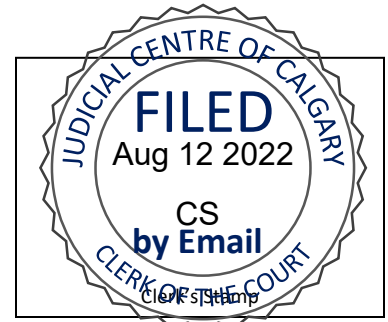


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Aug 25 2022

COURT FILE NUMBER BK01 095206
COURT Queen’s Bench of Alberta
JUDICIAL CENTRE Calgary
MATTER IN THE MATTER OF THE BANKRUPTCY OF NORTH AMERICAN STEEL ERECTORS INC.

APPLICANT TRISURA GUARANTEE INSURANCE COMPANY
RESPONDENT NORTH AMERICAN STEEL ERECTORS INC. by its Trustee in Bankruptcy MNP LTD.

DOCUMENT **APPLICATION PURSUANT TO SECTION 38 OF THE BANKRUPTCY AND INSOLVENCY ACT**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
Rose LLP
2100, 440 – 2nd Avenue SW
Calgary, Alberta T2P 5E9
Telephone: (403) 776-0538
Attention: Andrew Wilkinson
File No.: 10774-025

NOTICE TO RESPONDENT

This application is made against you. You are the Respondent.

You have the right to state your side of this matter before the Justice.

To do so, you must be in Court when the application is heard as shown below:

Date Thursday, August 25, 2022
Time 3:00 p.m.
Where Calgary Courts Centre, 601 5 St SW, Calgary, AB T2P 5P7
Virtually, via Webex
Before Whom Presiding Commercial Justice in Chambers

Go to the end of this document to see what else you can do and when you must do it.

Remedy claimed or sought:

- 1. An Order that:
 - (a) Pursuant to s. 38 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the “**BIA**”), Trisura Guarantee Insurance Company (“**Trisura**”) may and is authorized to, in the place of the MNP Ltd. (the “**Trustee**”), prosecute proceedings in its own name and for its own benefit and at its expense, and for the benefit and at the expense of the Participating Creditors (as defined below) under conditions set out below, on behalf of North American Steel

Erectors Inc. (“**North American**” or the “**Bankrupt**”) against Shield Industries Ltd. and Wynward Insurance Group in the Court of Queen’s Bench of Alberta Court File No. 2001-16202 (the “**Proceedings**”).

- (b) The Trustee shall execute an assignment assigning all its right, title and interest in the Proceedings and shall transfer and make available all books and documents of the Bankrupt that are in the Trustee’s possession which concern or relate to the Proceedings, and that such assignment shall vest in Trisura and such other Participating Creditors who satisfy paragraph 1(d) below who are thereby granted all the right, title and interest which the Trustee has, had or shall have in the subject matter of the Proceedings by virtue of its office as the trustee in bankruptcy of the Bankrupt.
- (c) Notice of the granting of the Order obtained in this Application upon the creditors who have proved claims against the Bankrupt’s estate (collectively, the “**Creditors**”) shall be deemed to be sufficiently served by sending the Order obtained by registered mail to each of the creditors at their address as shown in the Bankrupt’s Statement of Affairs. The Order obtained shall be deemed to have been served 5 days after the Order obtained is sent.
- (d) All benefits derived from the Proceedings together with the costs of same shall belong exclusively to Trisura and to any other Creditors who within 7 days after service in accordance with paragraph 1(c) above agree to contribute *pro rata* according to the amount of their respective claims, to the expense and risk of prosecuting the Proceedings, and who within the like time in writing directed to:

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Andrew.Wilkinson@rosellp.com

signify their agreement.

- (e) Each creditor who satisfies paragraph 1(d) above (each a “**Participating Creditor**” and collectively, the “**Participating Creditors**”) shall pay any account duly issued to that Participating Creditor in accordance with paragraph 1(d) above within 30 days of receipt at an address for service provided by the Participating Creditor. Failing to pay such an account shall entitle Trisura to apply to have the said Participating Creditor removed from the Proceedings and to be no longer entitled to the benefits derived from same.
- (f) If any Creditor fails to satisfy paragraph 1(d) above within the time as thereby limited, they shall be thereafter excluded from participating in the benefits to be derived from the Proceedings.
- (g) The costs of Trisura and of such Participating Creditors as may join with it in the Proceedings shall be paid, and after paying the said costs, the balance, if any, shall be divided between Trisura and any Participating Creditors who have contributed under

paragraph 1(e) above *pro rata* according to the respective amounts of their claims in addition to any dividends that they may be entitled to out of the Bankrupt's other assets, but only to the extent of their said claims.

- (h) Trisura and the Participating Creditors shall account to the Trustee for all benefits derived from prosecuting the Proceedings and all costs incurred in prosecuting the same. In the case of a surplus after paying Trisura its claims and costs and the claims and costs of any of the Participating Creditors, according to the priority of the same respectively as determined by paragraph 1(g) above, such surplus shall be paid to the Trustee in augmentation of the Bankrupt's estate.
- (i) The Trustee shall provide Trisura within four days of service of the Order obtained upon it with a list of the names and addresses of all creditors who have proven claims against the Bankrupt's estate.
- (j) The Trustee shall deliver to Trisura all records of the Bankrupt that are in the Trustee's possession, whether in paper or electronic form, which concern or relate to the Proceedings (collectively, the "**Records**"). Upon the conclusion or discontinuance of the Proceedings, Trisura shall return the Records to the Trustee.

2. Such further and other relief as this Honourable Court directs.

Grounds for making this application:

- 3. Trisura is a creditor of North American within the meaning of the *BIA*.
- 4. North American had commenced the Proceedings against Shield Industries Ltd., a steel supplier, and Wynward Insurance Group, a surety who had issued a performance bond regarding the 9th Avenue Bridge Project.
- 5. The Proceedings have merit.
- 6. The Trustee has provided a notice to creditors advising that it does not have access to funds to continue the Proceedings and invited any creditors to pursue an application under section 38 of the *BIA*.

Material or evidence to be relied on:

- 7. Affidavit of Stuart Detsky, sworn August 12, 2022;
- 8. The First Report of the Trustee, dated July 6, 2022.
- 9. Such further and other evidence as counsel may advise and this Honourable Court permit.

Applicable Rules:

- 10. None.

Applicable Acts and regulations:

11. Sections 38 of the *BIA*, along with any other sections that may be applicable.

Any irregularity complained of or objection relied on:

12. None.

How the application is proposed to be heard or considered:

13. Remotely, via Webex, before the Presiding Justice in Commercial Chambers.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the Applicant what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the Applicant.