), filed, and on hearing the submissions of counsel for the Monitor, Suncor Energy Inc., Her Majesty the Queen in Right of Alberta, as represented by the Director, Regional Compliance, South Saskatchewan Region, Alberta Environment and Parks, and such other counsel as were present, no one else appearing although duly served,

1 **THIS COURT ORDERS** that the release and settlement agreement between Sears Canada Inc., Suncor Energy Inc. and Her Majesty the Queen in Right of Alberta, as represented by the Director, Regional Compliance, South Saskatchewan Region, Alberta Environment and Parks (the “**Release and Settlement Agreement**”), a copy of which is attached to the Thirty-Seventh Report of the Monitor at Appendix C, is hereby approved and the parties thereto are hereby bound by this order and by those terms of the Release and Settlement Agreement.

2 **THIS COURT ORDERS** that the remainder of the Reserve Amount, as such term is defined in the Notice of Motion and Thirty-Seventh Report, is hereby permitted to be released back to the Applicants’ estate to be available for any other estate purpose, including but not limited to, distribution to the creditors.

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

**ORDER
(Calgary Environmental Settlement)**

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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

**NOTICE OF MOTION
(Calgary Environmental Settlement)
(returnable August 7, 2020)**

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

TAB 2

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

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

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

July 29, 2020

Contents

Section	Page
A. INTRODUCTION	2
B. PURPOSE	5
C. TERMS OF REFERENCE	6
D. RELEASE AND SETTLEMENT AGREEMENT AND RELEASE OF RESERVE AMOUNT.....	7

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

**ONTARIO
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3339611 CANADA INC.

APPLICANTS

**THIRTY-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**”) 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 (the “**Stay Period**”); 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 (the “**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 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.
5. On October 13, 2017, the Court issued, among other orders, an order approving an agreement and a process for the liquidation of the inventory and FF&E at all remaining Sears Canada retail locations.
6. The liquidation of all inventory and FF&E is now completed and all Sears Canada retail locations are closed.
7. 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.
8. 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.
9. On March 2, 2018, the Court issued an Order appointing Lax O’Sullivan Lisus Gottlieb LLP as Litigation Investigator (as amended on April 26, 2018, the “**Litigation Investigator Order**”), with a mandate to identify and report on certain rights and claims that the Sears Canada Entities or any creditors of the Sears Canada Entities may have against any parties.
10. On March 29, 2018, the Superintendent issued an order winding-up the Pension Plan effective October 1, 2017.
11. On May 9, 2018, the Court issued an Order approving a process for a mediation among stakeholders with the goal of achieving a resolution of significant claim and distribution matters (the “**Mediation**”) as a preliminary step toward a global resolution of material estate matters. The Mediation commenced on June 13, 2018 with Regional Senior Justice Morawetz as mediator and resulted in settlements with major creditors as further described in Prior Reports (as defined below).

12. On December 3, 2018, the Monitor and the Honourable J. Douglas Cunningham, Q.C. as Court-appointed litigation trustee (the “**Litigation Trustee**”), were authorized by the Court to pursue litigation against certain third parties on behalf of Sears Canada and its creditors, in connection with the payment of certain dividends (the “**2013 Dividend**”) by Sears Canada to its shareholders in 2013 (the “**Estate 2013 Dividend Litigation**”). The Court also lifted the stay of proceedings in the Initial Order to allow the Estate 2013 Dividend Litigation, as well as a claim by Morneau Shepell Ltd., as administrator of the Pension Plan (the “**Pension Plan Administrator**”) and class action claims (collectively, the “**Dealer Class Action**”) by certain “Sears Hometown” store dealers, each also arising from the 2013 Dividend, to be commenced or continued.
13. On February 15, 2019, the Court issued an Order (the “**Meetings Order**”) authorizing the Monitor to file a joint plan of compromise and arrangement in respect of the Sears Canada Entities (the “**Plan**”) and to convene meetings of Affected Unsecured Creditors (the “**Meetings**”) for the purpose of considering and voting on the Plan.
14. The Stay Period was most recently extended to September 30, 2020 by Order of the Court granted on March 31, 2020.
15. In connection with the CCAA Proceedings, the Monitor has provided thirty-six reports and twenty-three 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, or will be made, available on the Monitor’s website at cfcanada.fticonsulting.com/searscanada/.

B. PURPOSE

16. The purpose of this thirty-seventh report of the Monitor (the “**Thirty-Seventh Report**”) is to provide the Monitor's recommendation for the approval of a settlement between Sears, Suncor Energy Inc. (“**Suncor**”) and Her Majesty the Queen in Right of Alberta, as represented by the Director, Regional Compliance, South Saskatchewan Region, Alberta Environment and Parks (“**AEP**”)(“**Release and Settlement Agreement**”) and to provide

for the release of the Reserve Amount (as defined below) associated with this issue, as previously set out in the Thirty-Sixth and Thirty-Third Reports.

C. TERMS OF REFERENCE

17. In preparing this Thirty-Seventh Report, the Monitor has relied upon audited and unaudited financial information of the Sears Canada Entities, the Sears Canada Entities' books and records, and discussions and correspondence with, among others, advisors to the Sears Canada Entities' stakeholders (collectively, the "**Information**").
18. Except as otherwise described in this Thirty-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 Thirty-Seventh Report in a manner that would comply with the procedures described in the *Chartered Professional Accountants of Canada Handbook*.
19. Future-oriented financial information reported in or relied on in preparing this Thirty-Seventh Report is based on assumptions regarding future events. Actual results will vary from these forecasts and such variations may be material.
20. The Monitor has prepared this Thirty-Seventh Report in connection with its request for an order approving the Release and Settlement Agreement and releasing the Reserve Amount. The Thirty-Seventh Report should not be relied on for any other purpose.
21. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars.

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, the former General Counsel and Corporate Secretary of Sears Canada; (iv) the Plan; and (v) the Prior Reports..

D. RELEASE AND SETTLEMENT AGREEMENT AND RELEASE OF RESERVE AMOUNT

22. The events giving rise to the Release and Settlement Agreement and Reserve Amount have previously been set out in the Thirty-Third and Thirty-Sixth Reports. Copies of those reports, without appendices, are attached as Appendices A and B for reference.
23. The Release and Settlement Agreement arises from environmental remediation activities at the location of a former full-line store of Sears Canada at the North Hill Centre shopping mall in Calgary. Among the historical operations of the store was a retail gas bar. Following the discovery of an accidental leak of gasoline from underground storage tanks, Sears Canada commenced and continued remediation activities from the early 1990s to the present.
24. As a result of the environmental remediation requirements and Sears Canada's insolvency, AEP issued an environmental protection order ("EPO") on February 28, 2018, with various amendments thereto on March 29, 2018, and October 11, 2018, and ultimately consolidated by Amendment No. 3 on November 15, 2019.
25. Sears Canada, Suncor and Concord North Hill G.P. ("Concord") were each named as persons responsible under the EPO. Concord is the current landowner/developer of the former Sears Canada full-line store property. Suncor is a prior operator of a gas bar on the contaminated property.
26. An appeal of the EPO was taken to the Alberta Environmental Appeals Board ("EAB") on December 3-5, 2019. At issue on the appeal, among other things, were the appropriate persons responsible under the EPO. Also at issue were the parameters of the EPO and remediation plan to be established pursuant and responsive to the EPO.

27. The EAB released a report and recommendations dated February 3, 2020. Those recommendations were implemented into a ministerial order dated February 5, 2020, by the Alberta Minister of Environment and Parks. In brief, the effects of those recommendations and order are to:
- (a) Maintain the general parameters of the remediation plan under the EPO, subject to enhanced reporting and monitoring requirements;
 - (b) Remove Concord as a party to the EPO; and
 - (c) Maintain Suncor as a party to the EPO, with equal obligations for conduct of the remediation plan.
28. The EPO is now final. Concord is no longer a person responsible under the EPO and the parameters of the EPO have been set.
29. Prior to the EAB hearing, Concord and Suncor had alleged that the Supreme Court of Canada decision in *Orphan Well Association v. Grant Thornton Ltd* (“**Redwater**”) had the effect of precluding the distribution of funds that would otherwise be required for the conduct of the EPO. AEP also expressed a similar position. The Monitor and the Applicants disagreed.
30. As a result of these allegations, the Monitor brought a motion to set a reserve amount (the “**Reserve Amount**”) for the EPO activities (the “**Reserve Motion**”), to allow for a distribution from the estate, which was adjourned to a date to be scheduled following the hearing and determination of the EPO appeal proceedings described above, which could have an impact on the appropriate reserve amount for the EPO activities.
31. As a result of the conclusion of the EAB proceedings, the Monitor, in consultation with Sears Canada’s environmental consultant, updated and finalized the Reserve Amount. The final amount was fixed by order of the Court on March 31, 2020, in the amount of \$8,433,000.
32. Following the conclusion of the EAB proceedings, the Monitor entered into negotiations with Suncor and AEP to resolve the Redwater dispute. Those negotiations were successful

and resulted in the Release and Settlement Agreement. A copy of the Release and Settlement Agreement is attached at Appendix C.

33. In brief, the Release and Settlement Agreement provides for payment to Suncor of half of the Reserve Amount by Sears Canada. In return, Suncor takes over the obligations of Sears Canada under the EPO, and Suncor and AEP release any CCAA claims and do not oppose the distribution or any other use of the remainder of the Reserve Amount, after payment to Suncor.
34. Litigation over the Reserve amount and the Redwater dispute would have been complex, time-consuming and unpredictable. Given the evolving nature of environmental insolvency issues, it could also have entailed one or even two rounds of further appeals. In the circumstances, the Monitor regards entry into the Release and Settlement Agreement as an appropriate resolution of the Redwater dispute. It accordingly recommends approval of the Release and Settlement Agreement.
35. Correspondingly, upon the approval of the Release and Settlement Agreement, there is no longer any purpose for the Reserve Amount, as it existed only to permit future distributions while securing the Redwater claim. While there are other persons or parties such as Concord who have or had asserted CCAA claims emanating from the historical environmental contamination at the Calgary North Hill Shopping Centre location, those are claims based in either contract or tort (nuisance). The Monitor has disallowed, or is in the process of disallowing, such claims for reasons unrelated to Redwater and they are, in the case of Concord, currently proceeding through the claims adjudication process.
36. The Monitor therefore also seeks an order permitting the release of the remainder of the Reserve Amount, to be available for any other estate purpose, including distribution to the creditors.

The Monitor respectfully submits to the Court this, its Thirty-Seventh Report.

Dated this 29th day of July, 2020.

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

A handwritten signature in black ink that reads "Paul Bishop". The signature is written in a cursive style with a large initial "P".

Paul Bishop
Senior Managing Director

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

Greg Watson
Senior Managing Director

APPENDIX "A"

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

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

THIRTY-THIRD REPORT OF FTI CONSULTING CANADA INC., AS MONITOR

OCTOBER 23, 2019

Contents

Section	Page
A. INTRODUCTION.....	2
B. PURPOSE	6
C. TERMS OF REFERENCE.....	6
D. CALGARY NORTH HILL EPO AND THE RESERVE.....	7

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., 9845488
CANADA INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR
COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741
CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041
ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC. AND
3339611 CANADA INC.

APPLICANTS

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

A. INTRODUCTION

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

2. 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 (the “**Stay Period**”); 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 (the “**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 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.
5. On October 13, 2017, the Court issued, among other orders, an order approving an agreement and a process for the liquidation of the inventory and FF&E at all remaining Sears Canada retail locations.
6. The liquidation of all inventory and FF&E is now completed and all Sears Canada retail locations are closed.
7. The only remaining material asset of the Sears Canada Entities, other than possible litigation-related assets, that has not been sold is a real property asset located in Barrie, Ontario.
8. 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.
9. 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.
10. On March 2, 2018, the Court issued an Order appointing Lax O’Sullivan Lisus Gottlieb LLP as Litigation Investigator (as amended on April 26, 2018, the “**Litigation Investigator Order**”), with a mandate to identify and report on certain rights and claims that the Sears Canada Entities or any creditors of the Sears Canada Entities may have against any parties.
11. On March 29, 2018, the Superintendent issued an order winding-up the Pension Plan effective October 1, 2017.
12. On October 18, 2018, the Monitor, the Pension Plan Administrator, the Superintendent and Pension Representative Counsel, entered into a Pension Support Agreement (the

- “PSA”). The PSA initially contemplated an April 30, 2019 outside date for the implementation of a plan of compromise and arrangement (the “Plan”).
13. On December 3, 2018, the Monitor and the Honourable J. Douglas Cunningham, Q.C. as Court-appointed litigation trustee (the “**Litigation Trustee**”), were authorized by the Court to pursue litigation against certain third parties on behalf of Sears Canada and its creditors, in connection with the payment of certain dividends (the “**2013 Dividend**”) by Sears Canada to its shareholders in 2013 (the “**Estate 2013 Dividend Litigation**”). The Court also lifted the stay of proceedings in the Initial Order to allow the Estate 2013 Dividend Litigation, as well as a claim by Morneau Shepell Ltd., as administrator of the Pension Plan (the “**Pension Plan Administrator**”) and class action claims (collectively, the “**Dealer Class Action**”) by certain “Sears Hometown” store dealers, each also arising from the 2013 Dividend, to be commenced or continued.
 14. The Plan was accepted for filing by the Court on February 15, 2019. A detailed description of the Plan is included in the Twenty-Ninth Report of the Monitor dated February 6, 2019 and the Supplement thereto.
 15. The date for voting on the Plan (the “**Meeting Date**”) was set for March 28, 2019. On March 25, 2019, the Monitor determined that an adjournment of the Meetings to a date to be communicated later by the Monitor was required.
 16. Following discussions among the parties to the PSA, an amendment to the pension support agreement was entered into on March 20, 2019 (the “**PSA Amendment Agreement**”) extending the outside date to September 30, 2019. The parties to the PSA agreed to the amendment to allow the Monitor to complete certain outstanding matters prior to the Meeting Date. A copy of the PSA Amendment Agreement was attached as an Appendix to the Monitor’s Thirty-First Report. The parties to the PSA subsequently agreed to a further amendment to the PSA to provide a revised outside date of January 31, 2020, which has been set out in a second PSA Amending Agreement.
 17. As described in the Thirty-Second Report, one of the primary reasons for the adjournment of the Meeting Date related to the EPO, as defined below. For the reasons

set out in the body of this report, the Monitor believes the appropriate next step is to set the Reserve, as defined below, in order to proceed with the Meeting Date, implementation of the Plan and subsequent distributions.

18. In connection with the CCAA Proceedings, the Monitor has provided 32 reports and 22 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, or will be made, available on the Monitor’s website at cfcanada.fticonsulting.com/searscanada/.

B. PURPOSE

19. The purpose of this thirty-third report of the Monitor (the “**Thirty-Third Report**”) is to provide the Court with information regarding the Monitor’s motion to set a reserve amount (“**Reserve**”) of \$7,736,000 to satisfy any costs that Sears Canada may be required to pay to conduct the remediation activities required under the revised remediation plan (“**RRP**”) established in response to environmental protection order EPO2018/01-SSR, issued February 28, 2018 and amended March 29, 2018 and October 11, 2018 (“**EPO**”) issued by the Director of Alberta Environment and Parks (“**Director**”) pursuant to the *Environmental Protection and Enhancement Act*, RSA 200 C-E12.

C. TERMS OF REFERENCE

20. In preparing this Thirty-Third 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**”).
21. Except as otherwise described in this Thirty-Third 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 Thirty-Third Report in a manner that would comply with the procedures described in the *Chartered Professional Accountants of Canada Handbook*.
22. Future-oriented financial information reported in or relied on in preparing this Thirty-Third Report is based on Management's assumptions regarding future events. Actual results will vary from these forecasts and such variations may be material.
 23. The Monitor has prepared this Thirty-Third Report in connection with its request for establishment of the Reserve. The Thirty-Third Report should not be relied on for any other purpose.
 24. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars.

D. CALGARY NORTH HILL EPO AND THE RESERVE

25. Sears Canada formerly operated a full-line store located at the North Hill Centre shopping mall in Calgary ("**Calgary North Hill Store**"). Among the historical operations of the store was a retail gas bar.
26. Following the discovery of an accidental leak of gasoline from underground storage tanks, Sears Canada has conducted remediation activities that began in the early 1990s and continue today. In 2012, Sears Canada was ordered by Alberta Environment and Parks to update its site management plan ("**SMP**") to remediate the site to the level of newly updated provincial guidelines. Sears Canada did so. Up to the time of the CCAA Proceedings, Sears Canada spent approximately \$13.5 million on remediation activities under the SMP. Since the commencement of the CCAA Proceedings, Sears Canada,

under the supervision of the Monitor, spent approximately \$2.3 million on remediation activities.¹

27. On or about February 28, 2018, the Director issued the EPO. The EPO was amended on March 29, 2018 and October 11, 2018. There are two other parties to the EPO: Concord North Hill GP (“**Concord**”) and Suncor Energy Inc (“**Suncor**”). Concord is a large scale commercial landlord and property developer operating across a number of Canadian provinces. Concord purchased the Calgary North Hill Store from Sears Canada in 2015. A copy of the Agreement of Purchase and Sale is attached as Appendix A.
28. Suncor is a globally competitive Canada-based integrated energy company that operates in three business segments: oil sands, exploration and production, and refining and marketing. Suncor is alleged by the Director to have been involved in the operations of the gas bar at the Calgary North Hill Store as a manager and lessee and also to have conducted the decommissioning of the gas bar in the mid 1990s.
29. Sears Canada has appealed the EPO to the Alberta Environmental Appeals Board (“**EAB**”). The hearing was first scheduled for June 4-5, 2019. As a result of issues unrelated to the CCAA Proceeding, the hearing has been rescheduled to December 3-5, 2019. The basis for Sears Canada’s appeal was that the timeframe set out for the EPO was arbitrary and unreasonable. However, as discussed in greater detail below, the Director and Sears Canada have now agreed to the RRP, which resolves those concerns raised by Sears Canada.
30. Concord and Suncor have also appealed the EPO. Each of Concord and Suncor alleges that they are not proper parties to the EPO. In the event either of Concord and Suncor is unsuccessful in their appeals, they will remain independently liable to the Director for the conduct of all of the activities required under the RRP.

¹ Figures include all activities to the end of 2019.

31. Before and after the CCAA Proceedings commenced, Sears Canada's remediation activities consisted primarily of passive remediation steps and monitoring, with periodic active interventions, all as contemplated under the approved SMP.
32. After the commencement of the CCAA Proceedings, Sears Canada approached its site activities on the basis that the governing insolvency laws required Sears Canada to continue any normal course compliance with regulatory requirements or orders. Concomitantly, those insolvency laws and the environmental legislation itself did not permit a regulator to accelerate remediation requirements simply because of the insolvency, and those governing insolvency laws permitted distribution of all estate funds when the estate was otherwise in position to do so.
33. Accordingly, Sears Canada operated under the approved SMP until the EPO was issued. After issuance of the EPO, Sears Canada, in consultation with the Monitor, also entered into lengthy negotiations with the Director for acceptance of the RRP. As part of those negotiations, Sears Canada, with the assistance of its consultant Clifton Associates ("**Clifton**"), engaged in a variety of environmental data gathering steps to satisfy inquiries raised by the Director. Sears Canada also continued to maintain all its activities under the SMP while those negotiations were underway, and in fact added certain steps, in order to satisfy the Director.
34. On or about January 31, 2019, the Supreme Court issued reasons for decision in the case of *Orphan Well Association v Grant Thornton Ltd.*, 2019 SCC 5 ("**Redwater**"). On or about February 22, 2019, Suncor and subsequently Concord, advised the Monitor that they believed Redwater precluded distribution by Sears Canada of any amounts that may be necessary to conduct future remediation activities. Suncor confirmed this position by letter from its counsel dated February 27, 2019. A copy of the letter is attached as Appendix B.
35. The Monitor disagreed and disagrees with Suncor and Concord's position. However, the parties agreed to engage in negotiations in an attempt to resolve the disagreement. At the same time, Sears Canada's negotiations with the Director with respect to the contents of

the RRP were still ongoing. As a result, among other reasons, the Monitor adjourned the Meetings of Sears Canada's creditors then scheduled for March 28, 2019.

36. Sears Canada concluded its negotiations with the Director with respect to the RRP on or about August 13, 2019, by submittal of the RRP for approval. The Director approved the RRP on or about September 12, 2019. A copy of the Director's letter approving the RRP is attached as Appendix C.
37. In the same time frame, the negotiations among Sears Canada, Concord and Suncor with respect to the Redwater liability concluded without agreement.
38. Accordingly, on or about September 17, 2019, the Monitor advised the Director, Concord and Suncor, that, given the Director's confirmation of the RRP, the Monitor:
 - (a) intended to bring a motion to this Court for advice and directions upon the effect of Redwater, if any ("**Redwater Motion**");
 - (b) as a preliminary step intended to bring a motion on November 4, for establishment of the Reserve, in order to proceed with timely Plan voting, implementation and distribution; and
 - (c) would shortly provide an updated RRP cost estimate (having previously provided detailed costing for the RRP to Concord and Suncor).

A copy of the email in this regard from counsel for the Monitor is attached as Appendix D.

39. On or about September 20, 2019, the Monitor provided the detailed updated RRP cost estimate. A copy of the email in this regard from counsel for the Monitor, including the detailed costing, is attached as Appendix E.
40. Activities under the RRP are anticipated to continue for up to 30 years. The cost estimate for the RRP established a maximum net present value for the conduct of the remediation activities of \$7,341,000, and was calculated after provision for the remaining expenditures through the end of the 2019 calendar year. The individual estimate values

included contingency factors ranging from 2-3% to 4-5%. In addition a general contingency of 4% was added. Under certain scenarios the net present value of the RRP drops by as much as \$3 million.

41. In providing the RRP cost estimate, the Monitor requested responses, if any, by September 26, 2019, to facilitate preparation of court materials for this motion.
42. The Director responded on or about October 2, 2019 and advised that the Director:
 - (a) took no position on the Reserve or the proposal for a limited distribution, and as such would not appear at this motion; and
 - (b) took the position that Redwater applied to the EPO in the context of the CCAA Proceedings.

A copy of the email from counsel for the Director is attached as Appendix F.

43. Suncor responded on or about October 7, 2019, and expressed various objections to the Reserve, including asserting that a 10% general contingency was required. The Monitor responded on October 11, 2019 and expressed disagreement with the objections to Suncor, but agreed to the increased contingency in return for withdrawal of the other objections. Accordingly the Reserve was increased to \$7,736,000. A copy of the email exchange among counsel for Suncor and the Monitor in this regard is attached as Appendix G.
44. No comment has been received from Concord.
45. Establishing the Reserve will allow the Sears estate to move forward toward resolution by permitting informed voting, and ultimately distribution, while the Redwater Motion remains outstanding. In particular, to comply with the provisions of the PSA it is necessary to establish the maximum estate liabilities, which would include this amount. Moreover, establishing the Reserve as an initial step, before the hearing of the Redwater Motion allows:

- (a) sufficient time that the outcome of the EAB hearing may be known at the time of the Redwater Motion (rather than attempting to resolve the Redwater Motion now), which outcome could have significant relevance to this Court's determination; and
 - (b) for the conduct of any appeals of the Redwater Motion to proceed independent of and subsequent to a general distribution to Sears Canada's creditors.
46. It is the Monitor's view that the Reserve represents a reasonable and conservative worst case estimate. The RRP was drafted by Sears Canada's consultants Clifton, who have decades of experience monitoring and evaluating the Calgary North Hill Store site and surrounding lands. The costing is based in large part on previously incurred costs for the same or similar activities, as well as direct quotes by service providers involved in the remediation services for future activities. The RRP activities were approved by the Director, who has a similar number of years of experience in evaluating the state of the North Hill site. The RRP cost has been agreed to by Suncor, a large and sophisticated participant in the oil and gas sector, with its own lengthy experience of environmental remediation activities and who risks the possibility of being liable for any shortfall.
47. In all of the above circumstances the Monitor's view is that the Reserve is in absolute terms the most accurate available estimate of maximum future liability. It is also the Monitor's view that the Reserve fairly balances the need to proceed with estate matters while making appropriate provision for the potential liability of the EPO under the Redwater Motion. The Monitor notes that the Reserve:
- (a) is intended to be used only if this Court, on the Redwater Motion, determines that the EPO has priority to a distribution; and
 - (b) is intended to be returned to creditors to the amount all or portions of it are unused.

48. The Monitor therefore recommends fixing the Reserve, for the reasons set out above, in the amount of \$7,736,000.

The Monitor respectfully submits to the Court this, its Thirty-Third Report.

Dated this 23rd day of October, 2019.

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

A handwritten signature in blue ink, appearing to read "Steven W. Bissell". The signature is written in a cursive style with a long, sweeping underline.

Steven W. Bissell
Managing Director

APPENDIX “B”

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

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

THIRTY-SIXTH REPORT OF FTI CONSULTING CANADA INC., AS MONITOR

March 24, 2020

Contents

Section	Page
A. INTRODUCTION.....	2
B. PURPOSE	5
C. TERMS OF REFERENCE.....	6
D. UPDATE ON THE CCAA PROCEEDINGS AND THE ACTIVITIES OF THE SEARS CANADA ENTITIES AND THE MONITOR	7
E. THE PLAN.....	15
F. RECEIPTS AND DISBURSEMENTS FOR THE TWENTY-SEVEN WEEK PERIOD ENDING MARCH 14, 2020.....	16
G. REVISED CASH FLOW FORECAST FOR THE PERIOD ENDING SEPTEMBER 30, 2020.....	20
H. STAY EXTENSION	23

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., 9845488
CANADA INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR
COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741
CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041
ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC. AND
3339611 CANADA INC.

APPLICANTS

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

A. INTRODUCTION

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

2. 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 (the “**Stay Period**”); 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 (the “**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 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.
5. On October 13, 2017, the Court issued, among other orders, an order approving an agreement and a process for the liquidation of the inventory and FF&E at all remaining Sears Canada retail locations.
6. The liquidation of all inventory and FF&E is now completed and all Sears Canada retail locations are closed.
7. 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.
8. 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.
9. On March 2, 2018, the Court issued an Order appointing Lax O’Sullivan Lisus Gottlieb LLP as Litigation Investigator (as amended on April 26, 2018, the “**Litigation Investigator Order**”), with a mandate to identify and report on certain rights and claims that the Sears Canada Entities or any creditors of the Sears Canada Entities may have against any parties.
10. On March 29, 2018, the Superintendent issued an order winding-up the Pension Plan effective October 1, 2017.
11. On May 9, 2018, the Court issued an Order approving a process for a mediation among stakeholders with the goal of achieving a resolution of significant claim and distribution matters (the “**Mediation**”) as a preliminary step toward a global resolution of material estate matters. The Mediation commenced on June 13, 2018 with Regional Senior Justice Morawetz as mediator and resulted in settlements with major creditors as further described in Prior Reports (as defined below).

12. On December 3, 2018, the Monitor and the Honourable J. Douglas Cunningham, Q.C. as Court-appointed litigation trustee (the “**Litigation Trustee**”), were authorized by the Court to pursue litigation against certain third parties on behalf of Sears Canada and its creditors, in connection with the payment of certain dividends (the “**2013 Dividend**”) by Sears Canada to its shareholders in 2013 (the “**Estate 2013 Dividend Litigation**”). The Court also lifted the stay of proceedings in the Initial Order to allow the Estate 2013 Dividend Litigation, as well as a claim by Morneau Shepell Ltd., as administrator of the Pension Plan (the “**Pension Plan Administrator**”) and class action claims (collectively, the “**Dealer Class Action**”) by certain “Sears Hometown” store dealers, each also arising from the 2013 Dividend, to be commenced or continued.
13. On February 15, 2019, the Court issued an Order (the “**Meetings Order**”) authorizing the Monitor to file a joint plan of compromise and arrangement in respect of the Sears Canada Entities (the “**Plan**”) and to convene meetings of Affected Unsecured Creditors (the “**Meetings**”) for the purpose of considering and voting on the Plan.
14. The Stay Period was most recently extended to March 31, 2020 by Order of the Court granted on September 19, 2019.
15. In connection with the CCAA Proceedings, the Monitor has provided thirty-five reports and twenty-three 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, or will be made, available on the Monitor’s website at cfcanada.fticonsulting.com/searscanada/.

B. PURPOSE

16. The purpose of this thirty-sixth report of the Monitor (the “**Thirty-Sixth Report**”) is to provide the Court with information regarding:
 - (a) the current status of various matters in the CCAA Proceedings, including the activities of the Monitor and the Sears Canada Entities since the date of the

Monitor's Thirty-Second Report to the Court dated September 13, 2019 (the "**Thirty-Second Report**");

- (b) an update on the status of the Plan and the Meetings;
- (c) the Monitor's request for an order (the "**Stay Extension Order**") extending the Stay Period (as defined in the Initial Order) to September 30, 2020, and providing a corresponding extension of the application period for the Employee Hardship Fund;
- (d) the Monitor's request for an order establishing the Reserve Amount in connection with the EPO (each as defined below); and
- (e) the Monitor's comments and recommendations in connection with the foregoing.

C. TERMS OF REFERENCE

17. In preparing this Thirty-Sixth Report, the Monitor has relied upon audited and unaudited financial information of the Sears Canada Entities, the Sears Canada Entities' books and records, and discussions and correspondence with, among others, advisors to the Sears Canada Entities' stakeholders (collectively, the "**Information**").
18. Except as otherwise described in this Thirty-Sixth 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 Thirty-Sixth Report in a manner that would comply with the procedures described in the *Chartered Professional Accountants of Canada Handbook*.

19. Future-oriented financial information reported in or relied on in preparing this Thirty-Sixth Report is based on assumptions regarding future events. Actual results will vary from these forecasts and such variations may be material.
20. The Monitor has prepared this Thirty-Sixth Report in connection with its request for the Stay Extension Order and an order establishing the Reserve Amount. The Thirty-Sixth Report should not be relied on for any other purpose.
21. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars.
22. 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, the former General Counsel and Corporate Secretary of Sears Canada; (iv) the Plan; and (v) the Prior Reports.

D. UPDATE ON THE CCAA PROCEEDINGS AND THE ACTIVITIES OF THE SEARS CANADA ENTITIES AND THE MONITOR

23. Set out below is a summary of material developments since the date of the Thirty-Second Report.

Claims Process

24. As noted in Prior Reports, in connection with the Claims Procedure Orders, the Monitor has received nearly 3,000 Proofs of Claim and D&O Proofs of Claim.
25. To the extent that disputes in respect of Claims and D&O Claims were not able to be resolved consensually and expeditiously, the Monitor has referred those claims to The Honourable James Farley (the “**Claims Officer**”), one of the two claims officers appointed pursuant to the Claims Procedure Orders, for adjudication.
26. In total, eight disputed claims have been referred to the Claims Officer so far, all of which have now been finally determined by the Claims Officer, or consensually resolved.

27. There are approximately 16¹ claims against the Sears Canada Entities that have not yet been resolved, and 13 unresolved D&O Claims. Unresolved claims against the Sears Canada Entities are comprised mostly of (i) insurance claims, the resolution of which is being led by the Sears Canada Entities' insurance adjuster, (ii) environmental claims, including duplicative claims filed by various parties in respect of Sears Canada's former full-line store located at the North Hill Centre shopping mall in Calgary (the "**Calgary North Hill Claims**") described in greater detail below, (iii) certain landlord claims; (iv) claims related to the 2013 Dividend Litigation, and (v) certain employee-related claims.
28. As described in Prior Reports, the Mediation, with the assistance of Regional Senior Justice Morawetz, initially resulted in agreements with landlords representing 77% of all claims filed by landlords, excluding environmental and D&O Claims. In addition, on December 3, 2018, the Monitor entered into a settlement agreement with landlords (collectively, the "**Moving Landlords**") representing the remainder of landlord claims that were unresolved as at that time (excluding environmental and D&O Claims). However, the Moving Landlords subsequently took the position that the quantum of each Moving Landlord's claim remained to be agreed. Following a hearing on May 7, 2019, the Court directed that certain information be provided to the Moving Landlords regarding the Monitor's calculation of the Moving Landlords' claims under the December 3rd settlement agreement. The Monitor has provided the relevant information to the Moving Landlords. Since providing the information to the Moving Landlords the Monitor has engaged in further discussions with the Moving Landlords to seek to reach a resolution.

Calgary North Hill

29. The resolution of the Calgary North Hill Claims is interrelated with certain appeal proceedings in respect of an Environmental Protection Order ("**EPO**") before the Alberta Environmental Appeals Board (the "**EAB**").
30. The appeal proceedings for the EPO were heard December 3-5 in Calgary. The Applicants' primary issue in the appeal proceedings was the parameters of the EPO and remediation

¹ This number does not include the claims of the 22 Moving Landlords (as defined below).

plan to be established pursuant and responsive to the EPO. The remainder of the proceedings before the EAB involved appeals by the other parties to the EPO, Concord North Hill GP (“**Concord**”) and Suncor Energy Inc. (“**Suncor**”). Concord is the current landowner/developer. Suncor is a prior operator of a gas bar on the contaminated property. Each of Concord and Suncor appealed their status as parties to the EPO.

31. The EAB released a report and recommendations dated February 3, 2020. Those recommendations were implemented into a ministerial order dated February 5, 2020, by the Alberta Minister of Environment and Parks. In brief, the effects of those recommendations and order are to:
 - (a) Maintain the general parameters of the remediation plan under the EPO, subject to enhanced reporting and monitoring requirements;
 - (b) Remove Concord as a party to the EPO; and
 - (c) maintain Suncor as a party to the EPO, with equal obligations for conduct of the remediation plan.

32. Concord and Suncor previously alleged that the recent Supreme Court of Canada decision in *Orphan Well Association v. Grant Thornton Ltd* (“**Redwater**”) has the effect of precluding the distribution of funds that would otherwise be required for the conduct of the EPO. The Monitor and the Applicants disagree. As a result of these allegations, the Monitor brought a motion to set a reserve amount (the “**Reserve Amount**”) for the EPO activities (the “**Reserve Motion**”), to allow for a distribution from the estate, which was adjourned to a date to be scheduled following the hearing and determination of the EPO appeal proceedings described above, which could have an impact on the appropriate reserve amount for the EPO activities.

33. As a result of the conclusion of the EAB proceedings, the Monitor, in consultation with Sears Canada’s environmental consultant, has been able to update and finalize the Reserve Amount and now seeks to move ahead with the Reserve Motion to set the Reserve Amount. A copy of the Monitor’s Thirty-Third Report, providing the background to the Reserve Motion will be served with the Monitor’s Motion Record.

34. The Reserve Amount being sought has been updated to reflect the increased monitoring and reporting costs stemming from the changes to the EPO. The Monitor, in consultation with Sears Canada's environmental consultant, has verified the prior estimates based on guidance from the environmental consultant and added additional amounts for the increased monitoring and reporting costs, and contingency on top of those amounts. The Reserve Amount now being sought is \$8,433,000.00. This reflects an increase of \$697,000 over the Reserve Amount originally requested in the Reserve Motion. A copy of the revised costing for the Reserve Amount is attached as Appendix "A".
35. The updated Reserve Amount and the associated costing has been provided to Suncor and the Director of Alberta Environment and Parks ("**Director**"). The Director is the statutory body responsible for enforcement of and compliance with the EPO.
36. Suncor has confirmed to the Monitor that it is content with the quantum of the Reserve Amount. The Monitor understands that the Director takes no position on the Reserve Amount.
37. Suncor and the Director are the parties with direct interests in the Reserve Motion. As such, the Monitor understands that there is no opposition to the Reserve Motion and requests the granting of the order sought.
38. The Redwater issues that give rise to the requirement for the Reserve Amount are the subject of discussion among the Monitor, Suncor and the Director.
39. If the parties are unable to reach agreement on these Redwater issues, the Monitor or those parties may return to Court for a determination of the issue.

Real Estate Sale Process

40. At the time of the Monitor's Thirty-Second Report, the only remaining unsold real property asset of Sears Canada was the Barrie full-line store (Barrie, ON) (the "**Barrie Property**").
41. The marketing and sale of the Barrie Property to potentially interested third parties could not proceed until the expiry or termination of certain rights of the adjacent mall owner under a purchase option and right of first refusal, as described in the Prior Reports.

42. An agreement for the sale of the Barrie Property was entered into in October 2019 and was approved by the Court on January 13, 2020.
43. The sale of the Barrie Property closed on January 20, 2020.

Pension Support Agreement

44. As described in the Monitor's Thirty-First Report, the Monitor, the Pension Plan Administrator, the Superintendent and Pension Representative Counsel, entered into a Pension Support Agreement (the "PSA") on October 18, 2018. The PSA initially contemplated an April 30, 2019 outside date for the implementation of the Plan, which date has subsequently been extended to March 31, 2020. The parties to the PSA are currently discussing a further extension.

Employee Matters

45. As of the date of this Thirty-Sixth Report, the Applicants have four remaining employees working part time.
46. To date, the Monitor has received 102 applications for assistance from the Employee Hardship Fund, of which 74 have been approved. So far, approximately \$168,000 has been paid out of the Employee Hardship Fund. The time period for applications to the Employee Hardship Fund currently expires on March 31, 2020.
47. On October 16, 2018, the Court issued an order (as amended and restated, the "**Receivership Order**") pursuant to section 243(1) of the *Bankruptcy and Insolvency Act* appointing FTI Consulting Canada Inc. as receiver (the "**Receiver**") without security of specific bank accounts in the names of the Sears Canada Entities who currently employ, or previously employed, employees. In accordance with the Receivership Order, FTI issued its Receivership Certificate commencing the Receivership on January 7, 2019
48. The primary purpose of the Receivership Order is to allow for payments from the Federal Government to eligible former employees of the Sears Canada Entities pursuant to the *Wage Earner Protection Program Act* (the "**WEPPA**").

49. To date, Service Canada has made payments in the amount of \$44.5 million to former employees of the Sears Canada Entities in connection with the WEPPA.
50. On April 24, 2019, Employee Representative Counsel sought an order for directions with respect to approximately \$850,000 (the “**Surplus Funds**”) available for refund resulting from the termination of insurance coverage provided by Sun Life Assurance Company of Canada for the benefit of employees of Sears Canada and certain of its subsidiaries. Employee Representative Counsel proposed that these amounts be made available to former employee beneficiaries on a pro rata basis. On June 13, 2019, the Court directed that the Surplus Funds be distributed to participating employees pro rata based upon their premiums paid under the insurance arrangement (the “**Surplus Funds Order**”). Following the issuance of the Surplus Funds Order, the Monitor, Sears Canada and Employee Representative Counsel worked to identify eligible participating employees and develop and agree a methodology for allocating and distributing the Surplus Funds. Sears Canada, in consultation with the Monitor, distributed the Surplus Funds to eligible former employees in late October 2019.

Litigation Matters

51. On December 3, 2018, the Monitor and the Litigation Trustee were authorized by the Court to pursue the Estate 2013 Dividend Litigation. The Court also lifted the stay of proceedings in the Initial Order to allow the Estate 2013 Dividend Litigation, as well as a claim by the Pension Plan Administrator and the Dealer Class Action, each arising from the 2013 Dividend (collectively, the “**2013 Dividend Litigation**”), to be commenced or continued.
52. On December 19, 2018, the Monitor commenced an action seeking, among other things, a declaration that the transfer of funds to Sears Canada’s shareholders by way of the 2013 Dividend was a “transfer at undervalue” for the purposes of section 96 of the *Bankruptcy and Insolvency Act*. This action, together with the other claims comprising the 2013 Dividend Litigation, are proceeding in the Commercial List court under the case management of Justice McEwen. Materials in connection with the 2013 Dividend Litigation are posted on the Monitor’s Website.

53. On May 23, 2019, the United States Bankruptcy Court granted an Order in the proceedings of Sears Holdings Corporation, among others, under Chapter 11 of the United States Bankruptcy Code lifting the automatic stay in those proceedings for the purpose of joining Sears Holdings Corporation as a defendant in the Estate 2013 Dividend Litigation, as well as the claim by the Pension Plan Administrator, and for the purpose of allowing the 2013 Dividend Litigation to proceed as against Sears Holdings Corporation in the Ontario court. Each of the Litigation Trustee, the Monitor and the Pension Plan Administrator updated their respective statements of claim in the 2013 Dividend Litigation to include Sears Holdings Corporation as a defendant.
54. A timetable for the 2013 Dividend Litigation was approved by the Court in an endorsement dated July 12, 2019. Examinations for discovery proceeded in November and December 2019. The first phase of mediation took place in early February 2020. The second phase of mediation was scheduled for early April 2020.
55. On March 16, 2020, the Court heard a motion for an order approving a settlement of the 2013 Dividend Litigation as against Sears Holdings Corporation. That order has now been granted. Pursuant to this settlement, which remains subject to further approval by the United States Bankruptcy Court, the plaintiffs in the above litigation, collectively, will have an allowed Class 4 general unsecured claim in an amount equal to CDN\$200 million² under the Modified Second Amended Joint Chapter 11 Plan of Sears Holdings Corporation and its Affiliated Debtors under Chapter 11 of the United States Bankruptcy Code. The settlement with Sears Holdings Corporation is described in greater detail in the Thirty-Fifth Report of the Monitor.
56. The former director defendants in the 2013 Dividend Litigation initially received funding for defence costs through a 2015-2016 directors and officers insurance policy issued to Sears Holdings Corporation for the benefit of directors of Sears Canada, among others. The Monitor has been advised that the primary layer of coverage under this 2015-2016

² Using exchange rates applicable in the Modified Second Amended Joint Chapter 11 Plan of Sears Holdings Corporation and its Affiliated Debtors

policy is now exhausted and that the first excess insurer under this policy has denied coverage, asserting that a different policy period should respond. The question of the appropriate insurance policies to respond to this matter is the subject of a proceeding in the courts of Illinois.³

57. While these insurance coverage matters are under consideration in the Illinois court, the Monitor understands that certain insurers have agreed to provide coverage for the former director defendants' ongoing defence costs.
58. The Court has now advised that the trial of the Estate 2013 Dividend Litigation and the claim of the Pension Plan Administrator, previously scheduled to commence on May 19, 2020, is adjourned to a date to be fixed after June 1, 2020 for rescheduling in accordance with the Chief Justice's Notice to the Profession dated March 15, 2020 in light of the COVID-19 crisis. A copy of the Court's endorsement is attached as Appendix "B".
59. The Monitor will continue to post information regarding the 2013 Dividend Litigation to the Monitor's website.

Other Activities of the Monitor

60. The Monitor has also undertaken the following activities:
 - (a) monitored the Sears Canada Entities' receipts and disbursements;
 - (b) maintained the Service List for the CCAA Proceedings and posted regular updates of the Service List to the Monitor's Website;
 - (c) supervised and assisted in activities related to the completion of the sale of the remaining real estate asset;

³ These insurance coverage matters were also raised in the Ontario court, but are not proceeding in the Ontario court at this time.

- (d) worked with Employee Representative Counsel, Pension Representative Counsel, and their advisors to respond to questions and provide information to their respective constituents;
- (e) worked with the Sears Canada Entities to assist in appropriately accounting for pre-filing and post-filing obligations;
- (f) attended meetings and teleconferences with stakeholders, their counsel, and advisors;
- (g) responded to requests by former employees for financial assistance under the Employee Hardship Fund and the WEPP;
- (h) continued to operate and monitor its telephone hotline and email account for stakeholder inquiries and to respond to such inquiries; and
- (i) continued its work in connection with the claims processes contemplated pursuant to the Claims Procedure Orders.

E. THE PLAN

- 61. In order to distribute the proceeds from the liquidation of the assets of the Sears Canada Entities to their creditors in accordance with their legal entitlements, and to facilitate pursuit of the Estate 2013 Dividend Litigation, the Monitor developed the Plan. The Plan was accepted for filing by the Court on February 15, 2019.
- 62. A detailed description of the Plan is included in the Twenty-Ninth Report of the Monitor dated February 6, 2019 and the Supplement thereto.
- 63. Pursuant to the Meetings Order, the date for the Meetings of the SLH Creditor Class and the Sears Creditor Class was set for March 28, 2019. In accordance with the Meetings Order, the Monitor notified all Affected Unsecured Creditors of the Meetings.
- 64. On March 25, 2019, the Monitor determined that an adjournment of the Meetings to a date to be communicated later by the Monitor was required. In accordance with the Meetings Order, a notice of the adjournment (the “**Adjournment Notice**”) was served on the Service

List and posted on the Monitor's Website. In addition, the Monitor sent a copy of the Adjournment Notice by email to all Affected Unsecured Creditors and employees represented by Employee Representative Counsel for which the Monitor had email addresses.

65. The primary impediments to moving forward with Meetings at the time of the Adjournment Notice were: (i) uncertainty on the quantum of a limited number of unresolved claims; and (ii) questions regarding the quantum and priority of the Calgary North Hill Claims. These matters could have affected the ability of Sears Canada to satisfy the distributable asset value thresholds and claim value thresholds that are conditions to implementation of the Plan in favour of the Pension Parties.
66. The Monitor now believes, based upon the status of the EPO and the related appeal proceedings and the status of other unresolved claims, that if the order to be sought on the Reserve Motion is granted, the Monitor will be in a position to proceed with the Meetings and hopes to provide notice to creditors of the new date for the Meetings in the near future. The Monitor is also considering the impact that COVID-19 related issues may have on the Meetings.

F. RECEIPTS AND DISBURSEMENTS FOR THE TWENTY-SEVEN WEEK PERIOD ENDING MARCH 14, 2020

67. The Sears Canada Entities' actual net cash inflow on a consolidated basis for the twenty-seven week period ended March 14, 2020 was approximately \$4.7 million⁴, compared to a forecast net cash outflow of \$11.2 million, resulting in a positive variance of approximately \$15.9 million as indicated in the table below:

⁴ Net cash flows before payments of professional fees incurred in respect of the Estate 2013 Dividend Litigation.

VARIANCE REPORT	Actual	Forecast	Variance
(CAD in Millions)			
Receipts	9.1	-	9.1
Operating Disbursements			
Payroll and Employee Related Costs	(0.1)	(0.2)	0.1
Owned Real Property - Carrying Costs	(0.2)	(0.2)	-
Non-Merchandise Vendors	(1.3)	(6.4)	5.1
Rent and Property Taxes	(0.1)	(0.1)	-
Total Operating Disbursements	(1.7)	(6.9)	5.2
Net Operating Cash Inflows / (Outflows)	7.4	(6.9)	14.3
Professional Fees	(2.7)	(4.3)	1.6
Net Cash Inflows / (Outflows)	4.7	(11.2)	15.9

68. Explanations for the key variances in actual cash flows are as follows:

- (a) The positive permanent variance in Receipts of \$9.1 million consisting primarily of:
- i. Proceeds from the sale of the last real estate asset being the former Sears full-line store property in Barrie, Ontario, which was not included in the forecast due to uncertainty surrounding the timing and amount of the proceeds;
 - ii. The receipt of tax refunds which had not been included in the cash flow forecast due to uncertainty with respect to the timing of refunds; and
 - iii. Accrued interest on cash balances.
- (b) the positive variance in Non-Merchandise Vendor disbursements of \$5.1 million is a timing variance that is expected to reverse in future forecast periods and consists primarily of amounts owing in respect of post-filing warranty claims for which the form of payment is contemplated in the proposed Plan; and

- (c) the positive variance in professional fees is primarily a timing difference resulting from the postponement of the Meetings to consider the proposed Plan and the implementation of the Plan, which is expected to reverse in future forecast periods.
69. Actual ending cash as of March 14, 2020 was approximately \$204.1 million, which reflects payments of professional fees in respect of the Estate 2013 Dividend Litigation which will be recovered from future distributions to Opt-In creditors as contemplated in the proposed Plan.
70. The Sears Canada Entities' cumulative receipts and disbursements since the commencement of the CCAA Proceedings through the week ended March 14, 2020 are reflected in the table below:

CUMULATIVE RECEIPTS AND DISBURSEMENTS	
(CAD in Millions)	
For the 143 Week Period Ending March 14, 2020	
Receipts	1,370.7
Operating Disbursements	
Payroll and Employee Related Costs	(268.2)
Merchandise Vendors	(289.4)
Owned Real Property	(0.4)
Non-Merchandise Vendors	(179.5)
Rent and Property Taxes	(91.4)
Sales Taxes	(65.3)
Pension	(14.7)
IT Costs	(27.3)
Recovery of Expenses from Agent	83.6
Capital Expenditures	(0.8)
Total Operating Disbursements	(853.4)
Net Operating Cash Inflows / (Outflows)	517.3
Professional Fees	(101.7)
Repayments of Existing Credit Facilities	(283.3)
DIP Fees and Interest Paid	(19.7)
Net Cash Inflows / (Outflows)	112.6
Cash	
Beginning Balance	126.5
Net Cash Inflows / (Outflows)	112.6
DIP Draws / (Repayments)	(32.0)
Others incl. FX Valuation	(3.0)
Ending Balance	204.1

71. The Initial Order allowed the Sears Canada Entities to continue to use their existing Cash Management System as described in the First Wong Affidavit and the Pre-Filing Report. After the commencement of the CCAA Proceedings, the Sears Canada Entities continued to use their Cash Management System in a manner consistent with past practice. Sears Canada, in consultation with the Monitor, has closed bank accounts that were no longer needed and consolidated funds in the remaining operating accounts. Substantially all of these amounts were then transferred to the Monitor's trust account. The Monitor continues

to permit these funds to be made available to Sears Canada to the extent necessary to fund remaining ordinary course costs.

G. REVISED CASH FLOW FORECAST FOR THE PERIOD ENDING SEPTEMBER 30, 2020

72. A revised cash flow forecast for the period March 15, 2020 until September 30, 2020 has been prepared and is presented in the table below (the “**Revised Cash Flow Forecast**”):

Sears Canada Entities

CCAA Cash Flow Forecast

(CAD in thousands)

Forecast:	March 15- Sep 30, 2020
Total Receipts	-
Operating Disbursements	
Payroll and Employee Related Costs ^[2]	(120)
Non-Merchandise Vendors ^[3]	(6,690)
IT and Data Storage Costs ^[4]	(20)
Total Operating Disbursements	<u>(6,830)</u>
Net Operating Cash Inflows / (Outflows)	<u>(6,830)</u>
Professional Fees ^[5]	(4,540)
Net Cash Inflows / (Outflows)	<u>(11,370)</u>
Cash	
Beginning Balance	204,103
Net Cash Inflows / (Outflows)	(11,370)
Ending Cash Balance	<u><u>192,733</u></u>

Notes:

[1] The purpose of this cash flow forecast is to estimate the liquidity requirements of the Sears Canada Entities during the forecast period.

[2] Forecast Payroll and Employee Related Costs are based on recent payroll amounts.

[3] Forecast Non-Merchandise Vendor disbursements primarily relate to the payment of post-filing warranties and potential amounts owing to provincial workers' compensation bodies.

[4] Forecast IT and Data Storage Costs reflect disbursements made to certain IT-related vendors for usage of IT services and storage of data based on existing terms and conditions of the contract.

[5] Forecast Professional Fees include legal and financial advisor fees associated with the CCAA proceedings payable by the Applicants including fees of Employee Representative Counsel, Pension Representative counsel and their advisors. Forecast professional fee disbursements do not include fees associated with the Estate 2013 Dividend Litigation.

73. Pursuant to section 23(1)(b) of the CCAA, the Monitor hereby reports to the Court as follows:

- (a) the Revised Cash Flow Forecast was prepared for the purpose described in the notes to the Revised Cash Flow Forecast (the “**Forecast Notes**”), using the Probable Assumptions and Hypothetical Assumptions set out therein;
 - (b) since Hypothetical Assumptions need not be supported, the Monitor’s procedures with respect to the Hypothetical Assumptions were limited to evaluating whether the Hypothetical Assumptions were consistent with the purpose of the Revised Cash Flow Forecast. The Monitor has also reviewed the support for the Probable Assumptions;
 - (c) based on that review, and as at the date of this Thirty-Sixth Report, nothing has come to the attention of the Monitor that causes it to believe that:
 - (i) the Hypothetical Assumptions are inconsistent with the purpose of the Revised Cash Flow Forecast;
 - (ii) the Probable Assumptions are not suitably supported or consistent with the plans of the Sears Canada Entities or do not provide a reasonable basis for the Revised Cash Flow Forecast, given the Hypothetical Assumptions; or
 - (iii) the Revised Cash Flow Forecast does not reflect the Probable and Hypothetical Assumptions; and
 - (d) since the Revised Cash Flow Forecast is based on assumptions regarding future events, actual results will vary from the forecast even if the Hypothetical Assumptions occur. Those variations may be material. Accordingly, the Monitor expresses no assurance as to whether the Revised Cash Flow Forecast will be achieved. The Monitor also expresses no opinion or other form of assurance with respect to the accuracy of any financial information presented in this Thirty-Sixth Report, or relied upon by the Monitor in preparing this Thirty-Sixth Report.
74. The Revised Cash Flow Forecast assumes a continuation of these CCAA Proceedings toward a resolution pursuant to a plan of compromise or arrangement. If it appears to the Monitor that this assumption ceases to be reasonable, the Monitor will report to the Court

regarding any adjustments to the Revised Cash Flow Forecast that may be required to reflect an alternative path to completion of these proceedings.

75. The Revised Cash Flow Forecast also assumes fees of legal counsel to the board of directors, Employee Representative Counsel, Pension Representative Counsel and their respective financial advisors remain consistent with prior periods.
76. The Revised Cash Flow Forecast may be updated if developments occur that have a material impact on the forecasted cash flows of the Sears Canada Entities.
77. The Revised Cash Flow Forecast has been prepared solely for the purpose described in the Forecast Notes. The Revised Cash Flow Forecast should not be relied upon for any other purpose.
78. The Revised Cash Flow Forecast shows total net operating cash outflows of approximately \$6.8 million, before professional fees of approximately \$4.5 million, such that net cash outflows for the period are forecasted to be approximately \$11.4 million.
79. Aside from professional fees, forecast disbursements consists primarily of disbursements in respect of post-Filing Warranty claims and potential amounts owing to provincial workers' compensation bodies.
80. The professional fee forecast has been prepared based on fee estimates provided by professional firms or based on observed run rates where no forecast was provided. The total forecast professional fee disbursements of \$4.5 million is primarily comprised of forecast future (and not currently accrued) fees to the end of the forecast period.
81. The Revised Cash Flow Forecast does not include any estimated professional fees or disbursements associated with the Estate 2013 Dividend Litigation.

H. STAY EXTENSION

82. The Stay Period currently expires on March 31, 2020.
83. The Monitor is requesting an extension of the Stay Period until and including September 30, 2020.

84. The Applicants have proceeded in good faith and with due diligence under the supervision of the Monitor in accordance with the Governance Protocol since the date of the last extension of the Stay Period. However, additional time is required to complete necessary matters including holding the Meetings, seeking the Sanction Order and, if approved by creditors and the Court, implementing the Plan. Additional time is also required to continue to advance the Estate 2013 Dividend Litigation based upon the current approved litigation timetable.
85. The Applicants have sufficient liquidity to fund these proceedings during the proposed extension of the Stay Period.
86. The Monitor believes that an extension of the Stay Period is appropriate, and that the length of the extension requested will minimize the need for multiple Court appearances and is reasonable in the circumstances.
87. Consistent with past requests to extend the Stay Period, the Monitor also believes that a concurrent extension of the application period for the Employee Hardship Fund to September 30, 2020 is appropriate.

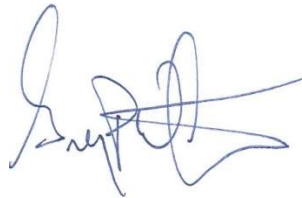
The Monitor respectfully submits to the Court this, its Thirty-Sixth Report.

Dated this 24th day of March, 2020.

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



Paul Bishop
Senior Managing Director



Greg Watson
Senior Managing Director

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

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

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Monitor

APPENDIX "C"

RELEASE AND SETTLEMENT AGREEMENT

This Release and Settlement Agreement is made effective as of the
17th day of July, 2020 (the “**Effective Date**”)

BETWEEN:

Sears Canada Inc.
 (“**Sears**”)

- and -

Suncor Energy Inc.
 (“**Suncor**”)

- and -

Her Majesty the Queen in right of Alberta,
as represented by the Director, Regional Compliance, South Saskatchewan
Region, Alberta Environment and Parks
 (“**AEP**”)

(each a “**Party**” and collectively the “**Parties**”)

WHEREAS:

- (a) Sears and its related entities (the “**Applicants**”) are involved in *Companies Creditors’ Arrangement Act*, RSC 1985 c C-36 (“**CCAA**”) proceedings (the “**CCAA Proceedings**”) in the Ontario Superior Court of Justice (Commercial List) (the “**CCAA Court**”);
- (b) Sears and Suncor are named as persons responsible in respect of Environmental Protection Order No. EPO-2018-01 SSR as consolidated by Amendment No. 3 on November 15, 2019 and as amended by Alberta Environment and Parks Ministerial Order 09/2020 dated February 5, 2020 (the “**EPO**”) and attached as Appendix A;
- (c) Sears prepared a remediation plan prior to the Ministerial Order 09/2020 dated February 5, 2020, which will now need revision (“**Revised Remediation Plan**”) as a result of the Ministerial Order 09/2020 dated February 5, 2020 with respect to environmental contamination and remediation in or around the neighbourhood of Hounsfield Height-Briar Hill in the city of Calgary (the “**Site**”);
- (d) The CCAA Court issued an order approving an amount of \$8,433,000.00 as a reserve (“**Reserve**”) to satisfy any potential priority claims or agreed costs of remediation under the EPO including the Revised Remediation Plan;
- (e) Suncor asserts that, in accordance with *Orphan Well Association v. Grant Thornton Ltd.* 2019 SCC 5 (“**Redwater**”), Sears must make adequate provision for the obligations under the EPO including the Revised Remediation Plan and that such provision must be paid in priority to all creditors;

- (f) AEP asserts that *Redwater* applies to the EPO in the context of the CCAA Proceedings;
- (g) Sears asserts that *Redwater* does not stand for the propositions put forward by Suncor and AEP;

AND THEREFORE in consideration of the all-inclusive payment of FOUR MILLION TWO-HUNDRED SIXTEEN THOUSAND FIVE HUNDRED DOLLARS (\$4,216,500.00) to Suncor (the “**Settlement Funds**”) made by Sears minus 50% of any costs paid by Sears in connection with the Revised Remediation Plan since February 21, 2020 until court approval of this Release and Settlement Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. In the interest of avoiding a motion on *Redwater* in the CCAA Court and resolving all matters related to the *Redwater* issue and the obligations under the EPO, including completing all work required to implement the Revised Remediation Plan (the “**Disputed Claims**”):
 - (i) Sears has agreed to pay to Suncor from the Reserve or otherwise one-half of the estimated cost of satisfying the obligations under the EPO including the Revised Remediation Plan, being \$4,216,500 to Suncor, minus 50% of any costs paid by Sears in connection with the Revised Remediation Plan since February 21, 2020 until court approval of this Release and Settlement Agreement;
 - (ii) Suncor has agreed to assume all of Sears obligations under the EPO;
 - (iii) As of the Effective Date, Suncor will satisfy the obligations under the EPO or future Ministerial Orders or other orders made under the *Environmental Protection and Enhancement Act*, or other legislation administered by AEP in respect of the Site, including completing all work required to implement the Revised Remediation Plan;
 - (iv) As of the Effective Date, Suncor will oversee the day-to-day work required to satisfy the obligations under the EPO including all work required to implement the Revised Remediation Plan;
 - (v) Suncor agrees to indemnify Sears in respect of the obligations under the EPO or future Ministerial Orders or other orders made under the *Environmental Protection and Enhancement Act*, or its successor legislation in respect of the Site, including completing all work required to implement the Revised Remediation Plan
 - (vi) Suncor and AEP agree to release and withdraw all claims against the Applicants and their directors in the CCAA Proceedings that are related to the EPO;
 - (vii) The Parties agree not to bring a motion on *Redwater* in any Court or tribunal, including the CCAA Court;
 - (viii) Suncor and AEP agree not to oppose any step removing the remaining portion of the Reserve and releasing such funds for any purpose to the Applicants in the CCAA Proceedings; and
 - (ix) Suncor agrees not to bring an application for judicial review of Ministerial Order 09/2020 dated February 5, 2020.
2. Sears and Suncor agree to provide notice, as outlined in Appendix B, to the residents of the Hounslow Heights-Briar Hill neighbourhood and the parties and interveners in Environmental Appeals Board Appeals No. 17-069-070 & 18-013, and agree that:

- (i) the notice will be sent via regular mail or email;
- (ii) the notice will be posted to the communications website ("**Website**") referred to in clause 12 of the EPO, as outlined in Appendix A hereto by no later than 30 days after the Effective Date;
- (iii) the notice is to remain accessible on the Website for a minimum of 6 months from the date of posting; and
- (iv) upon posting of the notice, Sears will transfer/assign to Suncor the Website and all of the correspondence and reports posted on thereon.

Release

3. Except for their obligations hereunder, Suncor and Sears hereby remise, release and forever discharge each other, FTI Consulting Canada Inc., in its capacity as the court-appointed monitor of the Applicants in the CCAA Proceedings (the "**Monitor**"), their respective current and former shareholders, officers, directors, employees, consultants, agents, representatives, successors and permitted assigns and each of their respective subsidiaries, affiliates and all of their current and former shareholders, officers, directors, employees, consultants, agents, representatives, successors and permitted assigns (all of whom are collectively referred to herein as the "**Released Parties**"), of and from any and all manner of action and actions, cause and causes of action, suits, debts, sums of money, dues, expenses, damages, costs, claims and demands of any and every kind and nature whatsoever (including all types of subrogated claims and claims for indemnity or contribution), at law, in equity, or under any statute, presently known or unknown, which against the Released Parties Sears or Suncor ever had, now has or may hereafter have in connection with the EPO, the Site or environmental claims and remediation activities applicable thereto.
4. Sears or Suncor shall not directly or indirectly commence, advance, or pursue any action, claim, complaint or proceeding against the Released Parties or any person, entity or corporation which might claim contribution or indemnity from the Released Parties, or any one of them, under the provisions of a statute or otherwise, with respect to the matters released herein. This release may be plead in the event that any such action, claim, or proceeding is brought as a complete defence and reply by Sears or Suncor, as the case may be, and may be relied upon to dismiss the action, claim, complaint, or proceeding on a summary basis.
5. Despite any other provision in this Release and Settlement Agreement, AEP does not waive its authority under any legislation administered by AEP to take enforcement action related to the Site. AEP has only waived those rights expressly provided for in paragraphs 1 (vi) and (vii) of this Release and Settlement Agreement.
6. The Parties acknowledge and agree that in the event that AEP takes enforcement action related to the Site as described in paragraph 5 of this Release and Settlement Agreement, AEP may rely on the indemnity provided by Suncor in favour of Sears herein, and may make public the fact of its reliance and the nature of the indemnity.

Confidentiality

7. The Parties acknowledge that this Release and Settlement Agreement may be subject to disclosure under the Alberta *Freedom of Information and Protection of Privacy Act*.

8. Subject to paragraphs 2 and 6 of this Release and Settlement Agreement, the Parties agree that the existence and terms of this Agreement will be held in confidence and will receive no publication or disclosure either orally or in writing, directly or indirectly by the Parties, unless:
- (i) for the purpose of any legal proceedings between or among the Parties;
 - (ii) as required under the Alberta *Freedom of Information and Privacy Act* or similar enactment; or
 - (iii) otherwise required by law.
9. Notwithstanding paragraph 8 of this Release and Settlement Agreement, the Parties agree that this Release and Settlement Agreement may be disclosed by the Monitor in its motion materials seeking the approval of the CCAA Court for this Release and Settlement Agreement.

No Assignment

10. The Parties, and each of them, hereby represent and warrant that they have not assigned to any person, firm, corporation or legal entity any of the action and actions, cause and causes of action, suits, debts, sums of money, dues, expenses, damages, costs, claims and demands that are the subject of this Release and Settlement Agreement.

Voluntary Release

11. The Parties, and each of them, further represent and warrant that they fully understand the effects of this Release and Settlement Agreement, that they have had the benefit of their own legal counsel in reviewing this Release and Settlement Agreement or that they have each formed their own judgment of the facts and circumstances related to this Release and Settlement Agreement and have in no way relied upon any representations by or on behalf of any other Party, and that the terms of this Release and Settlement Agreement are voluntarily accepted by them for the purpose of making a full and final compromise, adjustment and settlement of all matters herein released.

Authority

12. The Parties, and each of them where applicable, hereby represent and warrant that the execution, delivery, and performance of this Release and Settlement Agreement are within their corporate or other organizational powers and have been duly authorized by all necessary corporate or other action, and that this Release and Settlement Agreement constitutes a legal, valid and binding obligation on each of the Parties, subject to, in the case of Sears, approval of the CCAA Court.

Further Assurances

13. The Parties shall at all times do such further acts and execute such further documents as may be reasonably required in order to fully perform and carry out the terms of this Release and Settlement Agreement.

Succession

14. This Release and Settlement Agreement shall be binding upon and enure to the benefit of the Parties and any of their respective directors, officers, shareholders, employees, agents, general and

corporate affiliations, solicitors, advisors, heirs, executors, administrators, successors, and assigns, as the case may be.

No Admission of Liability

15. The Parties acknowledge and agree that none of the Parties, by their execution of this Release and Settlement Agreement or payment of the Settlement Funds, admit or shall be deemed to have admitted any liability with respect to any matter to which this Release and Settlement Agreement relates, and in fact such liability is specifically and expressly denied.

Governing Law

16. This Release and Settlement Agreement shall be governed by and construed in accordance with the laws of the Province of Alberta. The Parties irrevocably attorn to the exclusive jurisdiction of the courts in Alberta.
17. Despite paragraph 16, any disputes regarding Sears' or the Monitor's obligations that would either be stayed by the CCAA Proceedings or be considered post-filing administrative actions shall be governed by and construed in accordance with the laws of the Province of Ontario and Canada. For these disputes, the Parties irrevocably attorn to the exclusive jurisdiction of the court for the CCAA Proceedings.

Counterpart Execution

18. This Release and Settlement Agreement may be executed in counterparts and may be transmitted electronically. Each such counterpart shall be deemed an original, and all such executed counterparts shall constitute one and the same agreement.

Severability

19. In the event any section, or any part or portion of any section of this Release and Settlement Agreement shall be held to be invalid, void or otherwise unenforceable, such holding shall not affect the remaining part or portions of that section, or any other section hereof, and all other provisions shall remain in full effect.

Entire Agreement

20. This Release and Settlement Agreement, including the recitals and Appendices, contains the entire agreement among the Parties with respect to the subject matter hereof. There are no covenants, representations, warranties, agreements or other conditions expressed or implied, collateral or otherwise, forming part of or in any way affecting or relating to this Release and Settlement Agreement, save as expressly set out herein. The Recitals to this Release and Settlement Agreement shall form an integral part hereof as if at length recited herein.

Execution

21. The Parties have executed this Release and Settlement Agreement as of the Effective Date provided above.

IN WITNESS WHEREOF and intending to be legally bound hereby, the Parties have executed the foregoing Release and Settlement Agreement.

FTI Consulting Canada Inc., in its capacity as court-appointed monitor of Sears Canada Inc., and not in its personal or corporate capacity and without personal or corporate liability, on behalf of:

SEARS CANADA INC.

Per: 

Steven Bissell

Title: Managing Director
"I have the authority to bind the corporation".

SUNCOR ENERGY INC.

Per:

Title:
"I have the authority to bind the corporation".

**HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA,
As represented by the Director, regional Compliance, South Saskatchewan Region, Alberta Environment and Parks**

Per:

"I have the authority to bind Alberta Environment and Parks".

Execution

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FTI Consulting Canada Inc., in its capacity as court-appointed monitor of Sears Canada Inc., and not in its personal or corporate capacity and without personal or corporate liability, on behalf of:

SEARS CANADA INC.

Per:

Title:
"I have the authority to bind the corporation".

SUNCOR ENERGY INC.

Per:



Title: Director, Site Remediation
"I have the authority to bind the corporation".

**HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA,
As represented by the Director, regional Compliance, South Saskatchewan Region, Alberta Environment and Parks**

Per:

"I have the authority to bind Alberta Environment and Parks".

Execution

21. The Parties have executed this Release and Settlement Agreement as of the Effective Date provided above.

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FTI Consulting Canada Inc., in its capacity as court-appointed monitor of Sears Canada Inc., and not in its personal or corporate capacity and without personal or corporate liability, on behalf of:

SEARS CANADA INC.

Per:

Title:
"I have the authority to bind the corporation".

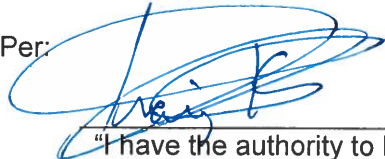
SUNCOR ENERGY INC.

Per:

Title:
"I have the authority to bind the corporation".

**HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA,
As represented by the Director, regional Compliance, South Saskatchewan Region, Alberta Environment and Parks**

Per:



"I have the authority to bind Alberta Environment and Parks".

APPENDIX A

[Environmental Protection Order No. EPO-2018/01-SSR]

ENVIRONMENTAL PROTECTION AND ENHANCEMENT ACT

BEING CHAPTER E-12 R.S.A. 2000 (the "Act")

Amendment No. 3

to

ENVIRONMENTAL PROTECTION ORDER NO. EPO-2018/01-SSR

I, Craig Knaus, the Director, pursuant to section 243(1) and 243(2) of the *Environmental Protection and Enhancement Act*, DO HEREBY AMEND Environmental Protection Order No. EPO-2018/01-SSR ["Order"] by:

- 1) deleting the words crossed out below from the Order because the Parties have completed clauses 3 to 6 inclusive, clause 10 and clause 11 to my satisfaction; and
- 2) consolidating Amendment No. 2 dated October 11, 2018, which added Suncor Energy Inc. as a party to the Order.

DATED at the City of Calgary in the Province of Alberta, this 15TH day of November, 2019.



 Craig Knaus
 Compliance Manager
 (the Director)
 South Saskatchewan Region

Section 91 of the *Environmental Protection and Enhancement Act* may provide a right of appeal against this decision to the Alberta Environmental Appeals Board. There may be a strict time limit for filing such an appeal. A copy of section 91 is enclosed. For further information, please contact the Board Secretary at #306 Peace Hills Trust Tower, 10011 - 109 Street, Edmonton, Alberta, T5J 3S8; telephone (780) 427-6207; fax (780) 427-4693.

Notwithstanding the above requirements, the Parties shall obtain all necessary approvals in complying with this order.

Take notice that this environmental protection order is a remedial tool only, and in no way precludes any enforcement proceedings being taken regarding this matter under this Act or any other legislation.

Sears Canada Inc. [Sears]
C/O
Lloyd McLellan
FTI Consulting Canada Inc.
1900, 520 – 3 Avenue SW
Calgary, Alberta T2P 0R3

And

Concord North Hill GP Ltd. [Concord]
4000, 421 – 7 Avenue SW
Calgary, Alberta T2P 4K9

And

Suncor Energy Inc. [Suncor]
150 – 6 Avenue SW
Calgary, Alberta T2P 3E3

[Collectively the “Parties”]

WHEREAS Sears or one of its predecessor companies (Contill Realty Ltd.), was the registered owner of the lands legally described as Plan 8210266, Block 21 [the “Lands”] located in the City of Calgary, Alberta from October 31, 1958 until June 18, 2015;

WHEREAS Sears operated both a retail clothing store and an automotive repair/Gas Bar [the “Service Station”], which were located in two separate buildings on the Lands;

WHEREAS Sears owned and/or operated the Service Station from 1958 until the decommissioning in 1995;

WHEREAS on March 1, 1984, Sunoco Inc. [“Sunoco”], a predecessor company of Suncor, entered into a management agreement with Simpsons-Sears Limited to “manage and operate Sears’ facilities for the retail sale of Motor Fuels”, including the Service Station [“Sunoco Agreement”];

WHEREAS from April 1984 to June 1994, Sunoco managed and operated the Service Station under the Sunoco Agreement;

WHEREAS between August 1985 and July 1989, Sunoco utilized the existing (two 10,000 gallon and one 4000 gallon) steel underground fuel storage tanks [“USTs”] and related infrastructure for the retail sale of motor fuels at the Service Station;

WHEREAS in June 1989, Sunoco retained Rossmar Construction Ltd. [“Rossmar”] to remove the existing USTs and replace them with two 8000 gallon and two 6000 gallon fiberglass USTs as part of Sunoco’s tank replacement program;

WHEREAS in August 1989, during the excavation and removal of the USTs, contaminated soil was discovered at the Service Station. Soil sampling results indicated high concentration levels of benzene, toluene, ethyl benzene, and xylenes ("BTEX"). Sample 3 had a combined concentration of BTEX of 3802 mg/kg with concentrations of Toluene (1340 mg/kg) and Xylenes (2013 mg/kg);

WHEREAS during the removal of the USTs in August 1989, 1075 tonnes of contaminated soil from the Lands were excavated and disposed of at a City of Calgary landfill;

WHEREAS after the removal of the USTs, Sunoco installed venting wells as part of a vapour management program at the Service Station;

WHEREAS Sunoco received and paid invoices from Rossmar and Global Engineering and Testing Ltd. who were involved in the replacement of the USTs, discovery of contaminated soil in 1989, and installation of the vapour management program at the Service Station;

WHEREAS in September 1995, Sunoco retained SEACOR Environmental Engineering Inc. ["SEACOR"] to decommission the Service Station and on or about October 16, 1995, the fiberglass USTs were removed;

WHEREAS on or about October 18, 1995, Seacor advised Sunoco that the USTs were removed and that the tank nest gravels were contaminated. Seacor informed Sunoco that the "test pitting exercise around site identified significant petroleum impacts to soils near the existing Sears Automotive building (could be associated with the previous tank nest.);"

WHEREAS on December 12, 1995, SEACOR provided Sunoco with an interim summary of its findings and recommendations for further environmental investigation activities stating "strong hydrocarbon odours (headspace vapour reading in excess of 10,000 ppmv) and major staining was evident during the excavation" of one test pit in the vicinity of the pump islands at the Service Station;

WHEREAS the decommissioning of the Service Station was postponed to the spring of 1996;

WHEREAS in a SEACOR report titled "Environmental Activities Synthesis Report – October 1995 To August 1997 – North Hill Sears Gas Bar", dated August 1997 [the "SEACOR August 1997 Report"], the Service Station was identified as commencing operation in 1958 and ceasing operation in 1995;

WHEREAS the SEACOR August 1997 Report identified that an underground storage tank at the Service Station leaked gasoline sometime between the late 1970's to early 1980's;

WHEREAS the SEACOR August 1997 Report identified exceedances of then applicable provincial guidelines of that time (Alberta Environmental Protection (AEP) Risk Management Criteria (RMC) Level II and Level III coarse grained soil (CGS) criteria) for both the Lands and the adjacent/downgradient properties (the "Off-Site") in both soil and groundwater for hydrocarbon residuals and benzene (the "Substances");

WHEREAS Sunoco received and paid invoices from SEACOR for the decommissioning of the Service Station in 1995 and initial remediation activities between 1995-1998;

WHEREAS the Lands were purchased by Concord on June 18, 2015 and Concord is the current registered owner of the Lands;

WHEREAS on March 29, 2016, the environmental consultant, Clifton Associates Ltd, ("Clifton") on behalf of Sears, submitted a reported titled "Remedial Action Plan for Mall and Hounsfield Heights Areas Calgary, Alberta" [the "RAP"], which identified in section 4.1 of the RAP, that the Alberta Tier 1 Soil and Groundwater Remediation Guidelines [the "Tier 1 Guidelines"] would be used as remediation targets;

WHEREAS on August 31, 2016, another consultant, Intrinsic Corp. on behalf of Sears, submitted a reported titled "Soil Vapour Quality Guidelines for Hounsfield Heights and Mall Areas" [the "Soil Vapour Guidelines"] to Alberta Environment & Parks ("AEP"), which were accepted by AEP as identified in a letter to Mr. Greg Paliouras of Sears, dated January 27, 2017;

WHEREAS Clifton Associates on behalf of Sears, submitted a report to AEP titled, "Revised Soil Vapour Monitoring Program (Update Fall 2016)", dated October 20, 2016 [the "Soil Vapour Monitoring Program"]. The Soil Vapour Monitoring Program was approved by AEP by letter dated January 27, 2017;

WHEREAS, numerous delineation and sampling events have been undertaken since the SEACOR August 1997 Report. The most recent Annual Summary Report completed by Clifton and dated May 19, 2017 (Annual summary report Hounsfield Heights – Briar Hill Community Calgary Alberta) identified that Substances are still present above the current Alberta Tier 1 Criteria;

WHEREAS there are several data gaps in the information regarding contamination both on the Lands and Off-Site which required additional work including:

- Completion of additional groundwater monitoring wells to characterize benzene and 1,2-DCA in groundwater in the southern extent of the plume in the Off-Site;
- Continue to conduct semi-annual groundwater sampling events to characterize the groundwater plume on the Lands and Off-Site;
- Continue to conduct semi-annual soil vapour sampling events as per the approved Soil Vapour Monitoring Program to characterize soil vapour; and
- Continued operation and maintenance of the DPVE system.

WHEREAS Craig Knaus, Compliance Manager, South Saskatchewan Region, has been appointed a Director for the purposes of issuing environmental protection orders under the Act (the "Director");

WHEREAS the Director is of the opinion that a release of a Substance has occurred, and that the Substance has caused, is causing or may cause an adverse effect on the environment;

WHEREAS the Director is of the opinion that the remedial actions taken to date by the Parties are not sufficient to confine, manage or remediate the Substances and that further work to delineate remediate and/or manage the Substances is required;

WHEREAS the Parties are a “person responsible” for the Substance, as defined in section 1(tt) of the Act;

THEREFORE, I, Craig Knaus, the Director, pursuant to section 113 of the *Environmental Protection and Enhancement Act*, DO HEREBY ORDER:

1. The Parties shall immediately re-commence the semi-annual soil vapour monitoring (high and low water table events) as described in the Soil Vapour Monitoring Program, including a sampling event prior to April 30, 2018);
2. Immediately recommence the Groundwater sampling and monitoring program as described in most recent program demonstrated in 2017 Second Quarter Groundwater Monitoring and Sampling Report, July 14, 2017.
3. ~~By July 1, 2018, complete delineation activities to fully delineate the dissolved gasoline plume based on the data gaps identified in the Clifton Associates report July 2016 titled, “2016 Supplemental Drilling Report Hounsfield Heights Briar Hill Community, Calgary, AB”;~~
4. ~~The Parties shall by December 15, 2018, submit a written plan to the Director to remediate the Substances on the Lands or any of the Substances from the Lands that have migrated to the Off Site areas (the “Remediation Plan”).~~
5. ~~The Remediation Plan shall be prepared by a qualified environmental professional that meets the requirements for professional sign criteria as established by Remediation and Reclamation Sign Off Advisory Committee.~~
6. ~~The Remediation Plan shall include, at a minimum, the following:~~
 - a. ~~A proposal outlining:~~
 - i. ~~the remediation and/or Risk Management Plan for all Substances in, on or under the Lands including all soil, subsoil and groundwater; and~~
 - ii. ~~the remediation and/or Risk Management Plan for all Substances in, on or under all Offsite areas, including to the North, South, East and West to which the Substances may have migrated including all soil, subsoil and groundwater.~~
 - b. ~~A detailed description of the work that will be undertaken for both the Lands and the Off Site areas to meet the Soil Vapour guidelines as per Soil Vapour Quality Guidelines for Hounsfield Heights and Mall Areas August 31, 2016 and Alberta Tier 1 Soil and Groundwater Remediation Guidelines, as applicable [the “Criteria”] for all other media; and~~

- ~~c. A schedule of implementation to implement the Remediation Plan, with a completion date of no later than **March 4, 2019**, or as otherwise approved by the Director.~~
7. The Parties shall implement the work set out in the Remediation Plan in accordance with the schedule of implementation that is approved by the Director.
8. The Parties shall submit written status reports to the Director as follows:
- a. Final, stamped versions of sampling and monitoring reports (for any media – soil, vapour, ground water) are to be submitted to the Director by the end of the 2nd month following the month the sampling and/or monitoring event occurred.
 - b. Annual Reports are required to be submitted to the Director by **March 31 of each year** for the previous January 1st to December 31st time period, with the first submission due March 31, 2019.
 - i) At a minimum, each Annual Report shall contain all of the following:
 - Summary of the communications with the affected landowners that occurred during the year;
 - List of any concerns that arose from other parties;
 - An explanation of how these concerns were addressed;
 - Any recommended changes to improve communication;
 - A summary description of all assessment, remediation and monitoring work undertaken;
 - A summary of the results obtained within the year;
 - Details on the operation of the Soil Vapour Extraction system and an evaluation of the effectiveness of the system;
 - Identification of data gaps with recommendations to address them and;
 - Recommendations and commitments for future assessment, monitoring and remediation work.
9. The Parties shall respond to inquiries from Off-Site landowners affected by the release within 3 business days of the inquiry being sent to the Parties individually or collectively.
- ~~10. The Parties shall within 30 days of the date of this Order, create, publish and activate a communications website.~~
- ~~11. Within 5 business days of the communications website being activated, the Parties shall provide the web address for the website to the Off-Site landowners affected by the release.~~
12. The Parties shall post on the communications website:
- a. regular status updates
 - b. copies of all finalized and stamped sampling and monitoring reports
 - c. a summary of the results of the posted finalized and stamped reports

DATED at the City of Calgary in the Province of Alberta, this 28 day of February, 2018.

[Original Order signed and dated
February 28, 2018]

Craig Knaus
Compliance Manager
(the Director)
South Saskatchewan Region

Section 91 of the *Environmental Protection and Enhancement Act* may provide a right of appeal against this decision to the Alberta Environmental Appeals Board. There may be a strict time limit for filing such an appeal. A copy of section 91 is enclosed. For further information, please contact the Board Secretary at #306 Peace Hills Trust Tower, 10011 - 109 Street, Edmonton, Alberta, T5J 3S8; telephone (780) 427-6207; fax (780) 427-4693.

Notwithstanding the above requirements, the Party(ies) shall obtain all necessary approvals in complying with this order.

Take notice that this environmental protection order is a remedial tool only, and in no way precludes any enforcement proceedings being taken regarding this matter under this Act or any other legislation.



ALBERTA
ENVIRONMENT AND PARKS

*Office of the Minister
Government House Leader
MLA, Rimbey-Rocky Mountain House-Sundre*

Ministerial Order
09 /2020

*Environmental Protection and Enhancement Act
R.S.A. 2000, c. E-12*

Order Respecting Environmental Appeals Board Appeal Nos. 17-069-070 and 18-013

I, Jason Nixon, Minister of Environment and Parks, pursuant to section 100 of the *Environmental Protection and Enhancement Act*, make the order in the attached Appendix, being an Order Respecting Environmental Appeals Board Appeal Nos. 17-069-070 and 18-013.

Dated at the City of Edmonton, in the Province of Alberta, this 5 day of Feb, 2020.



Jason Nixon
Minister

Appendix

Order Respecting Environmental Appeals Board Appeal Nos. 17-069-070 and 18-013

With respect to the decision of the Director, Regional Compliance, South Saskatchewan Region, Alberta Environment and Parks (the “Director”), to issue Enforcement Order No. EPO-2018/01-SSR (the “EPO”) and Amendment No. 2 to EPO-2018/01-SSR, I, Jason Nixon, Minister of Environment and Parks, order that:

1. The decision of the Director to name Sears Canada Inc. and Suncor Energy Inc. as parties to the EPO and the amendments thereto is confirmed.
2. The decision of the Director to name Concord North Hill GP Ltd. as a party to the EPO and the amendments thereto is reversed, such that Concord North Hill GP Ltd. is not a party to the EPO and amendments thereto.
3. The decision of the Director not to name BIM North Hill Inc. and Bentall Kennedy Prime Canadian Property Fund Ltd. as parties to the EPO and the amendments thereto is confirmed.
4. Amendment No. 3 to EPO-2018/01-SSR dated the 15th day of November 2019, which is a consolidation of the EPO, Amendment No. 1 to EPO-2018/01-SSR, and Amendment No. 2 to EPO-2018/01-SSR, is amended by deleting the portion of the order that reads:

“1. The Parties shall immediately recommence the semi-annual soil vapour monitoring...”

to and including

“12. The Parties shall post on the communications website:
 a. regular status updates
 b. copies of all finalized and stamped sampling and monitoring reports
 c. a summary of the results of the posted finalized and stamped reports”

and replacing it as follows:

- “1. The Parties shall immediately recommence the semi-annual soil vapour monitoring (high and low water table events) as described in the Soil Vapour Monitoring Program, (including a sampling event prior to April 30, 2018).
2. The Parties shall immediately recommence the Groundwater Sampling and Monitoring Program, as described in the most recent program demonstrated in the 2017 Second Quarter Groundwater Monitoring and Sampling Report, July 14, 2017.
3. The Parties shall complete the delineation of the presence of liquid petroleum hydrocarbons in the Hounsfeld Heights neighbourhood, as outlined in the Clifton Report and in accordance with the Remediation Plan approved by the Director, within 18 months of the date of the Ministerial Order issued in EAB Appeals 17-069-070 and 18-013.

4. The Director may extend the 18-month deadline specified in condition 3 if the Parties have difficulty obtaining access to private property, but the intent of the deadline, which is to complete the delineation in a timely manner, should remain.
5. The Parties shall implement the work set out in the Remediation Plan in accordance with the schedule of implementation that is approved by the Director.
6. Within 3 months of the date of the Ministerial Order issued in EAB Appeals 17-069-070 and 18-013, the Parties shall file an amended Remediation Plan for review and approval with the Director. The amended Remediation Plan shall make the remediation in the Hounsfeld Heights neighbourhood and Lions Park the first priority for any active remediation. The amended Remediation Plan shall include a schedule of implementation.
7. On or before March 31 of each year, starting in 2021, or on such other frequency specified by the Director in writing, the Parties shall update and revise the Remediation Plan for submission to and approval by the Director. The Remediation Plan shall include a schedule of implementation. The updates and revisions to the Remediation Plan shall consider the report entitled "Review of the Contaminant Situation Associated with the Sears Property and Remedial Approach Assessment," November 4, 2019, Wyndham Environmental Ltd. filed in EAB Appeal Nos. 17-069-070 and 18-013.
8. The Remediation Plan, including each update and revision, should be made available to the residents of the Hounsfeld Heights neighbourhood on a timely basis, after being approved by the Director.
9. The Parties shall submit written status reports to the Director as follows:
 - a. Final, stamped versions of sampling and monitoring reports (for any media - soil, vapour, groundwater) are to be submitted to the Director by the end of the 2nd month following the month the sampling and/or monitoring event occurred.
 - b. Annual Reports are required to be submitted to the Director by March 31 of each year for the previous January 1st to December 31st time period, with the first submission due March 31, 2019.
 - (i) At a minimum, each Annual Report shall contain all of the following:
 - Summary of the communications with the affected landowners that occurred during the year;
 - List of any concerns that arose from other parties;
 - An explanation of how these concerns were addressed;
 - Any recommended changes to improve communication;
 - A summary description of all assessment, remediation, and monitoring work undertaken;
 - A summary of the results obtained within the year;
 - Details on the operation of the Soil Vapour Extraction System and an evaluation of the effectiveness of the system;

- Identification of data gaps with recommendations to address them; and
 - Recommendations and commitments for future assessment, monitoring, and remediation work.
- (ii) Each Annual Report shall also outline the attempts by the Parties to gain access to the properties in the Hounsfeld Heights neighbourhood, as needed for the effective delineation and remediation. The Annual Reports should not contain personal information about any individual landowners.
- (iii) The Annual Reports shall include a detailed summary of the work done in the Hounsfeld Heights neighbourhood during the previous year, the results of that work, and the plans for work for the following year.
- (iv) The Annual Reports shall be made available to the community, including the residents of the Hounsfeld Heights neighbourhood.
10. The Parties to the EPO shall assign a key contact person to respond to questions or inquiries from the community, including the residents of the Hounsfeld Heights neighbourhood, within 5 business days of the question or inquiry being received by the Parties individually or collectively.
11. The Parties to the EPO shall assign a key contact person to work collaboratively with the residents of the Hounsfeld Heights neighbourhood and the Parties to develop and implement an effective two-way communication strategy.
12. The Parties shall post on the communications website:
- a. regular status updates;
 - b. copies of all finalized and stamped sampling and monitoring reports; and
 - c. a summary of the results of the posted finalized and stamped reports.”

APPENDIX B

[Date]

UPDATE: Transition of Remediation Responsibility from Sears to Suncor

This communication provides an update on the monitoring and remediation activities that are ongoing in the Hounsfield Heights-Briar Hill Community.

Further to our last update dated April 17, 2020, Suncor and Sears have agreed to the following:

- Suncor will assume all of Sears' obligations on a go-forward basis under the EPO as amended by Ministerial Order 09/2020 in respect of the Site, including completing all work required to implement the remediation plan.

AEP is agreeable to the transition of remediation responsibility under the EPO from Sears to Suncor.

Accordingly, as of August 7, 2020, Sears has transitioned full responsibility to satisfy the obligations required by the EPO including remediation work to Suncor and Suncor has accepted full responsibility to complete this work to the satisfaction of AEP. In addition, as of [x] date, Suncor has retained Clifton Associates Ltd. ("**Clifton**") to continue the work required to satisfy the obligations under the EPO, including the remediation plan. Clifton's continued involvement in the remediation will retain the knowledge, experience and familiarity with the site, the EPO and the remediation plan to ensure a smooth transition from Sears to Suncor. The contact person for Clifton will also remain the same – Stephen d'Abadie, MEng will continue his role as the Key Communication Contact for all stakeholders. Stephen can be reached at 403-263-2556 ext 4139 or at stephen_dabadie@clifton.ca.

Clifton will continue to communicate to the residents of Hounsfield Heights-Briar Hill in accordance with the EPO, as amended by Ministerial Order 09/2020, and remain available to discuss community concerns as in the past. If you have any questions or concerns, please feel free to contact Stephen d'Abadie through the channels outlined above.

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

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

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Monitor

TAB 3

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE)	FRIDAY, THE 7TH
)	
)	
JUSTICE HAINEY)	DAY OF AUGUST, 2020

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF SEARS CANADA INC., 9370-2751
QUÉBEC INC., 191020 CANADA INC., THE CUT INC., SEARS
CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES
INC., 9845488 CANADA INC., INITIUM TRADING AND
SOURCING CORP., SEARS FLOOR COVERING CENTRES
INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741
CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO
LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC.,
168886 CANADA INC., AND 3339611 CANADA INC.

(the "**Applicants**")

ORDER

THIS MOTION made by FTI Consulting Canada Inc., in its capacity as Court-appointed monitor (the "**Monitor**") in the proceedings of the Applicants pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. c-36 as amended (the "**CCAA**"), was heard this day by way of Zoom videoconference due to the COVID-19 crisis.

ON READING the Notice of Motion of the Monitor and the Thirty-Seventh Report of the Monitor dated July 29, 2020 (the "**Thirty-Seventh Report**"), filed, and on hearing the submissions of counsel for the Monitor, Suncor Energy Inc., Her Majesty the Queen in Right of Alberta, as represented by the Director, Regional Compliance, South Saskatchewan Region, Alberta Environment and Parks, and such other counsel as were present, no one else appearing although duly served,

1 **THIS COURT ORDERS** that the release and settlement agreement between Sears Canada Inc., Suncor Energy Inc. and Her Majesty the Queen in Right of Alberta, as represented by the Director, Regional Compliance, South Saskatchewan Region, Alberta Environment and Parks (the “**Release and Settlement Agreement**”), a copy of which is attached to the Thirty-Seventh Report of the Monitor at Appendix C, is hereby approved and the parties thereto are hereby bound by this order and by those terms of the Release and Settlement Agreement.

2 **THIS COURT ORDERS** that the remainder of the Reserve Amount, as such term is defined in the Notice of Motion and Thirty-Seventh Report, is hereby permitted to be released back to the Applicants’ estate to be available for any other estate purpose, including but not limited to, distribution to the creditors.

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

**ORDER
(Calgary Environmental Settlement)**

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IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C.
1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS
CANADA INC., et al.

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

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

Proceeding commenced at TORONTO

**MOTION RECORD OF THE MONITOR
(returnable August 7, 2020)**

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