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

SEARS CANADA INC.,
AND RELATED APPLICANTS

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

SEPTEMBER 7, 2018

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

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

APPLICANTS

TWENTY-SECOND 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; and

(c) scheduled a comeback motion for July 13, 2017 (the "**Comeback Motion**").

3. Following the Comeback Motion, the Court extended the Stay Period. In addition, the following orders were issued:

(a) an order setting out the terms of the appointment of Ursel Phillips Fellows Hopkinson LLP as representative counsel for the non-unionized active and former employees of the Sears Canada Entities ("**Employee Representative Counsel**");

(b) an order setting out the terms of the appointment of Koskie Minsky LLP as representative counsel to the non-unionized retirees and non-unionized active and former employees of the Sears Canada Entities with respect to pension and post-employment benefit matters ("**Pension Representative Counsel**");

(c) an order authorizing the eventual suspension of special payments under the Sears Canada Pension Plan, certain payments in connection with supplemental pension plans and certain payments under post-retirement benefit plans pursuant to a term sheet agreed to by the Ontario Superintendent of Financial Services, as Administrator of the Pension Benefits Guarantee Fund (the "**Superintendent**"), Employee Representative Counsel, Pension Representative Counsel, each of their respective representatives, and the Sears Canada Entities; and

(d) an order approving a sale and investor solicitation process (the "**SISP**") to solicit interest in potential transactions, including investment and liquidation proposals, involving the business, property, assets and/or leases of the Applicants.

4. On July 18, 2017, the Court issued an order approving an agreement and a process for the liquidation of inventory and FF&E at certain initial closing Sears Canada locations, which liquidation process is now completed.

5. On October 13, 2017, the Court issued, among other orders, an order (a) approving an agreement and a process (the "**Second Liquidation Process**") for the liquidation of the inventory and FF&E at all remaining Sears Canada retail locations, which liquidation commenced shortly thereafter and is now completed.

6. On November 10, 2017, the Superintendent issued a Notice of Intended Decision advising that it intended to make an order for the wind up of the Sears Canada Pension Plan (the "**Pension Plan**"), effective October 1, 2017 unless a request for hearing with the Financial Services Tribunal was submitted within 30 days of the Notice of Intended Decision. A hearing to challenge the intended decision was initially requested but subsequently withdrawn. On March 29, 2018, the Superintendent issued an order winding-up the Pension Plan, effective October 1, 2017.

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 May 9, 2018, the Court issued an Order approving a process for a mediation among stakeholders with the goal of achieving a potential resolution of significant claim and distribution matters (the "**Mediation**") as a preliminary step toward a global resolution of material estate matters, potentially through a plan of compromise or arrangement. The Mediation commenced on June 13-14, 2018 with Regional Senior Justice Morawetz as mediator.

10. The liquidation of assets at Sears Canada's retail locations is now completed, all retail locations are closed, and leases in respect of such locations have been disclaimed or surrendered back to the landlord. The major assets of the Sears Canada Entities that remain to be realized upon are the Applicants' remaining owned real estate assets.

11. In connection with the CCAA Proceedings, the Monitor has provided twenty-one reports and fifteen supplemental reports (collectively, the "**Prior Reports**"), and prior to its appointment as Monitor, FTI also provided to this Court a pre-filing report of the proposed Monitor dated June 22, 2017 (the "**Pre-Filing Report**"). The Pre-Filing Report, the Prior Reports and other Court-filed documents and notices in these CCAA Proceedings are available on the Monitor's website at cfcanada.fticonsulting.com/searscanada/ (the "**Monitor's Website**").

B. PURPOSE

12. The purpose of this twenty-second report of the Monitor (the "**Twenty-Second Report**") is to provide the Court with information regarding motions by Pension Representative Counsel, the Superintendent and the Plan Administrator (as defined below) (collectively, the "**Pension Motion**") for orders, among other things:

(a) that the amount of the wind-up deficit in connection with the Pension Plan is deemed to be held in trust for the beneficiaries of the Pension Plan pursuant to Section 57(4) of the *Pension Benefits Act* (Ontario) (the "**PBA**") with priority ahead of the claims of all other creditors of Sears Canada other than amounts secured by the Court-ordered charges (the "**PBA Deemed Trust Priority Issue**");

(b) that Morneau Shepell, as administrator of the Pension Plan (the "**Plan Administrator**"), has a lien and charge under Section 57(5) of the PBA for the amount of the wind-up deficit in connection with the Pension Plan (the "**PBA Lien Priority Issue**");

(c) that the foregoing orders survive any future bankruptcy or receivership of the Applicants;

(d) that 9370-2751 Quebec Inc. ("**Former Corbeil**") and 191020 Canada Inc. (together with 168886 Canada Inc.[1], "**Former SLH**") are jointly and severally liable with Sears Canada for the obligations under the Pension Plan and that the assets of Former Corbeil and Former SLH may also be subject to the deemed trust and lien under the PBA as described above (the "**Joint and Several Issue**"); and

(e) directions with respect to spousal waivers provided in connection with the Pension Plan (the "**Spousal Waiver Issue**").

C. TERMS OF REFERENCE

13. In preparing this Twenty-Second 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**").

14. Except as otherwise described in this Twenty-Second Report:

(a) the Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the *Chartered Professional Accountants of Canada Handbook*; and

(b) the Monitor has not examined or reviewed the financial forecasts or projections referred to in this Twenty-Second Report in a manner that would comply with the procedures described in the *Chartered Professional Accountants of Canada Handbook.*

[1] 168886 is a wholly-owned subsidiary of 191020 Canada Inc. that employed approximately 240 people in various provinces (excluding Ontario and Quebec) in connection with the S.L.H. Transport Inc. business.

15. Future-oriented financial information reported in or relied on in preparing this Twenty-Second Report is based on Management's assumptions regarding future events. Actual results will vary from these forecasts and such variations may be material.

16. The Monitor has prepared this Twenty-Second Report in connection with the Pension Motion. The Twenty-Second Report should not be relied on for any other purpose.

17. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars.

18. Capitalized terms not otherwise defined herein have the meanings ascribed to them in the following documents filed as part of the CCAA Proceedings: (i) the affidavits of Mr. Billy Wong, the former Chief Financial Officer of Sears Canada; (ii) the affidavit of Ms. Becky Penrice, the former Executive Vice-President and Chief Operating Officer of Sears Canada; (iii) the affidavits of Mr. Philip Mohtadi, General Counsel and Corporate Secretary of Sears Canada; and (iv) the Prior Reports.

D. OVERVIEW

19. The issues raised in the Pension Motion are the most significant issues remaining to be resolved in this proceeding. If the Pension Motion is successful in its entirety, no recoveries will be available to any creditors of Sears Canada, Former SLH and Former Corbeil other than the beneficiaries of the defined benefit portion of the Pension Plan. If the Pension Motion is unsuccessful, the beneficiaries of the defined benefit portion of the Pension Plan will share pro rata with other unsecured creditors of Sears Canada and in certain cases unsecured creditors of Former SLH in the remaining assets of the applicable entities.

20. The Monitor opposes the Pension Motion. The Monitor takes this position on behalf of all other creditors of Sears Canada, Former Corbeil and Former SLH whose recoveries would be eliminated if the Pension Motion is successful. The Monitor takes this position for three reasons. First, the Monitor's view is that the applicable legislation and case law support the conclusion that the Pension Motion should be dismissed. Second, as noted above, the Pension Motion is a significant issue affecting recoveries of all creditors of the

Applicants. Third, it does not appear that any creditor, individually, can be expected to take steps to fund and pursue the opposition of the Pension Motion for the benefit of all other creditors and there is no other viable option for all creditors to collectively fund any individual creditor to oppose the Pension Motion.

21. While the Pension Motion raises primarily legal questions that the Monitor will address in a factum to be filed in accordance with the timetable established for the Pension Motion, there are a number of factual matters that the Monitor believes will be relevant to the determination of the Pension Motion. Those factual matters are included in this Report, as follows:

(a) Current status of asset realizations for Sears Canada, Former Corbeil and Former SLH;

(b) Distributions to date from the proceeds of asset realizations;

(c) the quantum of the claim for the wind-up deficit under the defined benefit component of the Pension Plan (the "**Wind-up Deficit**") relative to the other claims against Sears Canada, Former Corbeil and Former SLH;

(d) the effect on recoveries for unsecured creditors generally if (i) the relief sought on the PBA Deemed Trust Priority Issue or PBA Lien Priority Issue is granted (or not granted); and (ii) if the Joint and Several Issue is determined in favour of the beneficiaries of the defined benefit component of the Pension Plan (or not so determined);

(e) historical practices regarding the operation of the Pension Plan and the employment of employees of Former SLH and Former Corbeil;

(f) certain tax matters; and

(g) information on multi-jurisdictional agreements applicable to the Pension Plan.

22. The Monitor also provides its view regarding the resolution of the Spousal Waiver Issue. As set out in greater detail below, the Monitor is supportive of a resolution that maintains the status quo with respect to Spousal Waivers.

E. ASSET REALIZATIONS

23. As noted above, the operations of Sears Canada and its affiliates have been terminated since the end of January 2018.

24. The businesses of Former Corbeil and Former SLH were sold as going concerns in transactions that closed on November 24, 2017 and December 4, 2017, respectively, and other ancillary business lines, including repair and home services businesses and the customer financing business were sold during the period from October 2017 to May 2018 (collectively, the "**Business Line Sales**").

25. The leased and owned real estate assets of Sears Canada have now, with the exception of owned properties in Newmarket, Barrie, Edmonton and St. Agathe, either been sold, surrendered, disclaimed or are subject to binding sale agreements that have been approved by the Court where such approval is required by the Initial Order (the "**Real Estate Monetization**").

26. Sales of residual assets have been completed on an ongoing basis throughout these proceedings (the "**Residual Asset Sales**").

27. The retail operations of Sears Canada were liquidated through two liquidation processes described above (the "**Liquidation Sales**").

28. The following chart summarizes the approximate net proceeds of the foregoing transactions by category:

Asset Category	Net Proceeds (in millions)
Business Line Sales	$56.2
Real Estate Monetization	$94.2
Residual Asset Sales	$24.7
Liquidation Sale - #1	$44.4
Liquidation Sale - #2	$341.9

29. After deducting (i) the costs of these CCAA Proceedings and operating costs; and (ii) distributions to secured creditors to date, an aggregate of $158.3 million remained on hand as of September 1, 2018. This total does not include proceeds from certain real estate transactions that have been agreed but are not yet completed or proceeds from any future sales of the Newmarket, Barrie, Edmonton and St. Agathe properties.

F. DISTRIBUTIONS TO DATE

30. Aside from ordinary course payments of post-filing obligations, the material distributions from the Sears Canada Entities to date have been made to the DIP ABL Lenders and the DIP Term Loan Lenders and to the lenders under the Sears Canada Entities' pre-filing secured lending facilities.

31. The distributions to these parties, and the source of the funds distributed are summarized as follows:

(a) Ordinary Course Distributions: In accordance with the Initial Order, ordinary course receipts from operations were used first to repay outstanding pre-filing obligations under the pre-filing Wells Revolving Credit Agreement and the GACP Pre-Filing Credit Agreement. Any cash inflows from operations, after repayment of the pre-filing credit facilities were effectively used to fund operations in the post-filing period, repay obligations to the DIP ABL Lender, or were held in trust for (and paid over to) the agents under the Liquidation Sales. In aggregate, ordinary course receipts from operations in the amount of $283.3 million were used to repay the obligations under the Wells Revolving Credit Agreement and the GACP Pre-Filing Credit Agreement.

(b) October Distributions: Distributions were paid to the DIP Lenders in October 2017 following receipt of proceeds of various asset sale and lease transfer/surrender transactions and from the retail liquidation approved by the Court on October 13, 2017 in an aggregate amount of $237.6 million.

(c) November Distribution: Distributions were made to the DIP Lenders in November 2017, following receipt of the proceeds of the Corbeil business and various ancillary asset sales, in an aggregate amount of $43.2 million.

32. The obligations to the DIP ABL Lenders were fully repaid in October 2017. The obligations to the DIP Term Lenders were fully repaid in November 2017.

33. In addition, over the past several months, distributions to certain construction lien claimants of proceeds from owned real estate sales and lease surrender transactions have been approved by the Court and completed in an aggregate amount of approximately $3.9 million.

G. CLAIMS AGAINST SEARS CANADA, FORMER CORBEIL AND FORMER SLH

34. Based upon information derived from the claims processes established under the Claims Procedure Orders, the aggregate unsecured claims against Sears Canada, Former Corbeil and Former SLH total not less than: $1.871 billion, $16 million and $31 million, respectively. These values are subject to change pending final determination of all claims in accordance with the Claims Procedure Order, the E&R Claims Procedure Order or any settlements reached with applicable creditors, and these changes may be material. The Monitor also notes that a number of contingent 'marker' claims of potentially significant value have been filed but not included in the above totals.

The wind-up deficit under the defined benefit component of the Pension Plan has been estimated by the Pension Administrator as $260.2 million as of September 30, 2017. Approximately $249.8 million of this claim is attributable to former employees of Sears Canada Inc. and approximately $10.4 million of this claim is attributable to former employees of Former SLH. For the purposes of the current motion, the Monitor will assume these values are finally determined.

35. In addition to the beneficiaries of the defined benefit component of the Pension Plan (the "**DB Beneficiaries**"), the following creditor groups, comprised largely of individuals and small businesses, make up a significant portion of the aggregate unsecured claim pool of Sears Canada:

(a) Employees and retirees with other post-employment benefit claims ("**OPEBs**") and retiree discount claims totalling $436 million;

(b) Former employees with termination and severance claims and other miscellaneous claims totalling $192 million;

(c) Contractors and other vendors to Sears Canada, including, in many cases, small business owners, totalling $320 million; and

(d) Customers with potential warranty claims totalling $88 million.

In aggregate, this group is comprised of not less than 46,000 separate creditors.

36. There are no material secured claims against Sears Canada, with the exception of any amounts that are secured by the court-ordered charges granted in the Initial Order and certain construction lien claims.

H. EFFECT OF PENSION MOTION ON CREDITOR RECOVERIES

37. Summaries of the anticipated recoveries available to unsecured creditors of Sears Canada, Former Corbeil and Former SLH are included as Appendix "A", based upon four distinct scenarios:

(a) <u>Scenario 1</u>: PBA Deemed Trust Issue and PBA Lien Issue are <u>not</u> determined in favour of the DB Beneficiaries and Joint and Several Issue is <u>not</u> determined in favour of the DB Beneficiaries.

(b) <u>Scenario 2</u>: PBA Deemed Trust Issue and PBA Lien Issue are <u>not</u> determined in favour of the DB Beneficiaries and Joint and Several Issue is determined in favour of the DB Beneficiaries;

(c) <u>Scenario 3</u>: PBA Deemed Trust Issue or PBA Lien Issue is determined in favour of the DB Beneficiaries, but the Joint and Several Issue is <u>not</u> determined in favour of the DB Beneficiaries; and

(d) <u>Scenario 4</u>: PBA Deemed Trust Issue or PBA Lien Issue <u>and</u> Joint and Several Issue are determined in favour of the DB Beneficiaries.

38. In all foreseeable circumstances, and leaving aside any potential litigation recoveries, it is clear that recoveries to unsecured creditors of Sears Canada will be very limited. In certain of the scenarios described above that are favourable to DB Beneficiaries, other creditors of Sears Canada, and in some cases creditors of Former Corbeil and Former SLH, are left with no recoveries at all. The estimated range of recoveries to unsecured creditors and DB Beneficiaries are summarized as follows under the various outcomes described above:

		Sears Canada	Corbeil	SLH / 168886	Total
Scenario 1:					
NO DEEMED TRUST / NO JOINT AND SEVERAL CLAIM	DB Pension Plan Deficit	$ 20,815,056	$ -	$ 2,809,279	$ 23,624,334
	Other Creditors	$ 134,210,863	$ 485,000	$ 5,640,977	$ 140,336,841
		$ 155,025,919	$ 485,000	$ 8,450,256	$ 163,961,175
	DB Pension Plan Deficit	8.3%	N/A	27.0%	
	Other Creditors	8.3%	100.0%	27.0%	

		Sears Canada	Corbeil	SLH / 168886	Total
Scenario 2:					
NO DEEMED TRUST / VALID JOINT AND SEVERAL CLAIM	DB Pension Plan Deficit	$ 17,846,431	$ 27,300,072	$ 7,677,065	$ 52,823,568
	Other Creditors	$ 110,470,579	$ 50,886	$ 616,142	$ 111,137,607
		$ 128,317,010	$ 27,350,958	$ 8,293,207	$ 163,961,175
	DB Pension Plan Deficit	20.3%	20.3%	20.3%	
	Other Creditors	6.9%	10.5%	3.0%	

		Sears Canada	Corbeil	SLH / 168886	Total
Scenario 3:					
VALID DEEMED TRUST / NO JOINT AND SEVERAL CLAIM	DB Pension Plan Deficit	$ 155,913,766	$ -	$ 7,562,409	$ 163,476,175
	Other Creditors	$ -	$ 485,000	$ -	$ 485,000
		$ 155,913,766	$ 485,000	$ 7,562,409	$ 163,961,175
	DB Pension Plan Deficit	62.4%	N/A	72.7%	
	Other Creditors	0.0%	100.0%	0.0%	

		Sears Canada	Corbeil	SLH / 168886	Total
Scenario 4:					
VALID DEEMED TRUST / VALID JOINT AND SEVERAL CLAIM	DB Pension Plan Deficit	$ 127,352,518	$ 29,046,248	$ 7,562,409	$ 163,961,175
	Other Creditors	$ -	$ -	$ -	$ -
		$ 127,352,518	$ 29,046,248	$ 7,562,409	$ 163,961,175
	DB Pension Plan Deficit	63.0%	63.0%	63.0%	
	Other Creditors	0.0%	0.0%	0.0%	

I. PENSION MATTERS RELATING TO FORMER CORBEIL AND FORMER SLH

39. Each of Corbeil Electrique Inc. ("**Corbeil**") and S.L.H. Transport Inc. (together with 168886 Canada Inc.[2], "**SLH**") contributed to the Pension Plan.

40. Former employees of Corbeil and SLH also receive benefits under the Pension Plan.

41. Based upon information disclosed by the Plan Administrator:

[2] 168886 is a wholly-owned subsidiary of 191020 Canada Inc. that employed approximately 240 people in various provinces (excluding Ontario and Quebec) in connection with the S.L.H. Transport Inc. business.

(a) As of September 30, 2017, 92 former employees of Corbeil (in Ontario and Quebec) and at least 298 former employees of SLH participated in the Pension Plan.

(b) No former employees of Corbeil are DB Beneficiaries.

(c) As of September 30, 2017, former SLH employees included both DB Beneficiaries (90), and beneficiaries under the defined contribution component of the Pension Plan (47) and beneficiaries under both components of the Pension Plan (161). In aggregate, Former SLH employees account for less than 1% of the total DB Beneficiaries.

42. The Monitor notes that the Pension Plan states:

> *"Employer" means [Sears Canada Inc.] and any other employer that is designated by [Sears Canada Inc.] for participation in the Plan and that has agreed to be bound by the terms of the Plan. "Employers" other than [Sears Canada Inc.] and the period during which they participate in relation to employees actively earning benefits in the Plan are Sears Canada Merchandising Services, effective December 23, 2001 until December 31, 2006 and Sears Canada Bank effective December 15, 2003 until January 1, 2006.*

43. The Monitor is not aware of any documentation specifically designating Former Corbeil as an "Employer" under the Pension Plan.

44. The Pension Plan further states, at Section I.6.1:

> *Subject to the provision of Section I.12.3 (Withdrawal of Assets) an Employer shall make such contributions to the Plan as are required based on the advice of the Actuary in order*
>
> *(a) to provide for the proper amortization of any unfunded liability or solvency deficiency; and*
>
> *(b) to meet the employer contribution requirements of the DC Provisions*
>
> *both (a) and (b) being **determined in accordance with the [PBA]**, after taking into account the assets held under the Trust Agreement for the Plan, the contributions of the Members and all other relevant factors.* [emphasis added]

45. Corbeil contributed to the Pension Plan on behalf of its employees who were beneficiaries under the defined contribution component of the Pension Plan.

46. SLH also contributed to the Pension Plan on behalf of its employees who were beneficiaries under the Pension Plan.

47. The PBA includes the following definition of "employer":

> *"employer" means, in relation to a member, former member or retired member of a pension plan, the person or persons from whom or the organization from which the member, former member or retired member receives or received remuneration to which the pension plan is related, and "employed" and "employment" have a corresponding meaning;*

48. The Monitor has been advised by Sears Canada that employees of Corbeil and SLH were paid their remuneration directly from Corbeil and SLH bank accounts and to the extent written employment agreements were in place those agreements were entered into between the employee and Corbeil or SLH, as applicable.

49. The Monitor further notes the following:

(a) Sears Canada Inc. was a public company listed on the Toronto Stock Exchange. Corbeil and SLH were separately incorporated entities. S.L.H. Transport Inc. was incorporated in 1978. 168886 Canada Inc. was incorporated in 1989. The shares of Corbeil Electrique Inc. were acquired by the Sears Canada Group in 2005.

(b) Many employees of Corbeil and SLH transferred to the purchasers of the Corbeil and SLH businesses that are now owned by unrelated third parties.

(c) Each of Corbeil and SLH operated independent businesses (a specialty retail appliance business and a transportation business), owned their own assets and had separate business plans and separate management teams. The businesses of Corbeil and SLH were sold separately from the Sears Canada business to independent purchasers as going concerns.

(d) The businesses of Corbeil, SLH and Sears Canada did not operate as a single business, there was no difficulty segregating their assets and assets were not transferred among these entities without corporate formalities.

50. Further information regarding the business and operations of Corbeil and SLH is included in the Affidavit of Billy Wong, sworn June 22, 2017, a copy of which is attached hereto without exhibits as Appendix "B".

J. TAX IMPLICATIONS

51. The Pension Plan is registered under the PBA and the *Income Tax Act*, R.S.C. 1985, c. 1 (5^{th} Supp) as amended (the "**ITA**").

52. The Monitor notes that any determination that Former SLH and Former Corbeil are jointly and severally liable with Sears Canada for the entire wind-up deficit under the Pension Plan and are required to make contributions with respect to individuals other than their own employees or former employees may be inconsistent with the registration scheme under the ITA, and may (among other things) constitute the plan a 'revocable plan' for purposes of paragraph 8502(b) of the Income Tax Regulations and subsection 147.1(11) of the ITA.

53. The implications of such inconsistency and the impact of any finding of joint and several liability in view of such inconsistency are legal matters that will be considered in greater detail in the Monitor's factum to be served in connection with the Pension Motion and are raised in this Report in the interest of ensuring transparency regarding the issues that will need to be considered.

K. MULTI-JURISDICTIONAL AGREEMENTS AND GOVERNING LAW

54. The Pension Plan is registered under the PBA.

55. The Pension Plan is also subject to (i) the 2016 Agreement Respecting Multi-Jurisdictional Pension Plans, in respect of the jurisdictions of British Columbia, Nova Scotia, Ontario, Quebec and Saskatchewan (the "**2016 Multi-Jurisdictional Agreement**"); and (ii) the Memorandum of Reciprocal Agreement between the Quebec

Pension Board, the Pension Commission of Ontario, the Superintendent of Pensions Alberta, the Superintendent of Pensions, Saskatchewan, the Pension Commission of Manitoba, the Superintendent of Pensions, Nova Scotia, the Superintendent of Pensions Newfoundland, the Minister Advanced Education and Labour New Brunswick and the Minister of Skills, Training and Labour of British Columbia (the "**1968 Memorandum of Agreement**").

56. Each of the 2016 Multi-Jurisdictional Agreement and the 1968 Memorandum of Agreement identify the major authority in connection with a pension plan as the participating authority where the plurality of plan members are employed (or in the case of the 2016 Multi-Jurisdictional Agreement, the plurality of active members of the pension plan in the most recent periodic information return filed with a pension supervisory authority in relation to a fiscal year end of the Pension Plan). It appears based upon available information that the major authority in connection with the Pension Plan is Ontario.

L. SPOUSAL WAIVER

57. The Monitor has reviewed the Motion Record of the Plan Administrator regarding the Spousal Waiver Issue.

58. The Monitor would support a resolution that permits the acceptance of spousal waivers as valid in all jurisdictions notwithstanding that they may not be, in all respects, compliant with the applicable provincial pension legislation. The Monitor takes this position for fairness reasons and due to practical considerations as discussed below.

59. The Monitor understands that pension members who had spouses would in the ordinary course receive a lower pension benefit in the near term in return for enhanced benefits to a surviving spouse in the longer term. The intention was that, over a longer period, the benefits projected to be received by the pension member and their surviving spouse would equal in aggregate the benefits projected for a non-married pension member. However, a pension member with a spouse could elect to receive the same larger short term benefits as a pension member without a spouse if the applicable spouse signed a form waiving their entitlement to standard survivor benefits (the "**Spousal Waivers**").

60. The Monitor further understands that the Spousal Waivers were compliant with Ontario law and were used for pension members in all provinces. However, the Pension Administrator has advised the Spousal Waivers did not fully comply with the laws of a number of other provinces, primarily regarding protections in the waiver forms directed at ensuring that the Spousal Waivers were validly consented to by the signing spouse.[3] The Monitor has been informed by Sears Canada that it received no indication from the Financial Services Commission of Ontario during their audits that the Spousal Waiver forms being used were incorrect.

61. The Pension Administrator has advised that if the Spousal Waivers were treated as invalid at this time, the result would be an increase in claims for spousal survivor benefits that were previously waived, with an aggregate cost of approximately $32 million including approximately $10 million of professional costs associated with resolving this matter. In addition, if the Spousal Waivers were found to be invalid, this would mean that the increased amounts previously paid out to Pension Plan members in reliance on the Spousal Waivers should never have been paid to the Pension Plan members.

Fairness

62. In the Monitor's view the most fair approach in the circumstances is to maintain the status quo with respect to Spousal Waivers:

(a) The Monitor is not aware of any complaints that the Spousal Waivers previously signed were improperly obtained or that the parties signing those Spousal Waivers did not understand the waivers or did not intend for the waivers to have the effect of waiving survivor benefits;

(b) The Monitor understands the Spousal Waivers were sufficient as a matter of Ontario law and the Monitor is not aware of any intention to mislead any party

[3] The Monitor has been advised by counsel to the Plan Administrator that an incorrect spousal waiver form was unintentionally included in the Plan Administrator's motion record on the Spousal Waiver Issue. A copy of the correct Alberta Spousal Waiver form is attached hereto as Appendix "C".

signing a Spousal Waiver in any other jurisdiction. It appears the Spousal Waiver process was administered by Sears Canada in good faith; and

(c) In the Monitor's view, pension beneficiaries should be treated in an even-handed and impartial manner. A result that maintains the status quo best achieves this result as there does not appear to be any practical way to ensure that all benefits previously paid in reliance upon the Spousal Waivers can be reversed and reallocated at this time. Any remedial action now would result in a windfall to certain beneficiaries at the expense of other beneficiaries.

Practical Considerations

63. The Monitor does not believe that any remedial steps to reverse the effect of the executed Spousal Waivers would provide material benefit to the pension group as a whole:

(a) If the pension parties are successful on the PBA Deemed Trust Priority Issue or the PBA Lien Priority Issue, current information suggests there will not be sufficient assets to fully satisfy the claims under the wind-up deficit, even excluding any increase resulting from the reversal of the Spousal Waivers. The increase in claim value to the wind-up deficit as a result of the reversal of the Spousal Waivers in such a circumstance would only re-allocate to a limited degree the recoveries of individual pension beneficiaries by increasing the claims of certain of those pension beneficiaries. No additional value would be available to the pension beneficiaries as a group;

(b) If the pension parties are not successful on the PBA Deemed Trust Priority Issue or the PBA Lien Priority Issue, the increased wind up deficit claim that would result from the reversal of the Spousal Waivers will have only a small impact on aggregate recoveries to pension beneficiaries as unsecured wind up deficit claims, and all other unsecured claims, are expected to receive only a very small percentage recovery for Sears Canada in these proceedings; and

(c) The Plan Administrator has estimated that it could cost approximately $10 million dollars in professional and administrative fees to administer the entire process regarding Spousal Waivers it views as non-compliant. These costs would significantly, or perhaps fully, offset any benefit to pension beneficiaries as identified in (a) and (b) above on the assumption that these amounts would be paid from the Pension Plan assets.

64. For the foregoing reasons, the Monitor believes the most appropriate approach in the current circumstances is to maintain the status quo with respect to the acceptance of existing Spousal Waivers in all jurisdictions.

The Monitor respectfully submits to the Court this, its Twenty-Second Report.

Dated this 7th day of September, 2018.

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

Paul Bishop
Senior Managing Director

Greg Watson
Senior Managing Director

APPENDIX "A"

ESTIMATED RECOVERY SCENARIOS

SEARS CANADA ENTITIES - RECOVERY ANALYSIS

DRAFT - Preliminary Recovery Estimate

September 1, 2018

SCENARIO 1 - NO DEEMED TRUST, NO JOINT AND SEVERAL CLAIM

(Amounts stated in CAD)		Non-Consolidated Plan: Sears Canada Inc.	Non-Consolidated Plan: Corbeil	Non-Consolidated Plan: SLH Transport / 168886 Canada	Total
PROCEEDS AVAILABLE FOR DISTRIBUTION					
Total Cash on Hand as Per Sept. 1, 2018		$ 136,141,971	$ 5,266,282	$ 16,852,922	$ 158,261,175
Total Forecasted Net Cash Flows Till Dec. 2018		$ 5,700,000	$ -	$ -	$ 5,700,000
Total Post-Filing Intercompany Adjustments (Till Jan. 2018)		$ (15,742,574)	$ 23,828,472	$ (8,085,898)	$ -
Total Post-Filing Intercompany Adjustments (After Jan. 2018)		$ 1,253,121	$ (48,505)	$ (1,204,615)	$ -
Total Recovery of Pre-Filing Intercompany Claims and Equity Surplus		$ 28,561,248	$ -	$ 887,847	$ 29,449,095
GROSS PROCEEDS AVAILABLE	A	**$ 155,913,767**	**$ 29,046,248**	**$ 8,450,256**	**$ 193,410,270**
Less: Total Pension Deficit Deemed Trust Distribution	B	$ -	$ -	$ -	$ -
PROCEEDS AVAILABLE AFTER TRUST CLAIMS	C=A+B	**$ 155,913,767**	**$ 29,046,248**	**$ 8,450,256**	**$ 193,410,270**
Less: Distribution of Pre-Filing Intercompany Claims	D	$ (887,847)	$ (28,561,248)	$ -	$ (29,449,095)
PROCEEDS AVAILABLE TO 3RD PARTY UNSECURED CLAIMS	E=C+D	**$ 155,025,920**	**$ 485,000**	**$ 8,450,256**	**$ 163,961,176**
UNSECURED CLAIMS:					
Total DB Pension Plan Deficit Claim*		$ 249,800,000	$ -	$ 10,400,000	$ 260,200,000
Total Intercompany Claims		$ 10,655,000	$ 16,158,000	$ -	$ 26,813,000
Total - Other Claims		$ 1,610,655,000	$ 485,000	$ 20,883,000	$ 1,632,023,000
TOTAL UNSECURED CLAIMS	F	**$ 1,871,110,000**	**$ 16,643,000**	**$ 31,283,000**	**$ 1,919,036,000**
Realizations Surplus / Deficit		$ (1,715,196,233)	$ 12,403,248	$ (22,832,744)	
Estimated Unsecured Recovery Rate %	C/F	**8.3%**	**100.0%**	**27.0%**	

	Sears Canada Inc.	Corbeil	SLH Transport / 168886 Canada	Total
Recovery Proceed Amounts - By Stakeholder Group:				
DB Pension Plan Deficit	$ 20,815,056	$ -	$ 2,809,279	$ 23,624,334
Total - Other 3rd Party Creditors	$ 134,210,863	$ 485,000	$ 5,640,977	$ 140,336,841
Total	$ 155,025,919	$ 485,000	$ 8,450,256	$ 163,961,175
Recovery % - By Stakeholder Group:				
DB Pension Plan Deficit - based on deficit by entity*	8.3%	N/A	27.0%	
General Creditors	8.3%	100.0%	27.0%	

Notes:

1. This recovery analysis is based on current cash on hand and estimated cash flows till December 2018 only and is used for illustrative purposes only.
2. The Proceeds Available To 3rd Party Unsecured Claims are net of any reserves relating to secured creditors / liens, bid deposits held in trust and employee hardship fund.
3. The recovery analysis does not reflect proceeds that would be available from future real estate transactions.
4. The recovery analysis does not reflect any operating costs or professional fees associated with any litigation matters or the wind down of the estate after December 2018.
5. The claims have been valued based on the Notices of Revision / Disallowance sent and the Notice of Dispute received (and in the case of material claims for which Notices of Dispute have been received, the Monitor’s view of a reasonable valuation thereof), and are subject to change as claims are adjudicated.

*The valuation allocation for the DB Pension Plan Deficit of $260.2 million between the Sears Canada Entities has been provided by Morneau Sheppell.

Note: These values are subject to change pending final determination of all claims in accordance with the Claims Procedure Order, the E&R Claims Procedure Order or any settlements reached with applicable creditors, and these changes may be material.

SEARS CANADA ENTITIES - RECOVERY ANALYSIS
DRAFT - Preliminary Recovery Estimate
September 1, 2018

SCENARIO 2 - NO DEEMED TRUST, VALID JOINT AND SEVERAL CLAIM

(Amounts stated in CAD)		Non-Consolidated Plan: Sears Canada Inc.	Non-Consolidated Plan: Corbeil	Non-Consolidated Plan: SLH Transport / 168886 Canada	Total
PROCEEDS AVAILABLE FOR DISTRIBUTION					
Total Cash on Hand as Per Sept. 1, 2018		$ 136,141,971	$ 5,266,282	$ 16,852,922	$ 158,261,175
Total Forecasted Net Cash Flows Till Dec. 2018		$ 5,700,000	$ -	$ -	$ 5,700,000
Total Post-Filing Intercompany Adjustments (Till Jan. 2018)		$ (15,742,574)	$ 23,828,472	$ (8,085,898)	$ -
Total Post-Filing Intercompany Adjustments (After Jan. 2018)		$ 1,253,121	$ (48,505)	$ (1,204,615)	$ -
Total Recovery of Pre-Filing Intercompany Claims and Equity Surplus		$ 1,695,290	$ -	$ 730,798	$ 2,426,088
GROSS PROCEEDS AVAILABLE	A	**$ 129,047,809**	**$ 29,046,248**	**$ 8,293,207**	**$ 166,387,264**
Less: Total Pension Deficit Deemed Trust Distribution	B	$ -	$ -	$ -	$ -
PROCEEDS AVAILABLE AFTER TRUST CLAIMS	C=A+B	**$ 129,047,809**	**$ 29,046,248**	**$ 8,293,207**	**$ 166,387,264**
Less: Distribution of Pre-Filing Intercompany Claims	D	$ (730,798)	$ (1,695,290)	$ -	$ (2,426,088)
PROCEEDS AVAILABLE TO 3RD PARTY UNSECURED CLAIMS	E=C+D	**$ 128,317,011**	**$ 27,350,958**	**$ 8,293,207**	**$ 163,961,176**
UNSECURED CLAIMS:					
Total DB Pension Plan Deficit Claim		$ 260,200,000	$ 260,200,000	$ 260,200,000	$ 260,200,000
Total Intercompany Claims		$ 10,655,000	$ 16,158,000	$ -	$ 26,813,000
Total - Other Claims		$ 1,610,655,000	$ 485,000	$ 20,883,000	$ 1,632,023,000
TOTAL UNSECURED CLAIMS	F	**$ 1,881,510,000**	**$ 276,843,000**	**$ 281,083,000**	**$ 1,919,036,000**
Realizations Surplus / Deficit		(1,752,462,191)	(247,796,752)	(272,789,793)	
Estimated Unsecured Recovery Rate %	C/F	**6.9%**	**10.5%**	**3.0%**	

Recovery Proceed Amounts - By Stakeholder Group:				
DB Pension Plan Deficit	$ 17,846,432	$ 27,300,072	$ 7,677,065	$ 52,823,569
Total - Other 3rd Party Creditors	$ 110,470,579	$ 50,886	$ 616,142	$ 111,137,607
Total	$ 128,317,011	$ 27,350,958	$ 8,293,207	$ 163,961,176
Recovery % - By Stakeholder Group:				
DB Pension Plan Deficit - based on aggregate deficit claim of $260.2 million	20.3%	20.3%	20.3%	
General Creditors	6.9%	10.5%	3.0%	

Notes:
1. This recovery analysis is based on current cash on hand and estimated cash flows till December 2018 only and is used for illustrative purposes only.
2. The Proceeds Available To 3rd Party Unsecured Claims are net of any reserves relating to secured creditors / liens, bid deposits held in trust and employee hardship fund.
3. The recovery analysis does not reflect proceeds that would be available from future real estate transactions.
4. The recovery analysis does not reflect any operating costs or professional fees associated with any litigation matters or the wind down of the estate after December 2018.
5. The claims have been valued based on the Notices of Revision / Disallowance sent and the Notice of Dispute received (and in the case of material claims for which Notices of Dispute have been received, the Monitor's view of a reasonable valuation thereof), and are subject to change as claims are adjudicated.

Note: These values are subject to change pending final determination of all claims in accordance with the Claims Procedure Order, the E&R Claims Procedure Order or any settlements reached with applicable creditors, and these changes may be material.

SEARS CANADA ENTITIES - RECOVERY ANALYSIS

DRAFT - Preliminary Recovery Estimate

September 1, 2018

SCENARIO 3 - VALID DEEMED TRUST, NO JOINT AND SEVERAL CLAIM

(Amounts stated in CAD)		Non-Consolidated Plan: Sears Canada Inc.	Non-Consolidated Plan: Corbeil	Non-Consolidated Plan: SLH Transport / 168886 Canada	Total
PROCEEDS AVAILABLE FOR DISTRIBUTION					
Total Cash on Hand as Per Sept. 1, 2018		$ 136,141,971	$ 5,266,282	$ 16,852,922	$ 158,261,175
Total Forecasted Net Cash Flows Till Dec. 2018		$ 5,700,000	$ -	$ -	$ 5,700,000
Total Post-Filing Intercompany Adjustments (Till Jan. 2018)		$ (15,742,574)	$ 23,828,472	$ (8,085,898)	$ -
Total Post-Filing Intercompany Adjustments (After Jan. 2018)		$ 1,253,121	$ (48,505)	$ (1,204,615)	$ -
Total Recovery of Pre-Filing Intercompany Claims and Equity Surplus		$ 28,561,248	$ -	$ -	$ 28,561,248
GROSS PROCEEDS AVAILABLE	A	**$ 155,913,767**	**$ 29,046,248**	**$ 7,562,409**	**$ 192,522,423**
Less: Total Pension Deficit Deemed Trust Distribution	B	$ (155,913,767)	$ -	$ (7,562,409)	$ (163,476,176)
PROCEEDS AVAILABLE AFTER TRUST CLAIMS	C=A+B	**$ -**	**$ 29,046,248**	**$ -**	**$ 29,046,248**
Less: Distribution of Pre-Filing Intercompany Claims	D	$ -	$ (28,561,248)	$ -	$ (28,561,248)
PROCEEDS AVAILABLE TO 3RD PARTY UNSECURED CLAIMS	E=C+D	**$ -**	**$ 485,000**	**$ -**	**$ 485,000**
UNSECURED CLAIMS:					
Total DB Pension Plan Deficit Claim		$ -	$ -	$ -	$ -
Total Intercompany Claims		$ 10,655,000	$ 16,158,000	$ -	$ 26,813,000
Total - Other Claims		$ 1,610,655,000	$ 485,000	$ 20,883,000	$ 1,632,023,000
TOTAL UNSECURED CLAIMS	F	**$ 1,621,310,000**	**$ 16,643,000**	**$ 20,883,000**	**$ 1,658,836,000**
Realizations Surplus / Deficit		$ (1,621,310,000)	$ 12,403,248	$ (20,883,000)	
Estimated Unsecured Recovery Rate %	C/F	**0.0%**	**100.0%**	**0.0%**	

	Sears Canada Inc.	Corbeil	SLH Transport / 168886 Canada	Total
Recovery Proceed Amounts - By Stakeholder Group:				
DB Pension Plan Deficit	$ 155,913,767	$ -	$ 7,562,409	$ 163,476,176
Total - Other 3rd Party Creditors	$ -	$ 485,000	$ -	$ 485,000
Total	$ 155,913,767	$ 485,000	$ 7,562,409	$ 163,961,176
Recovery % - By Stakeholder Group:				
DB Pension Plan Deficit - based on deficit by entity*	62.4%	N/A	72.7%	
General Creditors	0.0%	100.0%	0.0%	

Notes:

1. This recovery analysis is based on current cash on hand and estimated cash flows till December 2018 only and is used for illustrative purposes only.
2. The Proceeds Available To 3rd Party Unsecured Claims are net of any reserves relating to secured creditors / liens, bid deposits held in trust and employee hardship fund.
3. The recovery analysis does not reflect proceeds that would be available from future real estate transactions.
4. The recovery analysis does not reflect any operating costs or professional fees associated with any litigation matters or the wind down of the estate after December 2018.
5. The claims have been valued based on the Notices of Revision / Disallowance sent and the Notice of Dispute received (and in the case of material claims for which Notices of Dispute have been received, the Monitor's view of a reasonable valuation thereof), and are subject to change as claims are adjudicated.

*The valuation allocation for the DB Pension Plan Deficit of $260.2 million between the Sears Canada Entities has been provided by Morneau Sheppell.

Note: These values are subject to change pending final determination of all claims in accordance with the Claims Procedure Order, the E&R Claims Procedure Order or any settlements reached with applicable creditors, and these changes may be material.

SEARS CANADA ENTITIES - RECOVERY ANALYSIS
DRAFT - Preliminary Recovery Estimate
September 1, 2018

SCENARIO 4 - VALID DEEMED TRUST, VALID JOINT AND SEVERAL CLAIM

(Amounts stated in CAD)		Non-Consolidated Plan: Sears Canada Inc.	Corbeil	SLH Transport / 168886 Canada	Total
PROCEEDS AVAILABLE FOR DISTRIBUTION					
Total Cash on Hand as Per Sept. 1, 2018		$ 136,141,971	$ 5,266,282	$ 16,852,922	$ 158,261,176
Total Forecasted Net Cash Flows Till Dec. 2018		$ 5,700,000	$ -	$ -	$ 5,700,000
Total Post-Filing Intercompany Adjustments (Till Jan. 2018)		$ (15,742,574)	$ 23,828,472	$ (8,085,898)	$ -
Total Post-Filing Intercompany Adjustments (After Jan. 2018)		$ 1,253,121	$ (48,505)	$ (1,204,615)	$ -
Total Recovery of Pre-Filing Intercompany Claims and Equity Surplus		$ -	$ -	$ -	$ -
GROSS PROCEEDS AVAILABLE	A	**$ 127,352,519**	**$ 29,046,248**	**$ 7,562,409**	**$ 163,961,176**
Less: Total Pension Deficit Deemed Trust Distribution	B	$ (127,352,519)	$ (29,046,248)	$ (7,562,409)	$ (163,961,176)
PROCEEDS AVAILABLE AFTER TRUST CLAIMS	C=A+B	**$ -**	**$ -**	**$ -**	**$ -**
Less: Distribution of Pre-Filing Intercompany Claims	D	$ -	$ -	$ -	$ -
PROCEEDS AVAILABLE TO 3RD PARTY UNSECURED CLAIMS	E=C+D	**$ -**	**$ -**	**$ -**	**$ -**
UNSECURED CLAIMS:					
Total DB Pension Plan Deficit Claim		$ -	$ -	$ -	$ -
Total Intercompany Claims		$ 10,655,000	$ 16,158,000	$ -	$ 26,813,000
Total - Other Claims		$ 1,610,655,000	$ 485,000	$ 20,883,000	$ 1,632,023,000
TOTAL UNSECURED CLAIMS	F	**$ 1,621,310,000**	**$ 16,643,000**	**$ 20,883,000**	**$ 1,658,836,000**
Realizations Surplus / Deficit		(1,621,310,000)	(16,643,000)	(20,883,000)	
Estimated Unsecured Recovery Rate %	C/F	**0.0%**	**0.0%**	**0.0%**	

	Sears Canada Inc.	Corbeil	SLH Transport / 168886 Canada	Total
Recovery Proceed Amounts - By Stakeholder Group:				
DB Pension Plan Deficit	$ 127,352,519	$ 29,046,248	$ 7,562,409	$ 163,961,176
Total - Other 3rd Party Creditors	$ -	$ -	$ -	$ -
Total	$ 127,352,519	$ 29,046,248	$ 7,562,409	$ 163,961,176
Recovery % - By Stakeholder Group:				
DB Pension Plan Deficit - based on aggregate deficit claim of $260.2 million	63.0%	63.0%	63.0%	
General Creditors	0.0%	0.0%	0.0%	

Notes:

1. This recovery analysis is based on current cash on hand and estimated cash flows till December 2018 only and is used for illustrative purposes only.
2. The Proceeds Available To 3rd Party Unsecured Claims are net of any reserves relating to secured creditors / liens, bid deposits held in trust and employee hardship fund.
3. The recovery analysis does not reflect proceeds that would be available from future real estate transactions.
4. The recovery analysis does not reflect any operating costs or professional fees associated with any litigation matters or the wind down of the estate after December 2018.
5. The claims have been valued based on the Notices of Revision / Disallowance sent and the Notice of Dispute received (and in the case of material claims for which Notices of Dispute have been received, the Monitor's view of a reasonable valuation thereof), and are subject to change as claims are adjudicated.

Note: These values are subject to change pending final determination of all claims in accordance with the Claims Procedure Order, the E&R Claims Procedure Order or any settlements reached with applicable creditors, and these changes may be material.

APPENDIX “B”

AFFIDAVIT OF BILLY WONG, SWORN JUNE 22, 2017

Court File No.

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

APPLICANTS

AFFIDAVIT OF BILLY WONG
(Sworn June 22, 2017)

I, Billy Wong, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. This Affidavit is made in support of an Application by Sears Canada Inc. ("**Sears Canada**"), Corbeil Électrique Inc. ("**Corbeil**"), S.L.H. Transport Inc., The Cut Inc., Sears Contact Services Inc., Initium Logistics Services Inc., Initium Commerce Labs Inc., Initium Trading and Sourcing Corp., Sears Floor Covering Centres Inc., 173470 Canada Inc., 2497089 Ontario Inc., 6988741 Canada Inc., 10011711 Canada Inc., 1592580 Ontario Limited, 955041 Alberta Ltd., 4201531 Canada Inc., 168886 Canada Inc., and 3339611 Canada Inc. (together, the

"**Applicants**" or the "**Sears Canada Group**") for relief under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**").

2. I am the Executive Vice-President and Chief Financial Officer of Sears Canada and have held this position since December 2016. Prior to that, I was the interim Chief Financial Officer from July 2016 and before that held the position of Senior Vice-President, Corporate Financial Planning. I have been employed in Sears Canada's finance department since March 2015. I am also a director of each of the other Applicants. As such, I have personal knowledge of the matters deposed to in this Affidavit. Where I have relied on other sources for information, I have specifically referred to such sources and believe them to be true. In preparing this Affidavit, I have consulted with legal, financial and other advisors to Sears Canada and other members of the senior management team of Sears Canada. Unless otherwise indicated, all amounts in this Affidavit are in Canadian dollars.

3. This Affidavit is organized in the following sections:

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Introduction

4. The Sears Canada Group is one of Canada's largest multi-format retailers, employing approximately 17,000 people at 225 stores across Canada and at its head office in Toronto, Ontario. Sears Canada is a public company listed on the Toronto Stock Exchange and NASDAQ. The principal activities of Sears Canada and its subsidiaries include the sale of goods and services through its full-line department stores, Sears Home, Sears Hometown, Sears Outlet, and Corbeil stores, and via its online sales platform.

5. In addition to its approximately 17,000 employees, the Sears Canada Group's stakeholder groups include customers, vendors of inventory, suppliers of services, franchisees operating Corbeil stores, dealer operators of Hometown stores, retirees, landlords, tenants to whom the Sears Canada Group leases space, and others.

6. In recent years, the Sears Canada Group has experienced a sustained decline in its performance, including substantial declines in revenue, as well as recurring operating losses and net losses, and an erosion of its cash position, which has now resulted in significant liquidity pressures. The Sears Canada Group has considered and implemented a wide range of initiatives over the past few years to transform the business in an attempt to address the serious challenges facing the company and the retail industry more generally.

7. In particular, the Sears Canada Group has taken steps to transform its business from a bricks and mortar chain of retail stores supported by an e-commerce platform to an e-commerce based retailer with supporting stores. These steps include: launching the Initium Commerce Lab, an innovation hub, to design and implement a modernized technology platform

for Sears Canada; reducing square footage and changing the product mix in its stores through the Sears 2.0 program; launching a new off-price retail business called “The Cut”; closing numerous underperforming stores; improving the efficiency of logistics networks; and reducing costs.

8. In order to provide sufficient funds to implement this operational transformation and to fund its ongoing business operations, the Sears Canada Group has taken a number of actions, including the monetization of real estate assets, sale of joint venture interests, and additional borrowings. Recently, Sears Canada negotiated a new term loan credit facility with two available tranches. The first tranche of the term loan in the amount of US$93.9 million (CAN $125 million) was advanced on March 20, 2017. However, the second tranche of up to the U.S. dollar equivalent of CAN$175 million could not be funded in a timely manner and the anticipated closing was extended from May 4, 2017 to June 30, 2017.

9. As set out in Sears Canada’s press release date June 13, 2017, based on the status of negotiations with the term loan lenders, the amount that Sears Canada could expect to borrow under the second tranche was reduced to an amount up to $109.1 million before transaction fees. Ultimately, Sears Canada concluded that it was not prudent to encumber its remaining real estate assets for borrowings that were significantly less than $175 million.

10. On June 13, 2017, Sears Canada also filed its consolidated quarter-end financial statements, which noted that there was significant doubt as to the company’s ability to continue as a going concern. Management was uncertain as to Sears Canada’s ability to continue to satisfy its obligations and implement its business plan in the ordinary course due to Sears Canada’s inability to borrow the full amount of the second tranche of funding and the lack of timely, available alternative sources of liquidity. Without additional liquidity, the Sears Canada Group

can no longer continue to transform its business and rationalize its footprint outside of a CCAA proceeding.

11. Accordingly, as part of the relief sought in this application, the Applicants are seeking approval of two debtor-in-possession loan facilities (collectively, the "**DIP Facility**") with its existing lenders. I believe that the DIP Facility is the only available option for the Applicants to keep the vast majority of its workers employed and maintain going concern operations for the benefit of its stakeholders. The proposed DIP Facility is intended to provide the Sears Canada Group with stability, additional time, and the necessary liquidity to complete its operational restructuring as part of these CCAA proceedings.

12. The Sears Canada Group is entering these proceedings with the intention of emerging as a stronger, more focused competitor in the Canadian retail industry. It plans to continue to operate a large number of stores, maintain significant employment, and service its customers across Canada. However, in order to complete the Sears Canada Group's transformation and to right-size its business, the Sears Canada Group will be closing a number of stores, exiting business lines, reducing operating costs, and implementing headcount reductions. Management expects that the company that emerges from this CCAA proceeding will be well-positioned to capitalize on the opportunities that exist in the Canadian retail marketplace. The Sears Canada Group is already seeing promising signs of growth as Sears Canada's same store sales increased by 2.9% in the first quarter of Fiscal 2017, compared to the same quarter last year.

13. The Applicants require a stay of proceedings and related relief under the CCAA in order to continue operating and restructuring their businesses, with the ultimate goal of

maximizing enterprise value through one or more restructuring transactions for the benefit of their stakeholders, including potentially developing a plan of compromise and arrangement as part of these CCAA proceedings.

14. If an Initial CCAA Order is granted, the Applicants intend to promptly serve a motion or motions seeking this Court's approval of:

(a) a comprehensive and flexible sale and investor solicitation process that will seek and evaluate a broad range of potential transactions (the "**SISP**"), to be conducted by BMO Nesbitt Burns Inc. ("**BMO Capital Markets**") under the supervision of the Proposed Monitor. It is contemplated that the process will be open to both third parties and the company's landlords;

(b) the liquidation of inventory in certain stores that will be closing as part of these proceedings and associated sale guidelines; and

(c) the Sears Canada Group ceasing to: (i) make special payments with respect to the defined benefit portion of the Sears Pension Plan (defined below) and (ii) make payments with respect to other post-retirement benefits under the PRB Plan (defined below).

Corporate Structure of the Sears Canada Group

15. Sears Canada was incorporated under the laws of Canada by letters patent dated September 17, 1952 and was continued under the *Canada Business Corporations Act* by articles of continuance effective May 15, 1980. By articles of amendment effective May 31, 1984, it

changed its name from Simpsons-Sears Limited to Sears Canada Inc. By articles of amalgamation dated January 1, 1994, December 29, 1996 and December 30, 1999, Sears Canada was amalgamated with various wholly-owned subsidiaries.

16. Sears Canada is the ultimate parent company of the Sears Canada Group and the other Applicants are all direct or indirect wholly-owned subsidiaries of Sears Canada. A chart showing the organizational structure of the Sears Canada Group as of today's date is attached as Exhibit "A" to this Affidavit. The corporate chart also shows Sears Canada's relationship with its major shareholders.

A. <u>Sears Canada's Subsidiaries</u>

17. The following are descriptions of Sears Canada's key subsidiaries, which are all Applicants in this proceeding:

(a) **Corbeil Électrique Inc.** – a Quebec corporation that carries on the Corbeil specialty retail business from Corbeil branded corporate and franchised stores. Corbeil has a separate management structure from the rest of the Sears Canada Group's retail business, although Sears Canada provides Corbeil with legal and financial support services. It employs approximately 170 people directly. Additionally, approximately 130 people are employed by Corbeil franchisees;

(b) **S.L.H. Transport Inc. ("SLH") and 168886 Canada Inc. –** SLH is a Canadian corporation that transports merchandise to and from stores and merchandise pick-up locations for Sears Canada. It also provides transportation services to various third party customers. SLH employs approximately 380 people located in Ontario and Quebec. Additionally, SLH wholly-owns 168886 Canada Inc. which employs approximately 240 employees in other provinces. In addition, SLH contracts with approximately 185 independent contractors who own and operate (or oversee the operation of) their own trucks.

(c) **The Cut Inc. –** a Delaware corporation that operates as a procurement agent for sourcing off-price inventory for Sears Canada's new off-price brand that launched in Spring 2017. The Cut Inc. employs approximately 27 full-time employees in New York. The Cut Inc.'s office is embedded within one of Sears Canada's vendors in New York. Sears Canada funds The Cut Inc.'s payroll and other expenses;

(d) **Sears Contact Services Inc. ("Sears Contact") –** a Canadian corporation that operates call centres related to Sears Canada's business. As part of a return of the call centres to Canada, Sears Contact is in the process of hiring and training employees and currently employs approximately 300 people; and

(e) **173470 Canada Inc. –** a Canadian corporation that owns 1% of Sears Connect LP, a limited partnership which sells mobile phones, phone plans and long distance plans with various third parties. It has no employees. Sears Canada owns 99% of Sears Connect LP.

18. Sears Canada's additional subsidiaries are listed in Schedule A to this affidavit. I am a director for each of the subsidiaries listed above and in Schedule A, along with Philip

Mohtadi (General Counsel). One or more of Becky Penrice (Chief Operating Officer), Pamela Murphy, Jeff Abbott and Claude De Luca is also a director of the above subsidiaries.

19. With respect to the subsidiaries of Sears Canada: (i) none of them has total assets exceeding 15% of the consolidated assets of the Sears Canada Group, or sales and operating revenues in excess of 10% of the consolidated sales and operating revenues of the Sears Canada Group; and (ii) when taken together, they do not have assets exceeding 20% of the consolidated assets of the Sears Canada Group, or sales and operating revenues exceeding 20% of the consolidated sales and operating revenues of the Sears Canada Group.

20. The wireless, phone and long distance business run by the Sears Canada Group is run by Sears Connect LP. While the limited partnership Sears Connect LP is not an Applicant in this proceeding, the Applicants seek to have a stay of proceedings and other provisions of an Initial Order under the CCAA extended to Sears Connect LP in order to maintain stability through this restructuring process. The business and operations of the Applicants are heavily intertwined with that of Sears Connect LP, as it is wholly-owned by the Applicants and the wireless business run by Sears Connect LP operates out of Sears Canada's stores and online platform.

B. Sears Canada's Major Shareholders

21. Sears Canada currently has outstanding 101,877,662 common shares and 2,302,000 options to acquire common shares. No dividends have been paid since 2013.

22. ESL Investments, Inc. and investment affiliates, including Edward S. Lampert, (collectively "**ESL**"), form the largest shareholder of Sears Canada, both directly through

ownership in Sears Canada, and indirectly through shareholdings in Sears Holdings Corporation ("**Sears Holdings**"), a U.S. public company. The major shareholders are as follows:

	# of outstanding common shares	**% of outstanding common shares**
ESL	46,162,515	45.3%
Sears Holdings	11,962,391	11.7%
Fairholme Capital Management, LLC	20,375,533	20%

23. The directors and officers of Sears Canada, as a group, beneficially own, directly or indirectly, or exercise control or direction over 5,220 common shares, representing less than 1% of Sears Canada's issued and outstanding common shares.

24. Sears Canada's most significant agreement with Sears Holdings is a royalty-free license from Sears Holdings's wholly-owned subsidiary, Sears, Roebuck and Co., to use the name "Sears" as part of its corporate name as well as a royalty-free license to use other brand names, such as Kenmore® and DieHard® (the "**Trademark License Agreement**"). The Trademark License Agreement was amended in October 2014 and in March 2017. A copy of the Trademark License Agreement and the amendments thereto are attached as Exhibit "B" to this Affidavit.

25. Pursuant to the October 2014 amendment, the Trademark License Agreement will continue to apply for so long as Sears Holdings continues to own at least 10% of the voting shares of Sears Canada. In the event Sears Holdings' ownership interest in Sears Canada is reduced to less than 10%, Sears Canada would continue to have the right to use the trademarks on a royalty-free basis for a period of five years, after which Sears Canada would incur a cost to

continue to use the "Sears" name and certain other brand names for a transition period not to exceed four years.[1]

26. In January 2017, Sears Holdings agreed to sell the Craftsman® brand to Stanley, Black & Decker, Inc. and to use its reasonable best efforts either to obtain from Sears Canada a waiver of its then-exclusivity in Canada for the Craftsman® brand name or reduce the Sears Holdings ownership interest in Sears Canada below 10% and therefore trigger the process for the termination of Sears Canada's license of the Craftsman® brand name and the other trademarks governed by the Trademark License Agreement. The March 2017 amendment removed the Craftsman® brand name from the Trademark License Agreement. Concurrently with that amendment, Sears Canada entered into a license agreement with Stanley, Black & Decker, Inc. for a non-exclusive license (the first 15 years of which are royalty-free) to use the Craftsman® brand name in Canada.

27. In addition to the Trademark License Agreement, Sears Canada is party to an international merchandise purchasing agreement with Sears Holdings. This agreement is described in further detail below in the section regarding Merchandising and Sourcing.

28. Sears Canada and Sears Holdings are also parties to an information technology agreement for the sharing of information technology and software development, ownership and costs, which agreement, as amended on October 7, 2014, terminated when Sears Holdings ceased

[1] Sears, Roebuck & Co will extend the agreement for this further transition period not to exceed four years, at a royalty rate to be agreed equal to the lesser of a fair market rate based on the value of the trademarks or the lowest rate which will provide a reasonable incentive to induce Sears Canada to phase out the use of the trademarks.

to control 50% of the voting shares of Sears Canada in October 2014, subject to a three year transition period.

29. Additionally, Sears Canada and ESL are parties to an agreement where ESL will provide, at Sears Canada's request and without charge, investment, business and real estate consulting services to Sears Canada.

30. While Sears Canada's business requires use of the licenses provided pursuant to the Trademark License Agreement, the daily operations of the business of the Sears Canada Group, including those of Sears Canada, are not dependent upon the operation of the business of Sears Holdings. Rather, the two businesses are operated independently of one another by separate management teams.

Chief Place of Business

31. The chief place of business of the Sears Canada Group is Ontario. Sears Canada's head office and corporate headquarters is located in Toronto, Ontario. Approximately 7,500 employees work in Ontario. There are 65 operating Sears Canada retail stores located in Ontario as of April 29, 2017, which is the largest number of stores in any province where Sears Canada operates. Two of Sears Canada's five primary distribution centres are also located in Ontario.

The Business of the Applicants

32. The Sears Canada Group is a multi-channel retailer with a proud history of operating across Canada. Its merchandising operations include the sale of goods and services through its various retail channels and its "Direct" (catalogue/internet) channels. The Sears Canada Group's major competitors in Canada include traditional full-line department stores,

discount department stores, wholesale clubs, “big-box” retailers, internet retailers and specialty stores offering alternative retail formats.

33. The following is a brief description of the Sears Canada Group’s retail channels:

- **Full-Line Department Stores –** Sears Canada’s full-line department stores are located primarily in suburban enclosed shopping centres and range in size from approximately 30,000 to 300,000 square feet. The major merchandise categories include the following:

    - *Apparel & Accessories* - women’s, men’s and children’s apparel, nursery products, cosmetics, jewellery, footwear and accessories.

    - *Home & Hardlines* - home furnishings and mattresses, home décor, lawn and garden, hardware, leisure, seasonal products, toys, floorcare, sewing and major appliances.

    Although merchandise varies by store, the merchandise sales mix between the two major categories is approximately 60% Apparel & Accessories and 40% Home & Hardlines. Full-line department stores include a Sears catalogue and online merchandise pick-up location. Sears Travel offices and other licensed businesses, such as optical centres and portrait studios, are also located in many of Sears Canada’s full-line department stores.

- **Sears Home Stores –** Sears Home stores are typically located in power centres (large unenclosed shopping centres) and carry an extensive selection of furniture, mattresses box-springs, and major appliances. The majority of these stores range in size from 35,000 to 60,000 square feet.

- **Sears Hometown stores –** Almost all Hometown stores are independently owned and operated through a network of dealers, which have been appointed by Sears Canada for a specified period and subject to the terms and conditions of a dealer agreement. Most Hometown stores are located in markets that lack the population to support a full-line department store. These stores offer major appliances, furniture, mattresses and box-springs, outdoor power equipment as well as a catalogue and online merchandise pickup location. Hometown stores range in size from 2,000 to 10,000 square feet.

- **Outlet stores –** Outlet stores provide Sears Canada’s customers with in-store access to a broad assortment of surplus merchandise at prices that are significantly lower than Sears Canada’s retail prices. Clearance merchandise is sourced primarily from Sears Canada’s full-line department stores and Direct channel, with surplus big-ticket items sourced from all channels. Sears Canada anticipates that, going forward, it will not continue to operate Outlet stores.

- **Corbeil** – Corbeil is a chain of major appliance specialty stores located throughout Québec, the Greater Toronto Area and Eastern Ontario. There are 32 stores in the chain, 16 of which are independently owned and operated through a network of franchisees. The chain also includes two liquidation centres and one distribution centre in Montreal. Stores average approximately 6,500 square feet in size.

34. Sears Canada is in the process of transitioning its Direct sales channel from a catalogue and e-commerce business to solely an online sales / e-commerce platform. Sears Canada's website, sears.ca, enables Sears Canada to provide merchandise offers directly to online customers and highlights Sears Canada's extensive general merchandise selection. It is one of Canada's leading online shopping destinations with over 91.3 million visits in the fiscal year ended January 28, 2017 ("**Fiscal 2016**"). Sears Canada has continued to invest in its online capabilities to improve the user experience, and engage new customers and demographics, launching a new digital e-commerce platform, Initium, in November 2016.

35. As of April 29, 2017, Sears Canada had 705 order fulfilment / pick-up locations across Canada (of which 514 were independently owned and operated, and a further 191 were located within existing Sears Canada locations). Sears Canada also delivers its products directly to its customers' homes.

36. Additionally, the Sears Canada Group has a number of other sources of revenue:

(a) **Service Revenue** – the Sears Canada Group provides a number of services to its customers, including logistics and transportation services, protection agreements, home improvement services, and product repair services.

(i) Logistics and Transportation Services: In addition to providing logistics and transportation services to Sears Canada, SLH provides these services to a diverse base of third party commercial customers. SLH's business is discussed in more detail in the section regarding Distribution, below.

(ii) Protection Agreements: Sears Canada sells a variety of protection (*i.e.*, warranty) and replacement plans, including single- or multi-year coverage on major appliances, small appliances, electronics, vacuums, lawn and garden products, fitness products, and heating, ventilating and air conditioning products, as well as furniture and mattresses.

(iii) Parts and Repair Services: Sears Canada provides a number of repair services to its customers, including servicing of items covered under a Sears Protection Plan, cash calls (service fee-based repairs), as well as in-warranty service for select Kenmore®, Craftsman® and national brand products. Sears Canada has a network of home specialists that provide parts and repair services for home appliances and equipment (including HVAC products). These services are provided in part by Sears Canada employees and in part by third party contract technicians.

(b) **Commission Revenue –** the Sears Canada Group receives commissions on revenue generated by other product offerings within Sears Canada stores and under the Sears brand, including travel services, home improvement services, insurance, and wireless and long distance plans. As Sears Canada is not the primary obligor in these transactions, these commissions are recognized upon sale of the related product or service. The Sears Canada Group expects as part of these proceedings to exit some or all of its commission-generating businesses.

(c) **License Revenue** – the Sears Canada Group receives revenue comprised of license fee payments received from licensees that operate primarily within its stores, such as optical service centres. Revenue earned is based on a percentage of licensee sales. The Sears Canada Group expects as part of these proceedings to exit some or all of its license revenue generating businesses.

A. Store Formats and Locations

37. As noted above, the Sears Canada Group's different retail channels have varying store formats, locations and square footage. For its full-line department stores, Sears Canada is usually an anchor tenant for the mall or shopping centre. The following chart summarizes the Sears Canada Group's current number of store locations by region as at April 29, 2017:

	Pacific	**Prairies**	**Ontario**	**Quebec**	**Atlantic**	**TOTAL**
Full-Line Department Store	12	17	33	23	10	95
Sears Home Stores	2	3	14	4	0	23
Outlet Stores	1	1	4	3	1	10
Hometown Stores	17	21	8	4	15	65
Corbeil	0	0	6	26	0	32
National Logistics Centres	1	1	2	1	0	5
Direct Purchase Pick-Up	67	178	223	155	82	705

38. Since April 29, 2017, certain additional stores have closed or are in the process of closing.

39. As part of the completion of the operational restructuring to be implemented as part of these CCAA proceedings, the Applicants also intend to close 59 stores (20 full-line, 15 Sears Home stores, 10 Outlet stores and 14 Hometown stores) after liquidating the inventory and implementing an orderly wind-down of these stores, a list of which can be found in Exhibit “C”.

40. After the store closures described above are complete, it is anticipated that the Sears Canada Group will have 75 full-line department stores (including one pop-up shop), 8 Sears Home stores, 49 Hometown stores, 32 Corbeil stores, and 0 Outlet stores.

B. Hometown Dealers

41. The Sears Canada Group also has a network of dealers who independently own and operate 62 of its Hometown stores (collectively, the “**Hometown Dealers**”).[2] Hometown Dealers sell Sears Canada-supplied inventory in their stores and receive a range of commissions for such sales. Sears Canada makes a profit on the sale of inventory in Hometown stores, and Sears Canada maintains ownership of the inventory until it has been sold and delivered to the customer; however, ownership is regained by Sears Canada if and when the customer returns any inventory to the Hometown store.

42. Hometown Dealers are generally responsible for their own leases, employees, insurance costs, certain store fixtures, furnishings, equipment and upkeep. Hometown Dealers do not pay fees to use the Sears name and be part of the Hometown store network.

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[2] The other three stores are corporate stores.

43. Hometown stores are an integral part of the Sears Canada Group's go-forward plan, and the businesses of the Hometown Dealers and the Sears Canada Group are intertwined in a number of ways. Areas of inter-connection and inter-dependence include:

(a) Hometown Dealers exclusively sell Sears Canada inventory;

(b) Sears Canada continues to hold title to the inventory located in the Hometown stores, and this inventory is taken into account when calculating the borrowing base under Sears Canada's credit facilities (as described in greater detail below); and

(c) Sears Canada provides information technology, point of sale systems, and marketing and branding services.

C. Corbeil Franchisees

44. In 1997, Corbeil adopted a franchise model to facilitate the company's expansion. In consideration for the license to use the "Corbeil Appliances Concept" and the receipt of certain services from Corbeil, Corbeil franchisees (the "**Corbeil Franchisees**") pay Corbeil: (i) an initial franchise fee; (ii) a royalty based on gross income; (iii) marketing fees; and (iv) accounting and IT charges. The services that Corbeil provides its franchisees include: initial and ongoing training; site selection; lease negotiation assistance; layout planning; an operations manual; construction and furnishings; bid management; supply of display goods; advertising management; and consulting for financial management, marketing, and general business operations. All products and services sold at the franchise stores must be supplied by Corbeil.

45. Three of the Corbeil Franchisees own their own store premises, four franchisees lease from third party landlords, and the other nine franchisees sublease from Corbeil. It is currently intended that all of the Corbeil stores remain operational during the CCAA proceedings.

D. Real Estate and Leases

46. The Sears Canada Group owns the properties where eight full-line department stores, two Outlet stores, and one Sears Home store operate: five in Ontario, four in Quebec, and one in each of Manitoba and Prince Edward Island.

47. The majority of the other stores are held under long-term leases with Sears Canada or Corbeil as tenant. As of April 29, 2017, Sears Canada and Corbeil leased and owned the following stores:

	Leased	**Owned**	**TOTAL**
Full-Line Department Store	87	8	95
Sears Home Stores	22	1	23
Outlet stores	8	2	10
Hometown stores[3]	3	0	3
Corbeil[4]	23	0	23
Total	143	11	154

[3] Only Hometown stores that are not independently owned and operated are included. Hometown Dealers are responsible for their own leases.

[4] This figure includes 13 corporate stores and 1 liquidation centre (which is located in the same space as Corbeil's distribution centre) that are leased, as well as 9 stores which Corbeil leases and then subleases to its franchisees. Two other corporate stores are located within Sears Home stores and Corbeil pays rent to Sears Canada for those locations.

48. Catalogue and online merchandise pick-up locations are located in other Sears Canada stores or local businesses, and are therefore not included. As at April 29, 2017, the gross square footage of corporate store locations (both owned and leased) and Sears Canada's national logistics centres was approximately 19.7 million square feet.

i. ***Landlords***

49. Many of Sears Canada's store leases are held or managed by large landlords. Several of these landlords lease multiple locations to Sears Canada. The leases are generally for a current term of 1 to 10 years, with some leases granting Sears Canada multiple options to renew after that date.

50. Typical of retail store leases in Canada, many of the leases contain provisions that impact Sears Canada store operations. Sears Canada has operating covenants with landlords for a significant number of its stores. An operating covenant generally requires Sears Canada, during normal operating hours, to operate a store continuously as per the identified format in the lease agreement. The remaining term of the various operating covenants ranges from less than one year to 28 years, with an average remaining term of approximately five years, excluding options to extend leases. In addition, many of the retail leases include use and other similar restrictions.

51. Certain of Sears Canada's store leases also contain restrictions that relate to going out of business sales in one form or another, including in certain cases blanket prohibitions on "bankruptcy sales", "going out of business sales", "liquidation sales", and other similar terms. Additionally, many leases provide that Sears Canada will be in default if it becomes insolvent.

ii. ***Rights of Other Tenants in Third Party Leases***

52. Many third-party retail leases provide that tenants have certain rights against their landlords upon an anchor tenant's insolvency or upon an anchor tenant ceasing operations. For tenants of commercial properties where the Applicants' stores, offices or warehouses are located, the Applicants are asking the Court to stay rights, including but not limited to termination rights and reduction or abatement of rent, that tenants may have against the landlords, owners, operators or managers of the commercial properties that arise as a result of the Applicants' insolvency, or as a result of any steps taken by the Applicants pursuant to the proposed Initial Order. This relief is necessary to mitigate the effect of the Applicants' insolvency on their landlords and to maintain the status quo while restructuring negotiations continue.

iii. ***Owned and Leased National Logistics Centres***

53. Sears Canada operates five national logistics centres strategically located across the country, each referred to as an "**NLC**", of which one is owned and four are leased. The NLCs are located in Montreal, Québec, Vaughan and Belleville (owned), Ontario, Calgary, Alberta and Port Coquitlam, British Columbia.[5] The total floor area of these logistics centres is approximately 5.1 million square feet of which approximately 4.4 million square feet is devoted to warehouse and logistics operations. The remainder of the space is utilized for other Sears Canada operations, including the buying centre for The Cut Inc.

54. In addition to the NLCs, Corbeil leases a multipurpose distribution centre/warehouse/liquidation centre/office space in Montreal, Québec.

iv. *Office and Other Leases*

55. Sears Canada leases the office and other space for its corporate headquarters in Toronto, Ontario. Sears Canada also leases the two call centres in New Brunswick used by Sears Contact.

56. SLH leases seven shipping terminals: 2 in Ontario and 1 each in Alberta, Quebec, Manitoba, Saskatchewan, and Nova Scotia. In addition, SLH leases office premises in Kingston.

v. *Other Owned Properties*

57. Additionally, Sears Canada owns certain other real estate assets with no operating activity. As of April 29, 2017, the fair value of these properties was $2.8 million.

vi. *Subleases and Licenses to Third Parties*

58. Sears Canada has entered into a number of agreements to sub-lease premises to third parties. For instance, Sears Canada subleases store premises in Burlington, Ontario to the Hudson's Bay Company and store premises in Burnaby, B.C. to Toys R' Us. Sears Canada also subleases space to seven Active Green + Ross auto centres as well as to five KalTire tire dealers.

59. All sub-leases to third parties are classified as operating leases. Rental income from operating leases is recognized as a reduction of rent expense on a straight-line basis over the term of the lease. During Fiscal 2016, total sub-lease income from leased premises was $2.0

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[5] Sears Canada also leases an additional NLC in Calgary, Alberta that is operated by a third party. Sears Canada has terminated this contract and will no longer be using this facility as at August 18, 2017.

million. As at January 28, 2017, future minimum lease payments receivable from third party tenants totaled $12.9 million.

E. Merchandising and Sourcing

60. The sourcing and purchasing of goods sold by Sears Canada is conducted at its head office by the merchandise buying and corporate procurement teams. Sears Canada purchases its merchandise from approximately 3,300 domestic and international suppliers, many of which have long-standing relationships with Sears Canada.

61. Although Sears Canada's business is not substantially dependent on any one supplier, its relationship with certain suppliers is of significance to Sears Canada's merchandising strategy, including attracting customers to its locations, cross segment sales and image. Sears Canada is dependent upon a significant number of products that originate from non-Canadian markets. For the twelve months ended April 29, 2017, Sears Canada paid approximately USD $118.8 million for direct purchases of overseas merchandise (excluding commissions paid for merchandise purchasing services).

62. For the majority of the merchandise it purchases directly from overseas vendors, Sears Canada utilizes the international merchandise purchasing services of Sears Holdings, provided pursuant to an agreement between Sears Holdings and Sears Canada dated January 1, 1995. Sears Holdings may provide assistance to Sears Canada with respect to monitoring and facilitating the production, inspection and delivery of imported merchandise and the payment to vendors. Although Sears Holdings essentially acts as Sears Canada's purchasing agent, Sears Canada does not coordinate its merchandise purchasing with Sears Holdings. Sears Canada pays Sears Holdings a fee based on a stipulated percentage (5.5%) of the value of the imported

merchandise. In Fiscal 2016, Sears Canada paid $2.8 million to Sears Holdings in connection with this agreement.

63. Sears Canada's international merchandise purchasing arrangement with Sears Holdings is complemented by merchandise purchasing services provided by William E. Connor and Associates Ltd. Similar to the arrangement with Sears Holdings, Sears Canada pays the Connor buying group a fee based on a stipulated percentage (5.5%) of the value of the imported merchandise.

64. Corbeil has a separate merchandise purchasing program that is run out of Corbeil's head office in Montreal.

65. Title to goods purchased by Sears Canada passes based on the terms of the agreement with the specific vendor. For direct purchases of merchandise that are shipped from outside of North America, title generally passes to Sears Canada once the merchandise is loaded onto ships or airplanes for transit to Sears Canada. For all other purchases of merchandise, title generally passes when SLH (or a third party transportation service) picks up merchandise from the manufacturer or it is delivered to Sears Canada's NLCs or stores.

66. A portion of Sears Canada's merchandise is purchased in U.S. currency. As a result, exchange rate fluctuations between the Canadian and U.S. dollars may pose a risk to Sears Canada's business. In order to minimize the cost of its U.S. dollar requirements, Sears Canada uses foreign currency forward contracts to hedge exchange rate risk.

F. Distribution

67. All merchandise sold through the Retail (full-line department, Sears Home, Sears Hometown, Sears Outlet) and Direct (catalogue and internet) channels are distributed from Sears Canada's NLCs. Corbeil has a separate distribution centre in Montreal.

68. Sears Canada operates its own NLCs,[6] which are used for receiving, verifying and inspecting shipments; preparing outbound shipments for transportation to Sears Canada's stores; and inventory management. As of May 30, 2017, the NLCs held Sears Canada merchandise with a cost of approximately $174 million.

69. Sears Canada's wholly-owned subsidiary, SLH, provides logistics services for Sears Canada's merchandising operations and is responsible for transporting merchandise to Sears Canada's NLCs, stores and catalogue/internet merchandise pick-up locations. SLH also provides some transportation and distribution services to Corbeil. SLH is a federally-regulated business with its operations headquartered in Kingston, Ontario. While Sears Canada provides certain procurement, legal services, payroll services and funding, SLH's management and operations are separate from the Sears Canada retail business.

70. Additionally, SLH provides contract carrier services to over 300 commercial customers who are unrelated to the Sears Canada Group. Approximately 55% of SLH's business is with these third party customers. The third party business increases SLH's fleet utilization and improves the efficiency of its operations. SLH has developed an extensive domestic and cross-border distribution network to provide better and more consistent service to its customers. In

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[6] With the exception of the additional NLC in Calgary which is operated by a third-party. This contract has been terminated and Sears Canada will no longer use this facility after August 18, 2017.

addition to the Sears Canada NLCs, SLH has seven other strategically-located terminals across Canada.

71. SLH owns and operates a fleet of more than 268 trucks and 2,700 trailers. SLH also works with approximately 185 independent contractors who own and operate their own trucks. SLH has its own independent operating system which is used to track freight services, including pick up, routing, storage and final delivery of materials to Sears Canada and third-party customers.

72. Sears Canada must pay customs brokers, clearing houses, freight forwarders and other supply chain providers for costs incurred in transporting products from their sources inside and outside of North America. As of May 30, 2017, Sears Canada estimates that merchandise at cost of approximately $23 million was in transit to North America.

73. Sears Canada also has over 514 independent merchandise pick-up locations across Canada for its Direct line of business. These are located in stores in smaller communities and provide a convenient pick-up point for customers. Operators of these locations are paid a commission on any merchandise sent to them, as well as a fee for handling any returns.

G. Consignment Goods

74. A small proportion of product sold by Sears Canada, such as jewelry, women's apparel, and magazines, are delivered directly to Sears Canada stores under consignment arrangements by which the vendor holds title to the inventory until immediately before the sale, at which time title passes to Sears Canada.

H. Employees

75. As of May 30, 2017, the Sears Canada Group employed approximately 17,000 people, of which approximately 6,500 were full time and 10,500 were part time. In addition, the Sears Canada Group has relationships with approximately 775 independent contractors. Corbeil Franchisees and Hometown Dealers also employ approximately 250 people.

76. The following chart shows the approximate number of people employed by the Sears Canada Group in each province and in the U.S. as of May 30, 2017.[7]

Location	Full Time / Part Time	Full-Line/ Home/ Outlet	Corbeil	SLH	Other Services	Call Centre	Head Office	Total
Alberta	FT	375	0	113	191	0	0	679
	PT	873	0	0	94	0	0	967
British Columbia	FT	326	0	23	64	0	0	413
	PT	1,020	0	0	117	0	0	1,137
Manitoba	FT	87	0	25	4	0	0	116
	PT	356	0	0	7	0	0	363
New Brunswick	FT	77	0	22	3	294	0	396
	PT	290	0	0	0	5	0	295
Newfoundland	FT	49	0	0	3	0	0	52
	PT	192	0	0	2	0	0	194
Nova Scotia	FT	69	0	54	9	0	0	132
	PT	263	0	0	0	0	0	263
Ontario	FT	1,076	0	237	552	128	1,078	3,071
	PT	3,828	0	27	503	7	107	4,472
PEI	FT	15	0	0	0	0	0	15

[7] This chart does not include individuals employed by third parties such as the Corbeil franchisees, Hometown Dealers or third party licensees.

	PT	77	0	0	0	0	0	77
Quebec	FT	661	179	100	345	92	72	1,449
	PT	2,172	0	3	249	18	8	2,450
Saskatchewan	FT	94	0	16	8	0	0	118
	PT	234	0	0	3	0	0	237
U.S.	FT	0	0	0	0	0	26	26
	PT	0	0	0	0	0	1	1
Total	**FT**	**2,829**	**179**	**590**	**1,179**	**514**	**1,176**	**6,467**
	PT	**9,305**	**0**	**30**	**975**	**30**	**116**	**10,456**

77. The Sears Canada Group intends to eliminate approximately 500 non-store level positions immediately upon filing. Additional headcount reductions in the amount of approximately 2,400 will result from store closures. At this time, it is expected that some or all of these store level employees will be provided with working notice of termination. Further, it is anticipated that adjustments to compensation arrangements for certain store level employees will be made during the CCAA proceedings.

i. ***Sears Canada Store Level***

78. The majority of Sears Canada employees are "associates" who perform customer facing functions such as sales and service. As of May 30, 2017, Sears Canada employed approximately 1,795 full-time and approximately 9,267 part-time associates at the store level for a total of approximately 11,062 associates. Associates are paid hourly rates, commissions or some combination thereof. Subject to eligibility based on length of service and hours worked, associates may receive benefits packages (as described below).

79. In addition, each store has a certain number of “leaders”, who have a management role. As of May 30, 2017, Sears Canada employed approximately 1,072 leaders. Of those leaders, approximately 540 are paid at hourly rates and may be eligible for benefits, and approximately 532 are compensated through base salary and benefits. Leaders are eligible for a semi-annual incentive pay based on key store performance metrics.

80. A small number of Sears Canada employees from five stores and from one service team in Product Repair Services are represented by unions. These employees – which represent approximately 2% of the total Sears Canada employee population – are governed by various collective bargaining agreements with Unifor (Ontario), the International Brotherhood of Electrical Workers (British Columbia), and the Syndicat des Métallos (Québec).

ii. *Sears Canada Management Group and Other Salaried Employees*

81. As of May 30, 2017, Sears Canada employed approximately 1,185 people at its headquarters in Toronto, Ontario, and approximately 107 people in its other local offices. All of these employees are compensated through base salary and benefits.

82. In addition, some of these individuals are eligible to receive performance bonuses and are eligible to participate in an equity-based compensation plan that includes stock options and Performance Share Units (“**PSUs**”). There are currently outstanding 2,302,000 options to purchase commons shares and 758,170 PSUs.

iii. ***Corbeil Employees***

83. Corbeil has approximately 60 head office and warehouse employees, and another approximately 120 corporate store employees. Employee compensation is based upon responsibility level and salary scale. Sales associates are paid hourly rates and commissions on the products that they sell.

84. Management employees receive a base salary. Additionally, Corbeil offers both an Annual Incentive Plan and Contribution to Business Results ("**CTBR**") system to eligible management employees in order to promote performance. Payouts under the Annual Incentive Plan are based on achieving sales and EBITDA targets while the CTBR system determines a portion of any merit increase to salary.

iv. ***Sears Contact Employees***

85. The Sears Canada Group is currently in the process of moving its call centres from the Philippines and Bulgaria[8] to New Brunswick, with the aim of improving services as well as creating 530 new jobs. The New Brunswick call centres are operated by Sears Contact.

86. The New Brunswick government agreed to provide Sears Contact with (i) a forgivable loan of up to $2 million (which would be secured by a letter of credit and corporate guarantee from Sears Canada) for building improvements, equipment and employee training, which will earn forgiveness based on incremental payroll over six years and (ii) a payroll rebate of up to $3,356,800 for any annual incremental payroll over and above $5,555,550 to be disbursed over six years.

v. ***U.S.-Based Employees***

87. Approximately 27 employees of The Cut Inc. are based in the U.S. Those employees are generally paid a base salary and are eligible for an annual incentive bonus based on their performance.

vi. ***Payroll***

88. Sears Canada manages its own payroll processing and remits employee taxes and deductions as required. Sears Canada employees, Sears Contact employees and SLH employees who are salaried are paid monthly on the third week of each month. Sears Canada employees, Sears Contact employees and SLH employees who are hourly workers are paid bi-weekly. All these employees are paid through various RBC sub-accounts (described below in the cash management section).

89. 168886 Canada Inc employees are paid bi-weekly, and 168886 Canada Inc. uses ADP to provide payroll services for these employees.

90. The Cut Inc. and Corbeil use third party providers of payroll services (Trinet Group Inc. and Desjardins, respectively) to process payroll. The Cut Inc. employees are paid twice a month. Corbeil head office and warehouse employees are paid bi-weekly and corporate store employees are paid weekly. Employee wages, taxes and deductions are funded to ADP, Trinet Group Inc. or Desjardins on a gross basis, which then make the required payments.

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[8] The call centres in the Philippines and Bulgaria were outsourced to a third party.

91. Although Sears Canada's payroll fluctuates on a monthly basis due primarily to the change in hourly staffing levels to reflect seasonality, the average monthly wage costs of the work-force during the first quarter of Fiscal 2017 was approximately $31 million per month, excluding costs relating to pension and benefits.

vii. ***Health and Wellness Benefits***

92. The Sears Canada Group provides programs designed to enhance the health, wellness and quality of life of its employees. The programs include discounts on fitness facilities across Canada, weight loss services, home and auto insurance, tax preparation services, transportation and vehicle discounts as well as discounts on a wide range of entertainment and attractions, sporting events, magazine subscriptions and more. These programs operate at no cost to the Sears Canada Group and it intends to continue these programs during the CCAA proceedings**.**

93. The Sears Canada Group also provides eligible employees with disability, health and dental coverage. The Sears Canada Group pays for the coverage provided to full-time employees, and part-time employees may purchase coverage. The Sears Canada Group intends to continue this coverage during the CCAA proceedings.

I. <u>Pension and Other Post-Retirement Benefit Plans</u>

94. The Sears Canada Group currently maintains the following pension arrangements:

(a) Sears Canada Inc. Registered Retirement Plan, a pension plan registered under the Ontario *Pension Benefits Act*, R.S.O. 1990, c. P.8 (the "**PBA**") and the *Income Tax Act*, R.S.C. 1985, c. 1 (5^{th} Supp) (the "**ITA**") with a defined benefit component and a defined contribution component, and which is maintained for employees of Sears Canada, Sears Contact, Corbeil and SLH (the "**Sears Pension Plan**");

(b) Sears Canada Inc. Supplementary Retirement Plan, a non-registered supplemental pension plan maintained to provide benefits to eligible participants in the defined benefit component of the Sears Pension Plan (the "**Supplemental Plan**");

(c) Pension Plan for the eligible Employees of 168886 Canada Inc., a pension plan registered under the *Pension Benefits Standards Act*, R.S.C. 1985, c. 32 (2nd. Supp.) (the "**PBSA**") and the ITA which provides defined contribution pension benefits to employees in the Eastern Division of 168886 Canada Inc. (the "**168886 Eastern Plan**");

(d) Pension Plan for the eligible Employees of 168886 Canada Inc., a pension plan registered under the PBSA and the ITA which provides defined contribution pension benefits to employees in the Western Division of 168886 Canada Inc. (the "**168886 Western Plan**"); and

(e) A U.S. defined contribution pension plan for the employees of The Cut Inc. (the "**401K Plan**") that is provided through a third party administrator, Trinet.

95. In addition, all permanent employees of the Sears Canada Group are eligible to join a group registered retirement savings plan (the "**Group RRSP**") on a voluntary basis. No

member of the Sears Canada Group is required to make any contributions in respect of any of its employees that participate in the Group RRSP.

96. Sears Canada also maintains a post-retirement benefit plan, which provides life insurance, medical and dental benefits to eligible retired employees of the Sears Canada Group through an employee health and welfare trust (the "**PRB Plan**").[9]

i. ***Sears Pension Plan***

97. The Sears Pension Plan consists of a defined benefit component ("**DB Component**") and a defined contribution component ("**DC Component**"). Sears Canada acts as both the sponsor employer and as the "administrator" of the Sears Pension Plan for the purposes of the PBA. The DB Component of the Sears Pension Plan was closed to new entrants as of June 30, 2008 and all members of the DB Component ceased to accrue pensionable service after June 30, 2008.[10] However, earnings increases continue to be recognized for participants in the DB Component while such members are in active employment with Sears Canada.

98. Contributions to the DB Component of the Sears Pension Plan are required to be made in accordance with the most recent actuarial valuation report that has been filed with the pension regulator, the Financial Services Commission of Ontario, which was prepared as at December 31, 2015 and dated September 2016 (the **"Pension Valuation Report"**). The Pension Valuation Report indicates that, as at December 31, 2015, the hypothetical wind-up deficit under

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[9] Short-term disability payments for active employees are also paid through the health and welfare trust.

[10] Only Sears Canada or SLH employees are members of the DB Component of the Pension Plan.

the DB Component of the Sears Pension Plan was $266,805,000 and the transfer (wind-up) ratio was 81%.

99. The Pension Valuation Report indicates that, in accordance with temporary funding relief options available in Ontario, Sears Canada elected to consolidate the existing solvency special payments established prior to December 31, 2015 into a new five-year payment schedule and elected to defer by 12 months (*i.e.*, to December 31, 2016) the commencement of special payments relating to the new solvency deficiency established through the Pension Valuation Report. The combined effect of these two elections resulted in the minimum annual special payments required to be made to the Sears Pension Plan being approximately $44.2 million for the calendar years 2017-2020 and approximately $30.5 million for the 2021 calendar year. These special payment obligations may be modified pursuant to the next valuation report for the DB Component of the Sears Pension Plan, which is required to be performed no later than as at December 31, 2018. These special payments are currently required to be made in equal monthly installments of approximately $3.7 million and are due at the end of each month.

100. As service accruals ceased under the DB Component of the Sears Pension Plan effective July 1, 2008, no normal cost contributions are required for the DB Component of the Sears Pension Plan (however, as noted below, normal cost contributions continue to be made under the Sears Pension Plan in respect of the employees in the Sears Canada Group that participate in the DC Component of the Sears Pension Plan). As of December 31, 2016, there were 16,921 members in the DB Component of the Sears Pension Plan (3,025 active/disabled members; 160 transferred members; 195 suspended members; 396 deferred vested members; and 13,121 retired members).

101. Based on the significantly constrained liquidity position of the Applicants, the Applicants intend to serve a motion in the near term seeking court approval to cease making the monthly special payments for the DB Component of the Sears Pension Plan. The Sears Canada Group can no longer afford to make these special payments in respect of the DB Component of the Sears Pension Plan as it attempts to restructure under the CCAA. The cash forecasts described below do not include making any special payments beyond June 2017.

102. Eligible active employees of Sears Canada, Sears Contact, Corbeil and SLH[11] are eligible to participate in the DC Component of the Sears Pension Plan. Under the DC Component of the Sears Pension Plan, employees can select a contribution level from 1% to 7% of earnings (which includes base pay, variable pay, overtime pay and commissions). The participating employers under the DC Component of the Sears Pension Plan are required to make a matching contribution equal to 50% of the contributions made by an employee (*i.e.*, subject to a maximum match of 3.5% of earnings). There were 5,409 associates enrolled in the DC Component of the Sears Pension Plan as at May 25, 2017, with an additional 7,476 associates that were eligible to participate in the DC Component of the Sears Pension Plan but who had not enrolled. In Fiscal 2016, the Sears Canada Group made contributions of $4.8 million to the DC Component of the Sears Pension Plan.

103. As at the time of swearing this affidavit, to the best of my knowledge, the Sears Canada Group has paid to the Sears Pension Plan all contributions that are due (under both the DB Component and the DC Component of the Sears Pension Plan).

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[11] There are two separate defined contribution pension plans for employees of 168886 Canada Inc. (SLH's wholly-owned subsidiary), which are described in further detail below.

ii. ***Supplemental Plan***

104. The Supplemental Plan provides pension benefits to members of the DB Component of the Sears Pension Plan that are in excess of the benefits that are permitted to be provided under the Sears Pension Plan as a result of the maximum pension benefit limits under the ITA. As with the DB Component of the Sears Pension Plan, the Supplemental Plan only provides pension benefits to participating employees in respect to periods of pensionable service prior to July 1, 2008. The Supplemental Plan is not a registered plan and is not subject to the solvency/wind up funding requirements under the PBA.

105. In connection with the Supplemental Plan, Sears Canada has established a retirement compensation arrangement ("**RCA**") with CIBC Mellon Trust Company (the "**Supplemental Plan Trustee**") through which Supplemental Plan benefits (including ongoing monthly supplementary pension payments) are provided to individuals that terminated active service prior to January 1, 2010. Under the terms of the Supplemental Plan, benefits secured under the RCA are funded through a combination of letters of credit and cash. For individuals whose active service ended on or after January 1, 2010, Supplemental Plan benefits are paid directly by Sears Canada through its general revenues on a pay-as-you-go basis.

106. In fiscal 2012, Sears Canada amended the Supplemental Plan to allow the use of letters of credit to satisfy its funding requirements in respect of the benefits under the Supplemental Plan that are secured by the RCA. An actuarial valuation report prepared in respect of the Supplemental Plan as at December 31, 2015 (the **"Supplemental Plan Valuation Report"**) indicates that the funded portion of the Supplemental Plan (without taking into account any letters of credit) had a wind-up deficit of $8,405,249 as of December 31, 2015. The

Supplemental Plan Valuation Report does not deal with liabilities under the Supplemental Plan that are not funded through the RCA (i.e., liabilities in respect of the members who terminated from active status on or after January 1, 2010). Between December 31, 2015 and December 31, 2016, Sears Canada made a cash contribution to the RCA of approximately $1 million. In addition, as at May 26, 2017 a letter of credit with a face value of approximately $6.8 million was on deposit with the Supplemental Plan Trustee.

107. As of today's date, to the best of my knowledge, the Sears Canada Group has satisfied its funding requirements in respect of the benefits under the Supplemental Plan that are secured by the RCA and is current on its payment of benefits under the Supplemental Plan.

iii. ***168886 Eastern Plan***

108. Employees in the Eastern Division of 168886 Canada Inc. are eligible to participate in the 168886 Eastern Plan, which is a defined contribution pension plan that is registered under the federal PBSA and the ITA. There were 58 members of the 168886 Eastern Plan as at December 31, 2016. In Fiscal 2016, 168886 Canada Inc. made contributions of $78,844 to the 168886 Eastern Plan.

109. As of today's date, to the best of my knowledge, 168886 Canada Inc. has paid all contributions that are due to the 168886 Eastern Plan.

iv. ***168886 Western Plan***

110. Employees in the Western Division of 168886 Canada Inc. are eligible to participate in the 168886 Western Plan, which is a defined contribution pension plan that is

registered under the federal PBSA and the ITA. There were 153 members of the 168886 Western Plan as at December 31, 2016. For the payroll year ending December 17, 2016, 168886 Canada Inc. made contributions of $190,426.73 to the 168886 Western Plan.

111. As of today's date, to the best of my knowledge, 168886 Canada Inc. has paid all contributions that are due to the 168886 Western Plan.

v. ***PRB Plan***

112. Certain full-time associates hired by the Sears Canada Group prior to 1999 that met the requisite age and service requirements by December 31, 2008 are eligible for coverage for post-retirement life, health and dental benefits under the PRB Plan. Benefits under the PRB Plan are provided through a health and welfare trust on a pay-as-you-go basis.

113. In December 2009, Sears Canada made the decision to use the surplus in the health and welfare trust to make benefit payments (including benefit payments for short term disability benefits for active employees which are also provided under the trust). Beginning in February 2015, Sears Canada resumed funding the PRB Plan benefit payments since the surplus in the health and welfare trust had been depleted. There are currently no assets in the health and welfare trust.

114. An actuarial valuation of the PRB Plan is performed at least every three years, with the last valuation completed as of January 31, 2014 (the **"PRB Plan Valuation Report"**). As of January 31, 2017, Sears Canada's post-retirement benefit liabilities under the PRB Plan on an accounting basis were approximately $196 million. As at the time of swearing this affidavit,

to the best of my knowledge, Sears Canada is current on its payment of post-retirement life, health and dental benefits under the PRB Plan.

115. Similar to the above with respect to the anticipated request for the cessation of the special payments to the DB Component of the Sears Pension Plan, the Applicants intend to serve a motion in the near term seeking court approval to cease paying post-retirement benefits under the PRB Plan. The Sears Canada Group can no longer afford to make these payments as it attempts to restructure under the CCAA and the Cash Flow Forecast (defined below) does not include payments for the amounts going forward.

vi. ***The Cut Inc. 401K***

116. The Cut Inc. offers the 401K Plan to its employees through Trinet, a third party administrator. The Cut Inc. matches certain employee contributions to the 401K Plan. Contributions to the 401K Plan vest immediately.

117. As of today's date, to the best of my knowledge, The Cut Inc. has paid all contributions that are due to the 401K Plan.

vii. ***Retiree Group***

118. A group of former Sears Canada executives has formed a retiree group to advance their interests in respect of the Sears Pension Plan (the "**Retiree Group**"). The Retiree Group has retained Koskie Minsky LLP as their counsel and Sears Canada has recently started paying their reasonable legal fees. Sears Canada has been communicating with the Retiree Group with respect to the funded status and ongoing administration of the DB Component of the Sears Pension Plan.

The Applicants intend to continue this dialogue and engage with the Retiree Group as part of these CCAA proceedings.

viii. ***Notice to Pension Plan Beneficiaries***

119. As set out above, I understand that Sears Canada acts as both the sponsor employer and the administrator of the Sears Pension Plan for purposes of the PBA. I am informed by Tony Devir of Osler, Hoskin & Harcourt LLP and believe that these roles impose differing responsibilities and duties on Sears Canada, and that these responsibilities and duties may come into conflict during the course of these CCAA proceedings.

120. In view of this potential conflict, and because the Applicants are seeking that the Initial Order give Court-ordered charges including the DIP Lenders' Charges (as defined below) priority over the Encumbrances (as defined in the proposed Initial Order), including any deemed trusts created by the PBA, the Applicants intend to provide specific notice to individuals who are members, former members or retired members with entitlements under the DB Component of the Sears Pension Plan and individuals who are surviving spouses of a deceased member, former member or retired member where such surviving spouse has an entitlement to a benefit under the DB Component of the Sears Pension Plan.

121. In particular, should the Initial Order be granted, in addition to immediately engaging with Koskie Minsky LLP in its capacity as counsel to the Retiree Group, the Applicants intend to provide notice to those members of the DB Component of the Sears Pension Plan who are employees of Sears Canada through an e-mail communication and to provide notice to all other participants in the DB Component of the Sears Pension Plan (being former

members or retired members with entitlements under the DB Component of the Sears Pension Plan and individuals who are surviving spouses of a deceased member, former member or retired member where such surviving spouse has an entitlement to a benefit under the DB Component of the Sears Pension Plan) through sending letters advising them of the commencement of the CCAA proceedings, the date of the comeback hearing and the fact that issues relating to the Sears Pension Plan will be dealt with at that hearing. The notice will also direct the recipient to the Monitor's website as the place to obtain information with respect to the CCAA proceedings. The Applicants will also provide notice of the comeback hearing to the Ontario Superintendent of Financial Services.

122. I believe that this proposed notification procedure is a reasonable method of ensuring that notice of the comeback hearing and the relief to be sought therein is reasonably likely to come to the attention of the intended recipients.

J. Loyalty Program, Gift Cards and Warranties

123. In November 2015, Sears Canada launched a new Sears Club Points Program (the "**Loyalty Program**") which allows customers to earn points on purchases at Sears Canada using cash or any debit or credit card accepted by Sears Canada. Customers can then redeem points in accordance with the Loyalty Program rewards schedule for merchandise. Over 1.2 million customers are members of the Loyalty Program. A third party service provider, Exchange Solutions Inc., tracks and maintains the Loyalty Program. When points are earned, Sears Canada defers revenue equal to the fair value of the awards adjusted for expected redemptions. When awards are redeemed, the redemption value of the awards is charged against deferred revenue and recognized as revenue. The expected future redemption rates are reviewed on an ongoing basis and are adjusted based upon expected future activity. In Fiscal 2016, revenue recognized

from points redemption under the Loyalty Program totaled $22.7 million, and deferred revenue related to points issuances totaled $18.7 million. Sears Canada intends to honour the redemption of points, but customers will not be able to earn new points, during the CCAA proceedings.

124. Sears Canada also sells gift cards through its retail stores, websites and third parties with no administrative fee charges or expiration dates. A third party processor tracks the outstanding gift cards. No revenue is recognized at the time gift cards are sold. Revenue is recognized when the gift card is redeemed by the customer. Sears Canada also recognizes income when the likelihood of the gift card being redeemed by the customer is remote, which is generally at the end of 18 months subsequent to issuance, estimated based on historical redemption patterns. Sears Canada intends to continue to honour, but not sell, gift cards during the CCAA proceedings.

125. Sears Canada also sells extended warranty service contracts (with warranty coverage provided by Sears Canada or by third parties) with terms of coverage generally between 12 and 60 months. Revenue from the sale of each contract is deferred and amortized on a straight-line basis over the term of the related contract. Sears Canada intends to continue selling and honouring these warranties during the CCAA proceedings, with limited exceptions.

126. Sears Canada also intends to continue to honour the 30 day returns policy in continuing stores during the CCAA proceedings.

K. Royalty Contracts

127. Sears Canada has a number of royalty agreements pursuant to which it sells branded merchandise from various third parties. Sears Canada pays these third parties royalty

fees. As part of their operational restructuring, the Applicants intend to discontinue some or all of these royalty arrangements.

L. Critical Suppliers

128. The Applicants rely on a number of vendors and third-party service providers in operating their businesses. For instance, customs brokers, clearing houses, freight forwarders, fuel providers, and other supply chain providers are all essential to the Applicants' ability to continue running their business.

129. The Sears Canada Group relies on a number of third parties to process credit card, debit card, and other forms of electronic payment. Without these services, the Sears Canada Group would be unable to accept credit and debit cards in its retail stores, without which it would not be able to continue operating.

M. Charitable Efforts

130. For over sixty years, the Sears Canada Group has been supporting both national and local community-based initiatives through its investment in non-profit organizations. The Sears Canada Group has two main mandates for which funds are raised: children's education (emphasizing after-school programs) and children's health (emphasizing the fight against childhood cancer).

131. The Sears Canada Group has partnerships with organizations such as the Boys and Girls Clubs of Canada, Scouts Canada and Girl Guides of Canada which help children develop and reach their full potential. In addition, initiatives such as the Sears Drama Festival

and the Sears Canadian High School Design Competition also contribute to the healthy development of Canadian youth.

132. The Sears Canada Group also works with children's hospitals across the country and helps to raise funds to provide the special care required for children living with cancer as well as much needed research in the field of pediatric oncology. As an example, the Sears Canada Charitable Foundation provides funding for the Sears Cancer Clinic at the Hospital for Sick Children in Toronto. It also sponsored the ninth annual Sears National Kids Cancer Ride, in cooperation with the Coast to Coast Against Cancer Foundation.

133. Over the past year, the Sears Canada Group, its customers, vendors and employees raised or facilitated the donation of approximately $5.3 million for various charitable organizations through a variety of events and initiatives.

N. Outstanding Litigation Claims

134. The Sears Canada Group is subject to ongoing litigation from time-to-time. Unresolved litigation claims include the following:

(a) **Claims Against Sears Canada:** These include claims regarding real estate and/or environmental contamination disputes, breach of contract, constructive/wrongful dismissal, an inquiry being conducted by the Competition Bureau of Canada with respect to mattress sales, and various class actions regarding pricing practices, warranty practices, and alleged practices with a chain of dealers.

(b) **Claims Against Corbeil:** Claims include two class action claims regarding warranty practices.

135. Additionally, the Sears Canada Group is currently remediating various locations throughout Canada where it operated gas bars, auto centres and a logistics facility. The Sears Canada Group intends to continue these remediation activities during the CCAA proceedings.

The Financial Position of the Sears Canada Group

136. As a publicly traded company, Sears Canada files consolidated financial statements with the Canadian Securities Administrators through the SEDAR filing system and with the Securities and Exchange Commission in the United States. A copy of the Sears Canada Group's audited financial statements as of January 28, 2017 is attached as Exhibit "D" to this Affidavit. These are the most recent set of annual audited financial statements prepared and filed by Sears Canada.

137. In addition, a copy of the Sears Canada Group's unaudited financial statements for the first quarter ended April 29, 2017 is attached as Exhibit "E" to this affidavit. These are the most recent set of unaudited quarterly financial statements prepared and filed by Sears Canada. Certain information contained in the unaudited quarterly financial statements is summarized below.

A. Assets

138. As at April 29, 2017, the Sears Canada Group had total assets of approximately $1,187 million. This included current assets of approximately $942 million and non-current assets of approximately $245 million.

i. ***Current Assets***

139. As at April 29, 2017, the Sears Canada Group's current assets consisted of the following:

(a) Cash: $164.4 million;

(b) Accounts receivable, net: $61.5 million;

(c) Income taxes recoverable: $12.8 million;

(d) Inventories: $658.3 million;

(e) Prepaid expenses: $38.8 million;

(f) Derivative financial assets: $1.4 million; and

(g) Assets classified as held for sale: $5.2 million.

140. As of June 17, 2017, the Sears Canada Group had cash on hand of approximately $125.3 million. As set out above, inventory comprises the majority of the Sears Canada Group's current assets. As of June 17, 2017, the Sears Canada Group had inventory with a cost value of approximately $648.1 million.

ii. ***Non-Current Assets***

141. As at April 29, 2017, the Sears Canada Group's non-current assets consisted of the following:

(a) Property, plant and equipment: $233.2 million;

(b) Investment properties: $2.0 million ;

(c) Intangible assets: $2.5 million;

(d) Deferred tax assets: $0.6 million; and

(e) Other long-term assets: $6.7 million.

B. Liabilities

142. As at April 29, 2017, the Sears Canada Group had total liabilities of approximately $1,108 million. This included current liabilities of approximately $528 million and non-current liabilities of approximately $580 million.

i. *Current Liabilities*

143. As at April 29, 2017, the Sears Canada Group's current liabilities consisted of the following:

(a) Accounts payable and accrued liabilities: $333.0 million;

(b) Deferred revenue: $130.1 million;

(c) Provisions: $55.9 million;

(d) Income taxes payable: $0.6 million;

(e) Other taxes payable: $4.2 million; and

(f) Current portion of long-term obligations: $4.0 million.

ii. *Non-Current Liabilities*

144. As at April 29, 2017, the Sears Canada Group's non-current liabilities consisted of the following:

(a) Long-term debt: $120.4 million;

(b) Long-term obligations: $17.2 million;

(c) Deferred revenue: $68.1 million;

(d) Retirement benefit liability: $294.9 million; and

(e) Other long-term liabilities: $79.4 million.

145. The Sears Canada Group's long-term liabilities consist primarily of the approximately $120.4 million obligation in respect of long-term debt and the approximately $294.9 million obligation in respect of Sears Canada's retirement plans.

C. Revenue

146. The Sears Canada Group has incurred significant losses and experienced negative operating cash flows for the past several years. The following table provides a five year "snapshot" of key financial measures of the Sears Canada Group:

(in Millions)	**Fiscal 2016**	**Fiscal 2015**	**Fiscal 2014**	**Fiscal 2013**	**Fiscal 2012**
Total Revenue	$2,613.6	$3,145.7	$3,424.5	$3,991.8	$4,346.5
Adjusted EBITDA	$(282.9)	$(160.5)	$(122.4)	$35.7	$73.5
Net Earnings (Loss)	$(321.0)	$(67.9)	$(338.8)	$446.5	$101.2
Capital Expenditures	$27.4	$45.4	$54.0	$70.8	$101.6
A/R (Net)	$67.1	$59.4	$73.0	$83.3	$77.7
Inventories	$598.5	$664.8	$641.4	$774.6	$851.4
PP&E	$227.1	$444.1	$567.6	$785.5	$1,118.5
Total Assets	$1,244.4	$1,633.2	$1,774.1	$2,392.3	$2,504.7
Working Capital	$460.6	$543.0	$522.0	$567.0	$410.7
Dividends	$0	$0	$0	$509.4	$101.9

147. The decrease in revenue from Fiscal 2015 to Fiscal 2016 was attributable to sales declines in all product categories in Home & Hardlines and Apparel & Accessories, including:

(a) a decrease in the Direct channel of $203.0 million compared to Fiscal 2015, primarily due to a decrease in catalogues, catalogue pages and distribution, as well as challenges experienced with the launch of the new website;

(b) a decrease of $136.5 million as the result of store closures during and subsequent to Fiscal 2015;

(c) a decrease of commission and licensee revenue of $75.7 million, primarily due to reduced revenues after the termination of the credit card marketing and servicing agreement with JPMorgan Chase Bank, N.A. (Toronto Branch) ("**JPMorgan Chase**") in November 2015; and

(d) a decrease in services and other revenue of $8.0 million, primarily due to reduced shipping fees on sales to customers through Sears Canada's Direct channel and Sears Home stores due to store closures.

148. The Sears Canada Group's Adjusted Net Loss Before Interest, Taxes, Depreciation and Amortization ("**Adjusted EBITDA**") for Fiscal 2016 was negatively impacted by the termination of the credit card marketing and servicing agreement with JPMorgan Chase described above, by $59.5 million due to the weakening of the Canadian dollar compared to the U.S. dollar, and by $24.3 million from expenses incurred for the Initium initiative (discussed below) and challenges experienced with the launch of the new website. These negative impacts were partially offset by a $23.0 million release of a sales tax provision, savings of $14.9 million related to the closure of underperforming stores subsequent to Fiscal 2015, and a decrease of

$5.6 million in severance costs. Excluding the impact of these items, Adjusted EBITDA for Fiscal 2016 declined by $5.9 million compared to Fiscal 2015.

149. Additionally, in the first quarter of Fiscal 2017, the Sears Canada Group experienced net losses of $144.4 million. Adjusted EBITDA was a loss of $133.9 million in the first quarter compared to a loss of $75.4 million for the same quarter last year. Revenue was $505.5 million in the first quarter, a decline of 15.2% compared to the same quarter last year.

D. Secured Debt and Credit Facilities

i. *Summary of Sears Canada's Credit Facilities as of June 5, 2017*

	Type	***Current Facility***	***Amount Outstanding***
Wells Fargo Credit Agreement	Revolver based on borrowing base and letter of credit availability	Up to CAN $300.0 million	CAN $33 million plus (as of May 26, 2017) $136.6 million of outstanding letters of credit
GACP Credit Agreement	Term facility with two tranches	US$93.9 million plus up to the US$ equivalent of CAN $175 million	US$93.9 million

ii. *Description of Credit Facilities*

(a) *Wells Fargo Revolving Credit Facility*

150. On September 10, 2010, Sears Canada entered into a Credit Agreement (as amended, the "**Wells Fargo Credit Agreement**") with (i) Wells Fargo Capital Finance Corporation Canada ("**Wells Fargo**") as Administrative Agent, Co-Collateral Agent and Swingline Lender, (ii) GE Canada Finance Holding Company as Co-Collateral Agent and Documentation Agent, (iii) CIBC Asset Based Lending Inc. and Bank of Montreal as Co-Syndication Agents, (iv) Wells Fargo, GE Capital Markets (Canada) Limited, GE Capital

Markets, Inc., CIBC Asset-Based Lending Inc. and BMO Capital Markets as Joint Lead Arrangers and Bookrunners, and (v) the lenders currently participating in the syndicate (the "**Revolving Facility Lenders**"). The obligations of Sears Canada under the Wells Fargo Credit Agreement are guaranteed on a secured basis by Corbeil (and together with Sears Canada, the "**Loan Parties**").

151. The Wells Fargo Credit Agreement originally provided for an $800.0 million senior secured revolving credit facility (the "**Revolving Credit Facility**") with a maturity date of September 10, 2015. On May 28, 2014, the term of the Revolving Credit Facility was extended to May 28, 2019 and the total credit limit was reduced to $300.0 million. Advances under the Revolving Credit Facility are available by way of direct advances or letters of credit (each an "**LOC**"). A copy of the Wells Fargo Credit Agreement, including the amendments thereto, is attached as Exhibit "F".

152. Availability under the Revolving Credit Facility is determined pursuant to a borrowing base formula, up to a maximum availability of $300.0 million. The borrowing base formula is linked to the value of 85% of the Loan Parties' eligible credit card receivables plus 85% of the net orderly liquidation value of the Loan Parties' eligible inventory less the amount of reserves relating to liens or charges that could rank *pari passu* or in priority to Wells Fargo's liens and including in particular a reserve in respect of the estimated net pension deficit in the event of a wind-up of the DB Component of the Pension Plan (the "**Pension Reserve**").

153. Accordingly, borrowing availability under the Wells Fargo Credit Agreement fluctuates from month to month. Sears Canada calculates its borrowing base monthly to

determine the amount that Sears Canada can draw upon under the Revolving Credit Facility in accordance with the Wells Fargo Credit Agreement.

154. On June 5, 2017, Sears Canada completed a draw of $33 million under the Revolving Credit Facility and there is currently no material additional availability after application of the reserves. Interest on cash drawings under the Revolving Credit Facility is determined based on bankers' acceptance rates, LIBOR or prime rates plus an applicable margin. Margins range from 1.75% to 2.25% per annum depending on the type of advance subject to adjustment in accordance with a pricing grid. LOCs issued under the Revolving Credit Facility are subject to a fee of 1.75% per annum for commercial letters of credit or 2.25% per annum for standby letters of credit. Letters of credit are also subject to a fronting fee payable to the issuing bank on the undrawn and unexpired amount of such letters of credit. Interest amounts and letter of credit fees under the Revolving Credit Facility are due monthly or on the last day of the applicable interest period in the case of banker acceptance or LIBOR advances.

155. Sears Canada has a number of outstanding LOCs issued under the Revolving Credit Facility, which fluctuate in quantity and amount from time to time. As of May 26, 2017, there were 35 standby LOCs outstanding in the aggregate principal amount of approximately $117.3 million and merchandise LOCs outstanding in the aggregate principal amount of approximately US$14.3 million. Five of the standby LOCs were issued in relation to Sears Canada's sale and lease back transactions and amount to approximately $36.1 million. Ten of the standby LOCs were issued in favour of various Sears Canada suppliers and amount to approximately $27.8 million. Other beneficiaries of standby LOCs include Canadian banks,

utilities providers, and insurers. The largest amount of any single LOC is approximately $18.9 million.

156. The Revolving Credit Facility includes a requirement for mandatory repayments to the extent the loans outstanding exceed the line cap (determined by reference to the lesser of the borrowing base minus reserves and the maximum amount of the loan) or if Sears Canada's liquidity falls below a specified level. Such mandatory repayments do not reduce the credit limit. Advances and unused commitments under the Revolving Credit Facility may be optionally prepaid or reduced without premium or penalty (subject to payment of customary breakage costs in respect of banker's acceptance or LIBOR drawings prepaid before the end of the applicable interest period).

157. Due primarily to the Pension Reserve, the Revolving Credit Facility provides insufficient liquidity for Sears Canada. As such, Sears Canada evaluated additional financing opportunities that would provide additional capital relative to the collateral available.

(b) *GACP Term Loans*

158. On March 20, 2017, Sears Canada entered into a Credit Agreement (the "**GACP Credit Agreement**" and, together with the Wells Fargo Credit Agreement, the "**Credit Agreements**") with, (i) GACP Finance Co., LLC ("**GACP**") as Administrative Agent and Syndication Agent, (ii) KKR Capital Markets LLC and GACP Finance Co., LLC as Joint Lead Arrangers, (iii) TPG Specialty Lending, Inc. as Documentation agent, and (iv) the lenders currently participating in the syndicate (the "**Term Loan Lenders**"). The GACP Credit Agreement terminates on the earliest of (i) March 20, 2022, (ii) the termination date of the Wells

Fargo Credit Agreement if it is not refinanced under certain terms and (iii) the date that an earlier termination event occurs. The obligations of Sears Canada under the GACP Credit Agreement are guaranteed on a secured basis by Corbeil. A copy of the GACP Credit Agreement, including amendment thereto, is attached as Exhibit "G".

159. The GACP Credit Agreement is a term loan credit facility with two available tranches. An initial term loan of approximately US$93.9 million (CAN $125 million) was advanced on March 20, 2017 (the "**Initial Term Loan**") against a borrowing base of 10% of the Loan Parties' eligible credit card receivables plus 20% of the Loan Parties' eligible inventory (the "**Personal Property Borrowing Base Portion)**, less the amount of reserves, including the Pension Reserve under the Revolving Credit Facility.

160. The GACP Credit Agreement also provides for a delayed draw term loan available at Sears Canada's option subject to the grant of a first charge on certain owned and leased real property acceptable to Sears Canada and the Term Loan Lenders (the "**Delay Draw Term Loan**" and, together with the Initial Term Loan, the "**Term Loans**"). The amount of the Delayed Draw Term Loan cannot exceed the lesser of (a) the U.S. dollar equivalent of CAN$175 million and (b) a borrowing base of 50% of the fair market value of owned real property and 30% of the fair market value of leasehold real property, in each case with a first priority charge in favour of the Term Loan Lenders (the "**Real Property Borrowing Base Portion**"), less reserves (including the Pension Reserve). Interest on the Term Loans is determined based on the LIBOR rate (with a floor of 1%) plus a margin of 9.5% or the prime rate plus a margin of 8.5% and is payable monthly. The anticipated closing date with respect to the Delay Draw Term Loan was extended from May 4, 2017 to June 30, 2017.

161. The GACP Credit Agreement includes a requirement for mandatory repayments to the extent the loans outstanding exceed the loan cap (determined by reference to the lesser of the full borrowing base, being the Personal Property Borrowing Base Portion and the Real Property Borrowing Base Portion (if any at such time) minus the reserves, and the maximum amount of the loan) or if Sears Canada's liquidity falls below a specified level (but subject to an aggregate $20 million threshold before such repayment is required). The GACP Credit Agreement also includes prepayment penalties.

162. The GACP Credit Agreement may impact on the availability of financing under the Revolving Credit Facility. Pursuant to the GACP Credit Agreement, if the amount advanced in the Term Loans exceeds the borrowing base, the difference between those amounts becomes a reserve against the Revolving Credit Facility (the "**Push Down Reserve**"). The Push Down Reserve consequently reduces the amount of financing available to Sears Canada under the Revolving Credit Facility.

163. As noted above, based on the status of negotiations with the Term Loan Lenders, the amount that Sears Canada could expect to borrow under the Delay Draw Term Loan was reduced to an amount up to $109.1 million before transaction fees. Ultimately, Sears Canada concluded that it was not prudent to encumber its remaining real estate assets for borrowings that were significantly less than $175 million. The inability to access the full amount of this funding contributed to Sears Canada's liquidity problems and is one of the catalysts for the Applicants' decision to seek relief under the CCAA.

(c) *Collateral under the Credit Agreements*

164. The obligations of Sears Canada and Corbeil under or in connection with the Credit Agreements are secured by Sears Canada's and Corbeil's:

(a) credit card account receivables, inventory, most accounts, cash and cash equivalents and proceeds of the foregoing, and four real estate properties in Belleville, Ontario, Peterborough, Ontario, City of Trois-Rivieres, Quebec and Charlottetown, Prince Edward Island (the "**Initial Real Property Collateral**", and together with the credit card account receivables, inventory, most accounts, cash and cash equivalents and proceeds of the foregoing, the "**Wells Fargo Priority Collateral**"); and

(b) equipment, certain goods (including furniture and fixtures), accounts relating to the GACP Credit Agreement and proceeds of the foregoing and any real property collateral subsequently secured (the "**GACP Priority Collateral**" and, together with the Wells Fargo Priority Collateral, the "**Collateral**").

165. Wells Fargo has security over the Collateral pursuant to a guarantee and collateral agreement dated as of September 10, 2010 as amended and restated as of April 19, 2017, as well as deeds of hypothec and debentures with respect to the Initial Real Property Collateral (collectively, the "**Wells Fargo Collateral Agreements**"). A copy of the amended and restated Wells Fargo Collateral Agreement is attached as Exhibit "H".

166. GACP has security over the Collateral pursuant to a guarantee and collateral agreement dated as of March 20, 2017 and amended and restated as of April 19, 2017, as well as

deeds of hypothec and debentures with respect to the Initial Real Property Collateral (collectively, the "**GACP Collateral Agreements**"). A copy of the amended and restated GACP Collateral Agreements is attached as Exhibit "I".

167. The respective priorities of Wells Fargo and GACP with respect to the Collateral are governed by an Intercreditor Agreement dated as of March 20, 2017 made between Wells Fargo and GACP and acknowledged by Sears Canada and Corbeil. A copy of the Intercreditor Agreement is attached as Exhibit "J". Subject to two limited inventory suppliers, (i) Wells Fargo has first priority over the Wells Fargo Priority Collateral and has second priority over the GACP Priority Collateral, and (ii) GACP has first priority over the GACP Priority Collateral and has second priority over the Wells Fargo Priority Collateral.

168. As at January 28, 2017, restricted cash of $100 million was pledged voluntarily as collateral under the Revolving Credit Facility to provide additional security to the Revolving Facility Lenders. This amount was then reduced to $30 million. Subsequently, the $30 million in restricted cash was returned to the company.

Cash Management System

169. In the ordinary course of business, Sears Canada uses a centralized cash management system to monitor account activity and balances for itself and each of its subsidiaries with the exception of Corbeil and SLH, which have their own cash management systems (the "**Sears Cash Management System**"). These accounts are monitored daily and managed centrally at Sears Canada's head office in Toronto. The Sears Cash Management System facilitates cash forecasting and reporting, monitoring, collection and disbursement of funds, and control over the administration of various bank accounts required to effect the

collection, disbursement and movement of cash. There are various blocked account agreements in place, but none have been activated at this time.

170. The Sears Cash Management System involves four main banks with over 80 bank accounts. In general, Royal Bank of Canada ("**RBC**") and Bank of Montreal ("**BMO**") provide the primary accounts for receipts of credit, debit and EFT transactions as well as the primary accounts for disbursements. Canadian Imperial Bank of Commerce ("**CIBC**") provides the primary accounts for cash receipts from the Sears Canada stores. Sears Canada uses BMO for Canadian dollar EFT disbursements to its North American vendors, while HSBC Canada ("**HSBC**") and RBC are used for USD EFT disbursements to North American and international vendors.

171. Sears Canada uses a variety of receipt and disbursement sub-accounts which are consolidated on a monthly basis into central accounts at each bank referred to as "Concentrator Accounts".[12] The RBC Canadian and US dollar Concentrator Accounts are Sears Canada's main operating accounts. Funds are transferred from the Concentrator Accounts at CIBC and BMO either directly to the RBC USD Concentrator or else into the RBC Canadian dollar accounts by way of the RBC treasury account. When funds must be transferred out of the RBC Concentrator Account to other Concentrator Accounts (e.g. BMO or HSBC) or other entities (e.g. Corbeil), these funds are transferred through the RBC treasury account.

172. Corbeil has a largely independent cash management system (the "**Corbeil Cash Management System**") that is managed from Corbeil's head office in Montreal. Similarly, SLH

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[12] The sub-accounts are each designated to process a certain type of transaction (e.g. Visa card settlements, direct deposit payroll payments) to simplify the reconciliation of the account activity.

also has a largely independent cash management system (the "**SLH Cash Management System**") that is managed from SLH's head office in Kingston. All of the Corbeil and SLH accounts are with RBC. Sears Canada will fund or remove excess cash from the SLH or Corbeil accounts when needed or available.

173. Except for The Cut Inc.'s bank account at RBC Bank (Georgia) NA, all of the accounts are located in Canada, regardless of the financial institution. The Cut Inc. also has a USD denominated bank account located in Canada.

A. Sears Canada Receipts

i. *Credit/Debit Payments*

174. Debit and credit card settlements represent approximately 90% of receipts from Sears Canada store sales.[13] Additionally, sales from Sears Canada's online platform are all credit card transactions and Sears Canada has a number of other receipt streams where customers pay using credit cards.

175. All card transaction settlements except for MasterCard are deposited into various deposit-only sub-accounts at RBC. Funds are swept automatically from these sub-accounts at the end of each day into the RBC Treasury Account and then to the RBC Concentrator Account. MasterCard settlements are deposited into a sub-account at BMO and swept into the main BMO account (the "**BMO Concentrator Account**") at the end of each day.

[13] Sears Canada uses a third party, Moneris Solutions Corporation ("**Moneris**"), to process the card transactions.

ii. ***Cash Receipts***

176. Cash receipts represent approximately 10% of receipts from Sears Canada's store sales.[14] All retail stores, other than independent Direct pick-up locations and Hometown Dealer locations, use CIBC as their depository bank. All Canadian funds are deposited into sub-accounts which are swept monthly to a CIBC Canadian Concentrator Account. All US funds are deposited into sub-accounts which are swept monthly to a CIBC USD Concentrator Account. Periodically, the CIBC USD Concentrator Account is swept into an RBC account which is, in turn, swept into an RBC USD Concentrator Account.

177. Independent Direct pick-up locations and Sears Hometown Dealers utilize banks that are convenient to their locations as many stores are in rural areas with limited banking options, and store staff is responsible for depositing cash receipts. On a regular basis, funds in the depository bank accounts of the independent Direct pick-up and Hometown Dealer locations are transferred by EFT transactions into a single bank account at RBC, which is then swept on a regular basis into the RBC Concentrator Account.

iii. ***Other Receipts***

178. Sears Canada has a number of other sources of receipts which are deposited into sub-accounts (either with CIBC (cheques/cash) or RBC (EFT)) which are swept into the applicable Concentrator Accounts (e.g. Head Office Deposits, Western Union Receipts, etc.).

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[14] Sears Canada uses a third party, Brinks, to collect cash from the stores. The pickups typically occur once per week.

B. Sears Canada Disbursements

179. Sears Canada uses separate sub-accounts at various banks to process disbursements. These accounts run negative balances as payments are made and are funded by a transfer of funds from the associated Concentrator Account. The relevant banking institution monitors the overall cash position of Sears Canada, which allows for these accounts to run a negative balance at any given time. Sears Canada generally maintains a consolidated $5 million float of cash when considering making payments from the Concentrator Account. It reviews the net balance of funds with each institution on a daily basis.

i. ***Payroll***

180. Payroll for Sears Canada employees and SLH employees is funded through two RBC sub-accounts depending on whether the employee is paid by cheque or the funds are deposited directly into their individual bank account.[15]

181. The Cut Inc. has its own bank account with RBC that is used to make payroll related disbursements to its third party payroll processing service provider.

ii. ***Health Benefits***

182. Sears Canada has an account at RBC which it uses to fund its obligations to employees on sick leave. Funds are transferred to this account from the RBC Treasury Account.

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[15] 168886 Canada Inc. employees are paid by third-party service provider ADP, which is paid by SLH through its own cash management system.

iii. ***Vendor Payments***

183. Payments to vendors by EFT are processed through Sears Canada's accounts with BMO and HSBC. Canadian denominated EFT payments to North American vendors are made directly from the BMO Concentrator Account. US dollar denominated EFT payments to North American or international vendors are paid from either a BMO sub-account or an HSBC sub-account which is funded from an RBC USD account.

184. Payments to North American vendors paid by cheque are processed from the various sub-accounts of the RBC CAD and USD Concentrator Accounts.

iv. ***Revolving Credit Facility Repayments***

185. Any repayments on the Revolving Credit Facility are processed directly from the RBC Treasury account. Sears Canada does not have a bank account with Wells Fargo.

v. ***Other Disbursements***

186. Sears Canada has a number of other disbursement accounts for various purposes, such as a CIBC sub-account for coin purchases as well as RBC and CIBC accounts to fund chargebacks and "not sufficient funds" customer purchases. Additionally, Sears Canada has bank accounts with Toronto Dominion Bank ("**TD**"), National Bank and the Bank of Nova Scotia ("**BNS**") in order to pay the bank fees payable on the individual dealer bank accounts provided by these institutions.

C. Corbeil Cash Management System

187. Corbeil has its own group of bank accounts with RBC and funds its own operations primarily from its cash receipts. Sears Canada will also provide funding to Corbeil on an as needed basis throughout the year. Corbeil has two main accounts at RBC, a “Chequing” account and a “Receipts/Non-Cheque Disbursement” account. Cash receipts and credit card settlements are deposited into two RBC sub-accounts and swept into the RBC Chequing account at the end of each day. Cash transfers from Sears Canada are deposited directly into the RBC Chequing account. Miscellaneous corporate receipts (e.g., tax refunds etc.) are deposited into the RBC Receipts/Non-Cheque Disbursement account.

188. Disbursements to suppliers made by cheque or by EFT are processed through the RBC Chequing account.

D. SLH Cash Management System

189. SLH has its own group of bank accounts with RBC and funds its own operations directly from cash receipts and from funding provided by Sears Canada.

190. SLH collections on its third party customer accounts are deposited into two accounts at RBC (one Canadian dollar and one USD). The Canadian dollar account is swept automatically every day into SLH’s main RBC Concentrator Account.

191. SLH has five Canadian dollar and one US dollar denominated RBC sub-accounts that it uses for SLH disbursements. The Canadian dollar sub-accounts are funded from SLH’s main RBC Concentrator Account and the US dollar disbursement account is funded from the SLH USD deposits account.

E. **Intercompany Debt**

192. Intercompany balances between members of the Sears Canada Group exist as a result of, among other things: (i) inter-company cash management and finance functions; (ii) the provision of services among Sears Canada Group members; and (iii) the payment of certain subsidiaries' operating costs by Sears Canada. In the ordinary course of business, these intercompany amounts fluctuate from time to time.

The Urgent Need for Relief under the CCAA

193. The Sears Canada Group has experienced many years of declining sales and significant losses, with net losses beginning in 2014.

194. Factors contributing to this decline in financial performance include: (i) a general weakening of the traditional Canadian retail industry; (ii) unsustainable fixed costs from an overly broad footprint; (iii) the decline of the catalogue business; (iv) lower than expected conversion of catalogue customers to online customers; (v) the inability to secure an agreement with a financial institution for the management of its credit and financial services operations; and (vi) the weakening of the Canadian dollar.

195. The Sears Canada Group has been able to maintain liquidity during this time of transformation through monetizing the value in its real estate and other assets. The dispositions of assets by the Sears Canada Group have resulted in the following cash receipts (in $ millions) in recent years:

	2013	**2014**	**2015**	**2016**
Proceeds from sale of joint ventures	$315.4	$71.7	$0.0	$0.0
Proceeds from credit card termination	$0.0	$0.0	$174.0	$0.0

Proceeds from sale and leaseback	$0.0	$0.0	$130.0	$257.1
Proceeds from lease terminations	$590.5	$0.0	$0.0	$37.9
Proceeds from sale of Assets	$1.9	$1.2	$0.3	$3.1
Total	$907.8	$72.9	$304.3	$298.1

196. The Sears Canada Group has used the proceeds from these transactions to, among other things, pay dividends (prior to 2014) and fund the strategic initiatives detailed below.

197. As a result of the Sears Canada Group's poor financial performance and considerable negative press, vendors supplying inventory to Sears Canada have increasingly been imposing reduced terms on the company. This has further exacerbated liquidity issues.

198. Additionally, the Sears Canada Group faces certain challenges with respect to its pension and postretirement benefit obligations. While the Sears Canada Group is up-to-date with the current required contributions to the Sears Pension Plan, the DB Component of the Sears Pension Plan has a large funding deficit when calculated on a wind-up basis and the monthly special payments place a significant strain on the liquidity available to conduct ongoing operations. The funding deficit has become a significant risk and impediment to the Sears Canada Group's ongoing business, including through the pension reserves taken by its lenders.

199. The Sears Canada Group continues to face significant challenges. The Canadian retail market remains highly competitive as key players and new entrants compete for market share, including as a result of the growth of luxury retailers entering the market and the continued expansion of online sales. Certain international retailers continue to expand into Canada while existing retailers enhance their product offerings and become direct competitors. In addition, the weakening of the Canadian dollar continues to present additional challenges for

Canadian retailers, as this generally leads to higher costs for the company as many goods are purchased with US dollars.

200. The timing of this CCAA application is principally a function of declining liquidity. The Applicants cannot complete the implementation of their operational restructuring without additional liquidity and the stability created by a stay of proceedings under the CCAA. The Applicants simply do not have sufficient cash and projected cash going forward to continue their restructuring initiatives without the benefit of court protection.

201. In addition, the Applicants need to "right size" their operations through negotiations with stakeholders, the disclaimer of a number of unprofitable store locations, reducing the store footprint, staffing reductions, and eliminating a number of businesses and product lines. Right-sizing the business will also have ancillary implications on the Applicants' purchasing, distribution and logistics functions, among others. All of this will be assisted through court-supervised restructuring proceedings.

202. A stay of proceedings is needed while the Sears Canada Group navigates its restructuring and to otherwise ensure the stability and preservation of the going concern value of the business.

203. The success of the Applicants' restructuring efforts will depend principally upon: (i) addressing long term liquidity issues so as to ensure future viability of operations (which may entail a sale of all or parts of the business or securing a source of exit financing sufficient to adequately capitalize the business going forward); and (ii) completing the operational transformation of the Sears Canada Group.

204. The Sears Canada Group has recently taken steps to engage a number of parties to assist in formulating and executing on potential restructuring strategies, including: (i) Osler, Hoskin & Harcourt LLP (“**Osler**”), counsel to the Sears Canada Group; (ii) FTI Consulting Canada Inc. (“**FTI**”), as prospective CCAA Monitor (in such capacity and if so appointed by the Court, the “**Monitor**”); (iii) Bennett Jones LLP (“**Bennett Jones**”), as independent counsel to Sears Canada’s board of directors and the Special Committee of Sears Canada’s board of directors, described below; and (iv) BMO Capital Markets, as investment banker and financial advisor (the “**Financial Advisor**”).

205. Additionally, the board of directors of Sears Canada recently constituted a special committee of independent directors (the “**Special Committee**”) to consider various strategic alternatives, including obtaining sources of capital, the recapitalization or restructuring of the Sears Canada Group or the sale of material assets or all of its business, or any alternatives to the aforementioned transactions, which may include insolvency-related proceedings.

206. Due to, among other things, Sears Canada’s inability to draw the full amount of the Delayed Draw Term Loan, and the continuing and mounting operating losses being faced by the company, the Sears Canada Group is facing a looming liquidity crisis and will be unable to meet its obligations as they become due without court protection. Further, the Sears Canada Group does not have sufficient liquidity to pay the claims that will be triggered through the last phase of the operational restructuring described herein.

207. The Applicants are therefore insolvent and will be unable to meet their obligations as they come due without the benefit of an Initial CCAA Order and the receipt of DIP financing. If the Applicants are not permitted the opportunity to restructure under the CCAA or are not able

to successfully restructure and instead proceeded to bankruptcy, the expected proceeds of the Applicants' assets and business would in all likelihood be insufficient to pay in full the claims of their creditors (including those claims arising by virtue of the Applicants ceasing to operate).

208. The Special Committee has spent considerable time considering strategic alternatives for the Sears Canada Group with a view to making a recommendation on such alternatives to the full board of directors. The Special Committee has received presentations and/or information from senior management, the Financial Advisor, the Proposed Monitor, and Osler in the course of discharging its mandate. It has also received independent legal advice from Bennett Jones. After a thorough consideration of the options facing the company, and based on advice of its and Sears Canada's professional advisors referred to above, the Special Committee resolved to recommend the filing of this CCAA application to the board of directors.

209. Following a review of the Sears Canada Group's performance described above, the careful consideration of all options, and the recommendation of the Special Committee, the board of directors of Sears Canada has determined that, in its business judgement, and based on advice of its and Sears Canada's professional advisors referred to above, it is in the best interest of its business and its stakeholders to file for CCAA protection.

Restructuring Efforts to Date

210. In response to the losses incurred over the last several years, the Sears Canada Group has taken a number of actions to re-engineer its business for long-term growth. The initiatives to achieve this objective have been established within five primary workstreams, which are designed to drive the Sears Canada Group's business goals of increasing revenue and maintaining a strong balance sheet. The five primary workstreams are as follows:

(a) **Sears 2.0** - Moving Sears Canada's physical retail stores to a more productive model, with a customer-focused and relevant assortment of products, faster inventory turns, and an assessment of the required square footage per store.

(b) **Initium** - Building a new technology architecture to run Sears Canada with an upgraded e-commerce experience and logistics capabilities. The platform has the potential to structure Sears Canada as a digital commerce company with a network of stores attached, as opposed to a network of stores and legacy technology with a separate e-commerce business.

(c) **Real Estate** - Matching the Sears Canada Group's real estate portfolio to better suit its needs for a profitable store-based retail business.

(d) **Cost Reduction** - Bringing the Sears Canada Group's Selling, General and Administrative expense structure in line with its revenue.

(e) **New Off-Price Business, Fast Fashion and Sears Label Essentials** - Launching Sears Canada's new off-price business **–** The Cut @ Sears **–** as well as its new fast fashion offering and rebranding Sears Canada's private label businesses.

211. As described below, the Sears Canada Group has made progress on these key workstreams:

A. <u>Sears 2.0</u>

- **Prototype Stores**: In 2016, Sears Canada launched its first new Sears 2.0 prototype stores at four locations in Ontario. The stores underwent significant changes in their layout and offerings all designed to deliver quality products at affordable prices. Sears Canada plans to convert ten more stores to the Sears 2.0 format in 2017.

- **Price Scraping**: Sears Canada implemented a program whereby it researches competitor pricing daily to seek to ensure Sears Canada offers the lowest price on comparative appliances and mattresses.

- **Financing**: Sears Canada entered into a new loan processing and servicing agreement with easyFinancial Services Inc. to extend financing options to Sears Canada's customers purchasing major appliances and other home appliances.

- **Operational Reorganization**: Sears Canada has made several changes to its store structures to improve efficiency and increase the effectiveness of the chain of communication between management and the store associate teams within its retail stores. For instance, in January 2017, Sears Canada announced that it would separate the leadership structure of its full-line department stores into (i) Apparel and Accessories and (ii) Home and Hardlines so that leaders can manage smaller areas of the store more efficiently and with greater expertise.

- **New Logo**: Sears Canada unveiled a new logo during the third quarter of 2016 as part of its plan to re-invigorate and revitalize Sears Canada across all lines of business.

B. Initium

212. In the first quarter of Fiscal 2016, Sears Canada launched Initium Commerce Lab, an innovation hub, to design and implement a modernized technology platform for Sears Canada. Initium is an open-concept, creative environment, physically located away from head office operations to more easily facilitate the generation of new ideas and focus on delivering customer-centric, digital solutions.

- **New Website**: The new digital e-commerce platform launched the new Sears Canada website nationally in November 2016. While the transition to the new website initially encountered some significant technical difficulties, these difficulties are in the process of being addressed.

- **Technology Infrastructure**: In the second quarter of 2016, Sears Canada announced that it had entered into an agreement with a third party vendor to help streamline and update Sears Canada's current technology infrastructure and mainframe applications with the goal of reducing costs and improving efficiency, enabling the company to decommission legacy systems concurrent to establishing Initium. This agreement will also protect Sears Canada's technology environments with advanced cybersecurity solutions, and assist Sears Canada with elements of its new technology architecture.

C. Real Estate

213. Commencing in or about Fiscal 2012, the Sears Canada Group has undertaken a series of property sales and location closures in order to streamline its operations and eliminate unprofitable locations. This "right-sizing" strategy has included: (i) selling owned property that

was no longer required, (ii) selling owned property that was still required and leasing-back the property; and (iii) closing leased locations.

214. Since the beginning of Fiscal 2016 alone, the Sears Canada Group completed the following real estate transactions:

- Closed and self-liquidated numerous underperforming stores;
- Completed sale and leaseback transactions with respect to its NLCs located in Vaughan, Ontario, Calgary, Alberta, Port Coquitlam, British Columbia, and Montreal, Quebec;
- Completed sale and leaseback transactions with respect to certain retail stores;
- Completed a lease termination of the office floors at the Toronto Eaton Centre;
- Sold two former NLCs located in Regina, Saskatchewan; and
- Assigned eight of its Sears Home banner store leases to Leon's Furniture Ltd.

D. Cost Reduction

215. The Sears Canada Group achieved annualized cost reductions of $159.6 million in Fiscal 2016, which exceeded the upper range of its target of $155.0 million in annualized cost reductions. These reductions were primarily achieved through: store closures, headcount reductions and exiting unprofitable lines of business.

E. <u>New Off-Price Business, Fast Fashion and Sears Label Essentials</u>

216. In early 2017, Sears Canada officially launched its off-price business as "The Cut @ Sears". The Cut @ Sears has a dedicated merchandising team to bring deals on designer products to Sears Canada's customers. This merchandise is available online as well as in specific sections of certain Sears Canada full-line stores.

217. Sears Canada also launched a new fast fashion offering which features trendy, high-fashion apparel aimed at a millennial lifestyle audience.

218. In March 2017, Sears Canada also began rebranding its private label businesses with the introduction of a new line of everyday favorites on the Sears Label – key essentials for women, men, kids and the home. Sears Label essentials are positioned at elevated quality with prices designed to turn the inventory quickly.

F. <u>Additional Efforts to Boost Liquidity</u>

219. In addition to the efforts noted above, Sears Canada has sought to enhance its financial flexibility by entering into the GACP Credit Agreement.

Relief Sought

220. The Sears Canada Group has made significant efforts to pursue a restructuring outside of a formal insolvency proceeding. The Sears Canada Group's liquidity position continues to deteriorate and a going concern note was included in its first quarter financial statements for Fiscal 2017. The Sears Canada Group does not have adequate liquidity to fulfill current business objectives and maintain going concern operations without commencing a

CCAA process, including the DIP Facility. As set out above, the Sears Canada Group will be unable to meet its liabilities as they become due and is therefore insolvent.

A. **Stay of Proceedings**

221. In order to provide breathing space to the Applicants while they restructure and to permit the Sears Canada Group to continue to operate as a going concern, the Applicants require a stay of proceedings. The Applicants are concerned about the potential termination of contracts by key suppliers and the inability to require suppliers to provide future product in accordance with contractual arrangements. It would be detrimental to the Sears Canada Group's ability to restructure if proceedings were commenced or continued or rights and remedies were exercised against the Applicants.

222. The Applicants request that the benefit of the stay of proceedings be extended to the Hometown Dealers and the Corbeil Franchisees with respect to any claims against them arising out of the Applicants' insolvency and the application for protection under the CCAA.

223. The operations of the Sears Canada Group, the Hometown Dealers and the Corbeil Franchisees are intertwined and the proposed limited extension of the stay is necessary to maintain stability and value in the CCAA process. Hometown Dealer stores allow Sears Canada to operate in smaller markets that cannot support a full-line department store and any third party actions that could affect their operations may result in a loss of revenue. Further, a significant portion of the Hometown Dealer stores are projected to be part of the reconfigured Sears footprint on a go-forward basis. Similarly, Corbeil Franchisees account for half of the Corbeil store footprint and are integral to the continued success of the Corbeil business going forward.

224. Any proceedings commenced against Hometown Dealers or Corbeil Franchisees would necessarily require the participation of key personnel of the Applicants – for example, to provide evidentiary support for the defence of such claims through witnesses or documents. The need to provide such support could be a very significant distraction for the Applicants' key personnel during the restructuring and would materially detract from the paramount goal of achieving the timely restructuring of the business. Additionally, it would negatively affect the Sears Canada Group's plan to continue with its Hometown Dealer stores and Corbeil Franchisees, and would hamper ongoing business relations at this critical time.

225. The stay will allow management to develop and oversee an orderly restructuring of the business with less disruption to the Applicants' current business operations, as well as to continue implementing the operational restructuring initiatives. This, in turn, will help to protect the interests of the Sears Canada Group's stakeholders, including employees, suppliers, landlords, customers and lenders. Having regard to the circumstances, and in an effort to preserve the going concern value of the Sears Canada Group's business, I believe that the granting of a stay of proceedings is in the best interests of the Sears Canada Group and its stakeholders.

226. As noted above, the Applicants are also seeking to stay rights, including but not limited to termination rights and reduction or abatement of rent, that tenants may have against the landlords, owners, operators or managers of the commercial properties where the Sears Canada Group's stores, offices or warehouses are located that arise as a result of the Applicants' insolvency, or as a result of any steps taken by the Applicants pursuant to the proposed Initial Order.

B. <u>DIP Financing</u>

227. Because of its current liquidity challenges, and as demonstrated in the Cash Flow Forecast (discussed below), the Sears Canada Group requires interim financing to provide stability, continue going concern operations and to restructure its business as part of this CCAA proceeding.

228. As part of the Sears Canada Group's consideration of strategic alternatives, Sears Canada's current lenders were canvassed on their willingness to provide DIP financing. In the view of the Financial Advisor, the existing lenders would be in the best position to provide DIP financing in a timely manner as they were already familiar with the Sears Canada Group, its complex business and collateral base. Although discussions were held with another potential financier, the Financial Advisor was of the view that, given the rapidly deteriorating financial position of the Applicants, any non-current lender would likely be unable to conduct due diligence and provide committed DIP financing in the urgent timeframe required. Further, a DIP facility provided by the current lenders would avoid potentially distracting litigation involving a third party priming DIP facility.

229. Subject to certain terms and conditions, the Term Loan Lenders and the Revolving Facility Lenders (collectively, the "**DIP Lenders**") have agreed to provide the DIP Facility to Sears Canada consisting of a $300 million revolving credit facility (the "**DIP Revolver**") as well as a term loan in the amount of the US$ equivalent of CAN$150 million (the "**DIP Term Loan**"). The DIP Facility is guaranteed, jointly and severally, by the Applicants. The related credit agreements (the "**DIP Revolving Credit Agreement**" and the "**DIP Term Loan Credit Agreement**", collectively the "**DIP Credit Agreements**") and fee letters are attached to this affidavit as Exhibit "K".

230. The funds available under the DIP Facility will be used to meet the Sears Canada Group's funding requirements during the CCAA proceedings in accordance with the Cash Flow Forecast, including the payment of professional fees and other costs and expenses in connection with the CCAA proceedings.

231. The DIP Credit Agreements do not contemplate, or permit the Sears Canada Group to make, any draws on the DIP Facility until after the comeback hearing. The Cash Flow Forecast demonstrates that the Applicants will not require the additional liquidity provided by the DIP Facility until after the comeback hearing. Nevertheless, it is essential that the DIP Facility is approved at the commencement of the CCAA proceeding in order to provide stability and certainty to the CCAA proceedings.

232. The DIP Facility includes the following commercial terms:

(a) **Interest**: DIP Term Loan: LIBOR + 11.0% (with a floor of 1%) or US prime rate + 10.0%; DIP Revolver (on cash advances) LIBOR + 4.50% or Prime rate + 3.50%; DIP Revolver (on LOCs): (a) 4.50% per annum, in the case of a Standby LOC, and (b) 4.00% per annum, in the case of a merchandise (commercial) LOC.

(b) **Commitment Fee**: DIP Term Loan: 3.5%, DIP Revolver: 1.25%;

(c) **Unused Line Fee**: DIP Revolver: 0.375%; and

(d) **Exit Fee**: DIP Term Loan 1.5%.

233. Certain prepayment and termination fees with respect to the Initial Term Loan (in the amount of approximately $5 million) become due and payable as outstanding obligations under the GACP Credit Agreement upon the commencement of this CCAA proceeding. The DIP Term Loan Credit Agreement provides that these fees will not be payable provided that Sears Canada repay in full all amounts owing pursuant to the Initial Term Loan on or before a specified date using cash on hand or post-filing receipts.

234. As discussed above, there are a number of outstanding and undrawn LOCs under the Revolving Credit Facility. In the event that a beneficiary draws on an LOC from and after the commencement of these CCAA proceedings, Sears Canada's obligation to reimburse the Revolver Lenders is triggered (the "**Reimbursement Obligation**"). The DIP Facility provides that from and after the comeback hearing, the amount of any outstanding Reimbursement Obligation will be deemed to be an advance under the DIP Revolver secured by the DIP Revolver Charge (as defined below).

235. Undrawn LOCs remain obligations of Sears Canada under the Revolving Credit Facility. Pursuant to the DIP Agreement, the undrawn LOCs will be cash collateralized by Sears Canada following the comeback hearing from cash on hand or through use of the DIP Facility. The funds to cash collateralize the undrawn LOCs will be deposited into the L/C Collateral Account (as defined in the DIP Revolving Credit Agreement).

236. Pursuant to the DIP Credit Agreements, after the comeback hearing, any pre-filing amounts outstanding under the Revolving Credit Facility and Initial Term Loan will be repaid using cash on hand or post-filing receipts. Pre-filing amounts outstanding under the Revolving Credit Facility are to be paid down prior to pre-filing amounts outstanding under the

Initial Term Loan. The DIP Credit Agreements specifically provide that advances under the DIP Facility cannot be used to satisfy these pre-filing obligations.

237. It is a condition precedent to the availability of the DIP Facility that the Initial Order be in form and substance satisfactory to the DIP Lenders, including in respect of the granting of the DIP Lenders' Charges (as defined below). The maturity date of the DIP Facility is the earliest of (i) December 20, 2017, (ii) termination of the DIP Facility by Sears Canada, or (iii) the occurrence of an "Event of Default" to be defined in each applicable DIP Credit Agreement.

238. The DIP Credit Agreements require that the following milestones, among others, be met (all capitalized terms not previously defined as defined in the DIP Credit Agreements):

(a) Sears Canada must commence CCAA proceedings and obtain the Initial Order on or prior to **June 23, 2017**;

(b) The Comeback Motion in respect of the Initial Order, which shall be in form and substance satisfactory to each Agent, and which shall include seeking authority to implement the SISP and approve the DIP Lenders' Charges on a final basis, shall be heard on or before **July 13, 2017**;

(c) On or before **July 21, 2017**, the Court shall enter an order approving the SISP (the "**SISP Order**"), which shall be in form and substance acceptable to each Agent;

(d) **Within 3 Business Days** of the issuance of the SISP Order, Sears Canada shall forward process letters to potential bidders;

(e) On or before **September 25, 2017**, Sears Canada, with the consent of each Agent and the DIP Lenders, shall have selected the binding bid(s) (the "**Successful Bid(s)**") and negotiated definitive documentation in respect of the Successful Bid(s) in form and substance acceptable to each Agent and the DIP Lenders;

(f) On or before **September 27, 2017**, Sears Canada, with the consent of each Agent and the DIP Lenders, shall have identified store locations, if any, where the inventory at such locations are not included in any Successful Bid(s) and shall have sought the required authority to and shall have commenced store closure sales for all such locations and inventory located thereon;

(g) On or before **September 29, 2017**, Sears Canada shall have served a motion seeking approval of the Successful Bid(s) by the Court;

(h) On or before **October 4, 2017**, the Court shall have approved the Successful Bid(s); and

(i) On or before **October 25, 2017**, Sears Canada shall have consummated the Successful Bid(s), which shall be in form and substance acceptable to the Agent and the DIP Lenders.

239. The DIP Revolver and the DIP Term Loan are proposed to be secured by Court-ordered security interests, liens and charges (the "**DIP Revolver Charge**" and the "**DIP Term Loan Charge**", respectively, and together the "**DIP Lenders' Charges**") on all of the present and future assets, property and undertaking of the Applicants, including any cash on hand at the

day of the filing (the "**Property**"). The DIP Lenders' Charges will not secure any obligation that exists before the Initial Order is made.

240. The DIP Lenders' Charges are to have priority over all other security interests, charges and liens other than the Administration Charge, the FA Charge, the KERP Priority Charge and the Directors' Priority Charge (all as defined below, and collectively with the KERP Subordinated Charge and the Directors' Subordinated Charge the "**Charges**"). The DIP Revolver Charge is to have priority over the DIP Term Loan Charge with respect to the Wells Fargo Priority Collateral. The DIP Term Loan Charge is to have priority over the DIP Revolver Charge with respect to all other Property (all as set out in the proposed Initial Order).

241. Notwithstanding any other provision of the proposed Initial Order, the L/C Collateral Account shall be deemed to be subject to a lien, security, charge and security interest in favour of Wells Fargo in its capacity as Agent under the DIP Revolving Credit Agreement (the "**DIP Revolver Agent**"). The charges as they may attach to the L/C Collateral Account, including by operation of law or otherwise: (a) shall rank junior in priority to the lien, security, charge and security interest in favour of the DIP Revolver Agent in respect of the L/C Collateral Account; and (b) shall attach to the L/C Collateral Account only to the extent of the rights, if any, of any Sears Canada Group entity to the return of any cash from the L/C Collateral Account in accordance with the DIP Revolving Credit Agreement.

242. The DIP Facility is critical to the successful restructuring of the Sears Canada Group, as it will provide the Applicants with the necessary liquidity and stability to operate as a going concern during these proceedings. Absent an injection of cash in accordance with the Cash

Flow Forecast, the Sears Canada Group will be forced to shut down its operations, which will have a catastrophic impact on its employees, suppliers, landlords and other stakeholders.

C. Monitor

243. It is proposed that FTI will act as Monitor in the CCAA proceedings if the proposed Initial Order is issued. FTI has consented to act as the Monitor of the Applicants. A copy of the Monitor's consent is attached as Exhibit "L".

244. The Sears Canada Group, with the assistance of FTI, has prepared a 13-week cash flow forecast (the "**Cash Flow Forecast**"), as required by the CCAA. A copy of the Cash Flow Forecast is attached as Exhibit "M" to this Affidavit. They show that the Sears Canada Group can continue operations during the proposed initial stay period.

245. I understand that FTI will file an initial pre-filing report with the Court as proposed Monitor in conjunction with the Applicants' request for relief under the CCAA.

D. Financial Advisor

246. The Applicants engaged BMO Capital Markets as their independent Financial Advisor to assist them in developing a contingency plan and implementing it in the event of any restructuring. The engagement letter for BMO Capital Markets is attached as a confidential Appendix to the Pre-Filing Report of the Monitor (the "**BMO Engagement Letter**"). The Applicants are asking, as part of the proposed Initial Order, for the Court to approve Sears Canada's engagement of BMO Capital Markets as its financial advisor and are seeking a charge in the amount of $3.3 million (the "**FA Charge**") to secure the amounts payable under the BMO Engagement Letter. The FA Charge is proposed to rank *pari passu* with the Administration

Charge. As the BMO Engagement Letter contains commercially sensitive information, the proposed Initial Order also includes a request that the confidential Appendix to the Pre-Filing Report be sealed and not form part of the court record pending further Order of the Court.

247. It is my belief, and the belief of senior management of the Applicants, that BMO Capital Markets' significant investment banking experience and expertise, its extensive experience in running sales processes in insolvency proceedings and its capabilities in the area of debt restructuring have greatly benefited the Applicants in their restructuring efforts to date. Further, BMO Capital Markets led the negotiations that resulted in the DIP Facility. If the Applicants were deprived of the benefit of BMO Capital Markets' continued advice and assistance and were required to retain a new financial advisor, it would likely take a significant period of time for such financial advisor to acquire a similar working knowledge of the business and would make it extremely difficult to implement a restructuring.

248. It is also my belief that the quantum and nature of the fee structure provided for in the BMO Engagement Letter is fair and reasonable in the circumstances. Pursuant to the BMO Engagement Letter, BMO Capital Markets is entitled to be paid:

(a) an engagement fee of $750,000, which was paid upon the execution of the BMO Engagement Letter;

(b) a work fee of $100,000 per month or part thereof payable in cash in advance;

(c) a financing fee (the "**Financing Fee**") equal to 1.0% of the principal amount or commitment amount (as applicable) of secured debt amended or raised, and 2.5%

of the amount of equity privately issued, sold or placed, if Sears Canada or any of its subsidiaries completes one or more Financings (as defined in the BMO Engagement Letter), including under the DIP Facility;

(d) a success fee (the "**Contingency Plan Implementation Fee**") in the amount of $6.5 million payable in cash upon the implementation of a Contingency Plan (as defined in the BMO Engagement Letter) by Sears Canada or any of its subsidiaries; and

(e) a fee of $75,000 per lease payable upon the consummation of a Lease Negotiation (as defined in the BMO Engagement Letter) and an additional $75,000 per such lease payable on the date that a Contingency Plan Implementation Fee becomes payable (collectively, the "**Lease Negotiation Fees**"). The minimum Lease Negotiation Fee is $2.5 million in the event that a Contingency Plan Implementation Fee becomes payable and $1.25 million in the event that the BMO Engagement Letter is terminated with no Contingency Plan Implementation Fee having become payable. The aggregate of all Lease Negotiation Fees shall not exceed $5 million.

249. The BMO Engagement Letter also provides for the following credits for the benefit of Sears Canada: (i) in the event that a DIP Financing may be used as Exit Financing (as each such term is defined in the BMO Engagement Letter), then only one Financing Fee shall apply, but no Contingency Plan Credit (as defined below) shall apply in such circumstances; (ii) if a Financing Fee becomes payable with respect to an Exit Financing and a Contingency Plan Implementation Fee is also payable concurrently, then 50% of the lesser fee shall be creditable

against the higher fee (the "**Contingency Plan Credit**"); and (iii) Lease Negotiation Fees up to $2.5 million shall be creditable against any Contingency Plan Implementation Fee payable.

250. As required by the BMO Engagement Letter, Sears Canada paid BMO Capital Markets $4.2 million as a prepayment of amounts payable thereunder (the "**Prepayment Amount**"). Upon the termination of the BMO Engagement Letter and subject to a hold-back for amounts determined as payable thereunder by BMO Capital Markets, acting reasonably, the Prepayment Amount shall be returned to Sears Canada. In addition, to the extent that the FA Charge exceeds $3.3 million, then, upon the expiry of any applicable appeal periods, BMO Capital Markets shall return to Sears Canada from the Prepayment Amount, an amount equal to the difference between the FA Charge and $3.3 million.

E. Key Employee Retention Plan

251. The proposed Initial Order includes approval of a key employee retention plan (as set out below, the "**KERP**") and the granting of a Court-ordered charge up to the maximum aggregate amount of $9.2 million as security for payments under the KERP.

252. The KERP was developed by the Applicants, in consultation with Osler and with the involvement of FTI, to facilitate and encourage the continued participation of senior management and other key employees of the Applicants who are required to guide the business through the restructuring and preserve value for stakeholders. The KERP will provide its participants with additional payments as an incentive to continue their employment through the CCAA proceedings. These employees have significant experience and specialized expertise that cannot be easily replicated or replaced. Further, these key employees will likely have other, more certain employment opportunities and will be faced with a significantly increased workload

during the restructuring process. Additionally, certain senior store level employees are included in the KERP in order to facilitate a successful liquidation of the closing stores and an orderly exit from the premises.

253. The Applicants propose to include the following employees in the KERP:

Role	**Approximate Number of Employees**	**Estimated Cost**
HQ Employees	43	$7.6 million
Closing Store Employees	116	$1.6 million
Total	159	$9.2 million

254. The KERP payments for the HQ employees will be made in three installments payable as follows: (i) 45 days after the filing date;[16] (ii) 90 days after the filing date;[17] and (iii) 180 days after the filing date.[18] In the event of the completion of a successful restructuring plan in this CCAA proceeding and (where applicable) the successful completion of specified Key

[16] In the case of nine executive employees who are KERP beneficiaries, this payment will be fully earned once the initial CCAA filing has been made, and will be payable to them on the earlier of: termination without cause or 45 days after the filing date. In the case of the other HQ employee KERP beneficiaries, if an employee is terminated without cause prior to 45 days after the CCAA filing, this first payment is prorated by the number of days employed from the filing date - for greater clarity it will be the number of days/45.

[17] If an employee is terminated without cause after 45 days and prior to 90 days after the CCAA filing, this second payment is prorated by the number of days employed from the first payment date – for greater clarity the number of days after the 45th day and before the 90th day/45.

[18] In the case of eight executive employees who are KERP beneficiaries, this third installment will only be paid upon completion of a successful restructuring plan. In the case of other HQ employee KERP beneficiaries, if an employee is terminated without cause between 90 and 180 days after the CCAA filing, this third payment is prorated by the number of days employed from the second payment date – for greater clarity the number of days after the 90th day and before the 180th day/90.

Performance Indicator ("**KPI**") milestones (as determined by management), then all unpaid installments become payable.

255. The first, second and third installments will each be in an amount equal to 25 percent of the total KERP payment payable to the HQ employee in question. The final 25 percent of the total KERP payment only becomes payable upon the completion of the successful restructuring. The total KERP payments for the HQ employees range from 25 percent to 100 percent of the base salary of the relevant employees.

256. The KERP payments for the closing store employees will be made upon the closure of the store where the employee was employed and the successful achievement of certain KPIs. The KERP payments for the closing store employees are in an amount equal to 25 percent of the employees' base salaries.

257. If the Sears Canada Group finds itself in a full liquidation scenario, any amounts not yet earned by HQ employees who are not part of the liquidation process would instead be eligible to be used to provide a KERP for store level personnel at the additional closing stores. The current version of the KERP only provides incentive payments for store level employees for stores that are known to be closing at the outset of the CCAA proceedings. It is therefore proposed that the Applicants, with the consent of the Monitor, be provided with the flexibility to transfer all or a portion of those unused KERP amounts for HQ employees who are not part of the liquidation process to store level employees in a full liquidation scenario. A copy of the KERP is attached as a confidential Appendix to the Pre-Filing Report of the Monitor. As the KERP contains commercially sensitive and personal information, the proposed Initial Order

includes a request that the confidential Appendix to the Pre-Filing Report be sealed and not form part of the court record pending further Order of the Court.

258. Assuming the Applicants are able to retain all of the key employees and all of the milestones are met, the total amount payable under the KERP would be a maximum of approximately $9.2 million. The Applicants are seeking a charge (the “**KERP Charge**”) to secure the amounts payable under the KERP. A portion of the KERP Charge is proposed to rank immediately below the Administration Charge and FA Charge and immediately above the Directors’ Priority Charge (the “**KERP Priority Charge**”). The remainder of the KERP Charge is proposed to rank immediately below the DIP Lenders’ Charges and immediately above the Directors’ Subordinated Charge (the “**KERP Subordinated Charge**”).

F. Administration Charge

259. In connection with its appointment, it is proposed that the Monitor, along with its counsel, counsel to the Applicants, and counsel to Sears Canada’s board of directors and the Special Committee, will be granted a Court-ordered charge on all of the present and future assets, property and undertaking of the Applicants (the “**Property**”) as security for their respective fees and disbursements relating to services rendered in connection with this CCAA proceeding up to a maximum amount of $5 million (the “**Administration Charge**”). The Administration Charge is proposed to rank *pari passu* with the FA Charge and to have priority over all other charges and security interests.

G. Directors’ and Officers’ Protection

260. A successful restructuring of the Sears Canada Group will only be possible with the continued participation of its directors (the “**Directors**”), management and employees. These

personnel are essential to the viability of the Applicants' continuing business and the preservation of enterprise value.

261. I am advised by Marc Wasserman of Osler and believe that, in certain circumstances, directors can be held liable for certain obligations of a company owing to employees and government entities, which may include unpaid accrued wages; unpaid accrued vacation pay; and unremitted sales, goods and services, and harmonized sales taxes. The Sears Canada Group estimates, with the assistance of FTI in its capacity as proposed Monitor, that these obligations may amount to as much as approximately $64 million.

262. It is my understanding that the Sears Canada Group's present and former directors and officers who are or were employed by the Sears Canada Group are among the potential beneficiaries under liability insurance policies that cover an aggregate annual limit of USD $50 million; however, I understand that the policy has various exceptions, exclusions and carve-outs where coverage may not be available. I do not believe that this insurance policy provides sufficient coverage against the potential liability that the directors and officers could incur in relation to this CCAA proceeding.

263. In light of the potential liabilities and the uncertainty surrounding available indemnities and insurance, I and the other directors and officers have indicated to the Applicants that our continued service and involvement in this proceeding is conditional upon the granting of an Order under the CCAA which grants a charge in favour of the directors and officers of Sears Canada in the amount of $63.5 million on the Property (the "**Directors' Charge**"). The Directors' Charge would act as security for indemnification obligations for the Directors' and officers' potential liabilities as set out above. The Directors' Charge is bifurcated into a

"Directors' Priority Charge" in the amount of $44 million and the "**Directors' Subordinated Charge**" in the amount of $19.5 million. The Directors' Priority Charge is proposed to stand in priority to the proposed DIP Lenders' Charges and the KERP Subordinated Charge, but would be subordinate to the proposed Administration Charge, FA Charge, and KERP Priority Charge. The Directors' Subordinated Charge is proposed to be subordinate to the DIP Lenders' Charges and the KERP Subordinated Charge. The Directors' Charge is necessary so that the Applicants may benefit from their directors' and officers' experience with the business and the multifaceted retail industry and so that its directors and officers can guide the Sears Canada Group's restructuring efforts.

H. Postponement Of Annual Meeting Of Shareholders

264. As noted above, Sears Canada is a public company governed by the CBCA. As such, Sears Canada is required pursuant to section 133(1)(b) of the CBCA to call and, pursuant to the TSX rules, to hold an annual meeting of its shareholders by no later than July 28, 2017, being six months after the end of its preceding financial year which ended on January 28, 2017. Sears Canada's annual meeting was scheduled to be held on June 14, 2017. On June 13, 2017, Sears Canada announced that, in light of recent developments, it was postponing the annual meeting to a date to be determined, the details of which would be announced when determined.

265. The management of Sears Canada are presently devoting their efforts to stabilizing the business of the Applicants with a view to implementing a going concern and value maximizing restructuring. Holding the annual meeting of shareholders during the CCAA proceedings would divert the attention of senior management away from the restructuring. Moreover, financial and other information is and will continue to be available to the public

through the Applicants' court filings which will be easily accessible on the proposed Monitor's website (cfcananda.fticonsulting.com/searscanada).

266. Under the circumstances, I believe it is impractical for Sears Canada to call and hold an annual meeting of shareholders during this CCAA proceeding. Therefore, the proposed Initial Order postpones the holding of such meeting until further order of the Court.

267. The articles of Sears Canada require a minimum of seven directors. As a result of recent resignations, Sears Canada currently has six directors. Nevertheless, Sears Canada's by-laws permit the board of directors to act as such provided there is a quorum in place (for which only three directors are required). As Sears Canada can still conduct business pursuant to its by-laws and the Applicants are focused on their restructuring, the proposed Initial Order provides that Sears Canada be relieved from the requirement to appoint any additional director until further order of the Court.

I. Payments During this CCAA Proceeding

268. During the course of this CCAA proceeding, the Applicants intend to make payments for goods and services supplied post-filing in the ordinary course as set out in the Cash Flow Forecast described above and as permitted by the draft Initial Order.

269. The Applicants expect third parties with contractual arrangements with the Sears Canada Group to continue to provide goods and services in accordance with the proposed Initial Order. However, in order to ensure uninterrupted business operations during the CCAA proceeding, the Applicants are proposing in the Initial Order that they be authorized, with the consent of the Monitor, but not required, to make certain payments, including payments owing in

arrears, to certain critical third parties that provide services that are integral to the Applicants' ability to operate during, and implement, their restructuring under these proceedings. These third parties include key logistics or supply chain providers, customs brokers and clearing houses, fuel providers, repair, maintenance and parts providers, armoured truck carriers, and providers of credit and debit processing services.

270. In addition, continued supply from certain overseas and domestic suppliers of both the Sears Canada Group's branded and private label merchandise is crucial to the success of this restructuring and the ordinary course operations of the Sears Canada Group's business. Thus, in order to ensure continued supply from certain suppliers during the CCAA proceedings and to preserve the Sears Canada Group's enterprise value, the Sears Canada Group is proposing, in limited circumstances, to pay such suppliers for amounts incurred before and after the commencement of these proceedings.

Conclusion

271. I am confident that granting the draft Initial Order sought by the Applicants is in the best interests of the Applicants and their stakeholders. Although the Sears Canada Group has made significant strides in recent years to transition itself into a modern Canadian retailer, it is currently in a very challenging financial position. Without the relief requested, including the stay of proceedings, the Sears Canada Group faces a cessation of going concern operations, the liquidation of its assets and the loss of its employees' jobs. The Sears Canada Group requires an immediate and realistic dialogue to ensue with and among its stakeholders with the goal of maximizing the ongoing value of the business and continuing employment for as many of its employees as is reasonably possible. The granting of the requested stay of proceedings will

maintain the "status quo" and permit an orderly restructuring and analysis of the Sears Canada Group's affairs.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario on June 22, 2017.	
Commissioner for Taking Affidavits Karin Sachar	Billy Wong

APPENDIX "C"

SPOUSAL WAIVER FORM

Alberta Government

Pension Partner Waiver of Entitlement to a 60% Joint and Survivor Pension from a Pension Plan

- This waiver form must be signed by a pension partner in order to permit a plan member to elect a form of pension that does not provide at least a 60% Joint and Survivor pension for the pension partner, if that plan member has pension partner at his or her pension commencement date.
- Alternatively, this waiver form must be signed by a pension partner in order to permit a plan member to elect a form of annuity that does not provide at least a 60% Joint and Survivor annuity for the pension partner, if that plan member has pension partner at the date of annuity purchase.
- This waiver form is not valid unless it is signed and filed with the plan administrator not more than 90 days before the pension commencement date of the plan member.

1 Section 90(2) and 99(1) of the *Employment Pension Plans Act* (SA 2012 cE-8.1) require that if a plan member has a pension partner on his or her pension commencement date, the form of pension must be a 60% Joint and Survivor pension, unless the pension partner agrees to a different form of pension by signing this waiver form.

2 A minimum 60% joint and survivor form of pension is a pension that is payable during the lives of the plan member and his or her pension partner and, after the death of one of them, is payable to the survivor for life in an amount that is not less than 60% of the amount that would have been payable to the plan member had the death not occurred.

3 By signing this waiver form, the pension partner gives up the right to the minimum 60% Joint and Survivor pension. This form must be signed and filed with the plan administrator not more than 90 days before the pension commencement date of the plan member.

4 The "pension commencement date" is the date the plan member selects as the date on which the plan member's pension is to start.

5 Being the "pension partner" means that

(a) I am married to the plan member and have not been living separate and apart from that person for a continuous period longer than 3 years, or

(b) if paragraph (a) above does not apply to me and there is no other person to whom paragraph (a) does apply, I have been living with the plan member in a marriage-like relationship, for a continuous period of at least 3 years or in a relationship of some permanence, if there is a child of our relationship by birth or adoption immediately preceding the date on which I have signed this waiver form.

I, ____, am the pension partner of
Name of Pension Partner

____ .
Name of Plan Member

6 Pension funds for the plan member are currently held in ______________________________,
Name of Pension Plan
a pension plan regulated in accordance with the *Employment Pension Plans Act* and the *Employment Pension Plans Regulation* (in this waiver form referred to as "the legislation").

7 I understand that I do not have to sign this waiver form unless I agree to the plan member electing a form of pension that provides less than a 60% joint and survivor pension. Nonetheless, I am signing this waiver form to permit the plan member to choose:

☐ a different level of a joint and survivor pension, or

☐ a form of pension other than a joint and survivor, which will not guarantee a pension for my lifetime and may not provide me with any death benefit at all.

8 I understand that signing this waiver form does not affect any rights that I could have as a result of any breakdown or potential breakdown in the relationship between the plan member and myself.

9 I understand that this waiver form has no effect unless it is signed and filed with the plan administrator not more than 90 days before the pension commencement date of the plan member.

10 I have chosen to sign this waiver form and, in so doing, give up my entitlement to the 60% Joint and Survivor pension required by the legislation.

CERTIFICATION OF PENSION PARTNER

I certify that

(a) I have read this waiver form and understand it and the potential results of my signing it,

(b) I have seen the plan member's retirement statement and know the potential impact this decision could have on any benefit that I am entitled to,

(c) I am signing this waiver form of my own free will,

(d) the plan member is not present while I am signing this waiver form,

(e) I realize that

  (i) this waiver form only gives a general description of the legal rights I have under the legislation, and

  (ii) if I wish to understand exactly what my legal rights are, I must read the legislation and, if necessary, consult a professional with pension expertise,

(f) the information that I have given in this waiver form is true, to the best of my knowledge, at the time when I sign this waiver form. If any of that information changes, I will notify the plan administrator of the change, and

(g) I am aware that I am entitled to a copy of this waiver form.

I sign this waiver form on ______________________ .
Dated (*mmm dd, yyyy*)

____ ______________________
Address of Pension Partner — Telephone Number of Pension Partner

____
Signature of Pension Partner

STATEMENT OF WITNESS

I certify that I am not related to this pension partner and that I witnessed this pension partner sign this waiver form in the absence of the plan member on ______________________ .
Dated (*mmm dd, yyyy*)

____
Name of Witness (PRINT)

____ ______________________
Address of Witness — Telephone Number of Witness

____
Signature of Witness

For further information, please contact ____
Name of Plan Administrator

at ____ .
Contact Information

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

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

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