Court File No. CV-19-00614629-00CL

PAYLESS SHOESOURCE CANADA INC. and
PAYLESS SHOESOURCE CANADA GP INC.

SEVENTH REPORT OF FTI CONSULTING CANADA INC., AS MONITOR

October 23, 2019

Court File No. CV-19-00614629-00CL

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 PAYLESS SHOESOURCE CANADA INC. AND PAYLESS SHOESOURCE CANADA GP INC.

(the "**Applicants**")

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

A. INTRODUCTION

1. On February 18, 2019, Payless Holdings LLC and certain of its subsidiaries and affiliates commenced cases (collectively, the "**U.S. Proceedings**") under Chapter 11 of Title 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of Missouri (the "**U.S. Court**").

2. On February 19, 2019, Payless ShoeSource Canada Inc. ("**PSSC**") and Payless ShoeSource Canada GP Inc. (together with PSSC, the "**Applicants**"), which are debtors in the U.S. Proceedings, sought and obtained an initial order (the "**Initial Order**") under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"). The benefits, protections, authorizations and restrictions of the Initial Order were also extended to Payless ShoeSource Canada LP ("**Payless Canada LP**", and together with the Applicants, the "**Payless Canada Entities**", and together with the other Payless entities subject to the U.S. Proceedings, the "**Debtors**"). The proceedings commenced under the CCAA by the Payless Canada Entities are referred to herein as the "**CCAA Proceedings**".

3. The Initial Order, among other things:

   (a) appointed FTI Consulting Canada Inc. ("**FTI**") as monitor of the Payless Canada Entities (in such capacity, the "**Monitor**") in the CCAA Proceedings;

   (b) granted a stay of proceedings (the "**Stay of Proceedings**") against the Payless Canada Entities until and including March 21, 2019;

   (c) approved the engagement of Ankura Consulting Group, LLC ("**Ankura**") as Chief Restructuring Organization of the Payless Canada Entities; and

   (d) approved a cross-border protocol.

4. On February 21, 2019, this Court granted an order approving a liquidation consulting agreement dated February 12, 2019 (the "**Liquidation Consulting Agreement**") between certain of the Debtors (including the Payless Canada Entities) and a contractual joint venture comprised of Great American Group, LLC and Tiger Capital Group, LLC (together, the "**Consultant**"). Pursuant to the Liquidation Consulting Agreement, the Debtors engaged the Consultant to advise the Debtors with respect to the liquidation of inventory and certain fixtures at the stores identified in the Liquidation Consulting Agreement.

5. On March 20, 2019, this Court granted an Order granting the Payless Canada Entities an extension of the Stay of Proceedings until and including June 7, 2019 and approving the Pre-Filing Report, the First Report, the Second Report and the activities of the Proposed Monitor and the Monitor, as applicable.

6. On April 24, 2019, this Court granted an Order (the "**Claims Procedure Order**") approving a claims procedure to solicit and identify (but not resolve) certain claims against the Payless Canada Entities (the "**Claims**").

7. Also on April 24, 2019, this Court granted an Order (the "**Amended Cash Flow Order**") that, *inter alia*, approved the Third Report and authorized the Payless Canada Entities to transfer funds to the Debtors, subject to the existing security interest of the Term Loan Lenders, (a) materially consistent with the Cash Flow Statement (as defined in the Amended Cash Flow Order), (b) in such amounts as may be determined by the Payless

Canada Entities with the prior written consent of the Monitor, or (c) as otherwise ordered by the Court.

8. On June 4, 2019, this Court granted an Order (the "**Second Stay Extension Order**") granting the Payless Canada Entities an extension of the Stay of Proceedings until and including September 20, 2019 and approving the Fourth Report and the activities of the Monitor. The Second Stay Extension Order also approved the fees and disbursements of the Monitor for the period from February 19, 2019 to May 19, 2019, and of counsel to the Monitor for the period from February 19, 2019 to May 17, 2019.

9. On September 17, 2019, this Court granted an Order (the "**Third Stay Extension Order**"), *inter alia*:

   (a) granting the Payless Canada Entities an extension of the Stay of Proceedings until and including December 20, 2019;

   (b) lifting the Stay of Proceedings, to the extent necessary, for the limited purpose of allowing the Payless Canada Entities to apply to the U.S. Court to dismiss the Payless Canada Entities' U.S. Proceedings;

   (c) ordering that all references to Cash Flow Statement in the Initial Order shall mean the cash flow statement attached to the Fifth Report;

   (d) approving the fees and disbursements of the Monitor for the period from May 20, 2019 to August 31, 2019, and of counsel to the Monitor for the period from May 18, 2019 to August 31, 2019; and

   (e) approving the Fifth Report and the activities of the Monitor.

10. On September 17, 2019, the Monitor filed a Supplement to the Fifth Report (the "**Supplemental Report**") which provided a summary of the CCAA Plan (as defined below).

11. On September 19, 2019, this Court granted an Order (the "**Meetings Order**"), *inter alia*, accepting the filing of the Payless Canada Entities' proposed plan of compromise and arrangement dated September 17, 2019 (as may be amended in accordance with the terms

thereof, the "**CCAA Plan**") and authorizing the convening of the meetings of creditors to consider and vote on the CCAA Plan (the "**Creditors' Meetings**").

12. On October 16, 2019, the Payless Canada Entities served on the Service List the First Amended and Restated CCAA Plan (the "**First Amended CCAA Plan**") and plan supplement to the First Amended CCAA Plan (the "**Plan Supplement**").

13. On October 17, 2019, in accordance with the Meetings Order and the CCAA, the Monitor filed its Sixth Report, which report included a description of the First Amended CCAA Plan and the Monitor's assessment thereof. A Copy of the Sixth Report is attached hereto as Appendix "A".

B. PURPOSE

14. The purpose of this Seventh Report of the Monitor (the "**Seventh Report**") is to report to the Court on:

(a) the receipts and disbursements of the Payless Canada Entities for the five-week period ending October 4, 2019;

(b) the Payless Canada Entities' current cash balances;

(c) an update on the U.S. Proceedings confirmation hearing which occurred on October 23, 2019;

(d) the approval of the First Amended CCAA Plan by the requisite majorities of Affected Creditors at the Creditors' Meetings;

(e) the Payless Canada Entities' request for an Order pursuant to section 6 of the CCAA for sanction of the First Amended CCAA Plan (the "**Sanction Order**") and the Monitor's recommendation with respect thereto;

(f) the Receivership Order being sought by the Monitor in accordance with the First Amended CCAA Plan; and

(g) the Payless Canada Entities' request for the Fourth Stay Extension (as defined below) and a limited lifting of the stay of proceedings to deal with intercompany claims.

C. TERMS OF REFERENCE

15. In preparing the Seventh Report, the Monitor has relied upon audited and unaudited financial information provided by the Debtors, including their books and records, financial information, forecasts and analysis, in addition to discussions with various parties, including senior management ("**Management**") of, and advisors to, the Payless Canada Entities, the other Debtors, and Ankura (collectively, the "**Information**").

16. Except as otherwise described in the Seventh Report:

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

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

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

18. The Monitor has prepared the Seventh Report in connection with the Sanction Motion. The Seventh Report should not be relied on for any other purpose.

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

20. Capitalized terms not otherwise defined herein have the meanings ascribed to them in the First Amended CCAA Plan, the Plan Supplement and/or the Sanction Order, as applicable.

D. RECEIPTS AND DISBURSEMENTS FOR THE PERIOD FIVE-WEEK PERIOD ENDING OCTOBER 4, 2019

21. The Payless Canada Entities' actual net cash outflow on a consolidated basis for the five week period ending October 4, 2019 was approximately $1.0 million, compared to a forecast net cash outflow of approximately $0.6 million as noted in the Fifth Cash Flow Forecast filed as Appendix "A" to the Fifth Report, representing a negative variance of approximately $0.4 million as summarized below.

Payless Canada Entities Variance Report (CAD $000s)	For the 5 week period ending October 4, 2019		
	Forecast	Actual	Variance
Operating Receipts	**-**	**37**	**37**
Operating Disbursements			
Payroll and Employee Related Costs	-	-	-
Occupancy Costs	-	-	-
Operating Expenses, Corporate, and Other	-	(19)	(19)
Total Operating Disbursements	**-**	**(19)**	**(19)**
Cash Flow From Operations	**-**	**18**	**18**
Professional Fees	(591)	(1,046)	(455)
Liquidation Costs	-	-	-
Total Non-Operating Disbursements	**(591)**	**(1,046)**	**(455)**
Net Cash Inflows / (Outflows)	**(591)**	**(1,028)**	**(437)**
Cash			
Beginning Balance	9,055	8,637	(418)
Net Cash Inflows / (Outflows)	(591)	(1,028)	(437)
Canadian Transfer Funds	-	-	-
Ending Balance	**8,464**	**7,609**	**(855)**

22. Explanations for the variances in actual receipts and disbursements as compared to the Fifth Cash Flow Forecast are as follows:

(a) Operating Receipts were approximately $0.04 million compared to a forecast amount of $nil primarily due to the return of security deposits by certain utility companies who provided services to the stores.

(b) Operating Disbursements were approximately $0.02 million compared to a forecast amount of $nil. These expenditures were forecast in a later period.

(c) Total Non-Operating Disbursements of approximately $1.0 million were incurred compared to a forecast amount of $0.6 million, which resulted in a variance of approximately $0.4 million. Professional fees incurred were higher than forecast primarily due to the work associated with the CCAA Plan and the First Amended CCAA Plan, and the preparation, coordination, and administration of the documents and discussions related thereto.

E. THE PAYLESS CANADA ENTITIES' CURRENT CASH BALANCES

23. The CCAA Entities currently have approximately $7.6 million of cash in their bank accounts.

24. If the First Amended CCAA Plan is approved by creditors and sanctioned by the Court and pursuant to the Plan Supplement, the following reserves will be funded by the CCAA Entities (the "**Reserves**") to complete the administration of the proceedings:

(a) Administrative Reserve $1,065,150 (less amounts paid for October 2019)

(b) Directors' Claim Reserve $2,000,000

(c) Post-Filing Claim Reserve $908,402

(d) Priority Claim Reserve $0

25. The Monitor is of the opinion that the Reserves are sufficient to fund the Payless Canada Entities during the Fourth Stay Extension, and to conclude the administration of the CCAA Proceedings. The Reserves will be funded following approval and sanction of the plan and the Monitor will report further on the Reserves in future reports.

26. Should the First Amended CCAA Plan not be sanctioned by the Court, the current cash balance of $7.6 million would be sufficient to fund the Payless Canada Entities during the Fourth Stay Extension. The current cash balance is in excess of the USD $2 million Administration Charge and USD $2 million D&O Charge prescribed by the Initial Order and will be held pending resolution of any claims against the charges.

F. UPDATE ON THE U.S. PROCEEDINGS

27. The Monitor understands that notwithstanding a limited objection filed by the United States Trustee, on October 23, 2019, the U.S. Plan was confirmed by the Honourable Kathy A. Surratt-States.

28. Additionally, the Monitor understands that the Payless Canadian Entities' Motion Seeking Entry of an Order Pursuant to 11 U.S.C. § 1112(b) Dismissing the Chapter 11 Cases of the Payless Canada Entities was granted, which dismissal will only become effective upon implementation of the U.S. Plan.

G. THE APPROVAL OF THE FIRST AMENDED CCAA PLAN BY AFFECTED CREDITORS

29. As previously described in further detail in the Sixth Report, the Monitor distributed the Information Package and the Notice of Creditors' Meetings and Sanction Motion in accordance with the provisions of the Meetings Order.

(i) Meeting of the General Unsecured Creditors Class

30. The meeting of the General Unsecured Creditors class (the "**General Unsecured Meeting**") was held in accordance with the Meetings Order on October 23, 2019 at the offices of Cassels, Brock & Blackwell LLP for the purpose of allowing the General Unsecured Creditors to consider and vote on the First Amended CCAA Plan. The General Unsecured Meeting was chaired by Jim Robinson, a representative of the Monitor, and was conducted in accordance with the provisions of the Meetings Order. A quorum was present for the General Unsecured Meeting.

31. At the General Unsecured Meeting, a motion for resolution to approve the First Amended CCAA Plan was made and seconded. The General Unsecured Creditors present and eligible to vote did so as follows:

	General Unsecured Creditors Class		
	Disputed Claims	**Undisputed Claims**	**Total**
# For	11	33	44
# Against	1	0	1
Total by Number	12	33	45
% For	91.67%	100.00%	97.78%
$ For	80,043.98	418,328.92	498,372.90
$ Against	38,323.00	-	38,323.00
Total by Value	118,366.98	418,328.92	536,695.90
% For	67.62%	100.00%	92.86%

(ii) Meeting of the Landlord Class

32. The meeting of the Landlord class (the "**Landlord Meeting**") was held in accordance with the Meetings Order on October 23, 2019 at the offices of Cassels, Brock & Blackwell LLP for the purpose of allowing the Landlords to consider and vote on the First Amended CCAA Plan. The Landlord Meeting was also chaired by Jim Robinson, a representative of the Monitor, and was conducted in accordance with the provisions of the Meetings Order. A quorum was present for the Landlord Meeting.

33. At the Landlord Meeting, a motion for resolution to approve the First Amended CCAA Plan was made and seconded. The Landlords present and eligible to vote did so as follows:

	Landlord Class		
	Disputed Claims	**Undisputed Claims**	**Total**
# For	111	13	124
# Against	2	0	2
Total by Number	113	13	126
% For	98.23%	100.00%	98.41%
$ For	44,135,369.25	177,699.63	44,313,068.88
$ Against	642,667.73	-	642,667.73
Total by Value	44,778,036.98	177,699.63	44,955,736.61
% For	98.56%	100.00%	98.57%

(iii) Approval of the First Amended CCAA Plan by Affected Creditors and Status of Review of Claims

34. Pursuant to section 6 of the CCAA and the Meetings Order, a majority in number representing two-thirds in value of creditors present and voting at a meeting of creditors is

required for the approval of a plan of arrangement or compromise. As described above, the requisite majorities were achieved at both the General Unsecured Meeting and Landlord Meeting and, accordingly, the First Amended CCAA Plan was approved by the Affected Creditors voting in both classes.

35. At this time, no Claims have been allowed or disallowed by the Payless Canada Entities and the Monitor, other than Listed Claims that were not disputed under the Claims Procedure Order. As noted in the tables above, there are Disputed Voting Claims that the Monitor is in the process of reviewing. In light of the proposed distributions to be made under the First Amended CCAA Plan, the Monitor is conducting a focused review of the Claims received, and has identified certain General Unsecured Claims that will need to be revised or disallowed. The Payless Canada Entities and the Monitor intend to send Notices of Revision or Disallowance to a limited number of General Unsecured Creditors in the coming weeks. Given the treatment of Landlord Claims under the First Amended CCAA Plan, the Monitor and the Payless Canada Entities do not intend to revise or disallow any Landlord Claims submitted.

H. REQUEST FOR THE SANCTION ORDER

36. The leading case of *Re Northland Properties Ltd.* (1989), 73 C.B.R. (N.S.) 195, 34 B.C.L.R. (2d) 122, [1989] 3 W.W.R. 363 (C.A.) articulates that for a plan of arrangement or compromise to be sanctioned pursuant to the CCAA, the following three (3) tests must be met:

(a) there has been strict compliance with all statutory requirements and adherence to previous orders of the Court;

(b) nothing has been done or purported to have been done that is not authorized by the CCAA; and

(c) the plan is fair and reasonable.

(i) Statutory Compliance and Adherence to Previous Court Orders

37. The CCAA contains a number of provisions where strict compliance is required before a plan of arrangement can be sanctioned by the court.

38. Section 5.1 of the CCAA contemplates the compromise of claims against directors; however, section 5.2 mandates certain exceptions. Specifically, a provision for the compromise of claims against directors may not include claims that:

(a) relate to contractual rights of one or more creditors; or

(b) are based on allegations of misrepresentations made by directors to creditors or of wrongful or oppressive conduct by directors.

39. As described in the Fifth Report and the Supplemental Report and the Sixth Report, the First Amended CCAA Plan provides for broad releases to the full extent permitted by law for the Payless Canada Entities, the Term Loan Agent, the Term Loan Lenders and the Monitor, and each of their respective directors, officers, agents, professional advisors and certain other parties (each a "**Released Party**" and collectively, the "**Released Parties**") from claims based in whole or in part on any omission, transaction, duty, responsibility, indebtedness, liability, obligations, dealing or other occurrence existing or taking place on or prior to the Effective Time of the First Amended CCAA Plan arising out of or in connection with the Affected Claims, the First Amended CCAA Plan, the U.S. Proceedings, the CCAA Proceedings or any D&O Claim that has been barred or extinguished by operation of the Claims Procedure Order.

40. The releases in favour of the Released Parities (the "**Releases**") do not release or discharge:

(a) the Payless Canada Entities and their respective assets, undertakings and properties from any Unaffected Claim that has not been paid in full under the First Amended CCAA Plan or the Plan Supplement to the extent of such non-payment;

(b) a Released Party from its obligations under the First Amended CCAA Plan or the Plan Supplement;

(c) subject to the provisions in the First Amended CCAA Plan pertaining to insurance, a Released Party found by a court of competent jurisdiction by final determination on the merits to have committed fraud or willful misconduct in relation to a Released Claim for which is it responsible at law; or

(d) the Directors from any Claims which have been preserved in accordance with the Claims Procedure Order that cannot be comprised due to the provisions of section 5.2(2) of the CCAA. To the extent not released, the proposed Sanction Order will limit recovery for such claims against the Directors to available insurance.

41. In the Monitor's opinion, each of the Released Parties was critical to the development and negotiation of the First Amended CCAA Plan, and each party did so with the expectation of receiving the Releases.

42. The proposed Sanction Order includes the customary provisions for such an order, including paragraph 24 giving effect to the releases contained in the First Amended CCAA Plan. In addition, the proposed Sanction Order contains the following provisions at paragraph 26 and 27:

> 26. **THIS COURT ORDERS** that, to the extent not barred, released or otherwise affected by paragraph 12 above, and notwithstanding paragraph 25 above, any Person having, or claiming any entitlement or compensation relating to, a Director/Officer Claim (with the exception of any Director/Officer Claims judged by the express terms of a judgment rendered on a final determination on the merits to have resulted from criminal, fraudulent or other wilful misconduct on the part of the Director or Officer (an "**Excluded Director/Officer Claim**")) will be irrevocably limited to recovery in respect of such Director/Officer Claim solely from the proceeds of the applicable insurance policies held by the Payless Canada Entities (the "**Insurance Policies**"), and Persons with any Director/Officer Claims will have no right to, and shall not, directly or indirectly, make any claim or seek any recoveries from the Payless Canada Entities or any Released Party, other than enforcing such Person's rights to be paid by the applicable insurer(s) from the proceeds of the applicable Insurance Policies. Nothing in this Plan Sanction Order prejudices, compromises, releases or otherwise affects any right or defence of any insurer in respect of an Insurance Policy or any insured in respect of a Director/Officer Claim. Notwithstanding anything to the contrary herein, from and after the Implementation Date, a Person may only commence or continue an action for an Excluded Director/Officer Claim against a Director or Officer if such Person

has first obtained leave of the Court on notice to the applicable Directors and Officers, the Monitor and the Payless Canada Entities.

27. **THIS COURT ORDERS** that from and after the Implementation Date, any and all Persons shall be and are hereby forever barred, estopped, stayed and enjoined from commencing, taking, applying for or issuing or continuing any and all steps or proceedings, whether directly, derivatively or otherwise, and including without limitation, administrative hearings and orders, declarations or assessments, commenced, taken or proceeded with or that may be commenced, taken or proceeded with against any Released Party in respect of all Claims and matters which are released pursuant to Article 8 of the Plan or discharged, compromised or terminated pursuant to the Plan, except as against the applicable insurer(s) to the extent that Persons with Director/Officer Claims seek to enforce rights to be paid from the proceeds of the Insurance Policies, and provided that any claimant in respect of a Director/Officer Claim that was duly filed with the Monitor by the Claims Bar Date shall be permitted to file a statement of claim in respect thereof to the extent necessary solely for the purpose of preserving such claimant's ability to pursue such Director/Officer Claim against an insurer in respect of an Insurance Policy. Notwithstanding anything to the contrary contained herein, from and after the Implementation Date, a Person may only commence or continue an action against a Released Party in respect of a matter that is not released pursuant to Article 8.1(a)-(d) of the Plan if such Person has first obtained leave of the Court on notice to the applicable Released Party, the Payless Canada Entities, the Monitor and the insurer(s) under any applicable Insurance Policy.

43. While the Releases do not release the Directors and Officers to the extent that any Director/Officer Claims cannot be released under the CCAA, in the Monitor's reading, paragraphs 26 and 27 of the proposed Sanction Order provide for a permanent injunction for actions in respect of Director/Officer Claims, other than Excluded Director/Officer Claims[1], against any party other than the provider of the applicable insurance policies held

[1] "**Excluded Director/Officer Claim**" is defined as any Director/Officer Claims judged by the express terms of a judgment rendered on a final determination on the merits to have resulted from criminal, fraudulent or other wilful misconduct on the part of the Director or Officer.

by the Applicants (collectively, the "**Insurance Policies**"), and limits recovery for valid Director/Officer Claims solely to the proceeds of the Insurance Policies.

44. The Monitor has reviewed all Claims received pursuant to the Claims Procedure Order, and the Monitor is not aware of any Claims that would constitute section 5.1(2) Claims.

45. Section 6 of the CCAA also contains restrictions in respect of the sanction of a plan of arrangement, which restrictions are summarized as follows:

(a) pursuant to section 6(3) of the CCAA, a requirement that the plan provides for the payment in full of certain Crown claims within six (6) months of sanction;

(b) pursuant to section 6(5), a requirement that the plan provides for payment to employees and former employees, immediately after sanction, of amounts (the "**6(5) Claims**"):

i. that would have been payable under section 136(1)(d) of the BIA if the company had become bankrupt on the date of filing; and

ii. for wages, salaries, commissions or compensation for services rendered during the CCAA Proceedings;

(c) pursuant to section 6(6), a requirement that the plan provides for payment of certain amounts in respect of registered pension plans immediately after Court sanction unless the Court is satisfied that the relevant parties have entered into an agreement, approved by the relevant pension regulator, respecting payment of those amounts; and

(d) pursuant to section 6(8) of the CCAA, a restriction that no compromise or arrangement that provides for a payment of an equity claim may be sanctioned by the Court unless all non-equity claims are paid in full.

46. Section 4.4 of the First Amended CCAA Plan provides that Crown Priority Claims will be paid in full within six (6) months after the Sanction Order, as required by section 6(3) of the CCAA.

47. Section 4.4 of the First Amended CCAA Plan also provides that Employee Priority Claims will be paid in full immediately after the Sanction Order, as required by section 6(5) of the CCAA. As at the date of this Seventh Report, there are no known Crown Priority Claims or 6(5) Claims.

48. The Payless Canada Entities do not participate in a prescribed pension plan. Accordingly, it is not necessary for the First Amended CCAA Plan to provide for the payment of amounts of the type required to be paid pursuant to section 6(6) of the CCAA.

49. Section 19(2) of the CCAA provides that certain claims may not be subject to compromise or arrangement unless the creditor holding such claim has voted for the acceptance of the compromise or arrangement.

50. As described in the Fifth Report and the Supplemental Report, the First Amended CCAA Plan only compromises certain specific claims against the Payless Canada Entities. In the Monitor's view, none of the claims against the Payless Canada Entities that would be compromised under the First Amended CCAA Plan are claims of the types described in section 19(2) of the CCAA. Furthermore, the definition of "Excluded Claim" in the Claims Procedure Order specifically included any Claims that cannot be compromised pursuant to section 19(2) of the CCAA.

51. The Monitor is not aware of any instances where the Payless Canada Entities have not substantially complied with the Orders granted by this Court during the CCAA Proceedings.

(ii) Actions Not Authorized by the CCAA

52. The Monitor is not aware of any instances where the Payless Canada Entities have taken or have purported to have taken any action that is not authorized by the CCAA.

(iii) Fairness and Reasonableness of the Plan

53. In *Re Canadian Airlines Corp.*, (2000), 20 C.B.R. (4th) 1, leave to appeal refused, 20 C.B.R. (4th) 46 (C.A.), the Honourable Madam Justice Paperny, then of the Alberta Court of Queen's Bench, stated that the following are relevant considerations in determining whether a plan is fair and reasonable:

(a) the composition of the unsecured creditors' vote;

(b) what creditors would receive on liquidation or bankruptcy as compared to the plan;

(c) alternatives available to the plan and bankruptcy;

(d) consideration of oppression of rights;

(e) unfairness to stakeholders; and

(f) public interest.

(a) Composition of the Vote

54. The First Amended CCAA Plan was voted on by Eligible Voting Creditors in the General Unsecured Creditors class and the Landlord Class. The classification of Affected Creditors was approved by the Meetings Order.

55. The Monitor previously considered the factors set out in section 22(2) of the CCAA with respect to classification of creditors and remains of the view that the classification of creditors as contemplated by the Meetings Order and the First Amended CCAA Plan is appropriate. As summarized earlier in this Seventh Report, the First Amended CCAA Plan was approved by the requisite majorities of each class of Affected Creditors.

(b) Bankruptcy as Compared to the Plan

56. As stated in the Sixth Report, and as the Monitor has previously reported on, the Term Loan Lenders have valid security over substantially all of the Payless Canada Entities' assets, and as a result, there is a lack of available alternatives to the First Amended CCAA Plan.

57. If the First Amended CCAA Plan were not to be implemented, the Term Loan Lenders would be entitled to all of the funds currently held by the Payless Canada Entities, excluding amounts for valid claims subject to the Administration Charge and the D&O Charge. There would be no funds available for a distribution to unsecured creditors. In the event of a bankruptcy, it is possible that former employees could recover under the Wage Earner Protection Program ("**WEPP**"), but no other unsecured creditor would receive a distribution.

58. However, as discussed in the Sixth Report, a bankruptcy for one or more of the Payless Canada Entities would require, among other things, the approval of the Court and sufficient cash to fund the bankruptcy proceeding including the professional fees of a trustee in bankruptcy. Accordingly, it is not certain that bankruptcy is even a viable alternative in the circumstances.

59. The Monitor is of the view that the stakeholders of the Payless Canada Entities, taken as whole, will derive a greater benefit under the First Amended CCAA Plan when compared to any potential alternative, including a bankruptcy.

(c) Alternatives available to the First Amended CCAA Plan or Bankruptcy

60. Given that the Term Loan Lenders have valid security over substantially all of the Payless Canada Entities' assets, the Monitor is of the view that the only reasonable alternative to either the implementation of the First Amended CCAA Plan or a bankruptcy is a distribution of all remaining funds to the Term Loan Lenders, with no resulting recovery for any other creditor of the Payless Canada Entities.

(d) Oppression

61. In the view of the Monitor, there does not appear to be any aspect of the First Amended CCAA Plan that materially prejudices or materially disregards the interests of creditors or other stakeholders such that oppression would arise from the implementation of the First Amended CCAA Plan.

(e) Unfairness to Stakeholders

62. As described above, the First Amended CCAA Plan received the overwhelming support of Affected Creditors that voted at the Creditors' Meetings and represents the best possible recovery for the majority of Affected Creditors.

63. In addition, the Term Loan Lenders are supportive of the First Amended CCAA Plan.

64. The Monitor is not aware of any stakeholder that would be treated unfairly if the First Amended CCAA Plan were to be implemented.

(f) Public Interest

65. It is the Monitor's view that there are benefits from the implementation of the First Amended CCAA Plan that are in the public interest as it provides for certain distributions to the General Unsecured Creditors and the Landlords that would otherwise not be available to them as well as enhanced recoveries for former employees who are eligible for benefits under the WEPP, as described above. Furthermore, it is the Monitor's view that there is nothing in respect of the implementation of the First Amended CCAA Plan that could be considered to be contrary to the public interest.

I. RECEIVERSHIP ORDER AND WEPPA

66. As discussed in the Sixth Report, the First Amended CCAA Plan contemplates the appointment of FTI as receiver (in such capacity, the "**Receiver**") pursuant to a Receivership Order in respect of Payless Canada LP over a certain limited pool of funds.

67. Should the Receivership Order be granted, $100 of cash of Payless Canada LP and all Employee Distributions[2] will be directed to the Receiver instead of being distributed to the former employees.

68. As Payless Canada LP was the employer of all employees of the Payless Canada Entities, the receivership will have the effect of triggering the WEPP pursuant to the Wage Earner Protection Program Act, S.C. 2005, c.47, s.1 ("**WEPPA**"), which will result in a better recovery for all former employees of Payless Canada LP who are Affected Creditors and eligible for WEPP.

69. Former employees who would not be eligible for payments under the WEPP will not be included in the receivership process and will receive their distributions as General Unsecured Creditors.[3] The fees of the Receiver and its counsel in connection with administering the WEPP will be paid from the receivership property.

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[2] "**Employee Distributions**" means any distribution under this Plan to an employee or former employee of any of the Payless Canada Entities who is, to the best of the Monitor's knowledge, not ineligible under section 6 of WEPPA to receive a payment under WEPAA, in his or her capacity as an employee or former employee, on account of such employee or former employee's General Unsecured Claim

[3] Pursuant to section 6 of WEPPA, an individual is not eligible to receive a payment in respect of any wages earned during, or that otherwise relate to, a period in which the individual (a) was an officer or director of the former employer; (b) had a controlling interest within the meaning of the regulations in the business of the former

70. Should the Receivership Order not be granted, the Employee Distributions will be made directly to employees in the same manner as distributions to other General Unsecured Creditors. The granting of the Receivership Order is not a condition to implementation of the First Amended CCAA Plan.

71. The Monitor is of the view that the appointment of a Receiver is just in the circumstances. Should the Receivership Order be granted, the eligible former employees will be gain access the WEPP benefits, resulting in a greater recovery for the eligible former employees of the Payless Canada Entities. No other creditor of the Payless Canada Entities will be adversely affected by the proposed receivership.

72. The Monitor has proactively engaged in discussions with Service Canada and the WEPP, Policy and Oversight office (the "**WEPPA Office**"), in respect of the proposed administration of the WEPP. The Monitor discussed its intention to seek the appointment of the Receiver in order to have the effect of triggering WEPP.

73. In addition, the Monitor confirmed with Service Canada that:

(a) Service Canada will recognize the CCAA Proceedings filing date of February 19, 2019 in respect of Payless Canada LP for the purpose of determining the eligibility period contemplated under subsection 2(1)(a)(ii) of WEPPA;

(b) notwithstanding the requirement contained in subsection 16(1)(b) of the WEPPA Regulations, the WEPPA Office and Service Canada will not require the Receiver to issue, or any former employees of Payless Canada LP to submit, a proof of claim given the Claims Procedure that was previously undertaken in the CCAA Proceedings. As an alternative to submitting a proof of claim, the Receiver will confirm in the information provided to Service Canada, with a copy being provided to the former employee in the ordinary course, that a proof of claim was received from employees on the basis of the claims process in the CCAA Proceedings. With respect to the Information Packages issued to former employees of Payless Canada

employer; (c) occupied a managerial position within the meaning of the regulations with the former employer; or (d) was not dealing at arm's length with (i) an officer or director of the former employer, (ii) a person who had a controlling interest within the meaning of the regulations in the business of the former employer, or (iii) an individual who occupied a managerial position within the meaning of the regulations with the former employer.

LP, the Receiver would advise such former employees of the ordinary course requirements for the WEPP, including:

i. the existence of the WEPP and the conditions under which payments may be made;

ii. the details of the receivership;

iii. the amount of eligible wages owing to each former employee;

iv. each former employee's eligibility under the WEPP; and

v. directions on how to submit a WEPP application to Service Canada, including any required documents and supplementary information; and

(c) Service Canada and the WEPPA Office will accept the batch submission of the relevant data though an electronic encrypted file format rather than through the traditional method of inputting employee data into Service Canada's website on an employee-by-employee basis.

74. A copy of the correspondence between the Monitor and Service Canada with respect to the foregoing is attached hereto as Appendix "B".

75. The Monitor is not aware of any creditor that will be prejudiced by the receivership or the amendments contained in the First Amended CCAA Plan. The Monitor also notes that the amendments contained in the First Amended CCAA Plan were made in accordance with the provisions of the Meetings Order and the CCAA Plan.

J. REQUEST FOR A LIMITED LIFTING OF THE STAY OF PROCEEDINGS AND AN EXTENSION OF THE STAY PERIOD

76. As it relates to the Payless Canada Entities, the U.S. Plan contemplates:

(a) the cancellation of certain intercompany notes, including an obligation of Payless Finance Inc. (an entity incorporated in the United States and a U.S. Debtor) in favour of PSSC in the amount of approximately US$114 million; and

(b) the repayment by PSS Canada, Inc. (an entity incorporated in the United States and a U.S. Debtor) to Payless Canada LP of certain post-filing intercompany loans in the amount of approximately US$15.6 million.

77. The Monitor understands that the Intercompany Claims[4] are part of certain global transactions among the Debtors and their non-debtor affiliates and have implications for various U.S. Debtors and non-debtor entities. The U.S. Debtors and the Payless Canada Entities, along with the Monitor and other advisors, have carefully reviewing the proposed treatment of the various Intercompany Claims and determined the order in which the Intercompany Claims must be resolved under the U.S. Plan and the CCAA Plan.

78. The Plan Supplement contemplates that Payless Canada LP will pay the amount received from PSS Canada Inc., as repayment of the Post-Filing Intercompany Loans[5], to Payless ShoeSource Distribution, Inc. ("**PSSD**") (which for greater certainty is a U.S. Debtor) in partial satisfaction of the principal amounts owing from Payless Canada LP to PSSD. Payless Canada LP will then repay to PSSD, in partial satisfaction of the principal amounts owing from Payless Canada LP to PSSD, the available cash remaining after provision for the Reserves (the "**Surplus Cash**"), which repayment is ultimately for the benefit of the Term Loan Lenders. Following the aforementioned series of transactions, PSSC will cancel the existing note (including accumulated interest thereon) payable to Collective Brands II Cooperatief UA. The Monitor is supportive of the aforementioned mechanics and the proposed resolution of the Intercompany Claims. The Monitor understands that the distribution of the Surplus Cash to the Term Loan Lenders via the repayment of an intercompany loan owing from Payless Canada LP to PSSD to be a tax efficient method of distributing the Surplus Cash.

79. In order to allow these steps to occur prior to the effectiveness of the First Amended CCAA Plan, the Payless Canada Entities are seeking a limited lifting of the stay of proceedings

[4] "**Intercompany Claim**" means any Claim held by a Payless Canada Entity against another Payless Canada Entity or an affiliate of a Payless Canada Entity (including, for the avoidance of doubt, a U.S. Debtor) or any Claim held by an affiliate of a Payless Canada Entity (including, for the avoidance of doubt, a U.S. Debtor) against a Payless Canada Entity, provided however, that the Post-Filing Intercompany Loans shall not be an Intercompany Claim.
[5] "**Post-Filing Intercompany Loans**" means the post-petition loans from Payless ShoeSource Canada LP to Payless Finance, Inc., which loans are reflected on the books and records of the U.S. Debtors and the Payless Canada Entities and bear interest at a rate of 6%.

for the limited purpose of dealing with the Intercompany Claims as contemplated under the U.S. Plan. The Monitor supports the Payless Canada Entities' request.

80. The Stay Period currently expires on December 20, 2019. If the Sanction Order is granted, additional time may be required for the Payless Canada Entities and the Monitor to resolve outstanding Claims, to implement the First Amended CCAA Plan, and to make the distributions contemplated by the First Amended CCAA Plan. Additional time may be particularly necessary given that the distributions to the Affected Creditors are conditional on obtaining a Comfort Letter from the Canada Revenue Agency.

81. The continuation of the stay of proceedings is necessary to provide the stability needed to complete the foregoing activities. Accordingly, the Payless Canada Entities now seek an extension of the Stay Period to February 28, 2020 (the "**Fourth Stay Extension**").

82. As previously indicated in this Seventh Report, considering the current cash balance and the establishment of the Reserves should the First Amended CCAA Plan be implemented, the Payless Canada Entities are forecast to have sufficient liquidity to fund the CCAA Proceedings during the requested extension of the Stay Period as well as sufficient funding to conclude the CCAA Proceedings.

83. Based on the information currently available, the Monitor believes that the creditors of the Payless Canada Entities would not be materially prejudiced by the proposed extension of the Stay Period. The Monitor also believes that the Payless Canada Entities have acted, and continue to act, in good faith with due diligence and that the circumstances exist that make an extension of the Stay Period appropriate.

84. The Monitor therefore respectfully recommends that this Honourable Court grant the Payless Canada Entities' request for a limited lifting of the stay of proceedings for the purpose of permitting the forgiveness or cancellation in whole or in part of the Intercompany Claims set out in the U.S. Plan, and an extension of the Stay Period to February 28, 2020.

K. CONCLUSION AND RECOMMENDATION

85. As discussed earlier in this Seventh Report, for a plan of arrangement or compromise to be sanctioned pursuant to the CCAA, the following three tests must be met:

(a) there has been strict compliance with all statutory requirements and adherence to previous orders of the Court;

(b) nothing has been done or purported to have been done that is not authorized by the CCAA; and

(c) the plan is fair and reasonable.

86. The Monitor's view is that:

(a) the First Amended CCAA Plan has been approved by the Requisite Majorities of each class of Affected Creditors;

(b) there has been compliance with all requirements of the CCAA and the Payless Canada Entities have adhered to the previous Orders of the Court made in the CCAA Proceedings;

(c) nothing has been done or purported to be done by the Payless Canada Entities that is not authorized by the CCAA; and

(d) the First Amended CCAA Plan is fair and reasonable.

87. The Monitor believes that the Payless Canada Entities have acted, and are continuing to act, in good faith and with diligence and that the circumstances exist that make the Fourth Stay Extension appropriate.

88. The Monitor further understands that in order to effect certain steps as it relates to the Intercompany Claims prior to the effectiveness of the First Amended CCAA Plan, a limited lifting of the stay of proceedings in respect of the Payless Canada Entities must be granted for the limited purpose of dealing with the Intercompany Claims as contemplated under the U.S. Plan.

89. Accordingly, the Monitor respectfully recommends that this Honourable Court grant the Sanction Order, including an extension of the Stay Period to February 28, 2020 and a limited lifting of the stay of proceedings.

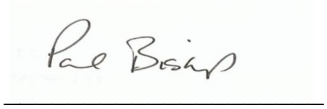
The Monitor respectfully submits to the Court this, its Seventh Report.

Dated this 23rd day of October 2019.

FTI Consulting Canada Inc.,

solely in its capacity as Monitor of Payless ShoeSource Canada Inc., Payless ShoeSource Canada GP Inc. and Payless ShoeSource Canada LP, and not in its personal capacity

Greg Watson
Senior Managing Director



Paul Bishop
Senior Managing Director

APPENDIX "A"

[ATTACHED]

Court File No. CV-19-00614629-00CL

PAYLESS SHOESOURCE CANADA INC. and
PAYLESS SHOESOURCE CANADA GP INC.

SIXTH REPORT OF FTI CONSULTING CANADA INC., AS MONITOR

October 16, 2019

Court File No. CV-19-00614629-00CL

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 PAYLESS SHOESOURCE CANADA INC. AND PAYLESS SHOESOURCE CANADA GP INC.

(the "**Applicants**")

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

A. INTRODUCTION

1. On February 18, 2019, Payless Holdings LLC and certain of its subsidiaries and affiliates (collectively, the "**Debtors**") commenced cases (collectively, the "**U.S. Proceedings**") under Chapter 11 of Title 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of Missouri (the "**U.S. Court**").

2. On February 19, 2019, Payless ShoeSource Canada Inc. ("**PSSC**") and Payless ShoeSource Canada GP Inc. (collectively, the "**Applicants**"), which are debtors in the U.S. Proceedings, sought and obtained an initial order (the "**Initial Order**") under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"). The benefits, protections, authorizations and restrictions of the Initial Order were also extended to Payless ShoeSource Canada LP ("**Payless Canada LP**", and together with the Applicants, the "**Payless Canada Entities**", and together with the Debtors, the "**Payless Group**"). The proceedings commenced under the CCAA by the Payless Canada Entities are referred to herein as the "**CCAA Proceedings**".

3. The Initial Order, among other things:

(a) appointed FTI Consulting Canada Inc. ("**FTI**") as monitor of the Payless Canada Entities (in such capacity, the "**Monitor**") in the CCAA Proceedings;

(b) granted a stay of proceedings (the "**Stay of Proceedings**") against the Payless Canada Entities until and including March 21, 2019;

(c) approved the engagement of Ankura Consulting Group, LLC ("**Ankura**") as Chief Restructuring Organization of the Payless Canada Entities; and

(d) approved a cross-border protocol.

4. On February 21, 2019, this Court granted an order approving a liquidation consulting agreement dated February 12, 2019 (the "**Liquidation Consulting Agreement**") between the Debtors (including the Payless Canada Entities) and a contractual joint venture comprised of Great American Group, LLC and Tiger Capital Group, LLC (together, the "**Consultant**"). Pursuant to the Liquidation Consulting Agreement, the Debtors engaged the Consultant to advise the Debtors with respect to the liquidation of inventory and certain fixtures at the stores identified in the Liquidation Consulting Agreement.

5. On March 20, 2019, this Court granted an Order granting the Payless Canada Entities an extension of the Stay of Proceedings until and including June 7, 2019 and approving the Pre-Filing Report, the First Report, the Second Report and the activities of the Proposed Monitor and the Monitor, as applicable.

6. On April 24, 2019, this Court granted an Order (the "**Claims Procedure Order**") approving a claims procedure to solicit and identify (but not resolve) certain claims against the Payless Canada Entities (the "**Claims**").

7. Also on April 24, 2019, this Court granted an Order (the "**Amended Cash Flow Order**") that, *inter alia*, approved the Third Report and authorized the Payless Canada Entities to transfer funds to the U.S. Debtors, subject to the existing security interest of the Term Loan Lenders, (a) materially consistent with the Cash Flow Statement (as defined in the Amended Cash Flow Order), (b) in such amounts as may be determined by the Payless Canada Entities with the prior written consent of the Monitor, or (c) as otherwise ordered by the Court.

8. On June 4, 2019, this Court granted an Order (the "**Second Stay Extension Order**") granting the Payless Canada Entities an extension of the Stay of Proceedings until and including September 20, 2019 and approving the Fourth Report and the activities of the Monitor. The Second Stay Extension Order also approved the fees and disbursements of the Monitor for the period from February 19, 2019 to May 19, 2019, and of counsel to the Monitor for the period from February 19, 2019 to May 17, 2019.

9. On September 17, 2019, this Court granted an Order (the "**Third Stay Extension Order**"), *inter alia*:

   (a) granting the Payless Canada Entities an extension of the Stay of Proceedings until and including December 20, 2019;

   (b) lifting the Stay of Proceedings, to the extent necessary, for the limited purpose of allowing the Payless Canada Entities to apply to the U.S. Court to dismiss the Payless Canada Entities' U.S. Proceedings;

   (c) ordering that all references to Cash Flow Statement in the Initial order shall mean the cash flow statement attached to the Fifth Report;

   (d) approving the fees and disbursements of the Monitor for the period from May 20, 2019 to August 31, 2019, and of counsel to the Monitor for the period from May 18, 2019 to August 31, 2019; and

   (e) approving the Fifth Report and the activities of the Monitor.

10. On September 17, 2019, the Monitor filed a Supplement to the Fifth Report (the "**Supplemental Report**") which provided a summary of the CCAA Plan (as defined below). A copy of the Supplemental Report is attached hereto as Appendix "A".

11. On September 19, 2019, this Court granted an Order (the "**Meetings Order**"), *inter alia*, accepting the filing of the Payless Canada Entities' proposed plan of compromise and arrangement dated September 17, 2019 (as may be amended in accordance with the terms thereof, the "**CCAA Plan**") and authorizing the convening of the meetings of creditors to consider and vote on the CCAA Plan (the "**Creditors' Meetings**").

B. PURPOSE

12. The purpose of this Sixth Report of the Monitor (the "**Sixth Report**") is to provide the Court with the Monitor's comments and recommendation regarding the CCAA Plan, the First Amended CCAA Plan (as defined below) and the Plan Supplement (as defined below).

C. TERMS OF REFERENCE

13. In preparing the Sixth Report, the Monitor has relied upon audited and unaudited financial information provided by the Debtors, including their books and records, financial information, forecasts and analysis, in addition to discussions with various parties, including senior management ("**Management**") of, and advisors to, the Payless Canada Entities, the other Debtors, and Ankura (collectively, the "**Information**").

14. Except as otherwise described in the Sixth Report:

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

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

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

16. The Monitor has prepared the Sixth Report in connection with the Creditors' Meetings. The Sixth 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 First Amended CCAA Plan or the Plan Supplement, as applicable.

D. NOTICE OF CREDITORS' MEETINGS AND SANCTION MOTION

19. The Information Package and the Notice of the Creditors' Meetings and Sanction Motion were provided in accordance with the provisions of the Meetings Order as follows:

(a) On September 24, 2019, the Monitor sent copies of the Information Package in English to all Eligible Voting Creditors;

(b) On September 30, 2019, the Monitor sent copies of the Notice of Creditors' Meetings and Sanction Motion in French to all Quebec employees;

(c) *The Globe and Mail* (National Edition) ran the Notice of Creditors' Meetings and Sanction Motion on September 26, 2019 and September 27, 2019;

(d) *La Presse* ran the Notice of Creditors' Meetings and Sanction Motion in French on September 28, 2019 and September 30, 2019;

(e) On September 19, 2019, the Monitor posted an electronic copy of the Information Package, inclusive of the Notice of Creditors' Meetings and Sanction Motion, on the Monitor's Website; and

(f) On September 20, 2019, Monitor's counsel sent a copy of the Information Package to the Service List.

E. U.S. PROCEEDINGS DISMISSAL MOTION

20. As noted above, pursuant to the Third Stay Extension Order, the Court lifted the Stay of Proceedings, to the extent necessary, for the limited purpose of allowing the Payless Canada Entities to apply to the U.S. Court to dismiss the Payless Canada Entities' U.S. Proceedings.

21. On or about October 2, 2019, the Payless Canada Entities filed a motion in the U.S. Proceedings seeking entry of an order pursuant to 11 U.S.C § 1112(b) dismissing the U.S. Proceedings as against the Payless Canada Entities upon the implementation of the U.S. Plan. The motion is currently scheduled to be heard on October 23, 2019 at 10:00 am

(Central Time), which is the same time that confirmation is scheduled to be sought in respect of the U.S. Plan.

F. THE CCAA PLAN AND THE PLAN SUPPLEMENT

(i) The CCAA Plan and the First Amended CCAA Plan

22. As discussed in the Supplemental Report, the Monitor had input into the development of the CCAA Plan, reviewed it, and was of the view that it was appropriate and reasonable in the circumstances. Additional details in respect of the CCAA Plan are contained in the Supplemental Report.

23. On October 16, 2019, the Payless Canada Entities served on the Service List the First Amended and Restated CCAA Plan (the "**First Amended CCAA Plan**").

24. The First Amended CCAA Plan contemplates the appointment of FTI as receiver (in such capacity, the "**Receiver**") pursuant to a Receivership Order in respect of Payless Canada LP over a certain limited pool of funds. If the Receivership Order is granted, $100 and all Employee Distributions (as defined in the First Amended CCAA Plan) will be directed to the Receiver instead of being distributed to the former employees. As Payless Canada LP was the employer of all employees for the benefit of the Payless Canada Entities, the receivership will have the effect of triggering the Wage Earner Protection Program (the"**WEPP**") pursuant to the *Wage Earner Protection Program Act*, S.C. 2005, c.47, s.1 ("**WEPPA**"), which will result in a better recovery for all former employees of Payless Canada LP who are Affected Creditors.

25. Former employees who would not be eligible for payments under the WEPP will not be included in the receivership process and will receive their distributions as General Unsecured Creditors.[1] The fees of the Receiver and its counsel in connection with administering the WEPP will be paid from the receivership property.

[1] Pursuant to section 6 of WEPPA, an individual is not eligible to receive a payment in respect of any wages earned during, or that otherwise relate to, a period in which the individual (a) was an officer or director of the former employer; (b) had a controlling interest within the meaning of the regulations in the business of the former employer; (c) occupied a managerial position within the meaning of the regulations with the former employer; or (d) was not dealing at arm's length with (i) an officer or director of the former employer, (ii) a person who had a controlling interest within the meaning of the regulations in the business of the former employer, or (iii) an individual who occupied a managerial position within the meaning of the regulations with the former employer.

26. If the Receivership Order is not granted, the Employee Distributions will be made directly to employees in the same manner as distributions to other General Unsecured Creditors. The granting of the Receivership Order is not a condition to implementation of the First Amended CCAA Plan.

27. The Monitor is of the view that the appointment of a Receiver is just in the circumstances. Should the Receivership Order be granted, the employees will be able to access the WEPP benefits, resulting in a greater recovery for the applicable former employees of the Payless Canada Entities. The Monitor has started to engage in discussions with Service Canada and the WEPP, Policy and Oversight office, in respect of the proposed administration of the WEPP.

28. The Monitor is not aware of any creditor that will be prejudiced by the receivership or the amendments contained in the First Amended CCAA Plan. The Monitor also notes that the amendments contained in the First Amended CCAA Plan were made in accordance with the provisions of the Meetings Order and the CCAA Plan.

(ii) Preferences and Transfers at Undervalue

29. Section 36.1 of the CCAA provides that Sections 95 to 101 of the *Bankruptcy and Insolvency Act* (the "**BIA**") apply to proceedings under the CCAA. Pursuant to these sections, a Court may, on application by the Monitor under the CCAA, declare preference transactions and transfers at undervalue (collectively, a "**Preference Transaction**") to be void as against the Monitor or, in the case of transfers at undervalue, order any party to (or privy to) the transfer to pay the difference in value between the consideration received by the debtor and the value given by the debtor.

30. The Monitor notes that pursuant to the Fifth Amended Joint Plan of Reorganization of Payless Holdings LLC and its Debtor Affiliates pursuant to Chapter 11 of the Bankruptcy Code dated July 21, 2017 (the "**2017 U.S. Plan**"), which was confirmed by the U.S. Court and recognized by this Court as part of the Payless Group's prior restructuring, all of the then-debtors (which included the Payless Canada Entities) waived all rights to commence

or otherwise pursue any and all Avoidance Actions[2], and such Avoidance Actions were released on plan implementation.

31. Taking into consideration the foregoing, during the course of the CCAA Proceedings, the Monitor has analyzed and considered the Payless Canada Entities' financial statements for the periods following the implementation of the 2017 U.S. Plan and has not identified any variances that indicate a material Preference Transaction occurred. Based on the foregoing, the Monitor is of the view that it is reasonable to include that sections 36.1 and 95 to 101 of the BIA do not apply in respect of the First Amended CCAA Plan.

(iii) The Plan Supplement

32. As contemplated by the Meetings Order, on October 16, 2019, the Payless Canada Entities served the Plan Supplement (the "**Plan Supplement**") on the Service List. The Monitor understands that the Plan Supplement is acceptable to the Supporting Term Loan Lenders.

33. The Plan Supplement, as contemplated by the Meetings Order, the CCAA Plan and the First Amended CCAA Plan, contains the following schedules:

(a) Schedule A – Transaction Steps (including treatment of Intercompany Claims) ("**Schedule A**"); and

(b) Schedule B – Reserves ("**Schedule B**").

34. The implementation of the First Amended CCAA Plan is conditional on the U.S. Plan becoming effective. The U.S. Plan contemplates that (i) for no consideration, Payless Finance Inc. ("**Finance**") will cancel the intercompany note in the amount of approximately US$114 million (including principal and interest) owed by Finance to PSSC, and (ii) PSS Canada, Inc. ("**PCI**"), an entity incorporated in the United States and a Debtor in the U.S. Proceedings, will repay Payless Canada LP the Post-Filing Intercompany Loans (including accumulated interest thereon) in full in the amount of approximately US$15.6 million. Following the effective date of the U.S. Plan, certain holders of the Tranche A-2 Term

[2] Pursuant to the 2017 U.S. Plan, Avoidance Actions means "any and all claims and causes of action which any of the Debtors, the debtors in possession, the Estates, or other appropriate party in interest has asserted or may assert under sections 502, 510, 542, 545, or 547 through 553 of the Bankruptcy Code or under similar or related state or federal statutes and common law, including fraudulent transfer laws."

Loan Secured Claims (as defined in the U.S. Plan) will own 100% of the equity in reorganized Payless Holdings LLC.

35. Schedule A of the Plan Supplement contemplates that, at the Effective Time, the following events or transactions will occur, or be deemed to have occurred and be taken and effected in five minute increments (unless otherwise indicated), in the order provided below (or in such other manner or order, or at such other time or times, as the Payless Canada Entities may determine in consultation with the Monitor):

(a) The Payless Canada Entities shall fund the Reserves and the Affected Creditor Distribution Account in accordance with the First Amended CCAA Plan;

(b) The Monitor, on behalf of the Payless Canada Entities, shall pay any Priority Claims from the Priority Claim Reserve Account as required by the CCAA and in accordance with the First Amended CCAA Plan;

(c) The Administration Charge and Directors' Charge shall continue and shall attach solely to the Administration Reserve and the Directors' Claim Reserve, respectively, from and after the Implementation Date pursuant to and in accordance with the proposed Sanction Order;

(d) Landlords shall be entitled to the treatment as set out in section 4.2 of the First Amended CCAA Plan;

(e) General Unsecured Creditors shall be entitled to the treatment as set out in sections 4.1, 4.7 and 6.2(b) of the First Amended CCAA Plan;

(f) The compromises with the General Unsecured Creditors and the Landlords and the release of the Released Parties shall become effective in accordance with section 4.7 and Article 8 of the First Amended CCAA Plan and as otherwise set forth in the proposed Sanction Order;

(g) The Intercompany Claims will be dealt with as follows:

i. Payless Canada LP will pay proceeds of the Post-Filing Intercompany Loans (including accumulated interest) received from PCI to Payless

ShoeSource Distribution, Inc. ("**PSSD**") in partial satisfaction of the principal amounts owing from Payless Canada LP to PSSD;

ii. Payless Canada LP will repay to PSSD in partial satisfaction of the principal amounts owing from Payless Canada LP to PSSD, the available cash remaining after provision for the Reserves (which remaining cash is estimated to be approximately $2.1 million); and

iii. PSSC will cancel the existing note (including accumulated interest thereon) payable to Collective Brands II Cooperatief UA.

36. Schedule B of the Plan Supplement contemplates that the Reserves provided for in the First Amended CCAA Plan be set out in the following amounts:

(a) Administrative Reserve - $1,065,150.00 (less amounts paid for October 2019);

(b) Directors' Claim Reserve - $2,000,000.00;

(c) Post-Filing Claims Reserve - $908,402.00; and

(d) Priority Claim Reserve - $0.00.

37. The Monitor is of the view that the Plan Supplement is appropriate and reasonable in the circumstances. Among other things, the Monitor is satisfied with the quantum of Reserves having considered many factors, including the Claims filed, the provisions of the CCAA and the Initial Order, and the work still to be done to implement the First Amended CCAA Plan and complete the CCAA Proceedings. The Plan Supplement is acceptable to the Monitor.

G. THE MONITOR'S ASSESSMENT OF THE FIRST AMENDED CCAA PLAN

38. The First Amended CCAA Plan is a plan of compromise and arrangement covering all of the Payless Canada Entities. The First Amended CCAA Plan is conditional upon and subject to all conditions being satisfied in the U.S. Plan. It is intended that the First Amended CCAA Plan will be implemented immediately after the U.S. Plan in the U.S. Proceedings. The First Amended CCAA Plan and the U.S. Plan are intended to affect a coordinated restructuring of all the Payless Group.

39. As described in the Supplemental Report, the Monitor is of the view that the unsecured creditors of the Payless Canada Entities are similarly situated to the Class 5B General Unsecured Creditors in the U.S. Proceedings, and as such should be treated equitably with the Class 5B General Unsecured Creditors. For the reasons set out in the Supplemental Report, the Monitor is satisfied that the unsecured creditors of the Payless Canada Entities are in fact being treated equitably with the similarly situated Class 5B General Unsecured Creditors under the U.S. Plan.

(i) Classification of Creditors

40. As described in the Supplemental Report, the CCAA Plan provides for two (2) classes of voting creditors, the General Unsecured Creditor class and the Landlord class, as follows:

(a) each General Unsecured Creditor in the General Unsecured Creditor class with a Proven Claim will receive a distribution in an amount equal to its *pro rata* share of the General Unsecured Pool, which is estimated to be a recovery of approximately 3.2% of its Proven Claim, subject to further reconciliation and finalization of Claims;

(b) each Landlord will receive the lesser of:

i. $3,840.00 per Lease (provided that if there are multiple Landlords per Lease, only one payment of $3,840.00 shall be made); and

ii. The amount asserted in the Landlord's Notice of Dispute of Claim Statement or Proof of Claim, or if no Notice of Dispute of Claim Statement or Proof of Claim was filed, the amount in the Landlord's Claim Statement.

The First Amended CCAA Plan contains no changes in this regard.

41. With respect to the classification of creditors, Section 22 of the CCAA provides as follows:

> "22(1) A debtor company may divide its creditors into classes for the purpose of a meeting to be held under section 4 or 5 in respect of a compromise or arrangement relating to the company and, if it does so, it is to apply to the court for approval of the division before the meeting is held.

> (2) For the purpose of subsection (1), creditors may be included in the same class if their interests or rights are sufficiently similar to give them a commonality of interest, taking into account:
>
> (a) the nature of the debts, liabilities or obligations giving rise to their claims;
>
> (b) the nature and rank of any security in respect of their claims;
>
> (c) the remedies available to the creditors in the absence of the compromise or arrangement being sanctioned, and the extent to which the creditors would recover their claims by exercising those remedies; and
>
> (d) any further criteria, consistent with those set out in paragraphs (a) to (c), that are prescribed."

42. The Monitor has considered the factors set out in section 22(2) of the CCAA and is of the view that the classification of creditors under the First Amended CCAA Plan is fair and appropriate in the circumstances. The Monitor also notes that the classification of creditors was previously approved without any opposition pursuant to the Meetings Order.

(ii) Compliance with Statutory Requirements

43. A plan of compromise or arrangement can only be sanctioned by the Court if, among other things, it complies with all statutory requirements.

44. Section 5.1(1) of the CCAA permits the compromise of claims against directors of a debtor company; however, section 5.1(2) of the CCAA contains certain exceptions. Section 8.1(d) of the First Amended CCAA Plan contains the statutory exceptions required by the CCAA in respect of the releases in favour of the directors of the Payless Canada Entities.

45. Section 6(3) of the CCAA requires that a plan provide for the payment in full of certain Crown claims within six (6) months of the plan being sanctioned. The First Amended CCAA Plan provides that the Crown Priority Claims will be paid in full within six (6) months after the Sanction Order, as required by section 6(3) of the CCAA.

46. Section 6(5) of the CCAA requires that a plan provide for payment immediately after sanction of certain amounts owing to employees and former employees. The First

Amended CCAA Plan provides that all Employee Priority Claims, to the extent unpaid, shall be paid.

47. The First Amended CCAA Plan provides for the creation of the Priority Claim Reserve, to be funded in cash by the Payless Canada Entities on the Implementation Date, from which Crown Priority Claims or Employee Priority Claims will be paid. It is noteworthy, however, that the Priority Claim Reserve is contemplated to be nil as the Payless Canada Entities and the Monitor are not aware of any Crown Priority Claims or Employee Priority Claims.

48. Section 6(6) of the CCAA requires that a plan provide for payment of certain unpaid amounts relating to pension plans. The Payless Canada Entities have advised the Monitor that they do not participate in a prescribed pension plan, and accordingly it is not necessary for the First Amended CCAA Plan to provide for the payment of amounts of the type required to be paid pursuant to section 6(6) of the CCAA.

49. Pursuant to section 6(8) of the CCAA, a plan that provides for payment of an equity claim (as that term is defined in the CCAA) may not be sanctioned by the Court unless all non-equity claims are paid in full. The First Amended CCAA Plan does not contemplate the payment of any such claims.

50. Pursuant to section 19(2) of the CCAA, a plan may not purport to compromise any claim that relates to the debts or liabilities described in section 19(2) unless the plan explicitly provides for the compromise of such claim and the creditor holding the claim votes in favour of the plan. No claims of the type described in section 19(2) were asserted against the Payless Canada Entities pursuant to the Claims Procedure Order.

51. Based on the foregoing, the Monitor is not aware of any aspect of the First Amended CCAA Plan that is not in compliance with statutory requirements.

(iii) Alternatives to the First Amended CCAA Plan

52. In arriving at its recommendation, the Monitor has considered possible alternatives to the First Amended CCAA Plan.

53. As the Monitor has previously reported on, the Term Loan Lenders have valid security over substantially all of the Payless Canada Entities, and as a result, there is a lack of available alternatives.

54. If the First Amended CCAA Plan were not to be implemented, the Term Loan Lenders would be entitled to all of the funds currently held by the Payless Canada Entities, and no distributions would be made in respect of any other Claims, except that former employees could recover under WEPPA if there were to be a bankruptcy.

55. However, a bankruptcy for one or more of the Payless Canada Entities would require, among other things, the approval of the Court and sufficient financing for the proceeding to satisfy a trustee in bankruptcy. Accordingly, it is not certain that bankruptcy is even a viable alternative in the circumstances.

56. The Monitor is of the view that the stakeholders of the Payless Canada Entities, taken as whole, will derive a greater benefit under the First Amended CCAA Plan when compared to any potential alternative, including a bankruptcy.

(iv) The Releases and Related Matters

57. As described above, section 5.1(2) of the CCAA prohibits the release of certain claims against directors. While the contemplated releases do not release the Directors to the extent that any Claim cannot be released under the CCAA, the First Amended CCAA Plan and the proposed Sanction Order provide for a permanent injunction for actions in respect of Director/Officer Claims, other than Excluded Director/Officer Claims, against any party other than the provider of the Insurance Policies (as defined in the proposed Sanction Order) and limits recovery for valid Director/Officer Claims solely to the proceeds of the Insurance Policies..

58. As further detailed in the Supplemental Report, the CCAA Plan contemplates a number of broad releases of the Payless Canada Entities, the Term Loan Agent, the Term Loan Lenders and the Monitor and each of their respective directors, officers, agents, professionals and certain other parties. The First Amended CCAA Plan contains no changes in this regard. The Monitor has reviewed the releases and believes that they are

fair and reasonable in the circumstances. Specifically, the Monitor notes that the releases do not release:

(a) the Payless Canada Entities and their respective assets, undertaking and properties from any Unaffected Claim that has not been paid in full under the First Amended CCAA Plan or the Plan Supplement to the extent of such non-payment;

(b) a Released Party from its obligations under the First Amended CCAA Plan or the Plan Supplement;

(c) subject to provisions in the First Amended CCAA Plan pertaining to insurance, a Released Party found by a court of competent jurisdiction by final determination on the merits to have committed fraud or willful misconduct in relation to a Released Claim for which it is responsible at law; or

(d) subject to provisions in the First Amended CCAA Plan pertaining to insurance, the Directors from any Claims which have been preserved in accordance with the Claims Procedure Order that cannot be compromised due to the provisions of Section 5.1(2) of the CCAA. To the extent not released, the proposed Sanction Order will limit recovery for such claims against the Directors to available insurance.

H. CONCLUSION

59. The only realistic alternative to the First Amended CCAA Plan is the possibility of a bankruptcy. For the reasons stated above, a bankruptcy is not a foregone conclusion in the event the First Amended CCAA Plan is not approved. If the First Amended CCAA Plan is not approved and there is no bankruptcy, the Term Loan Lenders would be entitled to all available funds in the estate, and unsecured creditors would not be entitled to a distribution resulting in no recovery in respect of their Claims. If the First Amended CCAA Plan is not approved and there is a bankruptcy, only the former employees who are now unsecured creditors would likely see a recovery on their claims through the implementation of WEPP, and the other unsecured creditors would not be entitled to a distribution. In the Monitor's view, the First Amended CCAA Plan provides the best alternative and recovery to the Payless Canada Entities' unsecured creditors.

60. Accordingly, the Monitor recommends that Creditors vote in favour of the First Amended CCAA Plan at the Creditors' Meetings.

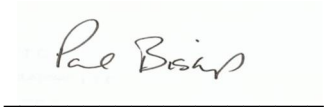
The Monitor respectfully submits to the Court this, its Sixth Report.

Dated this 16th day of October, 2019.

FTI Consulting Canada Inc.,

solely in its capacity as Monitor of Payless ShoeSource Canada Inc., Payless ShoeSource Canada GP Inc. and Payless ShoeSource Canada LP, and not in its personal capacity

Greg Watson
Senior Managing Director



Paul Bishop
Senior Managing Director

APPENDIX "A"

[ATTACHED]

Court File No. CV-19-00614629-00CL

PAYLESS SHOESOURCE CANADA INC. and
PAYLESS SHOESOURCE CANADA GP INC.

SUPPLEMENT TO THE FIFTH REPORT OF FTI CONSULTING CANADA INC., AS MONITOR

September 17, 2019

Court File No. CV-19-00614629-00CL

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 PAYLESS SHOESOURCE CANADA INC. AND PAYLESS SHOESOURCE CANADA GP INC.

SUPPLEMENT TO THE FIFTH REPORT TO THE COURT SUBMITTED BY FTI CONSULTING CANADA INC., IN ITS CAPACITY AS MONITOR

A. INTRODUCTION

1. On September 12, 2019, the Monitor filed its Fifth Report to the Court (the "**Fifth Report**") in relation to the relief sought by the Payless Canada Entities at a hearing scheduled for September 17, 2019. The Fifth Report noted that the Monitor intended to file a supplemental report to summarize and comment on the proposed CCAA Plan. This is that supplemental report (the "**Supplemental Report**").

B. PURPOSE

2. The purpose of this Supplemental Report is to provide the Court with the Monitor's comments and/or recommendations regarding:

   (a) an update in respect the Second Amended U.S. Plan (as defined below); and

   (b) the Payless Canada Entities' Plan of Compromise and Arrangement (the "**CCAA Plan**") dated September 17, 2019.

C. TERMS OF REFERENCE

3. In preparing this Supplemental Report, the Monitor has relied upon audited and unaudited financial information provided by the Debtors, including their books and records, financial information, forecasts and analysis, in addition to discussions with various parties,

including senior management ("**Management**") of, and advisors to, the Payless Canada Entities, the other Debtors, and Ankura (collectively, the "**Information**").

4. Except as otherwise described in the Supplemental 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 the Supplemental Report in a manner that would comply with the procedures described in the Chartered Professional Accountants of Canada Handbook.

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

6. The Monitor has prepared this Supplemental Report in connection with certain relief originally sought in connection with the September 17 Motion and now scheduled to be heard on September 19, 2019 at 9:15am. The Supplemental Report should not be relied on for any other purpose.

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

8. Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Frankum Affidavit (as defined in the Fifth Report), the Marotta Affidavit (as defined below), the Meetings Order, the Pre-Filing Report, the First Report, the Second Report, the Third Report, the Fourth Report and/or the Fifth Report, as applicable.

D. UPDATE IN RESPECT OF THE SECOND AMENDED U.S. PLAN

9. As described in the Affidavit of Stephen Marotta sworn September 17, 2019 (the " **Marotta Affidavit**"), the Monitor understands that the U.S. Debtors have further amended the U.S. Plan and the U.S. Disclosure Statement (the "**Second Amended U.S. Plan**" and the "**Second Amended Disclosure Statement**", respectively). Copies of the Second Amended U.S. Plan and Second Amended U.S. Disclosure Statement are included as Exhibit "B" and Exhibit "C"**,** respectively, to the Marotta Affidavit.

10. The Marotta Affidavit also attaches an information memorandum (the "**Information Memorandum**") which is intended to provide creditors of the Payless Canada Entities with a summary regarding the CCAA Proceedings and the Chapter 11 Proceedings and the impact of the Second Amended U.S. Plan on the CCAA Plan and creditors of the Payless Canada Entities. The Information Memorandum is included as Exhibit "D" to the Marotta Affidavit.

11. As described in more detail in the Marotta Affidavit, the Monitor understands that the Second Amended U.S. Plan provides for distributions to stakeholders as follows:

    (a) Administrative Claims (post-filing claims entitled to priority under U.S. law), Other Priority Claims (claims entitled to priority) and Other Secured Claims (mostly, claims secured by cash deposits or letters of credit), will be paid in full in cash.

    (b) Term Loan Lenders holding Tranche A-1 Term Loan Secured Claims will receive their *pro rata* share of US$68,800,000 in cash (an increase of approximately US$1.8 million from the prior version filed) and will waive any distributions in respect of related deficiency claims.

    (c) Term Loan Lenders holding Tranche A-2 Term Loan Secured Claims can elect to receive their *pro rata* share of common ownership units in the reorganized Payless Holdings LLC, or cash in the amount of 10% of their allowed tranche A-2 claims, and in either case, will waive any distributions in respect of related deficiency claims.

(d) General Unsecured Creditor recovery has been revised to reflect the global settlement with the Official Committee of Unsecured Creditors including:

i. General Unsecured Creditors of Payless ShoeSource Worldwide, Inc. and Collective Brands Logistics Limited (Class 5A) ("**Class 5A General Unsecured Creditors**") will receive their *pro rata* share of US$8.4 million, plus certain unused amounts currently designated for professional fees; and

ii. General Unsecured Creditors of all other U.S. Debtors (Class 5B) ("**Class 5B General Unsecured Creditors**"), will receive their *pro rata* share of US$5.1 million, plus certain unused amounts currently designated for professional fees (less the Canadian GUC Amount of US$900,000);

(e) Intercompany claims will be reinstated or cancelled as determined by the U.S. Debtors and the Requisite Plan Support Parties, and with respect to the Payless Canada Entities, with the consent of the Payless Canada Entities;

(f) Intercompany equity interests will be reinstated or cancelled as determined by the U.S. Debtors and the Requisite Plan Support Parties; and

(g) Equity interests in Payless Holdings LLC will be cancelled for no consideration.

12. The fixed amount for distribution to the general unsecured creditors of the Payless Canada Entities is USD$900,000 (being referred to as the "**Canadian GUC Amount**"), which the Monitor understands will be converted to Canadian dollars in the amount of $1,183,500.00 (using the exchange rate of 1.315).

13. The Payless Canada Entities, as guarantors, are indebted to the Term Loan Lenders in the aggregate amount of US$277.2 million as of the Filing Date under and in respect of the Terms Loan Credit Facility. The Monitor has received an opinion from its independent counsel that, subject to the typical assumptions and qualifications, the security in respect of the Terms Loan Credit Facility is valid and enforceable. Since all, or substantially all, of the Payless Canada Entities' assets are subject to liens of the Terms Loan Lenders (who will not be paid in full), the Canadian GUC Amount is a "gift", which the Terms Loan Lenders advise would not be available in a bankruptcy.

14. The Class 5A General Unsecured Creditors will receive a distribution larger than the Class 5B General Unsecured Creditors because Payless ShoeSource Worldwide, Inc. and Collective Brands Logistics Limited have certain additional unencumbered assets to support a higher distribution to unsecured creditors of those entities.

15. The Monitor is of the view that the unsecured creditors of the Payless Canada Entities are similarly situated to the Class 5B General Unsecured Creditors, and as such should be treated equitably with the Class 5B General Unsecured Creditors.

16. As described in the Marotta Affidavit, the U.S. Debtors and the Payless Canada Entities, with the assistance of the Monitor, compared the total amount of claims asserted in the Chapter 11 Claims Process and in the CCAA Proceedings pursuant to the Claims Procedure Order. Although a formal claims reconciliation process has not yet been undertaken in either jurisdiction, solely for purposes of this analysis:

    (a) all suspected duplicate claims, including claims filed against the Payless Canada Entities which were properly considered to be filed against the U.S. Debtors, were eliminated;

    (b) all unliquidated claims were estimated at zero;

    (c) all intercompany claims were disregarded;

    (d) the restructuring period claim in respect of each Canadian Lease was calculated under the landlord formula provided for in the United States Bankruptcy Code, which limits landlord claims to the greater of one lease year or 15 percent, not to exceed three years, of the remaining lease term plus any pre-filing amounts owed; and

    (e) all other claims were assumed allowed in full in the amounts set out in the U.S. schedules, the U.S. proofs of claim, the Claim Statements, the Amended Claim Statements or the Proofs of Claim.

17. Based on this analysis, the U.S. Debtors and the Payless Canada Entities, with the assistance of the Monitor, estimated that the recovery to unsecured creditors of the

applicable U.S. Debtors and the recovery (on a *pro rata* basis) to unsecured creditors of the Payless Canada Entities would be approximately 3.2%, subject to further reconciliation and finalization of Claims.

E. THE CCAA PLAN

18. The Monitor had input into the development of the CCAA Plan, has reviewed it, and is of the view that it is appropriate and reasonable for the Payless Canada Entities to seek the approval of the CCAA Plan by affected creditors at this time. A copy of the CCAA Plan is included as Exhibit "A" to the Marotta Affidavit.

Classification of, and Distributions to, Affected Creditors

19. As described in the Fifth Report and the Marotta Affidavit, the CCAA Plan provides for two (2) classes of voting under the CCAA Plan: (i) the General Unsecured Creditor class and (ii) the Landlord class.

20. It is proposed that each General Unsecured Creditor with a Proven Claim will receive a distribution in an amount equal to its *pro rata share* of the General Unsecured Pool. It is estimated that each General Unsecured Creditor will receive a recovery of approximately 3.2% of its Proven Claim subject to further reconciliation and finalization of Claims. With respect to Landlords, the CCAA Plan provides that each Landlord will receive the lesser of:

    (a) $3,840.00 per Lease (provided that if there are multiple Landlords per Lease, only one payment of $3,840.00 shall be made); or

    (b) the amount asserted in the Landlord's Notice of Dispute of Claim Statement or Proof of Claim, or if no Notice of Dispute of Claim Statement or Proof of Claim was filed, then the amount in the Landlord's Claim Statement.

21. A summary of the Claims filed pursuant to the Claims Procedure Order was provided in the Fifth Report. The Landlords are cumulatively the largest unsecured creditor group of the Payless Canada Entities. To date, the Monitor has received 254 Notices of Dispute of Claim Statement from the Landlords. As described in the Marotta Affidavit, because of the

relatively modest pool of funds available for unsecured creditors in Canada and the difficulty in reconciling Landlord Claims, the CCAA Plan proposes a fixed recovery per Landlord Claim. If the Payless Canada Entities and/or the Monitor were required to reconcile each Landlord Claim, including reviewing the specific terms of each relevant lease and the Landlord's efforts to mitigate damages, the Monitor believes that most (if not all) funds that would otherwise be available for distribution to unsecured creditors would be spent on professional fees. Fixing the recovery in respect of Landlord Claims allows the Payless Canada Entities and the Monitor to undertake a much more limited review of such Claims, which in turn, reduces professional costs and returns more value to unsecured creditors. The Monitor believes that this approach is appropriate and reasonable in the unique circumstances of this case, particularly the fixed Canadian GUC Amount available and relatively modest estimated recovery.

22. The Monitor is of the view that the fact that the Claims of Landlords and General Unsecured Creditors are being treated differently (although equitably) under the CCAA Plan justifies two separate voting classes.

23. The Payless Canada Entities and the Monitor arrived at the estimated distribution of $3,840.00 per Lease by examining the estimated percentage recovery to General Unsecured Creditors and Landlords under various scenarios.

24. The Monitor is of the view that the quantum of the proposed fixed distribution to Landlords is appropriate in the circumstances because:

    (a) it is subject to reduction if the amount asserted in the Landlord's Notice of Dispute of Claim Statement, or, in the Landlord's Claim Statement if no Notice of Dispute of Claim Statement was filed, is less than $3,840.00;

    (b) based on current estimates, it will result in an estimated recovery to General Unsecured Creditors of approximately 3.2% subject to further review and finalization of Claims, which is consistent with the current estimated recovery for Class 5B General Unsecured Creditors under the Second Amended U.S. Plan; and

(c) subject to any reduction referred to in (a) above, based on current estimates, it will result in a recovery to Landlords of approximately 3.2% based on how their claims would be calculated under the United States Bankruptcy Code, which is consistent with the current estimated recovery for landlords who are Class 5B General Unsecured Creditors.

25. The Monitor recognizes and acknowledges that under the CCAA, Landlord Claims are not to be calculated based on the formula set out in the United States Bankruptcy Code. However, given the unique circumstances of this case, as discussed above, the Monitor believes it is fair and appropriate to consider what Landlords would have received under the United States Bankruptcy Code in determining the appropriate distribution for the Landlords.

26. The Monitor has been very focused on ensuring that unsecured creditors of the Payless Canada Entities are treated equitably with similarly situated unsecured creditors of the U.S. Debtors, and the Monitor believes that has been achieved in the CCAA Plan. The Monitor notes that the Payless Canada Entities are U.S. Debtors and as such, any Canadian GUC Amount contemplated under the CCAA Plan ought to be equivalent to what they would have otherwise received under the U.S. Plan.

27. Pursuant to the terms of the CCAA Plan, no distributions will be made to Landlords or General Unsecured Creditors until documentation in form and content satisfactory to the Payless Canada Entities, the Supporting Term Loan Lenders and the Monitor (the "**Comfort Letter**") is received from the applicable Governmental Entity authorizing the Monitor to make the distributions, disbursements, or payments without any liability to any of the Payless Canada Entities, the Monitor, or each of their respective Directors, Officers, employees or agents in respect of the ITA, *Excise Tax Act*, and any other legislation pertaining to Taxes is received. The CCAA Plan provides that in the event the Comfort Letter is not received by December 31, 2019, the Payless Canada Entities may seek further directions from the Court.

28. The Monitor is of the view that receipt of the Comfort Letter prior to making distributions is necessary in order to eliminate the risk of any potential tax-related liability that could

arise in connection with the distributions to be made to the General Unsecured Creditors and the Landlords.

29. The CCAA Plan provides that further information regarding the treatment of Intercompany Claims will be provided in the Plan Supplement (which is described below).

Reserves

30. The CCAA Plan contemplates the creation of certain reserves (collectively, the "**Reserves**") in respect of Priority Claims and Claims that are required to be paid by Court order. In particular, the CCAA Plan provides for:

    (a) an Administrative Reserve, which will hold the estimated costs of administering the CCAA Plan;

    (b) a Directors' Claim Reserve, which will hold amounts secured by the Directors' Charge until applicable Claims have been resolved or paid;

    (c) Priority Claim Reserve, which will hold amounts necessary to pay any Crown Priority Claims or Employee Priority Claims that remain unpaid; and

    (d) a Post-Filing Claim Reserve, which will include an amount to pay for any unpaid Post-Filing Claims as estimated by the Monitor prior to implementation.

31. The Reserves will be subject to the security of the Term Loan Agent.

32. The CCAA Plan provides that the amount of the Reserves will be set out in the Plan Supplement, which must be acceptable to the Payless Canada Entities, the Monitor and the Supporting Term Loan Lenders.

33. To the extent that a Claim may be payable from more than one Reserve, the Monitor understands that the Payless Canada Entities will only reserve for such Claim once. To the extent that the Payless Canada Entities or the Monitor determine (with the consent of the other party) that there are funds in any Reserve sufficiently in excess of the amount required to fund payments that may be required to be made from such Reserve, the Payless Canada

Entities, with the consent of the Monitor and in consultation with the Term Loan Lenders, may transfer such excess funds to another Reserve.

34. To the extent that the Payless Canada Entities or the Monitor determine, with the consent of the other party, that there are insufficient funds in any Reserve to fund payments that may be required to be made from such Reserve, no excess amounts from any other Reserves will be distributed to the Payless Canada Entities without ensuring that sufficient funds are added to the applicable Reserve.

35. In the event that a dispute arises in respect of the Reserves, the parties to such dispute may seek a further order of the Court.

36. The Monitor intends to report on the Reserves in a further report to Court once they are determined.

Releases

37. The CCAA Plan contains broad releases of the Payless Canada Entities, the Term Loan Agent, the Term Loan Lenders and the Monitor, and each of their respective directors, officers, agents, professionals and certain other parties. The Monitor notes that the releases specifically do not release:

(a) the Payless Canada Entities and their respective assets, undertaking and properties from any Unaffected Claim that has not been paid in full under the CCAA Plan or the Plan Supplement to the extent of such non-payment;

(b) a Released Party (as defined below) from its obligations under the CCAA Plan or the Plan Supplement;

(c) subject to provisions in the CCAA Plan pertaining to insurance, a Released Party found by a court of competent jurisdiction by final determination on the merits to have committed fraud or willful misconduct in relation to a Released Claim for which it is responsible at law; or

(d) subject to provisions in the CCAA Plan pertaining to insurance, the Directors from any Claims which have been preserved in accordance with the Claims Procedure

Order that cannot be compromised due to the provisions of Section 5.1(2) of the CCAA. To the extent not released, the proposed Sanction Order will limit recovery for such claims against the Directors to available insurance.

38. The breadth and scope of the releases were developed by the Payless Canada Entities with input from the Monitor. The Monitor notes that all of the parties benefiting from the proposed releases under the CCAA Plan (each a "**Released Party**" and collectively, the "**Released Parties**") have played a significant role in the Payless Canada Entities' CCAA Proceedings. The Monitor also understands that the releases being sought by the Payless Canada Entities are critical to the Released Parties' support of the CCAA Plan.

Conditions to Implementation of CCAA Plan

39. The Monitor notes that there are a number of conditions to the implementation of the CCAA Plan that must be satisfied or waived, each of which is set out below:

(a) the CCAA Plan must be approved by the Required Majorities;

(b) the Court must grant the Sanction Order, the operation and effect of which must not be stayed, reversed or amended, and in the event of an appeal or application for leave to appeal, final determination must be made by the appellate court;

(c) the Reserves and the Affected Creditor Distribution Account must be funded by the Payless Canada Entities;

(d) the U.S. Proceedings with respect to the Payless Canada Entities must be dismissed;

(e) the U.S. Plan must be effective;

(f) the Monitor must receive written confirmation from the Term Loan Agent/Supporting Term Loan Lenders that the Supporting Term Loan Lenders are satisfied with:

i. the treatment of the Post-Filing Intercompany Loans,

ii. the form and substance of the Plan Supplement; and

iii. all variations and modifications of, and amendments and supplements to the Plan, the Plan Supplement and the Sanction Order, to and including the Implementation Date; and

(g) the Implementation Date must occur no later than the Outside Date.

40. The condition in (e) above may not be waived without the consent of the Supporting Term Loan Lenders, and the condition in (f) above may only be waived by the Supporting Term Loan Lenders.

Plan Supplement

41. The Payless Canada Entities, the Monitor and the Supporting Term Loan Lenders are continuing to consider the technical steps required to implement the CCAA Plan and the most efficient way to distribute funds in respect of the Term Loan Claims outside of the CCAA Plan. The Monitor expects that the determination of such steps will not impact Affected Creditors' recoveries, but will be necessary to quantify the Reserves. Additionally, given that the Term Loan Claims are Unaffected Claims under the CCAA Plan, the determination of such steps will also be necessary to quantify and determine the mechanics in respect of the distributions to be made to the Term Loan Claims outside of the CCAA Plan.

42. The proposed Meetings Order contemplates that the Payless Canada Entities file a Plan Supplement no later than five (5) Business Days prior to the Creditors' Meetings (or such other date as may be agreed to by the Monitor) providing such additional information in respect of the CCAA Plan. The Plan Supplement will be served on the Service List and posted on the Monitor's Website.

43. The Plan Supplement will be in form and substance acceptable to the Payless Canada Entities, the Monitor and the Supporting Term Loan Lenders.

F. CONCLUSION

44. The Monitor believes that the CCAA Plan should be accepted for filing and should be put out for a vote at the Creditors' Meetings as:

(a) The CCAA Plan was negotiated at arm's length, in good faith between the Payless Canada Entities and its stakeholders, with significant input and oversight from the Monitor;

(b) It is reasonable for the CCAA Plan to be subject to approval by two classes of creditors, being:

i. the General Unsecured Creditor class; and

ii. the Landlord class;

(c) In the Circumstances, the CCAA Plan represents the best possible recovery for Affected Creditors; and

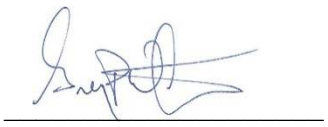
(d) The recoveries for General Unsecured Creditors and Landlords are expected to be commensurate with similarly situated creditors of the U.S. Debtors;

45. For the reasons stated in the Fifth Report and this Supplemental Report, the Monitor supports the relief sought by the Payless Canada Entities in connection with the September 17 Motion.

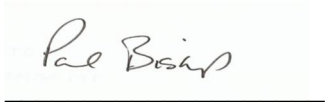
The Monitor respectfully submits to the Court this, its Supplemental Report.

Dated this 17th day of September, 2019.

FTI Consulting Canada Inc.,
solely in its capacity as Monitor of Payless ShoeSource Canada Inc.,
Payless ShoeSource Canada GP Inc. and Payless ShoeSource Canada LP,
and not in its personal capacity



Greg Watson
Senior Managing Director



Paul Bishop
Senior Managing Director

APPENDIX "B"

[ATTACHED]

Bennett Jones

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Sean H. Zweig
Partner
Direct Line: 416.777.6254
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October 16, 2019

Via E-Mail

Service Canada
Transformation and Integrated
Service Management Branch
Place du Portage, Phase IV
140 Promenade du Portage
Gatineau, Québec
K1A 0J9

Attention: Christina Harding

Wage Earner Protection Program, Policy
and Oversight
Employment and Social Development
Canada Place du Portage, Phase II
165 rue de l' Hotel-de-Ville Street
Gatineau, Québec
K1A 0J2
Attention: Alex Duff and Adam Seddon

Dear Sirs/Mesdames:

Re: Payless Canada

We are counsel to FTI Consulting Canada Inc. ("**FTI**"), the Court-appointed Monitor (the "**Monitor**") in the proceedings (the "**CCAA Proceedings**") of Payless ShoeSource Canada Inc. and Payless ShoeSource Canada GP Inc. (collectively, the "**Applicants**") under the *Companies' Creditors Arrangement Act* ("**CCAA**").

We write to you to follow up on your telephone and email correspondence with Jim Robinson of FTI on October 11, 2019. A copy of the email correspondence (the "**Email**") is attached hereto as Schedule "A" for your convenience.

As Mr. Robinson discussed with you, the intent is to seek the appointment of FTI as a receiver over certain assets, which will have the effect of triggering the Wage Earner Protection Program ("**WEPP**"). The purpose of this letter is to confirm the matters previously discussed relating to the receivership and WEPP in order to ensure everyone has a shared understanding. In particular, FTI believes that the items summarized below are beneficial for all in the circumstances and will help to streamline the WEPP program, including minimizing administration costs and avoiding confusion of the former employees who have already participated in a claims process in the CCAA Proceedings.

Payless LP Treatment for *Wage Earner Protection Program Act* ("WEPPA")

As you are aware, while Payless ShoeSource Canada LP ("**Payless LP**") is not an applicant in the CCAA Proceedings, Payless LP is subject to and enjoys the benefits, protections and authorizations

granted under the Initial Order dated February 19, 2019. A copy of the Initial Order is attached hereto as Schedule "B". We would point you to paragraph 2 in particular.

As discussed, the employees of the Payless Canada business were employed by Canada LP; not the Applicants. In accordance with the Email and your telephone correspondence with Mr. Robinson, we understand that the Wage Earner Protection Program, Policy and Oversight office (the "**WEPPA Office**") and Service Canada will recognize a CCAA filing date of February 19, 2019 in respect of Canada LP for the purpose of determining the eligibility period contemplated under subsection 2(1)(a)(ii) of WEPPA.

Proof of Claim

We also understand that, notwithstanding the requirement contained in subsection 16(1)(b) of the WEPPA Regulations, the WEPPA Office and Service Canada will not require FTI to issue, or any former employees of Payless LP to submit, a proof of claim given the claims process that was previously undertaken in the CCAA Proceedings.

As an alternative to submitting a proof of claim, FTI (in its capacity as receiver) will simply confirm in the information provided to Service Canada, with a copy being provided to the former employee in the ordinary course, that a proof of claim was received from employees on the basis of the claims process in the CCAA Proceedings. With respect to the information packages issued to former employees of Payless LP, FTI (in its capacity as receiver) would advise such former employees of the ordinary course requirements for the WEPP, including: i) the existence of the WEPP and the conditions under which payments may be made; ii) the details of the receivership; iii) the amount of eligible wages owing to each former employee; iv) each former employee's eligibility under the WEPP; and (v) directions on how to submit a WEPP application to Service Canada, including any required documents and supplementary information.

Data Submission

With respect to the submission of employee data to Service Canada for the processing of claims made pursuant to WEPPA, we understand that Service Canada and the WEPPA Office will accept the submission of such data though an emailed Excel file rather than through the traditional method of inputting employee data into Service Canada's website.

The Monitor intends to proceed on the basis outlined above unless we hear otherwise from you. We have also attached the current draft of the proposed receivership order hereto as Schedule "C".

We would be pleased to discuss any questions or concerns you may have, and we and the Monitor appreciate your efforts in proactively addressing and streamlining a WEPP administration in relation to the anticipated receivership of certain assets of Payless LP.

Yours truly,

BENNETT JONES LLP

Sean H. Zweig

Attachments

SCHEDULE "A"

Mike Shakra

Subject: RE: WEPP - Payless

From: alex.duff@labour-travail.gc.ca <alex.duff@labour-travail.gc.ca>
Sent: Friday, October 11, 2019 4:35 PM
To: Robinson, Jim <Jim.Robinson@fticonsulting.com>
Cc: adam.seddon@labour-travail.gc.ca; christina.harding@servicecanada.gc.ca
Subject: [EXTERNAL] RE: WEPP - Payless

Hi Jim,

It was nice meeting you over the phone, and thanks for providing us with an update on the status on your end.

Regarding your question about Payless ShoeSource Canada LP ("Payless LP"), the Initial Order is clear that Payless LP is subject to the proceedings under the CCAA and this is sufficient for the purposes of establishing eligible wages under WEPPA. As per WEPPA s.2(1)(a)(ii), the wage eligibility period would begin six months prior to the date of commencement of the CCAA proceedings, which would be the initial order date of February 19, 2019.

I hope the above is clear and please let us know if you have any other questions. I am away from the office on Tuesday and Wednesday next week, and Monday is a holiday, so won't be back until Thursday, October 17. Adam will be acting for me during that time.

Regards,
Alex

Alex Duff
Manager | Gestionnaire
Wage Earner Protection Program, Policy and Oversight | Programme de protection des salairés, politique et surveillance
Labour Program | Programme du travail
Phase II, Place du Portage
Tel.: 819-654-4266
alex.duff@labour-travail.gc.ca

From: Robinson, Jim <Jim.Robinson@fticonsulting.com>
Sent: 2019-10-11 4:10 PM
To: Harding, Christina CM [NC] <christina.harding@servicecanada.gc.ca>
Cc: Duff, Alex A [NC] <alex.duff@labour-travail.gc.ca>; Seddon, Adam A [NC] <adam.seddon@labour-travail.gc.ca>
Subject: RE: WEPP - Payless

Hi Christina, Alex and Adam,

Great speaking with you as well, and appreciate your time and efforts to work through our questions. My contact information is below for reference.

Jim

Jim Robinson, HBA, CPA•CA, CIRP
Managing Director, Corporate Finance & Restructuring

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jim.robinson@fticonsulting.com

TD South Tower
79 Wellington Street West | Suite 2010
Toronto, Ontario, M5K 1G8
www.fticonsulting.com

From: christina.harding@servicecanada.gc.ca <christina.harding@servicecanada.gc.ca>
Sent: Friday, October 11, 2019 4:01 PM
To: Robinson, Jim <Jim.Robinson@fticonsulting.com>
Cc: alex.duff@labour-travail.gc.ca; adam.seddon@labour-travail.gc.ca
Subject: [EXTERNAL] WEPP - Payless

Hi Jim,

Nice speaking with you this afternoon, please find below Alex and Adam's email addresses.

Duff, Alex A [NC] alex.duff@labour-travail.gc.ca

Seddon, Adam A [NC] adam.seddon@labour-travail.gc.ca

Thank you,
Christina

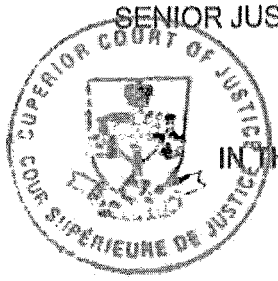
Senior Program Advisor // Conseillère Principale En Matière De Programme
New Service Offerings// Nouvelles Offres de Service
Transformation and Integrated Service Management Branch //
Direction générale de la transformation et de la gestion intégrée des services
Service Canada
Place du Portage, Phase IV
140 Promenade du Portage
Gatineau, K1A 0J9 Québec
christina.harding@servicecanada.gc.ca
(873)396-1090

SCHEDULE "B"

Court File No.
CV-19-00614629-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE REGIONAL	)	TUESDAY, THE 19th
	)	
SENIOR JUSTICE MORAWETZ	)	DAY OF FEBRUARY, 2019



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 PAYLESS SHOESOURCE CANADA INC. AND PAYLESS SHOESOURCE CANADA GP INC.

(the "**Applicants**")

INITIAL ORDER

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

ON READING the affidavit of Stephen Marotta sworn February 18, 2019 (the "**Marotta Affidavit**") and the Exhibits thereto, and the pre-filing report dated February 19, 2019 of FTI Consulting Canada Inc. ("FTI"), in its capacity as the proposed Monitor of the Payless Canada Entities (as defined below) (the "**Pre-Filing Report**") and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicants and Payless ShoeSource Canada LP (each a "**Payless Canada Entity**" and collectively, the "**Payless Canada Entities**"), counsel to FTI, counsel to Wells Fargo Bank, National Association (the "**ABL Agent**"), counsel to the ad hoc group of lenders under the Term Loan Credit Facility (as defined in the Marotta Affidavit), counsel to Cortland Products Corp. (the "**Term Loan Agent**") and counsel to the Liquidation Consultant (as defined in the Marotta Affidavit), and no one appearing for any other party

although duly served as appears from the affidavit of service of Monique Sassi sworn February 19, 2019 and on reading the consent of FTI to act as the Monitor,

SERVICE

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

APPLICATION

2. THIS COURT ORDERS AND DECLARES that the Applicants are companies to which the CCAA applies. Although not an Applicant, Payless ShoeSource Canada LP shall be bound by this Order as though it were an Applicant, enjoy the benefits of the protections and authorizations provided by this Order and shall be subject to the restrictions contained herein.

PLAN OF ARRANGEMENT

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

POSSESSION OF PROPERTY AND OPERATIONS

4. THIS COURT ORDERS that the Payless Canada Entities shall remain in possession and control of their respective current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, each of the Payless Canada Entities shall continue to carry on business in a manner consistent with the preservation of its business (the "**Business**") and Property. Each of the Payless Canada Entities shall be authorized and empowered to continue to retain and employ the employees, consultants, agents, advisors, experts, accountants, counsel and such other persons (collectively, the "**Assistants**") currently retained or employed by or with respect to it, with liberty to retain such further Assistants, including without limitation, a real estate advisor to assist in the monetization of the Payless Canada Entities' real property leases, as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. THIS COURT ORDERS that the Payless Canada Entitles shall be entitled to continue to utilize the central cash management system currently in place as described in the Marotta Affidavit or replace it with another substantially similar central cash management system (the "**Cash Management System**") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by each of the Payless Canada Entities of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Payless Canada Entities, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

6. THIS COURT ORDERS that each of the Payless Canada Entities' existing depository and disbursement banks (collectively, the "**Banks**") is authorized to debit the applicable Payless Canada Entity's accounts in the ordinary course of business without the need for further order of this Court for: (i) all cheques drawn on the Payless Canada Entities' accounts which are cashed at such Bank's counters or exchanged for cashier's cheques by the payees thereof prior to the date of this Order; (ii) all cheques or other items deposited in one of Payless Canada Entitles' accounts with such Bank prior to the date of this Order which have been dishonoured or returned unpaid for any reason, together with any fees and costs in connection therewith, to the same extent the Payless Canada Entities were responsible for such items prior to the date of this Order; and (iii) all undisputed pre-filing amounts outstanding as of the date hereof, if any, owed to any Bank as service charges for the maintenance of the Cash Management System.

7. THIS COURT ORDERS that any of the Banks may rely on the representations of the applicable Payless Canada Entity with respect to whether any cheques or other payment order drawn or issued by the Payless Canada Entitles prior to the date of this Order should be honoured pursuant to this or any other order of this Court, and such Bank shall not have any liability to any party for relying on such representations by the applicable Payless Canada Entities as provided for herein.

8. THIS COURT ORDERS that (i) those certain existing deposit agreements between the Banks shall continue to govern the post-filing cash management relationship between the Payless Canada Entities and the Banks, and that all of the provisions of such agreements, including, without limitation, the termination and fee provisions, shall remain in full force and effect, and (ii) either the Payless Canada Entities or the Banks may, without further Order of this Court, implement changes to the Cash Management Systems and procedures in the ordinary course of business pursuant to terms of those certain existing deposit agreements, including, without limitation, the opening and closing of bank accounts.

9. THIS COURT ORDERS that each of the Payless Canada Entities shall be entitled but not required to pay the following expenses and satisfy the following obligations whether incurred prior to, on or after the date of this Order to the extent such expenses are incurred and payable by such Payless Canada Entity:

(a) all outstanding and future wages, salaries, employee benefits (including, without limitation, employee medical, dental, vision, insurance and similar benefit plans or arrangements), vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements, and all other payroll and benefits processing and servicing expenses;

(b) the fees and disbursements of any Assistants retained or employed by or with respect to any of the Payless Canada Entities in respect of these proceedings, in accordance with the terms of their respective engagements; and

(c) with the consent of the Monitor, amounts owing for goods or services supplied to the Payless Canada Entities prior to the date of this Order by third party suppliers if, in the opinion of the Payless Canada Entities following consultation with the Monitor, such payment is necessary to maintain the uninterrupted operations of the Business.

10. THIS COURT ORDERS that, except as otherwise provided to the contrary herein each of the Payless Canada Entities shall be entitled but not required to pay all reasonable expenses incurred by such Payless Canada Entity in carrying on the Business in the ordinary course on or

after the date of this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

(a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and

(b) payment for goods or services actually supplied to such Payless Canada Entity following the date of this Order.

11. THIS COURT ORDERS that each of the Payless Canada Entities shall remit, in accordance with legal requirements, or pay:

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

(b) all goods and services taxes, harmonized sales taxes, or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by such Payless Canada Entity in connection with the sale of goods and services by such Payless Canada Entity, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not remitted until on or after the date of this Order, and

(c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by any of the Payless Canada Entities.

12. THIS COURT ORDERS that, except (i) as specifically permitted herein; or (ii) for repayments of the obligations owing under the ABL Credit Facility (as defined in the Marotta Affidavit) in the amounts noted as Canadian Excess Proceeds in the Cash Flow Statement attached to the Pre-Filing Report, as such Cash Flow Statement may be amended from time to time pursuant to a further Order of this Court or an Order in the U.S. Proceedings, each of the Payless Canada Entities is hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by any of the Payless Canada Entities to any of their creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

12A. THIS COURT ORDERS that the payments to be made by each of the Payless Canada Entities as authorized by this Order shall be materially consistent with the Cash Flow Statement, including without limitation the establishment and funding of the Reserve (as detailed in the Cash Flow Statement) in a separate Payless Canada Entity bank account (the "**Reserve Account**"). Payments shall only be made from the Reserve Account with the consent of the Monitor to satisfy those items for which the Reserve was established, or by further Order of the Court. For greater certainty, no Reserve amounts shall constitute Canadian Excess Proceeds or be otherwise used to repay the ABL Credit Facility without further Order of the Court, regardless of whether such amounts have been deposited into the Reserve Account.

12B. THIS COURT ORDERS that the Payless Canada Entities, in consultation with the Monitor, shall provide periodic reporting to the ABL Agent and the Term Loan Agent on a weekly basis (unless otherwise agreed) until the ABL Credit Facility (in the case of reporting to the ABL Agent) and the Term Loan Credit Facility (in the case of reporting to the Term Loan Agent) is repaid in full, with respect to the actual and projected receipts and disbursements of the Payless Canada Entities in a form to be agreed upon between the Payless Canada Entities each of the ABL Agent and the Term Loan Agent, in consultation with the Monitor.

RESTRUCTURING

13. THIS COURT ORDERS that each of the Payless Canada Entities shall, subject to such requirements as are imposed by the CCAA, have the right to:

(a) permanently or temporarily cease, downsize or shut down any of its business or operations, and to dispose of redundant or non-material assets not exceeding $100,000 in any one transaction or $500,000 in the aggregate; and

(b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate; and

(c) pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

all of the foregoing to permit each of the Payless Canada Entities to proceed with an orderly restructuring of the Business.

REAL PROPERTY LEASES

14. THIS COURT ORDERS that until a real property lease is disclaimed or resiliated in accordance with the CCAA, the Payless Canada Entity which is responsible for such payment shall pay, without duplication, all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) ~~but, excluding accelerated rent or penalties, fees or other charges arising as a result of the insolvency of any of the Payless Canada Entities or any affiliate thereof, the making of this Order, or the commencement of any insolvency proceeding (including, without limitation, the U.S. Proceedings, as defined in the Cross-Border Protocol) in respect of any of the Payless Canada Entities or any affiliate thereof in the United States or any other foreign jurisdiction (a "Foreign Proceeding")~~ or as otherwise may be negotiated between the applicable Payless Canada Entity and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

15. THIS COURT ORDERS that the relevant Payless Canada Entity shall provide each of the relevant landlords with notice of the relevant Payless Canada Entity's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased

premises to observe such removal and, if the landlord disputes the relevant Payless Canada Entity's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the relevant Payless Canada Entity, or by further Order of this Court upon application by the Payless Canada Entities on at least two (2) days notice to such landlord and any such secured creditors. If any of the Payless Canada Entities disclaims or resiliates the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer or resiliation of the lease shall be without prejudice to the relevant Payless Canada Entity's claim to the fixtures in dispute.

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

17. ~~THIS COURT ORDERS that, notwithstanding anything to the contrary in any real property lease or elsewhere, the Payless Canada Entities shall have no obligation to stock or restock and/or operate from any of its locations.~~ intentionally deleted

NO PROCEEDINGS AGAINST ANY OF THE PAYLESS CANADA ENTITIES, THE BUSINESS OR THE PROPERTY

18. THIS COURT ORDERS that until and including March 21, 2019, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of any of the Payless Canada Entities or the Monitor, or affecting any of the Business or the Property,

except with the written consent of the applicable Payless Canada Entity(ies) and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of any of the Payless Canada Entities or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

19. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person") against or in respect of any of the Payless Canada Entities or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the applicable Payless Canada Entity(ies) and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower any of the Payless Canada Entities to carry on any business which such entity is not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

20. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by any of the Payless Canada Entities, except with the written consent of the applicable Payless Canada Entity(ies) and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

21. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with any of the Payless Canada Entities or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll and benefits services, customs clearing, warehouse and logistics, insurance, transportation services, utility or other services to the Business or any of the Payless Canada Entities, are hereby restrained until

further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by any of the Payless Canada Entities, and that each of the Payless Canada Entities shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the appropriate Payless Canada Entity(ies) in accordance with normal payment practices of such Payless Canada Entity(ies) or such other practices as may be agreed upon by the supplier or service provider and each of the appropriate Payless Canada Entity(ies) and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

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

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

23. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of any of the Payless Canada Entities with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of any of the Payless Canada Entities whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligation.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

24. THIS COURT ORDERS that each of the Payless Canada Entities shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of each of the Payless Canada Entities after the commencement of the within

proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

25. THIS COURT ORDERS that the directors and officers of each of the Payless Canada Entities shall, as security for the indemnity provided in paragraph 24 of this Order, be entitled to the benefit of and are hereby granted (i) a charge on the funds in the Reserve Account in the amount of the funds held in the Reserve Account at any point in time (the "**Directors' Reserve Charge**") and (ii) a charge on the Property which charge shall not exceed a maximum amount of USD$4 million until March 21, 2019 and thereafter shall automatically reduce without any further order of this Court, to the maximum amount of USD$2 million (the "**Directors' General Charge**" and together with the Directors' Reserve Charge, the "**Directors' Charge**"). The Directors' Charge shall have the priority set out in paragraphs 45 and 47 herein.

26. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) each of the Payless Canada Entitles' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 24 of this Order.

APPROVAL OF THE CRO ENGAGEMENT

27. THIS COURT ORDERS that the agreement dated as of January 24, 2019 pursuant to which the Payless Canada Entities have engaged Ankura Consulting Group, LLC ("**Ankura**") to act as Chief Restructuring Organization (the "**CRO**") through the services of Stephen Marotta, Adrian Frankum and other employees of Ankura, a copy of which is attached as Exhibit "**H**" to the Marotta Affidavit as may be amended by the parties thereto with the consent of the Monitor (the "**CRO Engagement Letter**"), and the appointment of the CRO pursuant to the terms thereof, are hereby approved, including, without limitation, the payment of the fees and expenses contemplated thereby.

28. THIS COURT ORDERS that, subject to the provisions of the CCAA, this Order and any subsequent Order of this Court, the CRO is authorized to exercise and perform the powers,

responsibilities and duties as described in the CRO Engagement Letter and subject to the terms thereof, together with such other powers, responsibilities and duties as may be agreed upon by the CRO and approved by this Court (collectively, the "**CRO Powers**"), including, without limitation, the power to:

(a) make decisions with respect to the day to day aspects of the management and operations of the Business, including, without limitation, organization, human resources, marketing, sales, operations, supply chain, finance and administration, in such manner and take such actions and steps, as the CRO deems reasonably necessary and appropriate, and execute such documents and writings as required to cause or permit each of the Payless Canada Entitles to do all things authorized, directed and permitted pursuant to the CCAA, the terms of this Order, and any subsequent Orders of this Court, subject to the terms of those Orders;

(b) subject to the terms of this Order, realize and dispose of the Property of each of the Payless Canada Entities on behalf of such Payless Canada Entity(ies), including, without limitation, to negotiate and enter into agreements on behalf of each of the Payless Canada Entities with respect to the sale or other disposition of all or any part of the Property;

(c) represent each of the Payless Canada Entitles in any negotiations with any other stakeholders and their professional constituencies, including vendors and suppliers;

(d) assist the Payless Canada Entities with store closures and liquidations;

(e) evaluate the short-term company-prepared cash flows and financing requirements of the Payless Canada Entities as they relate to these proceedings;

(f) assist the Payless Canada Entities in the preparation and oversight of financial statements and schedules, monthly operating reports, and other information required in these proceedings, as applicable;

(g) assist the Payless Canada Entities in obtaining court approval and administration of financing including developing forecasts and information, and any insolvency related claims management and reconciliation process;

(h) work with the Payless Canada Entities, and their retained professionals, as appropriate, to assess any offer(s) made to one or more of the Payless Canada Entitles;

(i) communicate with and provide information to the Monitor, and its advisors, regarding the Business and affairs of each of the Payless Canada Entities;

(j) assist the Monitor, as requested by the Monitor, in connection with the powers given to the Monitor; and

(k) work with the Assistants and the Monitor in respect of all of the foregoing;

provided that, in each case such actions, agreements, expenses and obligations shall be construed to be those of the appropriate Payless Canada Entity and not of the CRO personally.

29. THIS COURT ORDERS that none of the CRO, Stephen Marotta, Adrian Frankum or such other employees of Ankura, shall be or be deemed to be a director, officer or employee of any of the Payless Canada Entities.

30. THIS COURT ORDERS that the CRO shall ~~not, as a result of the performance of its~~ if deemed to be in possession or control obligations and ~~duties in accordance with the terms of the CRO Engagement Letter and this Order, be deemed to be in Possession (as defined below) of any of the Property within the~~ meaning of any Environmental Legislation ~~(as defined below); provided, however, if the CRO is nevertheless later found to be in Possession of any Property, then the CRO, as the case may be, shall~~ be deemed to be a Person who has been lawfully appointed to take, or has lawfully taken, possession or control of such Property for the purposes of section 14.06(1.l)(c) of the *Bankruptcy and Insolvency Act of Canada* (the "BIA") ~~and shall be entitled to the benefits and protections in relation to the applicable Payless Canada Entity and such Property as provided by section 14.06(2) of the BIA to a "trustee" in relation to an insolvent Person and its property.~~

31. THIS COURT ORDERS that nothing in the CRO Engagement Letter or this Order shall be construed as resulting in the CRO being an employer, successor employer, responsible person or operator within the meaning of any statute, regulation or rule of law, or equity for any purpose whatsoever.

32. THIS COURT ORDERS that the CRO shall not have any liability with respect to any losses, claims, damages or liabilities, of any nature or kind, to any Person from and after the date of this Order except to the extent such losses, claims, damages or liabilities result from the gross negligence or wilful misconduct on the part of the CRO, provided further that in no event shall the liability of the CRO exceed the quantum of the fees paid to the CRO.

33. THIS COURT ORDERS that no action or other proceeding shall be commenced directly, or by way of counterclaim, third party claim or otherwise, against or in respect of the CRO, and all rights and remedies of any Person against or in respect of the CRO are hereby stayed and suspended, except with the written consent of the CRO and the Monitor, or with leave of this Court on notice to the Payless Canada Entities, the Monitor, and the CRO. Notice of any such motion seeking leave of this Court shall be served upon the Payless Canada Entities, the Monitor, and the CRO at least ten (10) days prior to the return date of any such motion for leave.

34. THIS COURT ORDERS that the obligations of each of the Payless Canada Entities to the CRO pursuant to the CRO Engagement Letter shall be treated as unaffected and may not be compromised in any Plan or proposal filed under the BIA in respect of any of the Payless Canada Entities.

35. THIS COURT ORDERS that (i) any indemnification obligations of any of the Payless Canada Entities in favour of the CRO and (ii) payment obligations of any of the Payless Canada Entities to the CRO shall be entitled to the benefit of and shall form part of the Administration Charge (as defined below) set out herein.

APPOINTMENT OF MONITOR

36. THIS COURT ORDERS that FTI is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the Business and financial affairs of each of the Payless Canada Entities with the powers and obligations set out in the CCAA or set forth herein and that each of the Payless Canada Entities and its shareholders, officers, directors, and Assistants and the CRO shall advise the Monitor of all material steps taken by such Payless Canada Entity pursuant to this Order, and shall co-operate fully with the Monitor in the exercise

of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

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

(a) monitor each of the Payless Canada Entities' receipts and disbursements;

(b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;

(c) advise each of the Payless Canada Entities in its development of the Plan and any amendments to the Plan;

(d) assist each of the Payless Canada Entities, to the extent required by the Payless Canada Entity, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;

(e) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of each of the Payless Canada Entities, to the extent that is necessary to adequately assess the Payless Canada Entities' business and financial affairs or to perform its duties arising under this Order;

(f) assist each of the Payless Canada Entities with respect to any Foreign Proceeding and monitor and report to this Court, as it deems appropriate, on the Foreign Proceeding;

(g) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and

(h) perform such other duties as are required by this Order or by this Court from time to time.

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

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

40. THIS COURT ORDERS that the Monitor shall provide any creditor of any of the Payless Canada Entities with information provided by such Payless Canada Entity in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by any of the Payless Canada Entities is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the applicable Payless Canada Entity(ies) may agree.

41. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save

and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

42. THIS COURT ORDERS that the Monitor, counsel to the Monitor and counsel to the Payless Canada Entities shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Payless Canada Entities as part of the costs of these proceedings. The Payless Canada Entities are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Payless Canada Entitles in accordance with the payment terms, including the use of retainers as previously paid, as agreed between or on behalf of the Payless Canada Entitles and such parties.

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

44. THIS COURT ORDERS that the CRO, the Monitor, counsel to the Monitor, and counsel to the Payless Canada Entitles shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of USD$2 million, as security for the professional fees and disbursements incurred by the CRO, the Monitor, counsel to the Monitor, and counsel for the Payless Canada Entities at each of their standard rates and charges and on the terms set forth in their respective engagement letters, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 45 and 47 hereof.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

45. THIS COURT ORDERS that the priorities of the Directors' Charge and the Administration Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of USD$2 million); and

Second – Directors' Charge (for the amounts set out in paragraph 25 hereof).

46. THIS COURT ORDERS that the filing, registration or perfection of the Directors' Charge or the Administration Charge (collectively, the "**Charges**") shall not be required, and that the

Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

47. THIS COURT ORDERS that each of the Directors' Charge and the Administration Charge (each as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person notwithstanding the order of perfection or attachment, other than any validly perfected security interest under the *Personal Property Security Act* (Ontario) or such other applicable provincial legislation that has not been served with notice of this Order. For the avoidance of doubt: (i) the Administration Charge and (ii) the Directors' Charge shall rank in priority to the security interest of the ABL Agent and the Term Loan Agent.

48. THIS COURT ORDERS that the Payless Canada Entities shall be entitled, on a subsequent motion on notice to those Persons likely to be affected thereby, to seek priority of the Charges ahead of any Encumbrance over which the Charges have not obtained priority.

49. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, none of the Payless Canada Entities shall grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Directors' Charge or the Administration Charge, unless the applicable Payless Canada Entity(ies) also obtains the prior written consent of the Monitor and the beneficiaries of the Directors' Charge and/or the Administration Charge, as applicable, or further Order of this Court.

50. THIS COURT ORDERS that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy or receivership order(s) issued pursuant to the BIA or otherwise, or any bankruptcy or receivership order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar

provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds any of the Payless Canada Entities, and notwithstanding any provision to the contrary in any Agreement:

(a) the creation of the Charges shall not create or be deemed to constitute a breach by any of the Payless Canada Entities of any Agreement to which it is a party;

(b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any obligation or Agreement caused by or resulting from the creation of the Charges; and

(c) the payments made by any of the Payless Canada Entities pursuant to this Order, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

51. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the applicable Payless Canada Entity(ies) interest in such real property leases.

CROSS-BORDER PROTOCOL

52. THIS COURT ORDERS that the cross-border protocol in the form attached as Schedule "A" hereto (the "**Cross-Border Protocol**") is hereby approved and shall become effective upon its approval by the United States Bankruptcy Court for the Eastern District of Missouri, and the parties to these proceedings and any other Person shall be governed by and shall comply with the Cross-Border Protocol.

SERVICE AND NOTICE

53. THIS COURT ORDERS that the Monitor shall (i) without delay, publish in *The Globe and Mail* (National Edition) and *Le Devoir* a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against any of the Payless Canada Entities of more than

$1,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

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

55. THIS COURT ORDERS that the Monitor shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in this proceeding (the "**Service List**"). The Monitor shall post the Service List, as may be updated from time to time, on the Website, provided that the Monitor shall have no liability in respect of the accuracy of, or the timeliness of making any changes to, the Service List.

56. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Payless Canada Entitles and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to any of the Payless Canada Entities' creditors or other interested parties at their respective addresses as last shown on the records of any of the Payless Canada Entities and that any such service or distribution shall be deemed to be received (a) if sent by courier, on the next business day following the date of forwarding thereof, (b) if delivered by personal delivery or facsimile or other electronic transmission, on the day so delivered, and (c) if sent by ordinary mail, on the third business day after mailing.

57. THIS COURT ORDERS that the Payless Canada Entities and the Monitor and their respective counsel are at liberty to serve or distribute this Order, any other materials and

orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Payless Canada Entities' creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or judicial obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

GENERAL

58. THIS COURT ORDERS that each of the Payless Canada Entities or the Monitor may from time to time apply to this Court to amend, vary or supplement this Order or for advice and directions concerning the discharge of its powers and duties under this Order or in the interpretation or application of this Order.

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

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

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

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

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

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

FEB 19 2019

PER / PAR: RW

Schedule "A"

CROSS-BORDER INSOLVENCY PROTOCOL

This cross-border insolvency protocol (the "Protocol") shall govern the conduct of all parties in interest in the Insolvency Proceedings (as such term is defined herein).

The Guidelines for Communication and Cooperation Between Courts in Cross-Border Insolvency Matters (the "Guidelines"), annexed as "Schedule A" hereto, shall be incorporated by reference and form part of this Protocol. To the extent there is any discrepancy between the Protocol and the Guidelines, this Protocol shall prevail.

A. Background

1. On February 18, 2019 (the "Petition Date"), Payless Holdings LLC and certain of its subsidiaries and affiliates (collectively, the "Debtors")[1] commenced cases (collectively, the "U.S. Proceedings") under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Eastern District of Missouri.

2. On February 19, 2019, certain of the Debtors, specifically Payless ShoeSource Canada Inc. and Payless ShoeSource Canada GP Inc., (together with Payless ShoeSource Canada LP, the "Canadian Debtors"), also sought protection in Canada (the "Canadian Proceedings" and

[1] The Debtors (as defined herein) in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Payless Holdings LLC [5704]; Payless Intermediate Holdings LLC [5190]; WBG-PSS Holdings LLC [0673]; Payless Inc. [3160]; Payless Finance, Inc. [2101]; Collective Brands Services, Inc. [7266]; PSS Delaware Company 4, Inc. [1466]; Shoe Sourcing, Inc. [4075]; Payless ShoeSource, Inc. [4097]; Eastborough, Inc. [2803]; Payless Purchasing Services, Inc. [3043]; Payless ShoeSource Merchandising, Inc. [0946]; Payless Gold Value CO, Inc. [3581]; Payless ShoeSource Distribution, Inc. [0944]; Payless ShoeSource Worldwide, Inc. [6884]; Payless NYC, Inc. [4126]; Payless ShoeSource of Puerto Rico, Inc. [9017]; Payless Collective GP, LLC [2940]; Collective Licensing, LP [1256]; Collective Licensing International LLC [5451]; Clinch, LLC [9836]; Collective Brands Franchising Services, LLC [3636]; Payless International Franchising, LLC [6448]; PSS Canada, Inc. [4969]; Payless ShoeSource Canada Inc. [4180]; Payless ShoeSource Canada GP Inc. [4182]; and Payless ShoeSource Canada LP [4179]. With respect to certain taxing authorities, the Debtors' address is 2001 Bryan Street, Suite 800, Dallas, TX 75201. However, the location of Debtor Payless Holdings LLC's corporate headquarters and the Debtors' service address is: c/o Payless ShoeSource Inc., 3231 S.E. 6th Avenue, Topeka, Kansas 66607.

together with the U.S. Proceedings, the "Insolvency Proceedings") by filing an application under *the Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") with the Ontario Superior Court of Justice (Commercial List) (the "Canadian Court" and together with the U.S. Court, the "Courts" and each individually, a "Court"). The remaining Debtors in these chapter 11 cases are domiciled in the United States (the "U.S. Debtors").

3. The Canadian Debtors sought an initial order from the Canadian Court (as may be amended from time to time, the "CCAA Order"), *inter alia*, (a) granting the Canadian Debtors relief under the CCAA; (b) appointing FTI Consulting Canada Inc. as monitor of the Canadian Debtors (the "Monitor"), with the rights, powers, duties and limitations upon liabilities set forth in the CCAA Order; and (c) granting a stay of proceedings in respect of the Canadian Debtors.

4. The Debtors continue to operate and maintain their businesses as debtors in possession pursuant to Bankruptcy Code sections 1107 and 1108. The Office of the United States Trustee (the "U.S. Trustee") may appoint an official committee of unsecured creditors (if appointed, the "U.S. Creditors' Committee") in the U.S. Proceedings.

B. Purpose and Goals

5. While the U.S. Proceedings and the Canadian Proceedings are full and separate proceedings pending in the United States of America (the "U.S.") and Canada, the implementation of basic administrative procedures and cross-border guidelines is both necessary and desirable to coordinate certain activities in the Insolvency Proceedings, protect the rights of parties thereto and ensure the maintenance of the Court's independent jurisdiction and comity. Accordingly, this Protocol has been developed to promote the following mutually desirable goals and objectives in the Insolvency Proceedings:

(a) harmonize and coordinate activities in the Insolvency Proceedings before the Courts;

(b) promote the orderly and efficient administration of the Insolvency Proceedings to, among other things, maximize the efficiency of the Insolvency Proceedings, reduce the costs associated therewith and avoid duplication of effort;

(c) honor the independence and integrity of the Courts and other courts and tribunals of the U.S. and Canada, respectively;

(d) promote international cooperation and respect for comity among the Courts, the Debtors, the U.S. Creditors' Committee, the U.S. Representatives (defined below), the Canadian Representatives (defined below and together with the U.S. Representatives, the "Estate Representatives"), the U.S. Trustee and other creditors and interested parties in the Insolvency Proceedings;

(e) facilitate the fair, open and efficient administration of the Insolvency Proceedings for the benefit of all of the creditors and interested parties of the Debtors, wherever located; and

(f) implement a framework of general principles to address basic administrative issues arising out of the cross-border and international nature of the Insolvency Proceedings.

C. Comity and Independence of the Courts

6. The approval and implementation of this Protocol shall not divest or diminish the U.S. Court's and the Canadian Court's independent jurisdiction over the subject matter of the

U.S. Proceedings and the Canadian Proceedings, respectively. By approving and implementing this Protocol, neither the U.S. Court, the Canadian Court, the Debtors, the Estate Representatives nor any creditors or interested parties shall be deemed to have approved or engaged in any infringement on the sovereignty of the U.S. or Canada.

7. The U.S. Court shall have sole and exclusive jurisdiction and power over the conduct of the U.S. Proceedings and the hearing and determination of matters arising in the U.S. Proceedings. The Canadian Court shall have sole and exclusive jurisdiction and power over the conduct of the Canadian Proceedings and the hearing and determination of matters arising in the Canadian Proceedings.

8. In accordance with the principles of comity and independence established in the preceding paragraphs, nothing contained herein shall be construed to:

(a) increase, decrease or otherwise modify the independence, sovereignty or jurisdiction of the U.S. Court, the Canadian Court or any other court or tribunal in the U.S. or Canada, including the ability of any such court or tribunal to provide appropriate relief under applicable law on an ex parte or "limited notice" basis;

(b) require the U.S. Court to take any action that is inconsistent with its obligations under the laws of the U.S.;

(c) require the Canadian Court to take any action that is inconsistent with its obligations under the laws of Canada;

(d) require any of the Debtors, the Monitor, the U.S. Creditors' Committee, the Estate Representatives or the U.S. Trustee to take any action or refrain from taking any action that would result in a breach of any duty imposed on them by any applicable law;

(e) authorize any action that requires the specific approval of one or both of the Courts under the Bankruptcy Code or the CCAA after appropriate notice and a hearing (except to the extent that such action is specifically described in this Protocol); or

(f) preclude any of the Debtors, the Monitor, the U.S. Creditors' Committee, the Estate Representatives, the U.S. Trustee, or any creditor or other interested party

from asserting such party's substantive rights under the applicable laws of the U.S., Canada or any other relevant jurisdiction including, without limitation, the rights of interested parties or affected persons to appeal from the decisions taken by one or both of the Courts.

9. Subject to the terms hereof, the Debtors, the U.S. Creditors' Committee, the Estate Representatives and their respective employees, members, agents and professionals shall respect and comply with the independent, non-delegable duties imposed upon them by the Bankruptcy Code, the CCAA, the CCAA Order and other applicable laws and orders of the Courts, as applicable.

D. Cooperation

10. To assist in the efficient administration of the Insolvency Proceedings and in recognizing that a Debtor may be a creditor of another Debtor's estate, the Debtors and the Estate Representatives shall where appropriate:

(a) reasonably cooperate with each other in connection with actions taken in both the U.S. Court and the Canadian Court; and

(b) take any other reasonable steps to coordinate the administration of the U.S. Proceedings and the Canadian Proceedings for the benefit of the Debtors' respective estates and stakeholders, including, without limitation, developing in consultation with the U.S. Creditors' Committee and seeking approval of any cross-border claims protocol by the Canadian and U.S. Courts.

11. To harmonize and coordinate the administration of the Insolvency Proceedings, the U.S. Court and the Canadian Court each may coordinate activities with and defer to the judgment of the other Court, where appropriate and feasible. In furtherance of the foregoing:

(a) The U.S. Court and the Canadian Court may communicate with one another, with or without counsel present, with respect to any procedural or substantive matter relating to the Insolvency Proceedings;

(b) Where the issue of the proper jurisdiction or Court to determine an issue is raised by an interested party in either of the Insolvency Proceedings with respect to a

motion or an application filed in either Court, the Court before which such motion or application was initially filed may contact the other Court to determine an appropriate process by which the issue of jurisdiction will be determined. Such process shall be subject to submissions by the Debtors, the Estate Representatives, the U.S. Creditors' Committee, the Monitor, the U.S. Trustee and any interested party before any determination on the issue of jurisdiction is made by either Court; and

(c) The Courts may, but are not obligated to, coordinate activities in the Insolvency Proceedings such that the subject matter of any particular action, suit, request, application, contested matter or other proceeding is determined in a single Court.

12. The U.S. Court and the Canadian Court may conduct joint hearings with respect to any matter relating to the conduct, administration, determination or disposition of any aspect of the U.S. Proceedings and the Canadian Proceedings, including the interpretation or implementation of this Protocol if both Courts consider such joint hearings to be necessary or advisable and, in particular, to facilitate or coordinate with the proper and efficient conduct of the U.S. Proceedings and the Canadian Proceedings. With respect to any such joint hearing, unless otherwise ordered, the following procedures will be followed:

(a) a telephone or video link shall be established so that both the U.S. Court and the Canadian Court shall be able to simultaneously hear the proceedings in the other Court;

(b) notices, submissions, applications, or motions by any party that are or become the subject of a joint hearing of the Courts (collectively, "Pleadings") shall be made or filed initially only to the Court in which such party is appearing and seeking relief. Promptly after the scheduling of any joint hearing, the party submitting such Pleadings to one Court shall file courtesy copies with the other Court. In any event, Pleadings seeking relief from both Courts shall be filed with both Courts.

(c) any party intending to rely on any written evidentiary materials in support of a submission to the U.S. Court or the Canadian Court in connection with any joint hearing shall file such materials, which shall be identical insofar as possible and shall be consistent with the procedure and evidentiary rules and requirements of each Court, in advance of the time of such hearing or the submissions of such application;

(d) If a party has not previously appeared in or attorned or does not wish to attorn to the jurisdiction of either Court, it shall be entitled to file such materials without, by the act of filing, being deemed to have attorned to the jurisdiction of the Court in which such material is filed, so long as it does not request in its materials or submissions any affirmative relief from the Court to which it does not wish to attorn;

(e) the Judge of the U.S. Court and the Justice of the Canadian Court who will hear any such application or motion shall be entitled to communicate with each other in advance of the hearing on the application or motion, with or without counsel being present, to establish guidelines for the orderly submission of pleadings, papers and other materials and the rendering of decisions by the U.S. Court and the Canadian Court, and to address any related procedural, administrative or preliminary matters; and

(f) the Judge of the U.S. Court and the Justice of the Canadian Court, having heard any such application, shall be entitled to communicate with each other after the hearing on such application or motion, without counsel present, for the purpose of determining whether consistent rulings can be made by both Courts, and coordinating the terms upon which such rulings shall be made, as well as to address any other procedural or non-substantive matter relating to such applications or motions.

13. Notwithstanding the terms of the preceding paragraph, the Protocol recognizes that the U.S. Court and the Canadian Court are independent courts. Accordingly, although the Courts will seek to cooperate and coordinate with each other in good faith, each of the Courts shall be entitled at all times to exercise its independent jurisdiction and authority with respect to:

(a) the conduct of the parties appearing in matters presented to such Court; and

(b) matters presented to such Court, including without limitation, the right to determine if matters are properly before such Court.

14. In the interest of cooperation and coordination of these proceedings, each Court shall recognize and consider all privileges applicable to communications between counsel and parties, including those contemplated by the common interest doctrine or like privileges, which would be applicable in each respective Court. Such privileges in connection with

communications shall be applicable in both Courts with respect to all parties to these proceedings having any requisite common interest.

15. Where one Court has jurisdiction over a matter which requires the application of the law of the jurisdiction of the other Court in order to determine an issue before it, the Court with jurisdiction over such matter may, among other things, hear expert evidence or seek the advice and direction of the other Court in respect of the foreign law to be applied, subject to paragraph 38 herein.

E. Retention and Compensation of Estate Representatives and Professionals

16. The Monitor, its officers, directors, employees, counsel, agents, and any other professionals related therefor, wherever located (collectively, the "Monitor Parties") and any other estate representatives in the Canadian Proceedings and their counsel and other professionals (collectively with the Monitor Parties, the "Canadian Representatives") shall all be subject to the sole and exclusive jurisdiction of the Canadian Court with respect to all matters, including:

(a) the Canadian Representatives' appointment and tenure in office;

(b) the retention and compensation of the Canadian Representatives;

(c) the Canadian Representatives' liability, if any, to any person or entity, including the Canadian Debtors and any third parties, in connection with the Insolvency Proceedings; and

(d) the hearing and determination of any matters relating to the Canadian Representatives arising in the Canadian Proceedings under the CCAA or other applicable Canadian law.

17. Additionally, the Canadian Representatives, and the Debtors' Canadian counsel:

(a) shall be compensated for their services solely in accordance with the CCAA and other applicable Canadian law or orders of the Canadian Court; and

(b) shall not be required to seek approval of their compensation in the U.S. Court.

18. The Monitor Parties shall be entitled to the protections of Bankruptcy Code section 306 and the same protections and immunities in the U.S. as those granted to them under the CCAA and the CCAA Order. In particular, except as otherwise provided in any subsequent order entered in the Canadian Proceedings, the Monitor Parties shall incur no liability or obligations as a result of the appointment of the Monitor, the carrying out of its duties or the provisions of the CCAA and the CCAA Order by the Monitor Parties, except any such liability arising from actions of the Monitor Parties constituting gross negligence or willful misconduct.

19. Any estate representative appointed in the U.S. Proceedings, including without limitation, any restructuring officer appointed under Bankruptcy Code section 306, the U.S. Creditors' Committee and any examiner or trustee appointed pursuant to Bankruptcy Code section 1104, and their respective counsel and other professionals (collectively, the "U.S. Representatives"), shall be subject to the sole and exclusive jurisdiction of the U.S. Court with respect to all matters, including:

(a) the U.S. Representatives' tenure in office;

(b) the U.S. Representatives' retention and compensation;

(c) the U.S. Representatives' liability, if any, to any person or entity, including the U.S. Debtors and any third parties, in connection with the Insolvency Proceedings; and

(d) the hearing and determination of any other matters relating to the U.S. Representatives arising in the U.S. Proceedings under the Bankruptcy Code or other applicable laws of the U.S.

20. Nothing in this Protocol creates any fiduciary duty, duty of care or other duty owed by the U.S. Representatives to the stakeholders in the Canadian Proceedings or by the

Canadian Representatives to the stakeholders in the U.S. Proceedings that they would not otherwise have in the absence of this Protocol.

21. The U.S. Representatives shall not be required to seek approval of their retention in the Canadian Court. Additionally, the U.S. Representatives:

(a) shall be compensated for their services solely in accordance with the Bankruptcy Code and other applicable laws of the United States or orders of the U.S. Court; and

(b) shall not be required to seek approval of their compensation in the Canadian Court.

22. Any professionals retained by or with the approval of the Debtors for Canadian related advice, activities performed in Canada or in connection with the Canadian Proceeding, including, in each case, counsel, financial advisors, accountants, consultants and experts (collectively, the "Canadian Professionals") shall be subject to the sole and exclusive jurisdiction of the Canadian Court. Accordingly, the Canadian Professionals: (a) shall be subject to the procedures and standards for retention and compensation applicable in the Canadian Court under the CCAA, the CCAA Order any other applicable Canadian law or orders of the Canadian Court; and (b) shall not be required to seek approval of their retention or compensation in the U.S. Court. The Debtors will include the identity and the amount of payments with respect to the Canadian Professionals in the Debtors' monthly operating reports.

23. Any professionals retained by or with approval of the Debtors for activities performed in the U.S. or in connection with the U.S. Proceedings, including, in each case, counsel, financial advisors, accountants, consultants and experts (collectively, the "U.S. Professionals") shall be subject to the sole and exclusive jurisdiction of the U.S. Court. Accordingly, the U.S. Professionals: (a) shall be subject to the procedures and standards for

retention and compensation applicable in the U.S. Court under the Bankruptcy Code and any other applicable laws of the U.S. or orders of the U.S. Court; and (b) shall not be required to seek approval of their retention of compensation in the Canadian Court.

24. Any professionals retained by the U.S. Creditors' Committee, including, in each case, counsel and financial advisors (collectively, the "Committee Professionals") shall be subject to the sole and exclusive jurisdiction of the U.S. Court. Accordingly, the Committee Professionals: (a) shall be subject to the procedures and standards for retention and compensation applicable in the U.S. Court under the Bankruptcy Code and any other applicable laws of the U.S. or orders of the U.S. Court; and (b) shall not be required to seek approval of their retention of compensation in the Canadian Court.

F. Rights to Appear and Be Heard

25. Each of the Debtors, their creditors and other interested parties in the Insolvency Proceedings, including the Canadian Representatives, and the U.S. Representatives shall have the right and standing to:

(a) appear and be heard in either the U.S. Court or the Canadian Court in the Insolvency Proceedings to the same extent as a creditor and other interested party domiciled in the forum country, but solely to the extent such party is a creditor or other interested party in the subject forum, subject to any local rules or regulations generally applicable to all parties appearing in the forum; and

(b) subject to 25(a) above, file notices of appearance or other papers with the Clerk of the U.S. Court or the Canadian Court in the Insolvency Proceedings; *provided, however*, that any appearance or filing may subject a creditor or interested party to the jurisdiction of the Court in which the appearance or filing occurs; provided further, that appearance by the U.S. Creditors' Committee in the Canadian Proceedings shall not form a basis for personal jurisdiction in Canada over the members of the U.S. Committee. Notwithstanding the foregoing, and in accordance with the policies set forth above:

(i) the Canadian Court shall have jurisdiction over the U.S. Representatives and the U.S. Trustee solely with respect to the particular matters as to

which the U.S. Representatives or the U.S. Trustee appear before the Canadian Court; and

(ii) the U.S. Court shall have jurisdiction over the Canadian Representatives solely with respect to the particular matters as to which the Canadian Representatives appear before the U.S. Court.

26. Solely with respect to consensual due diligence the U.S. Creditors' Committee will execute confidentiality agreements in the form to be agreed to by the Canadian Debtors and the U.S. Creditors' Committee.

G. Claims Protocol

27. It may be necessary to implement a specific claims protocol to address, among other things and without limitation, the timing, process, jurisdiction and applicable governing law to be applied to the resolution of claims filed by the Debtors' creditors (including intercompany claims) in the Canadian Proceedings and the U.S. Proceedings. In such event, and in recognition of the inherent complexities of the intercompany claims that may be asserted in the Insolvency Proceedings, the Debtors shall submit a specific claims protocol.

H. Notice

28. Notice of any motion, application or other pleading or paper filed in one or both of the Insolvency Proceedings relating to matters addressed by this Protocol and notice of any related hearings or other proceedings shall be given by appropriate means (including, where circumstances warrant, by courier or electronic forms of communication) to the following:

(a) all creditors and other interested parties in accordance with the practice of the jurisdiction where the papers are filed or the proceedings are to occur and order of the applicable court ; and

(b) to the extent not otherwise entitled to receive notice under subpart (a) of this paragraph, to:

(i) U.S. Counsel to the Debtors, Akin Gump Stauss Hauer & Feld LLP, Bank of America Tower, 1 Bryant Park, New York, NY 10036, USA (Attn: Meredith Lahaie and Kevin Zuzolo) and Armstrong Teasdale LLP, 7700 Forsyth Blvd., Suite 1800, St. Louis, MO 63105, USA (Attn: Erin Edelman and John Willard);

(ii) Canadian Counsel to the Debtors, Cassels Brock & Blackwell LLP, 2100, 40 King Street West, Toronto, ON Canada, M5H 3C2 (Attn: Ryan Jacobs, Jane Dietrich, Natalie Levine);

(iii) the Monitor, FTI Consulting Canada Inc., TD Waterhouse Tower, 79 Wellington Street West, Suite 2010, P.O. Box 104, Toronto, ON Canada, M5K 1G8 (Attn: Greg Watson, Paul Bishop), and its counsel, Bennett Jones LLP, 3400, One First Canadian Place, Toronto, ON Canada, M5X 1A4 (Attn: Sean Zweig, Kevin J. Zych);

(iv) Counsel to the ABL Agent, Choate Hall & Stewart LLP, Two International Place, Boston, MA 02110 (Attn: Kevin Simard, Doug Gooding and Jonathan Marshall); Thompson Coburn LLP, One US Bank Plaza, St. Louis, MO 63101 (Attn: Mark Bossi); and Norton Rose Fulbright Canada LLP, Suite 3800, Royal Bank Plaza, South Tower, 200 Bay Street, P.O Box 84, Toronto, ON Canada, M5J 2Z4 (Attn: Tony Reyes and David Amato);

(v) Counsel to the Ad Hoc Term Lender Committee, Kramer Levin Naftalis & Frankel LLP, 1177 Avenue of the Americas, New York, NY 10036, USA (Attn: Stephen D. Zide); Doster, Ullom & Boyle, LLC, 16090 Swingley Ridge Road, Suite 620, Chesterfield, Missouri 63017, USA (Attn: Gregory D. Willard); and Fasken Martineau DuMoulin LLP, Bay Adelaide Centre, 333 Bay Street, Suite 2400, P.O. Box 20, Toronto, ON Canada, M5H 2T6 (Attn: Stuart Brotman)

(vi) Counsel to any statutory committee or any other official appointed in the U.S. Proceedings;

(vii) the Office of the United States Trustee for Eastern District of Missouri;

(viii) such other parties as may be designated by either Court from time to time.

29. Notice in accordance with this paragraph may be designated by either of the Courts from time to time. Notice in accordance with this paragraph shall be given by the party otherwise responsible for effecting notice in the jurisdiction where the underlying papers are

filed or the proceedings are to occur. In addition to the foregoing, upon request, the U.S. Debtors or the Canadian Debtors shall provide the U.S. Court or the Canadian Court, as the case may be, with copies of any orders, decisions, opinions or similar papers issued by the other Court in the Insolvency Proceedings.

30. When any cross-border issues or matters addressed by this Protocol are to be addressed before a Court, notices shall be provided in the manner and to the parties referred to in paragraph 28 above.

I. Recognition of Stays of Proceedings

31. The Canadian Court hereby recognizes the validity of the stay of proceedings and actions against or respecting the U.S. Debtors and their property under Bankruptcy Code section 362 (the "U.S. Stay"). In implementing the terms of this paragraph, the Canadian Court may consult with the U.S. Court regarding the interpretation, extent, scope and applicability of the U.S. Stay, and any orders of this U.S. Court modifying or granting relief from the U.S. Stay.

32. The U.S. Court hereby recognizes the validity of the stay of proceedings and actions against or respecting the Canadian Debtors, its property and the current and former directors and officers of the Canadian Debtors under the CCAA and the CCAA Order (the "Canadian Stay"). In implementing the terms of this paragraph, the U.S. Court may consult with the Canadian Court regarding the interpretation, extent, scope and applicability of the Canadian Stay, and any orders of the Canadian Court modifying or granting relief from the Canadian Stay.

33. Nothing contained herein shall affect or limit the Debtors or other parties' rights to assert the applicability or non-applicability of the U.S. Stay or the Canadian Stay to any particular proceeding, property, asset, activity or other matter, wherever pending or located. Subject to the terms hereof: (a) any motion with respect to the application of the stay of

proceedings issued by the Canadian Court in the CCAA Proceeding shall be heard and determined by the Canadian Court and (b) any motion with respect to the application of the stay under Bankruptcy Code section 362 shall be heard and determined by the U.S. Court.

J. Effectiveness; Modification

34. This Protocol shall become effective only upon its approval by both the U.S. Court and the Canadian Court.

35. This Protocol may not be supplemented, modified, terminated or replaced in any manner except by the U.S. Court and the Canadian Court after notice and a hearing. Notice of any legal proceeding to supplement, modify, terminate or replace this Protocol shall be given in accordance with the notice provision contained in this Protocol.

K. Procedure for Resolving Disputes Under the Protocol

36. Disputes relating to the terms, intent or application of this Protocol may be addressed by interested parties to either the U.S. Court, the Canadian Court or both Courts upon notice as set forth in paragraphs 28 and 29 above. In rendering a determination in any such dispute, the Court to which the issue is addressed:

(a) shall consult with the other Court; and

(b) may, in its sole discretion, either:

(i) render a binding decision after such consultation;

(ii) defer to the determination of the other Court by transferring the matter, in whole or in part, to the other Court; or

(iii) seek a joint hearing of both Courts.

37. Notwithstanding the foregoing, each Court in making a determination shall have regard to the independence, comity or inherent jurisdiction of the other Court established under existing law.

38. In implementing the terms of the Protocol, the U.S. Court and the Canadian Court may, in their sole, respective discretion, provide advice or guidance to each other with respect to legal issues in accordance with the following procedures:

(a) The U.S. Court or the Canadian Court, as applicable, may determine that such advice or guidance is appropriate under the circumstances;

(b) The Court issuing such advice or guidance shall provide it to the non-issuing Court in writing;

(c) Copies of such written advice or guidance shall be served by the applicable Court in accordance with paragraph 28 hereof; and

(d) The Courts may jointly decide to invite the Debtors, the Estate Representatives, the U.S. Trustee, the Monitor and any other affected or interested party to make submissions to the appropriate Court in response to or in connection with any written advice or guidance received from the other Court.

39. For clarity, the provisions of paragraph 38 shall not be construed to restrict the ability of the U.S. Court or the Canadian Court to confer, as provided above, whenever they deem it appropriate to do so.

L. Preservation of Rights

40. Except as specifically provided herein, neither the terms of this Protocol nor any actions taken under the terms of this Protocol shall (a) prejudice or affect the powers, rights, claims and defenses of the Debtors and their estates, the Estate Representatives, the U.S. Trustee, the Monitor or any of the Debtors' creditors under applicable law, including the Bankruptcy Code, the CCAA and the Orders of the Courts or (b) preclude or prejudice the rights of any

person to assert or pursue such person's substantive rights against any other person under the applicable laws of the United States or Canada.

41. The question of the degree of standing of the U.S. Creditors' Committee in the Canadian Court remains an open issue. This Protocol is without prejudice to the question one way or the other.

Schedule A

GUIDELINES FOR COMMUNICATION AND COOPERATION BETWEEN COURTS IN CROSS-BORDER INSOLVENCY MATTERS

INTRODUCTION

A. The overarching objective of these Guidelines is to improve in the interests of all stakeholders the efficiency and effectiveness of cross-border proceedings relating to insolvency or adjustment of debt opened in more than one jurisdiction ("Parallel Proceedings") by enhancing coordination and cooperation amongst courts under whose supervision such proceedings are being conducted. These Guidelines represent best practice for dealing with Parallel Proceedings.

B. In all Parallel Proceedings, these Guidelines should be considered at the earliest practicable opportunity.

C. In particular, these Guidelines aim to promote:

(i) the efficient and timely coordination and administration of Parallel Proceedings;
(ii) the administration of Parallel Proceedings with a view to ensuring relevant stakeholders' interests are respected;
(iii) the identification, preservation, and maximisation of the value of the debtor's assets, including the debtor's business;
(iv) the management of the debtor's estate in ways that are proportionate to the amount of money involved, the nature of the case, the complexity of the issues, the number of creditors, and the number of jurisdictions involved in Parallel Proceedings;
(v) the sharing of information in order to reduce costs; and
(vi) the avoidance or minimisation of litigation, costs, and inconvenience to the parties[2] in Parallel Proceedings.

D. These Guidelines should be implemented in each jurisdiction in such manner as the jurisdiction deems fit.[3]

E. These Guidelines are not intended to be exhaustive and in each case consideration ought to be given to the special requirements in that case.

F. Courts should consider in all cases involving Parallel Proceedings whether and how to implement these Guidelines. Courts should encourage and where necessary direct, if they have the power to do so, the parties to make the necessary applications to the court to facilitate such implementation by a protocol or order derived from these Guidelines, and encourage them to act so as to promote the objectives and aims of these Guidelines wherever possible.

[2] The term "parties" when used in these Guidelines shall be interpreted broadly.
[3] Possible modalities for the implementation of these Guidelines include practice directions and commercial guides.

ADOPTION & INTERPRETATION

Guideline 1: In furtherance of paragraph F above, the courts should encourage administrators in Parallel Proceedings to cooperate in all aspects of the case, including the necessity of notifying the courts at the earliest practicable opportunity of issues present and potential that may (a) affect those proceedings; and (b) benefit from communication and coordination between the courts. For the purpose of these Guidelines, "administrator" includes a liquidator, trustee, judicial manager, administrator in administration proceedings, debtor-in-possession in a reorganisation or scheme of arrangement, or any fiduciary of the estate or person appointed by the court.

Guideline 2: Where a court intends to apply these Guidelines (whether in whole or in part and with or without modification) in particular Parallel Proceedings, it will need to do so by a protocol or an order,[4] following an application by the parties or pursuant to a direction of the court if the court has the power to do so.

Guideline 3: Such protocol or order should promote the efficient and timely administration of Parallel Proceedings. It should address the coordination of requests for court approvals of related decisions and actions when required and communication with creditors and other parties. To the extent possible, it should also provide for timesaving procedures to avoid unnecessary and costly court hearings and other proceedings.

Guideline 4: These Guidelines when implemented are not intended to:

(i) interfere with or derogate from the jurisdiction or the exercise of jurisdiction by a court in any proceedings including its authority or supervision over an administrator in those proceedings;

(ii) interfere with or derogate from the rules or ethical principles by which an administrator is bound according to any applicable law and professional rules;

(iii) prevent a court from refusing to take an action that would be manifestly contrary to the public policy of the jurisdiction; or

(iv) confer or change jurisdiction, alter substantive rights, interfere with any function or duty arising out of any applicable law, or encroach upon any applicable law.

Guideline 5: For the avoidance of doubt, a protocol or order under these Guidelines is procedural in nature. It should not constitute a limitation on or waiver by the court of any powers, responsibilities, or authority or a substantive determination of any matter in controversy before the court or before the other court or a waiver by any of the parties of any of their substantive rights and claims.

Guideline 6: In the interpretation of these Guidelines or any protocol or order under these Guidelines, due regard shall be given to their international origin and to the need to promote good faith and uniformity in their application.

COMMUNICATION BETWEEN COURTS

[4] In the normal case, the parties will agree on a protocol derived from these Guidelines and obtain the approval of each court in which the protocol is to apply.

Guideline 7: A court may receive communications from a foreign court and may respond directly to them. Such communications may occur for the purpose of the orderly making of submissions and rendering of decisions by the courts, and to coordinate and resolve any procedural, administrative or preliminary matters relating to any joint hearing where Annex A is applicable. Such communications may take place through the following methods or such other method as may be agreed by the two courts in a specific case:

(i) Sending or transmitting copies of formal orders, judgments, opinions, reasons for decision, endorsements, transcripts of proceedings or other documents directly to the other court and providing advance notice to counsel for affected parties in such manner as the court considers appropriate.

(ii) Directing counsel or other appropriate person to transmit or deliver copies of documents, pleadings, affidavits, briefs or other documents that are filed or to be filed with the court to the other court in such fashion as may be appropriate and providing advance notice to counsel for affected parties in such manner as the court considers appropriate.

(iii) Participating in two-way communications with the other court, by telephone or video conference call or other electronic means, in which case Guideline 8 should be considered.

Guideline 8: In the event of communications between courts, other than on administrative matters, unless otherwise directed by any court involved in the communications whether on an *ex parte* basis or otherwise, or permitted by a protocol, the following shall apply:

(i) In the normal case, parties may be present.

(ii) If the parties are entitled to be present, advance notice of the communications shall be given to all parties in accordance with the rules of procedure applicable in each of the courts to be involved in the communications.

(iii) The communications between the courts shall be recorded and may be transcribed. A written transcript may be prepared from a recording of the communications that, with the approval of each court involved in the communications, may be treated as the official transcript of the communications.

(iv) Copies of any recording of the communications, of any transcript of the communications prepared pursuant to any direction of any court involved in the communications, and of any official transcript prepared from a recording may be filed as part of the record in the proceedings and made available to the parties and subject to such directions as to confidentiality as any court may consider appropriate.

(v) The time and place for communications between the courts shall be as directed by the courts. Personnel other than judges in each court may communicate with each other to establish appropriate arrangements for the communications without the presence of the parties.

Guideline 9: A court may direct that notice of its proceedings be given to parties in proceedings in another jurisdiction. All notices, applications, motions, and other materials served for purposes of the proceedings before the court may be ordered to be provided to such other parties by

making such materials available electronically in a publicly accessible system or by facsimile transmission, certified or registered mail or delivery by courier, or in such other manner as may be directed by the court in accordance with the procedures applicable in the court.

APPEARANCE IN COURT

Guideline 10: A court may authorise a party, or an appropriate person, to appear before and be heard by a foreign court, subject to approval of the foreign court to such appearance.

Guideline 11: If permitted by its law and otherwise appropriate, a court may authorise a party to a foreign proceeding, or an appropriate person, to appear and be heard by it without thereby becoming subject to its jurisdiction.

CONSEQUENTIAL PROVISIONS

Guideline 12: A court shall, except on proper objection on valid grounds and then only to the extent of such objection, recognise and accept as authentic the provisions of statutes, statutory or administrative regulations, and rules of court of general application applicable to the proceedings in other jurisdictions without further proof. For the avoidance of doubt, such recognition and acceptance does not constitute recognition or acceptance of their legal effect or implications.

Guideline 13: A court shall, except upon proper objection on valid grounds and then only to the extent of such objection, accept that orders made in the proceedings in other jurisdictions were duly and properly made or entered on their respective dates and accept that such orders require no further proof for purposes of the proceedings before it, subject to its law and all such proper reservations as in the opinion of the court are appropriate regarding proceedings by way of appeal or review that are actually pending in respect of any such orders. Notice of any amendments, modifications, extensions, or appellate decisions with respect to such orders shall be made to the other court(s) involved in Parallel Proceedings, as soon as it is practicable to do so.

Guideline 14: A protocol, order or directions made by a court under these Guidelines is subject to such amendments, modifications, and extensions as may be considered appropriate by the court, and to reflect the changes and developments from time to time in any Parallel Proceedings. Notice of such amendments, modifications, or extensions shall be made to the other court(s) involved in Parallel Proceedings, as soon as it is practicable to do so.

ANNEX A (JOINT HEARINGS)

Annex A to these Guidelines relates to guidelines on the conduct of joint hearings. Annex A shall be applicable to, and shall form a part of these Guidelines, with respect to courts that may signify their assent to Annex A from time to time. Parties are encouraged to address the matters set out in Annex A in a protocol or order.

ANNEX A: JOINT HEARINGS

A court may conduct a joint hearing with another court. In connection with any such joint hearing, the following shall apply, or where relevant, be considered for inclusion in a protocol or order:

(i) The implementation of this Annex shall not divest nor diminish any court's respective independent jurisdiction over the subject matter of proceedings. By implementing this Annex, neither a court nor any party shall be deemed to have approved or engaged in any infringement on the sovereignty of the other jurisdiction.

(ii) Each court shall have sole and exclusive jurisdiction and power over the conduct of its own proceedings and the hearing and determination of matters arising in its proceedings.

(iii) Each court should be able simultaneously to hear the proceedings in the other court. Consideration should be given as to how to provide the best audio-visual access possible.

(iv) Consideration should be given to coordination of the process and format for submissions and evidence filed or to be filed in each court.

(v) A court may make an order permitting foreign counsel or any party in another jurisdiction to appear and be heard by it. If such an order is made, consideration needs to be given as to whether foreign counsel or any party would be submitting to the jurisdiction of the relevant court and/or its professional regulations.

(vi) A court should be entitled to communicate with the other court in advance of a joint hearing, with or without counsel being present, to establish the procedures for the orderly making of submissions and rendering of decisions by the courts, and to coordinate and resolve any procedural, administrative or preliminary matters relating to the joint hearing.

(vii) A court, subsequent to the joint hearing, should be entitled to communicate with the other court, with or without counsel present, for the purpose of determining outstanding issues. Consideration should be given as to whether the issues include procedural and/or substantive matters. Consideration should also be given as to whether some or all of such communications should be recorded and preserved.

CV-19-00614629-00CL

Court File No.

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 PAYLESS SHOESOURCE CANADA INC. AND PAYLESS SHOESOURCE CANADA GP INC.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

INITIAL ORDER

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SCHEDULE "C"

DRAFT
PRIVILEGED & CONFIDENTIAL

Court File No. CV-19-00614629-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MR	)	TUESDAY, THE 29TH
	)	
JUSTICE McEWEN	)	DAY OF OCTOBER, 2019

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 PAYLESS SHOESOURCE CANADA INC. AND PAYLESS SHOESOURCE CANADA GP INC.

(the "**Applicants**")

RECEIVERSHIP ORDER

THIS MOTION made by FTI Consulting Canada Inc. ("**FTI**"), in its capacity as court-appointed monitor (the "**Monitor**") of the Applicants and Payless ShoeSource Canada LP (the "**Payless Canada Entities**") for an Order (the "**Receivership Order**") pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") appointing FTI as receiver (in such capacity, the "**Receiver**") without security, of all Employee Distributions (as defined in the First Amended and Restated Plan of Compromise and Arrangement of the Payless Canada Entities dated October ●, 2019, as may be further amended from time to time (the "**CCAA Plan**")), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of the Monitor, the Affidavit of [Adrian Frankum] sworn October [23], 2019 including the exhibits thereto, the [seventh] report of the Monitor dated October ●, 2019, and on hearing the submissions of counsel for the Payless Canada Entities, the Monitor, FTI (as the proposed Receiver), the Term Loan Agent and the Supporting Term

Loan Lenders, and no one else appearing although duly served as appears from the affidavit of service of Taschina Ashmeade sworn October ●, 2019, and on reading the consent of FTI to act as the Receiver,

SERVICE

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

2. **THIS COURT ORDERS** that any capitalized term used and not defined herein shall have the meaning ascribed thereto in the CCAA Plan.

LIFTING OF THE STAY

3. **THIS COURT ORDERS** that the stay of proceedings granted by this Court under the Initial Order dated February 19, 2019, (the "**Initial Order**") is hereby lifted with respect to the Payless Canada Entities and the Receivership Property (as defined below) solely to allow: (i) the appointment of the Receiver over the Receivership Property on the Receivership Effective Date (as defined below); and (ii) the Receiver to act in respect of the Receivership Property, each in accordance with the provisions of this Receivership Order.

APPOINTMENT

4. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and effective upon service on the Service List of the certificate attached as **Schedule "A"** hereto (the "**Receivership Effective Date**") confirming that the Affected Creditor Distribution Date has occurred, FTI will hereby be appointed Receiver, without security, of all Employee Distributions and Cash in the amount of $100.00 to be transferred by Payless ShoeSource Canada LP to the Receiver (the "**Receivership Property**"), and no other property of the Payless Canada Entities.

5. **THIS COURT DECLARES** that the Receiver is a receiver within the meaning of section 243(1) of the BIA.

RECEIVER'S POWERS

6. THIS COURT ORDERS that, from and after the Receivership Effective Date, the Receiver will be empowered and authorized, but not obligated, to act at once in respect of the

Receivership Property and the Receiver will be expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

(a) subject to paragraphs 11, 13 and 14 of this Receivership Order, to exercise control over the Receivership Property;

(b) to perform its statutory obligations under the *Wage Earner Protection Program Act* (Canada) (the "**WEPPA**");

(c) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations; and

(d) to engage counsel to assist with the exercise of the Receiver's powers conferred by this Receivership Order,

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusions of all other Persons (as defined below), including the Payless Canada Entities and without interference from any other Person.

7. **THIS COURT ORDERS** that the Receiver be and is hereby relieved from compliance with the provision of sections 245(1), 245(2) and 246 of the BIA, provided that the Receiver shall provide notice of its appointment in the prescribed form and manner to the Superintendent of Bankruptcy, accompanied by the prescribed fee.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

8. **THIS COURT ORDERS** that (i) the Payless Canada Entities, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and members, and all other persons acting on their instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Receivership Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith grant access to the Receivership Property to the Receiver upon the Receivership Effective Date.

9. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the Receivership

Property and the current (if any) and former employees of the Payless Canada Entities for the purposes of complying with the Receiver's statutory obligations under the WEPPA, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 9 or in paragraph 10 of this Receivership Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to applicable laws prohibiting such disclosure.

10. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER OR THE RECEIVERSHIP PROPERTY

11. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver or the Receivership Property except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Receiver or the Receivership Property are hereby stayed and suspended pending further Order of this Court.

EMPLOYEES

12. **THIS COURT ORDERS** that employees of the Payless Canada Entities, if any, shall remain the employees of the Payless Canada Entities until such time as the Payless Canada Entities may terminate the employment of such employees and the Receiver shall not be liable

for any employee-related liabilities or obligations, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA.

LIMITATION ON ENVIRONMENTAL LIABILITIES

13. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Receivership Property or any of the Payless Canada Entities' other assets, property or undertaking, including (without limitation) property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial, or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the Ontario *Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**").

POSSESSION OF RECEIVERSHIP PROPERTY

14. **THIS COURT ORDERS** that the Receiver shall take no part whatsoever in the management or supervision of the management of the Business (as defined in the Initial Order) and the Receiver shall not, as a result of this Receivership Order or anything done in pursuance of the Receiver's duties and powers under this Receivership Order, be deemed to be in possession of or be deemed to have taken any steps to dispose of any of the Receivership Property, or of any other assets, property or undertaking of the Payless Canada Entities, including (without limitation) within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

15. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its delivery of the Receivership Certificate, its appointment or the carrying out the provisions of this Receivership Order, including any liability or obligation in respect of taxes, withholdings, interest, penalties, or other like claims, save and except for any gross negligence or wilful misconduct on its part, and it shall have no obligations under sections 81.4(5) or 81.6(3) of the BIA. Nothing in this Receivership Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

COSTS OF ADMINISTRATION

16. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, in an amount up to but not exceeding the amount of the Receivership Property, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Receivership Property, as security for such fees and disbursements, both before and after the making of this Receivership Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Receivership Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

17. **THIS COURT ORDERS** that, if requested by the Court or any interested person, the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

18. **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the Receivership Property, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

TERMINATION OF THE RECEIVERSHIP

19. **THIS COURT ORDERS** that unless otherwise ordered by the Court following the completion of the Receivers' duties under this Receivership Order, any Receivership Property remaining after payment of all fees and expenses of the Receiver and its counsel shall be remitted to Service Canada as subrogee of Claims paid in respect of eligible wages (as defined in WEPPA), as contemplated by WEPPA.

SERVICE AND NOTICE

20. **THIS COURT ORDERS** that, subject to further Order of the Court, service and notice with respect to this Receivership Order and the appointment of the Receiver shall be in accordance with paragraphs 54, 55, 56, and 57 of the Initial Order.

INITIAL ORDER, CCAA PLAN AND SANCTION ORDER

21. **THIS COURT ORDERS** that, except as expressly stated herein with respect to the Receivership Property, nothing herein amends the terms of the Initial Order, including the powers, authorizations, obligations and protections for the Monitor, the Payless Canada Entities and the Payless Canada Entities' directors and officers contained in the Initial Order.

22. **THIS COURT ORDERS** that, nothing herein amends the terms of the CCAA Plan or the Sanction Order, including the compromises, discharges, releases and injunctions provided for therein.

WEPPA

23. **THIS COURT ORDERS** that (i) notwithstanding subsection 21(1)(d) of WEPPA and subsection 16(1)(b) of the WEPPA Regulations, each individual (as such term is used in WEPPA) will not be required to, and shall not, deliver a proof of claim for wages owing, and the Receiver will instead accept the individual's CCAA claim for purposes of administration of WEPPA in this proceeding, and (ii) notwithstanding subsection 15(1)(d) of the WEPPA Regulations, the Receiver shall advise the Minister (as defined in WEPPA), and the Minister shall accept, that the requirement of an individual to deliver a proof of claim for wages owing was met given the acceptance of claims referred to immediately above.

24. **THIS COURT ORDERS** that, for the purposes of WEPPA and these receivership proceedings, (i) Payless ShoeSource Canada LP is subject to the CCAA Proceedings, (ii) the wage eligibility period for the purpose of establishing eligible wages under WEPPA in accordance with subsection 2(1)(a)(ii) of WEPPA has occurred, and (iii) the wage eligibility period began six months prior to the date of commencement of the CCAA Proceedings.

GENERAL

25. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

26. **THIS COURT ORDERS** that nothing in this Receivership Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Payless Canada Entities (or any of them).

27. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give

effect to this Receivership Order and to assist the Receiver and its agents in carrying out the terms of this Receivership Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Receivership Order or to assist the Receiver and its agents in carrying out the terms of this Receivership Order.

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

29. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Receivership Order on not less than seven (7) days' notice to the Receiver and the Payless Canada Entities and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

SCHEDULE "A"

RECEIVER CERTIFICATE

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 PAYLESS SHOESOURCE CANADA INC. AND PAYLESS SHOESOURCE CANADA GP INC.

RECEIVERSHIP CERTIFICATE

The undersigned confirm that this is the "Receivership Certificate" referred to in the Receivership Order of the Ontario Superior Court of Justice (Commercial List) made on October 29, 2019, and that in accordance with paragraph 4 of the Receivership Order, the Affected Creditor Distribution Date as defined in the First Amended and Restated Plan of Compromise and Arrangement of the Payless Canada Entities dated October ●, 2019, as may be further amended from time to time, has occurred and that the Receivership Effective Date shall be effective upon service of this certificate on the Service List.

PAYLESS SHOESOURCE CANADA INC., PAYLESS SHOESOURCE CANADA GP INC. AND PAYLESS SHOESOURCE CANADA LP

Per: _____

Name:

Title

FTI CONSULTING CANADA INC., SOLELY IN ITS CAPACITY AS PROPOSED RECEIVER, AND NOT IN ITS PERSONAL OR CORPORATE CAPACITY

Per: _____

Name:

Title: