

**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 DEL EQUIPMENT INC.**

Applicant

**MOTION RECORD
CCAA TERMINATION ORDER**
(Motion returnable October 29, 2020)

GOODMANS LLP
Barristers & Solicitors
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, Canada M5H 2S7

Christopher G. Armstrong LSO#: 55148B
carmstrong@goodmans.ca

Andrew Harmes LSO#: 73221A
aharmes@goodmans.ca

Tel: 416.979.2211
Fax: 416.979.1234

Lawyers for Del Equipment Inc.

Index

INDEX

Tab	Document
1.	Notice of Motion
2.	Affidavit of Douglas Lucky sworn October 22, 2020
A.	Affidavit of Douglas Lucky sworn October 20, 2019 (without exhibits)
B.	Affidavit of Douglas Lucky sworn September 8, 2020 (without exhibits)
3.	Draft CCAA Termination Order

1

Court File No.: CV-19-629552-00CL

**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 DEL EQUIPMENT INC.**

Applicant

NOTICE OF MOTION

(returnable October 29, 2020)

Del Equipment Inc. (“**DEL**” or the “**Company**”) will make a motion before Justice Hainey of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) on October 29, 2020, at 10:00 a.m. or as soon thereafter as the motion can be heard by judicial videoconference call in light of the COVID-19 crisis. Please refer to the videoconference details attached as Schedule “A” hereto in order to attend the motion and advise if you intend to join the motion by emailing Andrew Harmes at aharmes@goodmans.ca.

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

THE MOTION IS FOR:

- 2 -

1. An Order (the “**CCAA Termination Order**”), in substantially the form attached at Tab 3 of DEL’s Motion Record dated October 22, 2020, among other things:
 - (a) approving the Fourth Report, Fifth Report and Sixth Report (each as defined below) and the activities described therein and the fees and disbursements of the Monitor (as defined below) and its counsel;
 - (b) providing for the termination of these CCAA proceedings upon service of a certificate by the Monitor (the “**Monitor’s Certificate**”) certifying that, to the knowledge of the Monitor, all matters to be attended to in connection with these CCAA proceedings have been completed;
 - (c) authorizing DEL to make an assignment in bankruptcy and authorizing the CRO (as defined below) and the Monitor to execute and file any assignment in bankruptcy and related documents;
 - (d) terminating the Charges upon service of the Monitor’s Certificate (the “**CCAA Termination Time**”);
 - (e) discharging MNP Ltd. (“**MNP**”) as the Monitor as at the CCAA Termination Time;
 - (f) discharging Douglas Lucky as DEL’s Chief Restructuring Officer (the “**CRO**”) as at the CCAA Termination Time;
 - (g) releasing, effective as at the CCAA Termination, (i) the direct and indirect shareholders, directors, officers, employees, legal counsel and advisors of DEL,

- 3 -

(ii) the Monitor and its legal counsel, and (iii) the CRO and 2255987 Ontario Limited (operating as Strategic Results Advisors) (the persons listed in (i) to (iii) being collectively, the “**Released Parties**”) from all present and future claims and obligations based on any act, omission, transaction, dealing or other occurrence taking place prior to the CCAA Termination Time or completed pursuant to the CCAA Termination Order and relating to, among other things, DEL;

- (h) extending the Stay Period (as defined below) until the earlier of (i) the CCAA Termination Time; and (ii) such other date as this Court may order; and
- (i) providing certain other related and ancillary relief; and

2. Such further and other relief as counsel may request and this Court may permit.

THE GROUNDS FOR THE MOTION are as follows:

Background

3. On October 22, 2019, DEL was granted protection from its creditors under the *Companies’ Creditors Arrangement Act* (the “**CCAA**”) pursuant to the Initial Order of the Court (the “**Initial Order**”).

4. The Initial Order, among other things, (i) appointed MNP as the monitor (the “**Monitor**”) of DEL in the CCAA proceedings, (ii) granted a stay of proceedings in respect of DEL until and including November 21, 2019, or such later date as the Court may order (the “**Stay Period**”), and (iii) approved DEL’s commencement of a sale and investment solicitation process (the “**Sale Process**”). The Stay Period was subsequently extended by further orders of this Court to October 30, 2020.

- 4 -

5. On February 27, 2020, this Court granted an Approval and Vesting Order, among other things, approving a sale transaction (the “**DPI Transaction**”) between DEL and Drive Products Inc. (“**DPI**”) resulting from the Sale Process. The DPI Transaction, among other things, resulted in the going concern sale of DEL’s Ontario business (which represented a significant portion of its overall business) and certain of DEL’s additional assets to DPI, as well as the employment by DPI of 36 of DEL’s employees. The DPI Transaction closed on March 31, 2020.

6. On May 27, 2020 this Court granted an Auction Approval Order approving an auction services agreement entered into between DEL and Infinity Asset Solutions Inc. (the “**Auctioneer**”), pursuant to which the Auctioneer conducted online auctions between June 9 and June 24, 2020 for the Company’s remaining assets not included within the scope of the DPI Transaction (the “**Residual Assets**”) located at the Company’s Vancouver (Port Coquitlam), Calgary, Edmonton and Moncton branches, generating approximately \$1.04 million of net realizations to DEL. The Company also has carried out a self-liquidation of the relatively small amount of Residual Assets located at its Montreal branch, generating an approximately \$63,000 of additional net proceeds to DEL.

7. In addition to closing the DPI Transaction and completing the orderly liquidation of the Residual Assets not included within the scope of the DPI Transaction, the Company and its legal counsel have worked diligently since the commencement of these CCAA proceedings to advance the payment dispute (the “**Payment Dispute**”) involving Gin-Cor Industries Inc. (“**Gin-Cor**”) and Mack Defense, LLC (“**Mack Defense**”), in respect of which DEL is seeking to recover \$874,107.08 (the “**Funds**”) attributable to work performed by DEL and invoiced to Mack Defense, for which payment had instead been made by Mack Defense to Gin-Cor.

- 5 -

8. On May 7, 2020, following a hearing in respect of the Payment Dispute held in accordance with the Court-approved litigation protocol, this Court determined, among other things, that Gin-Cor has been unjustly enriched by the receipt and retention of the Funds and ordered that Gin-Cor return the Funds to DEL (the “**Payment Dispute Decision**”). The Ontario Court of Appeal delivered a decision on September 8, 2020 dismissing Gin-Cor’s motion for leave to appeal the Payment Dispute Decision and on September 9, 2020, the Funds were transferred by Gin-Cor’s legal counsel to DEL.

Termination of the CCAA Proceedings

9. In the course of these CCAA proceedings, DEL has, among other things, completed the going concern sale of its Ontario business (which represented a significant portion of DEL’s overall business) and certain additional assets pursuant to the DPI Transaction, completed an orderly liquidation of its remaining branches and assets not included within the scope of the DPI Transaction (whether pursuant to the Auction Services Agreement or by self-liquidation), collected the vast majority of its outstanding accounts receivable, wound-down its business operations, repaid in full all of its secured debt obligations and resolved the Payment Dispute resulting in DEL’s recovery of the Funds. DEL currently has approximately \$4.477 million of cash on hand.

10. The wind-down of the Company is substantially complete and DEL will shortly be in a position to proceed with a reconciliation of claims and distributions to creditors. DEL has determined that it would be more cost-effective to undertake such efforts within a bankruptcy process as opposed to under the CCAA.

- 6 -

11. The CCAA Termination Order will enable the Company to complete remaining matters in an efficient and cost-effective manner that preserves the remaining value of DEL's estate for the benefit of DEL's creditors, and bring these CCAA proceedings to an orderly conclusion.

12. Upon service of the Monitor's Certificate, these CCAA proceedings will be terminated, the Monitor will not have any further responsibilities in its role as court-appointed Monitor in these CCAA proceedings, and the CRO will not have any further responsibilities in its role as CRO.

13. Both the Monitor and the CRO have duly and properly discharged and performed their duties and obligations in these CCAA proceedings in compliance and in accordance with the CCAA and all orders of this Court made in these CCAA proceedings.

14. Upon the termination of these CCAA proceedings, it is proposed that the Released Parties shall be released from all present and future claims and obligations based on any act, omission, transaction, dealing or other occurrence taking place prior to the CCAA Termination Time or completed pursuant to the CCAA Termination Order.

15. The proposed release will facilitate the distribution of the Company's estate in an efficient an orderly manner pursuant to a bankruptcy process without the need to expend estate resources in connection with the development and implementation of a plan of compromise or arrangement under the CCAA.

Extension of the Stay Period

16. The Stay Period currently expires on October 30, 2020.

17. The Company has been acting and continues to act in good faith and with due diligence in these CCAA proceedings.
18. An extension of the Stay Period to the earlier of (i) the CCAA Termination Time, and (ii) such other date as this Court may order, will provide the Company with the time needed to complete any remaining matters in advance of terminating these CCAA proceedings and transitioning into a bankruptcy process.
19. The Company's operating costs are currently minimal given that DEL has sold almost all of its assets and its wind-down is substantially complete, and it has sufficient liquidity to complete any remaining matters in these CCAA proceedings.
20. The extension of the Stay Period is supported by the Monitor.

General

21. The provisions of the CCAA, including section 11.02, and this Court's equitable and statutory jurisdiction thereunder.
22. Rules 1.04, 1.05, 2.03, 3.02, 16 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended.
23. The Consolidated Notice to the Profession, Litigants, Accused Persons, Public and the Media regarding Expanded Operations of Ontario Superior Court of Justice dated May 13, 2020, as amended.
24. Changes to Commercial List Operations in light of COVID-19 dated March 16, 2020.
25. Such further and other grounds as counsel may advise and this Court may permit.

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

26. The Affidavit of Douglas Lucky sworn October 22, 2020 and the exhibits attached thereto;

27. The Sixth Report of the Monitor (the “**Sixth Report**”) including the fourth report of the Monitor dated May 22, 2020 (the “**Fourth Report**”), the fifth report of the Monitor dated September 10, 2020 (the “**Fifth Report**”) and the affidavits of Sheldon Title and Jennifer Stam and the other appendices attached thereto, to be filed; and

28. Such further and other materials as counsel may advise and this Court may permit.

Date: October 22, 2020

GOODMANS LLP
Barristers & Solicitors
333 Bay Street, Suite 3400
Toronto, Canada M5H 2S7

Christopher G. Armstrong LSO#: 51148B
carmstrong@goodmans.ca

Andrew Harmes LSO#: 73221A
aharmes@goodmans.ca

Tel: 416.979.2211
Fax: 416.979.1234

Lawyers for Del Equipment Inc.

SCHEDULE "A"

Videoconference Details

Please advise if you intend to join the hearing of the motion by emailing Andrew Harmes at aharmes@goodmans.ca.

To join hearing using a computer:

<https://us02web.zoom.us/j/83932006847?pwd=bEFEB0U4NHdORGdXRdRVnhMakx6QT09>

Meeting ID: 839 3200 6847

Passcode: 882645

One tap mobile

+13017158592,,83932006847#,,,,,0#,,882645# US (Germantown)

+13126266799,,83932006847#,,,,,0#,,882645# US (Chicago)

Dial by your location

+1 301 715 8592 US (Germantown)

+1 312 626 6799 US (Chicago)

+1 346 248 7799 US (Houston)

+1 669 900 6833 US (San Jose)

+1 929 205 6099 US (New York)

+1 253 215 8782 US (Tacoma)

Meeting ID: 839 3200 6847

Passcode: 882645

Find your local number: <https://us02web.zoom.us/u/kbK65EfDTC>

**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 DEL
EQUIPMENT INC.**

Court File No: CV-19-629552-00CL

Applicant

<p>ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST) Proceeding commenced at Toronto</p>
<p>NOTICE OF MOTION (returnable October 29, 2020)</p>
<p>GOODMANS LLP Barristers & Solicitors 333 Bay Street, Suite 3400 Toronto, Canada M5H 2S7</p> <p>Christopher G. Armstrong LSO#: 55148B carmstrong@goodmans.ca</p> <p>Andrew Harmes LSO#: 73221A aharmes@goodmans.ca</p> <p>Tel: (416) 979-2211 Fax: (416) 979-1234</p> <p>Lawyers for Del Equipment Inc.</p>

2

Court File No. CV-19-629552-00CL

**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 DEL EQUIPMENT INC.**

Applicant

**AFFIDAVIT OF DOUGLAS LUCKY
(sworn October 22, 2020)**

I, Douglas Lucky, of the City of Toronto, in the Province of Ontario, **MAKE OATH
AND SAY:**

1. I am the Chief Restructuring Officer (“**CRO**”) of Del Equipment Inc. (“**DEL**” or the “**Company**”). DEL retained 2255987 Ontario Limited (“**Strategic Results Advisors**”) (a company which I am the principal of) on July 23, 2019, to provide restructuring and turn-around advisory services. I was appointed by DEL as CRO immediately prior to the Company’s commencement of the within proceedings under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), with such appointment becoming effective upon the issuance by this Court of the Initial Order (as defined below). Accordingly, I have personal knowledge of the matters to which I depose in this affidavit. Where I do not possess personal knowledge, I have stated the source of my information and, in all such cases, believe it to be true.

2. This affidavit is sworn in support of a motion for an Order (the “**CCAA Termination Order**”) that, among other things:

- (a) approves the activities of the Monitor (as defined below) and the fees and disbursements of the Monitor and its legal counsel;
- (b) terminates these CCAA proceedings upon the Monitor serving a certificate (the “**Monitor’s Certificate**”) on the Service List (as defined in the Initial Order) (the “**CCAA Termination Time**”) certifying that, to the knowledge of the Monitor, all matters to be attended to in connection with these CCAA proceedings have been completed;
- (c) authorizes the Company to make an assignment in bankruptcy;
- (d) grants the CCAA Release (as defined and discussed below);
- (e) extends the Stay of Proceedings (as defined below) until the earlier of (i) the CCAA Termination Time, and (ii) such other date as this Court may order; and
- (f) provides certain other related and ancillary relief.

3. In addition, I understand that the Court is being asked at the same time to hear a motion brought by MNP Ltd. (“**MNP**”) in its capacity as receiver (in such capacity, the “**Receiver**”) in the Limited Receivership Proceedings (defined below) seeking an Order (the “**Receiver Discharge Order**”), among other things, discharging the Receiver, without security, over certain accounts of DEL (the “**Limited Receivership Property**”) and terminating the proceedings bearing Court File No. CV-20-00640027-00CL (the “**Limited Receivership Proceedings**”) on

the terms set out in the Receiver Discharge Order. The Limited Receivership Proceedings were commenced by Diesel Equipment Limited (“**Diesel**”), DEL’s senior secured creditor, pursuant to an Order made on April 29, 2020 (the “**Limited Receivership Order**”). The Limited Receivership Proceedings were commenced in conjunction with these CCAA proceedings in order to assist DEL’s former employees who would have been entitled to benefit from payments provided under the *Wage Earner Protection Program Act*, S.C. 2005, c. 47, s. 1 (the “**WEPPA**”) had the Company been subject to bankruptcy or receivership proceedings. As the Company understands that the Receiver has completed all of its duties in respect of the Limited Receivership Proceedings, the Company supports the issuance of the Receiver Discharge Order and the termination of the Limited Receivership Proceedings.

4. Monetary references in this affidavit are references to Canadian dollars. Capitalized terms used but not defined in this affidavit have the meaning given to them in my affidavit previously sworn in these proceedings on October 20, 2019 (the “**Initial Affidavit**”) in support of the Initial Order, or my affidavit sworn September 8, 2020 in connection with the Company’s most recent stay extension motion (the “**September Affidavit**”). Copies of the Initial Affidavit and the September Affidavit are attached to this affidavit, without exhibits, as Exhibits “A” and “B” respectively.

I. OVERVIEW

5. Prior to these CCAA proceedings, DEL operated a truck body and equipment “up-fitting” business pursuant to which DEL engineered, designed, manufactured and sold special truck bodies, attachments, equipment and work-ready vehicles across Canada through its six

manufacturing and distribution facilities. Additional information with respect to DEL and its former business is set forth in the Initial Affidavit.

6. Facing certain business and financial challenges, on October 22, 2019, DEL sought and obtained an order of this Court (the “**Initial Order**”) providing creditor protection and related relief under the CCAA. The Initial Order appointed MNP as the Court-appointed monitor of DEL in these CCAA proceedings (in such capacity, the “**Monitor**”), approved DEL’s proposed sale and investment solicitation process (the “**Sale Process**”) pursuant to which the Company would seek to identify a going-concern solution or other transaction that maximized the value of DEL and its business for the benefit of the Company and all stakeholders, and granted a stay of proceedings in respect of DEL, its business and property (the “**Stay of Proceedings**”) to provide the Company with the stability and breathing space necessary to advance the Sale Process.

7. On February 27, 2020, this Court granted an Order (the “**Approval and Vesting Order**”), among other things, approving a sale transaction (the “**DPI Transaction**”) between DEL and Drive Products Inc. (“**DPI**”) resulting from the Sale Process. The DPI Transaction, among other things, resulted in the going concern sale of DEL’s Ontario business (which represented a significant portion of its overall business) and certain of DEL’s additional assets to DPI for a cash purchase price totaling \$5,097,099, as well as the employment by DPI of 36 of DEL’s employees. The DPI Transaction closed on March 31, 2020.

8. On May 27, 2020 this Court granted an Order (the “**Auction Approval Order**”) approving an auction services agreement entered into between DEL and Infinity Asset Solutions Inc. (the “**Auctioneer**”) dated May 19, 2020 (the “**Auction Services Agreement**”) pursuant to which the Auctioneer would conduct online or webcast auctions of DEL’s remaining assets not

included within the scope of the DPI Transaction (the “**Residual Assets**”) located at the Company’s Vancouver (Port Coquitlam), Calgary, Edmonton and Moncton branches. The Auctioneer conducted the auctions pursuant to the Auction Services Agreement between June 9 and June 24, 2020, generating approximately \$1.04 million of net realizations to DEL. The Company also has carried out a self-liquidation of the small amount of Residual Assets located at its Montreal branch, generating an approximately \$63,000 of additional net proceeds to DEL.

9. As described in the September Affidavit, along with the closing of the DPI Transaction and the completion of the sale of Residual Assets pursuant to the Auction Services Agreement and the Montreal self-liquidation, the Company and its legal counsel have worked diligently since the commencement of these CCAA proceedings to advance the payment dispute (the “**Payment Dispute**”) involving Gin-Cor Industries Inc. (“**Gin-Cor**”) and Mack Defense, LLC (“**Mack Defense**”) which had negatively impacted DEL’s liquidity position and contributed to the Company commencing these CCAA proceedings.

10. On May 7, 2020 this Court determined, following a hearing in respect of the Payment Dispute held in accordance with the Court-approved litigation protocol, that Gin-Cor had been unjustly enriched by the receipt and retention of the \$874,107.08 (the “**Funds**”) attributable to work performed by DEL and invoiced to Mack Defense but paid by Mack Defense to Gin-Cor, and ordered that Gin-Cor return the Funds to DEL (the “**Payment Dispute Decision**”). As referenced in the September Affidavit, the Ontario Court of Appeal delivered a decision on September 8, 2020 dismissing Gin-Cor’s motion for leave to appeal the Payment Dispute Decision. On September 9, 2020, the Funds were transferred by Gin-Cor’s legal counsel to DEL.

11. The following chart summarizes certain key dates and developments in these CCAA proceedings:

Date	Development
October 22, 2019	Initial Order is issued which, among other things, approved the Sale Process.
February 27, 2020	Approval and Vesting Order is issued approving the DPI Transaction.
March 31, 2020	Closing of the DPI Transaction.
April 29, 2020	<p>Stay Extension and Distribution Order is issued, among other things, authorizing DEL to make certain distributions to Diesel in respect of the Secured Credit Agreement (as defined below) until the amounts outstanding thereunder are repaid in full.</p> <p>Pursuant to the Limited Receivership Order, MNP is appointed as receiver, without security, over the Limited Receivership Property pursuant to the <i>Bankruptcy and Insolvency Act</i>, R.S.C., 1985, c. B-3, as amended, for the sole purpose of allowing former employees of DEL to benefit from payments provided under the WEPPA, which they may be entitled to.</p>
May 7, 2020	Payment Dispute Decision is issued, among other things, ordering that Gin-Cor return the Funds to DEL.
May 27, 2020	Auction Approval Order is issued.
June 24, 2020	Completion of the final auction pursuant to the Auction Approval Order.
July/August, 2020	Disclaimer of most remaining contracts, collection of the majority of remaining accounts receivable and responding to leave to appeal in respect of Payment Dispute Decision.
September 8, 2020	Decision of the Ontario Court of Appeal is issued dismissing Gin-Cor's motion for leave to appeal the Payment Dispute Decision.
September 9, 2020	DEL received payment of the Funds.
September 14, 2020	Demonstration Vehicle Equipment Approval and Vesting Order is issued approving the sale of DEL's interest in the Equipment installed on the Unsold Demonstration Vehicles to Diesel and the Stay of Proceedings was extended to and including October 30, 2020. The sale of the DEL's interest in the Equipment installed on the Unsold Demonstration Vehicles closed on September 18, 2020.

12. In the course of these CCAA proceedings, DEL has, among other things, completed the going concern sale of its Ontario business (which represented a significant portion of DEL's overall business) and certain additional assets pursuant to the DPI Transaction, completed an orderly liquidation of its remaining branches and assets not included within the scope of the DPI Transaction (whether pursuant to the Auction Services Agreement or by self-liquidation), collected the vast majority of its outstanding accounts receivable, wound-down its business operations, and resolved the Payment Dispute resulting in DEL's recovery of the Funds.

13. Additionally, at the outset of the CCAA proceedings, DEL was indebted to its senior secured creditor, Diesel, in an amount exceeding \$11.7 million. Pursuant to the Stay Extension and Distribution Order made on April 29, 2020, DEL was authorized to make an interim distribution to Diesel of \$9 million and further distributions up to the amount owing to Diesel under the Second Amended and Restated Credit Agreement dated as of May 31, 2018 (the "**Secured Credit Agreement**"). DEL has since repaid in full all amounts owing under the Secured Credit Agreement.

14. The wind-down of the Company is now substantially complete and DEL will shortly be in a position, subject to this Court's approval, to proceed with a reconciliation of claims and distributions to unsecured creditors. DEL has determined that it would be more cost-effective to undertake such efforts within a bankruptcy process as opposed to under the CCAA, and seeks the proposed CCAA Termination Order to bring these CCAA proceedings in an efficient and orderly conclusion and transition into a bankruptcy process. DEL believes that the requested authorization to terminate these CCAA proceedings and transition into a bankruptcy process, as set out in the proposed form of CCAA Termination Order, will preserve the value of DEL's estate and is in the best interests of the Company and its stakeholders.

II. THE CCAA TERMINATION ORDER

15. DEL is requesting approval of the CCAA Termination Order to facilitate the completion of certain remaining wind-down matters and the termination of the CCAA proceedings in an efficient and cost-effective manner that preserves remaining value for the benefit of creditors with a remaining economic interest. The material aspects of the proposed CCAA Termination Order are described below.

16. Rather than incurring the cost and time of a further motion to seek termination of these CCAA proceedings once DEL has completed certain outstanding administrative matters, the proposed CCAA Termination Order provides that these CCAA proceedings will be terminated once the Monitor has served the Monitor's Certificate on the Service List certifying that, to the Monitor's knowledge, all matters to be attended to in these CCAA proceedings have been completed (thus signalling the occurrence of the CCAA Termination Time). The proposed CCAA Termination Order also provides for additional relief related to the termination of these CCAA proceedings, including, without limitation, the following:

- (a) DEL is authorized to file an assignment into bankruptcy. The Monitor and myself, in my capacity as CRO, are both authorized to execute and file any assignment in bankruptcy and related documents on behalf of DEL, and MNP is authorized to act as DEL's trustee in bankruptcy;
- (b) MNP shall be discharged as Monitor and I shall be discharged as CRO of DEL upon the CCAA Termination Time, provided that both the Monitor and myself, as CRO of DEL, shall have the authority to address any matters in our roles as Monitor or CRO, respectively, that are ancillary or incidental to these CCAA

proceedings. In addition, the Monitor and myself, as CRO of DEL, shall continue to have the benefit of the provisions of all orders made in these CCAA proceedings, including all releases, approvals and protections, including in connection with any incidental matters and other actions taken pursuant to the proposed CCAA Termination Order following the CCAA Termination Time;

- (c) effective at the CCAA Termination Time, (i) the direct and indirect shareholders, directors, officers, employees, legal counsel and advisors of DEL, (ii) the Monitor and its legal counsel, and (iii) the CRO and Strategic Results Advisors (the persons listed in (i) to (iii) being collectively, the “**Released Parties**”), shall be released from any and all liability that the Released Parties now or may hereafter have based in whole or in part on any act, omission, transaction, dealing or other occurrence existing or taking place prior to the CCAA Termination Time or completed pursuant to the proposed CCAA Termination Order relating to DEL, the business operations, assets, property and affairs of DEL, the administration and/or management of DEL, the Secured Credit Agreement and these CCAA proceedings, including any transaction or other matter approved or otherwise undertaken pursuant to or in connection with these CCAA proceedings (the “**CCAA Release**”). The CCAA Release does not release any claim against any director of DEL that is not permitted to be released pursuant to section 5.1(2) of the CCAA; and
- (d) the Stay of Proceedings shall be extended until the earlier of (i) the CCAA Termination Time, and (ii) such other date as this Court may order.

17. The process set forth in the proposed CCAA Termination Order will facilitate the completion of any remaining CCAA matters in an efficient and orderly manner that preserves the remaining value of DEL's estate, and will enable the Company to proceed with an orderly transition into a bankruptcy process to facilitate creditor distributions. The Company currently has approximately \$4.477 million of cash on hand.

18. The CCAA Release contained in the CCAA Termination Order will facilitate the distribution of DEL's remaining estate through a bankruptcy process without the need to expend estate resources in connection with the development and implementation of a plan of compromise or arrangement. DEL has determined that it would be more cost-effective to undertake a claims process under a bankruptcy process as opposed to under the CCAA. The purpose of the CCAA Release is to achieve certainty and finality for the Released Parties, while also enabling the Company to proceed with a transition into a bankruptcy process as opposed to undertaking a CCAA claims process and development and implementation of a CCAA plan of compromise or arrangement.

19. The Released Parties have made significant contributions to the Company's restructuring efforts and to achieving the best possible outcome to these CCAA proceedings. The release of these parties is reasonable and appropriate in the circumstances and will facilitate the completion of these CCAA proceedings in an efficient and orderly manner. In the circumstances, the CCAA Release is therefore in the best interests of the Company and its stakeholders.

III. THE CRO'S ACTIVITIES

20. Since my appointment as CRO of DEL, I have been actively involved in numerous aspects of DEL's business and these CCAA proceedings. The more significant activities that I have undertaken or been involved with include the following:

- (a) advancing the Company's efforts in connection with the Sale Process that led to the identification and completion of the DPI Transaction, including contacting interested parties to solicit expressions of interest, working with potentially interested parties on completing due diligence and submitting binding bids, and leading the Company's efforts, with the assistance of its legal counsel, with respect to the negotiation, execution and implementation of the DPI Transaction;
- (b) communicating with DEL's employees, customers, suppliers, creditors and other key stakeholders at all stages of these CCAA proceedings;
- (c) overseeing the Company's wind-down efforts, including, among other things, working with DEL's management to reduce employee head-count, identifying various vendor services and equipment lease agreements for termination and issuing notices of disclaimer where applicable, overseeing the collection of outstanding accounts receivables, negotiating the Auction Services Agreement and working with the Auctioneer and DEL management at its Montreal branch to complete the orderly liquidation of the Residual Assets not included within the scope of the DPI Transaction;
- (d) overseeing the conduct of the Payment Dispute;

- (e) corresponding regularly with the Monitor to provide updates with respect to the Company's business operations and various developments during these CCAA proceedings; and
- (f) preparing for court attendances, reviewing related materials and attending many such hearings on behalf of DEL.

IV. EXTENSION OF THE STAY OF PROCEEDINGS

21. The current Stay of Proceedings expires on October 30, 2020 (the "**Stay Period**"). The CCAA Termination Order provides for the extension of the Stay Period to and including the earlier of (i) the CCAA Termination Time, and (ii) such other date as this Court may order.

22. DEL continues to act diligently and in good faith with respect to the wind-down of the Company's estate and the completion of these CCAA proceedings. The Company expects to be in a position to terminate these CCAA proceedings in the near term, but is requesting an extension of the Stay Period until the CCAA Termination Time or such other date as this Court may order for DEL to complete certain remaining administrative matters before terminating these CCAA proceedings and transitioning into a bankruptcy process. The Company's operating costs are currently minimal given that its wind-down is now substantially complete. In such circumstances, I do not believe that any creditor will suffer any material prejudice as a result of the extension of the Stay Period as set forth in the CCAA Termination Order. I also understand that the Monitor supports the proposed extension of the Stay Period and the other relief being requested.

V. THE RECEIVER DISCHARGE ORDER

23. As referenced above, pursuant to the Limited Receivership Order, MNP was appointed as the Receiver, without security, over the Limited Receivership Property in order to allow former employees of DEL to access payments under the WEPPA to which they may be entitled. The Limited Receivership Order also provided that the Receiver and its counsel would be entitled to rely on the Administration Charge (as defined in the Initial Order) in respect of their fees.

24. I understand that MNP, as Receiver, has provided support and information to representatives from Employment and Social Development Canada (“ESDC”) with respect to the WEPPA, as needed, including delivering to ESDC trustee/receiver information forms on behalf of all of DEL’s former employees, and have been advised by Sheldon Title of MNP that the Receiver has completed all of its duties and obligations as receiver as set out in the Limited Receivership Order. Accordingly, it is my understanding that the Receiver will be bringing a motion seeking the Receiver Discharge Order, among other things, discharging MNP as receiver and terminating the Limited Receivership Proceedings.

25. In these circumstances, the Company supports the issuance of the Receiver Discharge Order and the termination of the Limited Receivership Proceedings pursuant to the terms thereof.

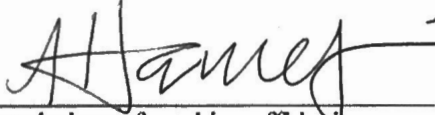
VI. CONCLUSION

26. In connection with these CCAA proceedings, DEL has completed the going concern sale of its Ontario business (which represented a significant portion of DEL’s overall business) and certain additional assets pursuant to the DPI Transaction, completed an orderly liquidation of its remaining branches and assets not included within the scope of the DPI Transaction, successfully advanced the Payment Dispute and recovered the Funds, collected the vast majority of its

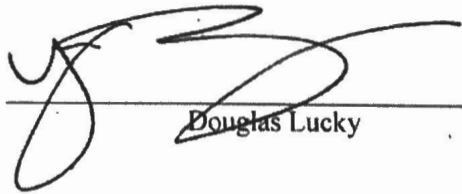
outstanding accounts receivable and repaid in full all amounts owing under the Secured Credit Agreement, among other things. The wind-down of the Company is now substantially complete and DEL is in a position to terminate these CCAA proceedings and proceed with an orderly transition into a bankruptcy process to facilitate creditor distributions. The proposed CCAA Termination Order will enable DEL, with the assistance of the Monitor, to complete any remaining matters in a cost-effective and efficient manner, and bring these CCAA proceedings to an orderly conclusion.

27. For the reasons set out herein, the Company respectfully requests that this Court grant the CCAA Termination Order.

SWORN BEFORE ME over
videoconference by Douglas Lucky stated
as being located in the City of Toronto in
the Province of Ontario, before me at the
City of Toronto in the Province of Ontario,
on October 22, 2020, in accordance with O.
Reg 431/20, Administering Oath or
Declaration Remotely



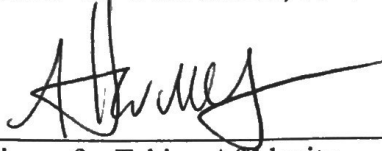
A Commissioner for taking affidavits
Name: Andrew Harmes



Douglas Lucky

A

**THIS IS EXHIBIT "A"
TO THE AFFIDAVIT OF DOUGLAS LUCKY
SWORN BEFORE ME OVER VIDEOCONFERENCE
THIS 22nd DAY OF OCTOBER, 2020**



Commissioner for Taking Affidavits

Court File No.: CV-19-629552-00CL

**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 DEL EQUIPMENT INC.**

Applicant

AFFIDAVIT OF DOUGLAS LUCKY

(sworn October 20, 2019)

Goodmans LLP
Barristers & Solicitors
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7

Christopher G. Armstrong LSO# 55148B
carmstrong@goodmans.ca

Andrew Harmes LSO#: 73221A
aharmes@goodmans.ca

Tel: 416.979.2211

Fax: 416.979.1234

Lawyers for Del Equipment Inc.

TABLE OF CONTENTS

I.	OVERVIEW	2
II.	THE COMPANY	5
	A. Overview	5
	B. The Business of the Company	6
	(i) The Truck Business.....	6
	(ii) Distribution Network	7
	(iii) Distribution Arrangements.....	8
	(iv) Hydraulics Business.....	8
	C. Real Property Lease Obligations.....	9
	D. Equipment Leases	10
	E. Converter Pool Agreements with OEMs	10
	F. Employees and Independent Contractors	11
III.	FINANCIAL POSITION OF THE COMPANY	12
	A. Financial Statements.....	12
	B. Revenue.....	13
	C. Secured Debt Obligations.....	13
	(i) Secured Credit Agreement.....	13
	(ii) RBC Floor Plan Facility re: GM Truck Chassis	16
	(iii) Ford Converter Agreement	17
	(iv) Priority Agreements	17
	D. Cash Management	17
IV.	MATTERS LEADING UP TO THE CCAA FILING.....	19
	A. The Failed Gin-Cor Transaction and DEL’s Operational Struggles.....	19
	B. The Mack Defense/Gin-Cor Payment Dispute.....	21
V.	CCAA PROCEEDINGS AND RELIEF SOUGHT	26
	A. The Company is Insolvent.....	26
	B. Stay of Proceedings	26
	C. Cash Flow Forecast and Interim Financing	27
	D. Approval of the Engagement of the CRO and Corporate Governance Matters.....	31
	E. Proposed Sale Process.....	32
	F. Proposed Monitor	34
	G. Administration Charge.....	35
	H. Directors’ Charge.....	35
	I. Payments During the CCAA Proceedings	37
	J. Priority of Proposed Charges	39
VI.	CONCLUSION	40

Court File No.: CV-19-629552-00CL

**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 DEL EQUIPMENT INC.**

Applicant

AFFIDAVIT OF DOUGLAS LUCKY

(sworn October 20, 2019)

I, Douglas Lucky, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am the principal of 2255987 Ontario Limited o/a Strategic Results Advisors (“**SRA**”), which was retained on July 23, 2019, to provide restructuring and turn-around advisory services to Del Equipment Inc. (“**DEL**” or the “**Company**”). I was previously employed as the chief executive officer and chief operating officer of DEL Equipment Limited (“**DEL Limited**”) (the previous entity through which DEL’s business was operated) from April 2013 to November 2017.¹ Earlier in my career, I was a partner and senior vice-president of Ernst & Young LLP practicing in the corporate finance and restructuring

¹ For ease of reference, I will refer to DEL Limited throughout as DEL unless there is a need to distinguish between DEL Limited and DEL.

- 2 -

groups. Over the course of the past fifteen years, I have served as an officer of a number of companies in need of restructuring or turn-around support. Based on my previous experience with DEL's business and SRA's recent engagement in an advisory capacity, I have personal knowledge of the Company and the matters to which I depose in this affidavit. Where I do not possess personal knowledge, I have stated the source of my information and, in all such cases, believe it to be true. As part of these proceedings, it is proposed that I will become the chief restructuring officer of DEL.

2. Unless otherwise indicated, monetary references in this affidavit are references to Canadian dollars.

I. OVERVIEW

3. This affidavit is sworn in support of an application for an Order (the "**Initial Order**") in respect of the Company pursuant to the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**").
4. DEL is a leading Canadian truck body and equipment "up-fitter" that engineers, designs, manufactures and sells special truck bodies, attachments, equipment and work-ready vehicles. The Company has operations nation-wide at six manufacturing and distribution locations where it employs approximately 174 employees. DEL has been serving the Canadian market for over 70 years, and has a broad and diverse customer base, including municipalities, truck dealerships, national fleet accounts and business operators.
5. DEL's primary business consists of the commercial sale of work-ready trucks through its nation-wide distribution network. It is an authorized "chassis holder" for a number of original equipment manufacturer ("**OEM**") partners, including General Motors of Canada

- 3 -

Company (“**GM**”) and Ford Motor Company of Canada, Limited (“**Ford**”). DEL sources truck chassis from its OEM partners pursuant to various converter pool agreements. DEL then installs truck body, equipment and accessories onto the chassis to complete work-ready trucks for sale by OEM-authorized dealers.

6. As discussed previously, I served as CEO and COO of DEL from 2013 until 2017. I was engaged by DEL at that time to assist in implementing certain business improvements and to prepare the Company for a strategic transaction. By 2017, DEL had successfully implemented the majority of these improvements and produced break-even EBITDA for the six-month period ending June 2017.
7. In June 2017, an agreement was reached with Gin-Cor Industries Inc. (“**Gin-Cor**”), a company that operates in the same field as DEL, pursuant to which Gin-Cor would acquire a 40% equity interest in and management control of DEL for a nominal sum, with a view to earning a 100% equity interest upon the achievement of certain profitability related milestones (the “**Gin-Cor Transaction**”).
8. The Gin-Cor Transaction was intended to enhance DEL’s performance through the achievement of business synergies arising from Gin-Cor managing DEL’s business, including through a relocation of DEL’s Toronto branch and national headquarters to a shared facility with Gin-Cor in Newmarket, Ontario.
9. Unfortunately, although DEL’s revenues increased in 2017 and 2018 compared to 2016, the Gin-Cor Transaction did not produce the hoped-for synergies, with the result that DEL has suffered increasing losses over the past two and a half years. In July 2019, Gin-Cor and the majority shareholder of DEL, Diesel Equipment Limited (“**Diesel**”), agreed to

- 4 -

terminate the Gin-Cor Transaction, with the result that 100% ownership and control of DEL reverted to Diesel on or about July 18, 2019, and Gin-Cor ceased to manage DEL's business as of that date.

10. Since July 2019, DEL has undertaken efforts to address the operational issues that challenged the business while under Gin-Cor management and to pursue other restructuring initiatives, including closing its Regina branch and pursuing sales of non-core assets. While these early initiatives have begun to improve DEL's performance, the Company is currently in significant arrears to its supplier base, many of whom have compressed trade terms (in some cases requiring "cash in advance" payment terms), which has negatively impacted DEL's liquidity.
11. To make matters worse, on September 10, 2019, DEL discovered that a significant payment owing to it from a customer, Mack Defense, LLC ("**Mack Defense**"), was instead paid to Gin-Cor. Despite DEL's good faith efforts over the past month to resolve this issue with Mack Defense and Gin-Cor, the Company has been unable to recover this payment. This has placed a significant additional strain on DEL's liquidity.
12. In light of the foregoing circumstances, the Company is facing a liquidity crisis and seeks CCAA protection at this time to provide stability to its business while it continues restructuring efforts and implements a sale and investment solicitation process (the "**Sale Process**") to pursue a going-concern solution that maximizes the value of its business for the benefit of all stakeholders. The commencement of CCAA proceedings will also enable DEL to obtain interim financing to fund the Sale Process and its working capital requirements while it pursues restructuring efforts, and provide a forum to expeditiously

- 5 -

resolve the payment dispute involving Mack Defense and Gin-Cor to the extent it cannot be resolved on a consensual basis in the near-term.

II. THE COMPANY

A. Overview

13. DEL is a family-owned OEM-approved vehicle up-fitter which, together with its predecessors, has been operating for more than 70 years.
14. The Company is a private corporation incorporated under the laws of the province of Ontario. Its registered and head office is located at 210 Harry Walker Parkway North, Newmarket, Ontario. To facilitate the Gin-Cor Transaction, DEL acquired substantially all of the assets of DEL Limited and assumed most of its liabilities pursuant to a transaction that closed on April 30, 2018.
15. DEL operates six distribution and manufacturing facilities across Canada in Moncton, Montréal, Calgary, Edmonton, Vancouver (Port Coquitlam) and Newmarket. DEL's Newmarket branch is the primary manufacturing facility and is also the central warehouse for DEL-manufactured landscape and contractor dump bodies, as well as DEL-manufactured pneumatics and hydraulics. Each of DEL's facilities has full equipment assembly and installation capabilities and are certified as an Intermediate and Final Stage Manufacturer, meaning DEL's facilities have proven that their vehicle production complies with safety standards under applicable legislation.
16. The Company's sole shareholder is Diesel. As discussed in greater detail below, Diesel is also DEL's senior secured creditor as a result of recently taking an assignment of DEL's secured credit facility from the Bank of Montreal ("**BMO**"), and is the owner (and

- 6 -

landlord) of five of the six premises from which DEL operates. Diesel is also the parent company of certain U.S. entities – Holt Industries, Inc. (“**Holt**”) and DEL Hydraulics, Inc. (“**DEL Hydraulics**”). Holt is an inactive holding company. DEL Hydraulics distributes DEL-manufactured pneumatic control valves in the U.S., along with third-party supplied truck equipment.

17. DEL is also a distributor of products produced by Unicell Limited and its affiliates (collectively, “**Unicell**”). Unicell is controlled by a minority shareholder of Diesel who is related to the controlling shareholder of Diesel. As further discussed herein, DEL, DEL Hydraulics and Unicell have historically shared certain financing arrangements, although in recent months the other parties have taken steps to establish their own financing arrangements independent of DEL. None of Diesel, Holt, DEL Hydraulics or Unicell are proposed to be subject to these CCAA proceedings.

B. The Business of the Company

(i) The Truck Business

18. The Company’s primary business consists of the sale of work-ready trucks to OEM-authorized dealers, end users, large fleets, government, and large leasing companies through its nation-wide distribution network (the “**Truck Business**”). The Truck Business consists of the design, manufacturing, installation, marketing and sale of specialized truck bodies, attachments and equipment.
19. OEMs such as GM or Ford produce heavy-duty trucks, truck chassis or cab-chassis that are suitable for completion as a work-performing vehicle, meaning that they require additional equipment or customization to serve a specific vocation or function (e.g. for

- 7 -

utility service providers, municipalities, construction companies or landscapers). DEL is a final-stage manufacturer that produces or purchases a range of products, including truck bodies, truck equipment, and parts and accessories, that DEL can install onto OEM-supplied chassis, completing end-product work vehicles.

20. As referenced above and described in further detail below, DEL has entered into various converter pool agreements with OEMs which set out the terms under which the OEMs supply DEL with truck chassis. The terms of such arrangements vary depending on the OEM; however, the converter pool agreements generally provide that the OEM will provide a supply of chassis to DEL to be stored at DEL's facilities on the condition that DEL will not alter or remove any such chassis from its storage facilities until DEL has entered into a separate agreement with one of the OEM's authorized dealers for the purchase and sale of a work-ready truck. Depending on the converter agreement, title to the unfinished vehicle may pass to DEL upon delivery, or DEL may hold the vehicle as bailee. Upon entering into the separate agreement with the OEM-authorized dealer, DEL proceeds to install such body or equipment as agreed to between DEL and the OEM-authorized dealer.

(ii) *Distribution Network*

21. DEL operates a nationwide distribution network with six regional facilities across Canada. It also recently closed a facility in Regina. Each of DEL's facilities are managed locally, with centralized services such as corporate management, human resources (including payroll), insurance, IT and finance being provided from DEL's headquarters in Newmarket.

- 8 -

(iii) Distribution Arrangements

22. DEL is party to distribution arrangements for a number of business lines. Among other arrangements, DEL has historically been the exclusive Canadian dealer for Unicell, a manufacturer of one-piece fiberglass van bodies, which is headquartered in Toronto, Ontario. At present, DEL distributes Unicell products in all Canadian provinces except Ontario. DEL is also distributor of a variety of other OEM equipment from Aebi Schmidt, Swenson, Everest, Swaploader, NRC, Waltco, Dhollandia, Tommygate, Beaucroc, Effer, Maxilift, Cobra, and Autocrane, among others.

(iv) Hydraulics Business

23. As referenced above, Diesel, the parent company of DEL, is also the parent company of certain U.S. entities, including DEL Hydraulics. DEL Hydraulics distributes DEL-manufactured shifters and pneumatic valves in the U.S.
24. In connection with its restructuring initiatives, DEL has agreed to sell certain assets used in or relating to the DEL Hydraulics distribution arrangement to DEL Hydraulics for cash consideration of \$588,721.40 (the “**Hydraulics Transaction**”), which amount equals the total book value of the assets to be transferred. The Hydraulics Transaction is scheduled to be completed on or about October 24, 2019, pursuant to the provisions of the proposed Initial Order. Under the terms of the sale agreement, DEL Hydraulics will also pay an hourly fee to DEL to continue to manufacture pneumatic valves and shifters during a 90 day transition period. The Company believes the Hydraulics Transaction will assist in generating needed working capital and also allow it to streamline and focus on its core Truck Business. I do not believe that these assets could be sold to a third party for anything

- 9 -

other than liquidation value. The proceeds that will be generated from this transaction will assist with the Company's liquidity and cash flow during the CCAA process.

C. Real Property Lease Obligations

25. DEL leases each of the facilities from which it operates. In particular, DEL leases its five operating facilities in Moncton, Montréal, Calgary, Edmonton and Vancouver from Diesel. These leases were entered into on July 1, 2017, and provide for a five-year term, with DEL having a one-time option to renew such leases for a further five-year term. These leases provide for a minimum annual aggregate lease commitment of \$588,000 for 2019, 2020 and 2021, and \$245,000 for 2022.
26. In connection with the Gin-Cor Transaction, in 2018 DEL relocated its Toronto branch and head office to a facility leased by Gin-Cor in Newmarket. A written sub-lease was prepared but never executed, although DEL and Gin-Cor have conducted themselves in conformity with its proposed terms. Upon termination of the Gin-Cor Transaction, DEL and Gin-Cor agreed that DEL would continue to sub-lease a portion of the Newmarket premises from Gin-Cor in exchange for DEL paying 50% of the base rent and related occupancy costs payable by Gin-Cor under the head lease. However, in light of various business disputes between DEL and Gin-Cor, including the Payment Dispute relating to Mack Defense (as defined and discussed below), DEL has elected not to make payments under the sub-lease for July, August and September 2019. DEL is prepared to make sub-lease payments to Gin-Cor on the terms agreed for the period from and after the commencement of the CCAA proceedings, provided that the appropriate safeguards are implemented to protect DEL's interest in the fund at issue in the Payment Dispute.

- 10 -

D. Equipment Leases

27. DEL is party to a number of long-term equipment lease arrangements (for instance, for forklifts, telehandlers and office equipment) that are necessary for the continuing operation of its business. In many (if not all cases), the lessors have made registrations under applicable provincial personal property security legislation in respect of the equipment leases.

E. Converter Pool Agreements with OEMs

28. As noted above, the Company sources chassis from OEMs pursuant to converter pool agreements. Currently, DEL is party to the following converter pool agreements:

(i) **Special Vehicle Manufacturer Converter's Agreement with GM effective as of June 9, 2016** (as amended, the "**GM Converter Agreement**"). Pursuant to the GM Converter Agreement, DEL purchases chassis from GM (which purchase is financed by the RBC Floor Plan Facility (as defined and described below)), with title to such truck chassis passing to DEL upon deemed delivery. DEL agrees not to make any modifications or remove any of such truck chassis from its premises until it has reached an agreement with a GM-authorized dealer for the sale of the completed vehicle. Once DEL sells the up-fitted chassis to a GM-authorized dealer, DEL notifies GM who then bills the dealer directly and credits DEL for the original cost of the truck chassis.

(ii) **Ford Authorized Converter Pool Agreement effective as of February 1, 2010** (as amended, the "**Ford Converter Agreement**"). Pursuant to the Ford Converter Agreement, Ford provides truck chassis to DEL as bailee such that Ford retains title

- 11 -

to the truck chassis until they are sold to a Ford-authorized dealer. DEL pays Ford a storage fee and agrees not to make any modifications or remove any Ford truck chassis from its premises until it has reached an agreement with a Ford-authorized dealer for the sale of the completed vehicle.

- (iii) **Commercial Vehicle Bailment Agreement effective November 14, 2007 with Chrysler Canada Inc. (“Chrysler”) (the “Chrysler Converter Agreement”).** Pursuant to the Chrysler Converter Agreement, Chrysler provides truck chassis to DEL as bailee such that Chrysler retains title to the truck chassis until they are sold to a Chrysler-authorized dealer. DEL agrees not to make any modifications or remove any such truck chassis from its premises until it has reached an agreement with a Chrysler-authorized dealer for the sale of the completed vehicle. The Chrysler Converter Agreement was executed between Chrysler and DEL Limited and has not been formally assigned to DEL, although the parties have continued to operate under its terms.

F. Employees and Independent Contractors

29. DEL currently employs approximately 174 employees, comprised of approximately 55 salaried and sales employees and 119 hourly employees, most of whom are located in Ontario and Alberta. None of DEL’s employees are unionized. In addition, DEL currently directly retains approximately three independent contractors.
30. DEL’s employees are paid weekly in arrears, and its monthly payroll obligation is approximately \$1.1 million. DEL also funds certain medical, dental, life insurance and other benefits to its employees pursuant to an administrative services only benefits plan with

- 12 -

Blue Cross Canada (“**Blue Cross**”). Payments are made to Blue Cross at the beginning of each month, and average approximately \$35,000.

31. Subject to the applicable waiting period, DEL’s employees participate in one of two multi-employer defined contribution pension plans (one for salaried employees, the other for hourly employees) administered by Sun Life Financial Canada, pursuant to which DEL makes contributions based on an employee’s tenure with DEL (the “**DC Plans**”). Aggregate monthly contributions to the DC Plans by DEL total approximately \$21,000. In addition, certain of DEL’s long-standing employees are also beneficiaries under one of two defined benefit pension plans originally sponsored by DEL Limited and assumed by Diesel (the “**DB Plans**”). The DB Plans were closed in 2011, were excluded from the liabilities assumed by DEL in its 2018 transaction with DEL Limited, and are not sponsored or otherwise contributed to by DEL.
32. As part of the relief sought in the CCAA proceedings, DEL proposes to continue to pay amounts owing to or in respect of its employees in the normal course, including outstanding and future salaries, expenses, vacation pay, pension contributions and other benefit amounts (whether incurred prior to or after the date of the Initial Order), in each case consistent with existing compensation policies and arrangements.

III. FINANCIAL POSITION OF THE COMPANY

A. Financial Statements

33. Attached as Exhibit “A” hereto is a copy of draft unaudited financial statements for DEL for the year ended December 31, 2018. DEL, with the assistance of its accountant, is in the process of taking the necessary steps to allow for the completion of the review of these

- 13 -

financial statements and expects review engagement report financial statements to be available in the coming weeks.

34. As at December 31, 2018, DEL's unaudited financial statements reflect (all amounts approximate) assets with a book value of \$21.3 million and total liabilities of \$26.2 million, with a shareholders' deficit of \$4.9 million.

B. Revenue

35. Although DEL has had increasing revenues every year since 2016 and total revenues of approximately \$58 million in 2018, the Company has recorded negative EBITDA in each of 2016, 2017 and 2018, including negative EBITDA of approximately \$5.4 million in 2018.

C. Secured Debt Obligations

36. DEL's primary secured debt liabilities consist of amounts owed under its Secured Credit Agreement and the RBC Floor Plan Facility (each as defined and described below). Approximately \$11.5 million is currently outstanding under the Secured Credit Agreement, plus interest and expenses which continue to accrue. In addition, as at October 15, 2019, approximately 25 GM chassis with a value of approximately \$1 million were being financed under the RBC Floor Plan Facility, although all such chassis are designated for use by Unicell.

(i) Secured Credit Agreement

37. DEL is a borrower under the Second Amended and Restated Credit Agreement dated as of May 31, 2018, among DEL Limited, DEL, DEL Hydraulics and certain Unicell entities, as co-borrowers, and Diesel, Diequip Limited ("**Diequip**"), Holt, Camellia Holdings Limited,

- 14 -

and 654831 Ontario Limited, as guarantors, and BMO, as lender (as amended and restated, the “**Secured Credit Agreement**”). Diesel, DEL Limited and Diequip were amalgamated on June 1, 2018 and continued as Diesel.

38. The credit facilities available under the Secured Credit Agreement consist of: (i) a \$16 million revolving credit facility; (ii) a \$2.755 million term loan facility; (iii) a \$2 million overdraft facility; and (iv) a \$7 million floor plan facility; however, the only amounts outstanding under the Secured Credit Agreement relate to the revolving credit facility. As discussed below, DEL has been (and is) in breach of various financial and other covenants under the Secured Credit Agreement that restricts its borrowings thereunder.
39. Canadian prime loans and U.S. base rate loans under the revolving facility bear interest at a rate based on the applicable Canadian prime rate or U.S. base rate plus 1.25% per annum if there is greater than 20% available to be drawn under the revolving facility, or 1.75% per annum if there is less than 20% available. The default rate of interest under the Secured Credit Agreement is an additional 2%.
40. All obligations under the Secured Credit Agreement are secured by a first priority security interest on substantially all of the assets of the Company, subject to the terms of the Priority Agreements (as defined and described below).
41. The significant majority of amounts outstanding under the Secured Credit Agreement represent amounts borrowed by DEL to finance its business, including to fund its working capital needs over the past several years. In addition, DEL has historically acted as the “banker” for the other borrowers under the Secured Credit Agreement by borrowing funds and on-lending them to the other borrower entities on an as-needed basis. Over the course

- 15 -

of the past year, the other borrowers under the Secured Credit Agreement have, or are in the process of, establishing independent financing arrangements to finance their respective businesses on a go forward basis. The Unicell entities have repaid amounts on-lent to them in full and DEL intends to collect other amounts it has on-lent to other borrowers that have not been repaid to date.

42. The Secured Credit Agreement has several compliance requirements, including a financial covenant that the borrowers and certain of the guarantors on a combined basis, must maintain a Fixed Charge Coverage Ratio (as defined in the Secured Credit Agreement) of not less than 1.1:1.0 calculated on the last day of each calendar month measured on a 12 month trailing basis. As a result of its deteriorating financial performance, the Company breached this financial covenant as at the end of 2018 and for subsequent periods through to the end of May 2019.
43. Following discussions with BMO regarding the status of the Secured Credit Agreement and DEL's business more generally, in July 2019 Diesel agreed to acquire all of BMO's rights under the Secured Credit Agreement. Since the acquisition of BMO's position, Diesel has made discretionary advances under the Secured Credit Agreement to assist in addressing DEL's ongoing liquidity constraints.
44. As discussed below, DEL and Diesel have entered into a DIP Term Sheet (as defined below) pursuant to which, subject to Court approval, Diesel will extend up to \$1 million of additional financing to DEL to finance these proceedings, the restructuring initiatives described herein, and DEL's immediate working capital needs.

- 16 -

(ii) *RBC Floor Plan Facility re: GM Truck Chassis*

45. DEL is the borrower under an amended and restated credit facilities agreement dated as of January 19, 2015, among DEL Limited and DEL, as borrowers, and Diesel, certain Unicell entities, Holt, DEL Hydraulics and GCD Holdings (2017) Limited,² as guarantors, and Royal Bank of Canada, as lender (“**RBC**”) (as amended, the “**RBC Floor Plan Facility**”).
46. The RBC Floor Plan Facility authorizes the borrowers thereunder to draw up to \$4.95 million, in the aggregate, in order to acquire GM truck chassis. Advances under the RBC Floor Plan Facility bear interest at a floating rate based on a cost of funds plus 3.00% per annum. All obligations under the RBC Floor Plan Facility are secured by a security interest in the financed GM truck chassis and certain additional assets of the Company, subject to the terms of the Priority Agreements.
47. There are currently no GM chassis in DEL’s possession that were financed under the RBC Floor Plan Facility. There are certain GM chassis financed under the RBC Floor Plan Facility which were designated for Unicell; however, it is expected that on or about October 21, 2019, GM’s finance subsidiary will acquire all of RBC’s rights under the RBC Floor Plan Facility as relates to Unicell and these chassis.
48. In light of the reduction in financing activity under the RBC Floor Plan Facility resulting from Unicell and the other borrowers under the RBC Floor Plan Facility establishing independent floor-plan financing arrangements for their businesses, the Company has had

² GCD Holdings (2017) Limited is the Gin-Cor entity that acquired the equity interest in DEL in connection with the Gin-Cor Transaction.

- 17 -

preliminary discussions with RBC to terminate the facility and enter into a new floor plan financing arrangement for GM vehicles with GM's finance subsidiary.

(iii) Ford Converter Agreement

49. As described above, DEL receives Ford truck chassis from Ford pursuant to the terms of the Ford Converter Agreement, which establishes a bailment relationship whereby Ford maintains ownership of the Ford truck chassis delivered to DEL until they are sold to a Ford-authorized dealer. As at September 30, 2019, DEL was in possession of 50 Ford chassis with a value of approximately \$3.8 million.

(iv) Priority Agreements

50. The respective priorities of Diesel (formerly BMO), RBC and Ford are governed by various priority agreements that have been executed by the parties (the "**Priority Agreements**"). In brief summary, the Priority Agreements provide, among other things, that: (i) as between Diesel and RBC, RBC has priority in the GM chassis inventory, and Diesel has priority in all other property of DEL; and (ii) each of Diesel and RBC recognize Ford's ownership of the Ford truck chassis supplied to DEL and agree that Ford's ownership rights shall not be affected by their respective security interests and other rights in DEL's property. As discussed below, DEL and Diesel are not proposing to prime or otherwise impact these arrangements through the DIP Financing.

D. Cash Management

51. The Company's cash management system, including the collection, transfer and disbursements of funds, is administered from its head office in Newmarket (the "**Cash Management System**").

- 18 -

52. The Company maintains a Canadian and USD bank account with BMO into which all receipts are deposited and from which all disbursements are made. The majority of the Company's receipts are from customer payments made at branch locations via cheques deposited at local BMO branches combined with electronic funds transfers and credit and debit transactions processed by Moneris Solutions Corporation, which are deposited into the Company's accounts within one to two business days. Purchases are managed at the branch level while payments to vendors are reviewed and authorized on a weekly basis by the Company's head office finance team for release. None of the Company's accounts are part of an umbrella system or otherwise linked with accounts of Diesel or any of its other affiliates.
53. As at the close of business on October 17, 2019, the Company's cash balance was approximately \$2 million, net of outstanding cheques and anticipated disbursements, including payroll.
54. The Company utilizes approximately 11 corporate credit cards issued through BMO (the "**Credit Cards**") to facilitate certain day-to-day required payments at both the head office and branch level, subject to a \$100,000 credit limit. The Company has continued to maintain the Credit Cards following BMO's assignment of the Secured Credit Agreement to Diesel, and BMO holds \$100,000 of cash collateral in respect thereof. As at October 16, 2019, there was an aggregate approximate amount of \$58,000 outstanding on the Credit Cards.
55. In connection with the CCAA proceedings, the Company is seeking the authority to continue to operate the Cash Management System to fund the obligations of the Company and to maintain its existing banking arrangements. The continued operation of the Cash

- 19 -

Management System will minimize disruption to the Company's operations caused by the CCAA proceedings and avoid the need to negotiate and implement alternative banking arrangements. The Cash Management System includes the necessary accounting controls to enable the Company and the proposed Monitor to trace funds and ensure that all transactions are adequately documented and readily ascertainable.

56. The Company is also requesting authority during the CCAA proceeding to continue to utilize the Credit Cards and make full repayment of all amounts outstanding thereunder, including with respect to pre-filing charges. As with the Cash Management System, the continued use of the Credit Cards will assist in minimizing the disruption to the Company's operations caused by the CCAA proceedings.

IV. MATTERS LEADING UP TO THE CCAA FILING

A. The Failed Gin-Cor Transaction and DEL's Operational Struggles

57. As described above, the Gin-Cor Transaction was intended to be a transformative transaction that would achieve certain synergies by transferring a 40% equity interest and full operational control of DEL to Gin-Cor, with a view to Gin-Cor acquiring a 100% equity interest in DEL over time.
58. Unfortunately, although DEL saw increased revenues in 2017 and 2018 compared to 2016, most of the expected synergies failed to materialize and DEL experienced increasing losses during the period of Gin-Cor management control, including as a result of significantly increased costs. Among other issues, the transition from DEL's Toronto facility to Gin-Cor's shared facility in Newmarket proved to be highly disruptive and costly, inefficient

- 20 -

chassis and pool stock management led to significant inventory and sales order conversion challenges, and sales practices became focused on growth at the expense of profitability.

59. Since the termination of the Gin-Cor Transaction in July 2019, the Company's former management team has re-established management control and SRA was engaged to conduct a review of the Company's business and assist the Company in developing and implementing restructuring initiatives. To date, these efforts have included closing the Company's facility in Regina, which closure is expected to save over \$500,000 on an annual basis, exploring the sale of non-core assets, implementing reductions in head office expenses and management fees charged to DEL's facilities, workforce reductions, operational changes at certain DEL facilities, the elimination of certain unprofitable products and the re-implementation of certain core DEL processes, among other things.
60. Notwithstanding these efforts, it is now apparent that a formal restructuring process is required to stabilize the business and implement a process to explore and execute a strategic transaction. At present, more than \$8 million is owing to the Company's supplier base and in recent weeks suppliers have begun to compress payment terms, including in some cases requiring cash in advance and cash on delivery. As described in greater detail below, DEL's liquidity has also been negatively impacted by a recent payment dispute involving Mack Defense and Gin-Cor (the "**Payment Dispute**"), which resulted in an approximately 20% reduction in anticipated receipts for September 2019. While Diesel has provided certain limited discretionary emergency financing to DEL in recent weeks, it has indicated that it is not prepared to provide further financing in the absence of a formal restructuring process being commenced.

- 21 -

B. The Mack Defense/Gin-Cor Payment Dispute

61. In mid-2018, DEL (through its Moncton branch) delivered a series of quotes and re-quotes to Mack Defense for the up-fit of four different truck configurations and 19 up-fit trucks (the “**MD Trucks**”) to be delivered to the Canadian Department of National Defence (“**DND**”) and the Parks Canada Agency (“**Parks Canada**”). Mack Defense issued purchase orders (“**POs**”) for the MD Trucks to DEL in July and November 2018. Over the course of late 2018 and over the first half of 2019, DEL up-fitted the MD Trucks as requested by Mack Defense and delivered them to DND bases and Parks Canada locations between May 3, 2019, and June 25, 2019. On or about June 6, 2019, DEL (then operating under the tradename Gincor Werx) issued a series of invoices to Mack Defense for the MD Trucks totalling \$874,107.08, which invoices were due and payable upon receipt (the “**MD Invoices**”). Copies of the quotes issued by DEL to Mack Defense, the POs issued by Mack Defense and the MD Invoices issued by DEL to Mack Defense for the MD Trucks are attached hereto as Exhibit “B”. Although the quotes and the MD Invoices delivered to Mack Defense include the logo and trade name Gincor Werx, each is clear that they are issued by the legal entity DEL. In addition, the POs issued by Mack Defense are addressed to “Del Equipment Ltd”.
62. On September 10, 2019, DEL was following up with its customers to collect overdue accounts receivable when it became aware that the \$874,107.08 payment owing by Mack Defense to DEL in respect of the MD Invoices had been made by Mack Defense to Gin-Cor, and not DEL. Upon learning of this, DEL immediately reached out to Mack Defense via telephone calls and emails to understand what had transpired. DEL also received and responded to various emails from Gin-Cor. Based on these inquiries and exchanges (many

- 22 -

of which were made by me personally but in some instances were made by DEL's controller (Isabel Marques) and director (Paul Martin)) and subsequent telephone conferences and emails with Brian Happel (Director of Business Control & Treasurer of Mack Defense) and Terry Grube (General Counsel of Mack Defense), and emails with Renzo Silveri (Chief Operating Officer of Gin-Cor), I understand as follows:³

- (a) On the morning of April 10, 2019, Brett Stoddart, a buyer at Mack Defense, emailed Jim Hazlehurst, a representative of DEL, asking for payment instructions for the work performed in relation to the MD Trucks. When Mr. Hazlehurst did not immediately respond, Mr. Stoddart emailed a Gin-Cor representative minutes later asking for payment instructions.

- (b) At 11:28 am on April 10, 2019, the Gin-Cor representative provided Mack Defense with Gin-Cor's own payment instructions despite the fact that Gin-Cor was not entitled to such accounts and Gin-Cor knew (or should have known) that it was not entitled to such accounts. Based on this email chain, it appears that the Gin-Cor representative was providing payment instructions for an invoice #53998 issued by Gin-Cor to Mack Defense, which invoice, to the best of my knowledge and belief, has nothing to do with the MD Trucks. A copy of the email chain between Mr. Stoddart and the Gin-Cor representatives, including the attachment, is attached as Exhibit "C" hereto.⁴

³ DEL expressly reserves the right to seek discovery of both Mack Defense and Gin-Cor in relation to the matters addressed herein as well as to deliver further evidence in respect of these matters.

⁴ Account details have been redacted from the payment instructions.

- 23 -

- (c) At 12:37 pm on April 10, 2019, Steve Lewin of DEL (who had been forwarded Mr. Stoddart's email by Mr. Hazelhurst of DEL) responded to Mr. Stoddart advising that DEL was "...now Del Equipment Inc. operated as Gincor Werx" and provided correct payment instructions for DEL, including filling out Mack Defense's "New Supplier Request Mack Defense Purchasing Form" which clearly indicated DEL as the supplier and included DEL's correct banking information. A copy of this email chain, including attachments, is attached as Exhibit "D" hereto.⁵
- (d) Based on the payment information provided by the Gin-Cor representative, Mack Defense paid a total of \$874,107.08 (the "**Payment Amount**") to Gin-Cor via wire transfers made August 28, 2019, and September 5, 2019, representing the total payment amount for the MD Trucks.
- (e) In making the payments to Gin-Cor, Mack Defense either ignored or overlooked the valid payment instructions that DEL had sent on April 10, 2019, which clearly specified DEL's identity and correct banking information for the Payment Amount to be wired to.
- (f) Neither Mack Defense nor Gin-Cor dispute that the Payment Amount was intended to be made to DEL for the MD Trucks.
- (g) By email dated September 18, 2019, Gin-Cor acknowledged that the Payment Amount received by it was "Del funds". Notwithstanding this acknowledgement, Gin-Cor has taken the position that it is entitled to retain the Payment Amount it

⁵ Account details have been redacted from the payment instructions.

- 24 -

wrongfully received from Mack Defense in order to set-off the Payment Amount against obligations of DEL to Gin-Cor, or to unilaterally retain the Payment Amount as collateral for alleged obligations owed by DEL to Gin-Cor. A copy of the email correspondence between Gin-Cor and DEL in this regard is attached as Exhibit "E" hereto.

- (h) Based on my discussions with Mack Defense and Gin-Cor, I do not understand there to have been any significant amounts owing by Mack Defense to Gin-Cor. As such, even if the provision of the wrong payment instructions by Gin-Cor to Mack Defense was an honest mistake, Gin-Cor should have immediately realized on receipt that the Payment Amount was not intended for it.
 - (i) Although Mack Defense has admitted in telephone conversations (i) between Isabel Marques, DEL's controller, and Brett Stoddart, the buyer at Mack Defense, on September 12, 2019; and (ii) between myself and Brian Happel, Director of Business Control & Treasurer of Mack Defense, on September 1, 2019, that Mack Defense had inadvertently paid the Payment Amount to Gin-Cor, Mack Defense has refused to pay DEL the amount owed for the MD Trucks on the basis that it views the Payment Dispute as a dispute between DEL and Gin-Cor.
63. Over the course of September 11, 2019, through October 1, 2019, DEL attempted in good faith to resolve these issues through numerous emails and/or discussions with both Mack Defense and Gin-Cor, neither of whom agreed to pay the amount due and owing to DEL for the MD Trucks. On October 10, 2019, DEL's counsel sent demand letters to each of Mack Defense and Gin-Cor, including advising Gin-Cor that it held the Payment Amount in trust for DEL and that, to the extent it did not immediately pay the Payment Amount to

- 25 -

DEL, it should be segregated in a separate account. Copies of these letters are attached at Exhibit “F” and “G”.⁶ On October 15, 2019, counsel to Mack Defense responded via letter, a copy of which is attached as Exhibit “H”, indicating that Mack Defense views the Payment Dispute as being between DEL and Gin-Cor. Gin-Cor has advised via text message that the matter is now being dealt with by their lawyers, but no formal reply has been received to DEL’s demand and request to segregate the Payment Amount.

64. Based on DEL’s prior involvement with Gin-Cor’s business, including the Company’s understanding of Gin-Cor’s financial circumstances, the Company is concerned that if immediate steps are not taken to preserve and protect the Payment Amount, there is a possibility that such funds will be dissipated by Gin-Cor and DEL will not be able to recover the Payment Amount from Gin-Cor if it prevails in the Payment Dispute.
65. In light of the foregoing (including Gin-Cor’s failure to confirm that it will segregate the Payment Amount), at the return of the CCAA application, DEL is also seeking an order that will compel Gin-Cor to immediately turn over the Payment Amount to the Monitor, to be held in a segregated account pending resolution of the Payment Dispute and further order of the Court.
66. As mentioned above, Gin-Cor’s wrongful retention of the Payment Amount has been a significant contributing factor to the Company’s current liquidity challenges. While DEL, with the assistance of the proposed Monitor, is prepared to try again to achieve a consensual resolution of the Payment Dispute, in the event such resolution is not achieved in a timely

⁶ Account details have been redacted from the payment instructions enclosed with the demand letters.

- 26 -

fashion, it intends to return to the Court in the near term to seek approval of an expedited litigation process to resolve this dispute.

V. CCAA PROCEEDINGS AND RELIEF SOUGHT

A. The Company is Insolvent

67. Despite its best efforts, the Company has been unable to resolve its financial and operational challenges and it is unable to meet its obligations to its creditors in the normal course.

68. The Company's financial challenges have worsened in recent months and it is facing an impending liquidity crunch. Without the benefit of creditor protection and access to the DIP Financing (as defined below), the Company will not have sufficient working capital to operate its business in the coming weeks. DEL is therefore insolvent and requires CCAA protection at this time.

B. Stay of Proceedings

69. In light of DEL's financial circumstances and without the benefit of CCAA protection, there could be an immediate and significant erosion of value to the detriment of all stakeholders. In particular, the Company is mindful of the following risks, which could materialize without the benefit of a stay of proceedings and the other relief sought under the CCAA: (a) suppliers ceasing to supply DEL or tightening payment terms in a manner that further exacerbates the liquidity challenges facing the Company; (b) suppliers terminating exclusive and non-exclusive distribution arrangements with DEL; (c) the potential termination of other agreements that are critical to the operation of DEL's

- 27 -

business, including the Company's converter agreements with its OEM partners; and (d) suppliers commencing legal action to recover amounts due and owing to them.

70. The Company is seeking CCAA protection to provide it with the opportunity to undertake the Sale Process and to identify and assess other strategic alternatives to maximize the value of its business for its stakeholders, including creditors, employees, customers, suppliers and other business partners. The stay of proceedings is necessary to maintain the stability and value of DEL's business while such actions are undertaken.

C. Cash Flow Forecast and Interim Financing

71. As indicated in the cash flow forecast attached hereto as Exhibit "I" (the "**Cash Flow Forecast**"), it is expected the Company will require access to additional funding while it pursues the Sale Process and its other restructuring initiatives. The Company's principal use of cash during these CCAA proceedings will consist of costs associated with the ongoing operation of its business, including, among other things, employee compensation, supplier payments, lease payments and general administrative expenses. In addition to these normal course operating expenditures, the Company will also incur professional fees and disbursements in connection with these CCAA proceedings and the Sale Process.

72. Given its current financial situation, the Company believes that it requires interim financing in order to provide stability and fund operations while implementing the Sale Process. Subject to certain terms and conditions, including the granting of the proposed Initial Order, Diesel has agreed to provide up to \$1 million (the "**DIP Financing**") to fund DEL's operations and expenses during the CCAA proceedings. Given the current financial circumstances of the Company, Diesel has indicated that it is not prepared to advance

- 28 -

additional funds to the Company without the security of the DIP Lender’s Charge (as defined below), including the proposed priority thereof.

73. Subject to Court-approval, the Company expects to enter into a DIP financing term sheet with Diesel (the “**DIP Term Sheet**”) substantially in the form of the unexecuted DIP Term Sheet attached hereto as Exhibit “J”.
74. The material terms of the DIP Term Sheet are summarized in the below table. Capitalized terms used in the below table that are not otherwise defined herein have the meaning given to such terms in the DIP Term Sheet.

Summary of Certain Key Terms of the DIP Financing	
Maximum Availability	Maximum principal amount of \$1 million.
Interest	Interest shall be payable in cash on the aggregate outstanding principal from the date of funding at a rate of 6.5% <i>per annum</i> , compounded monthly and payable in full on the Maturity Date (as defined below).
Fees	None.
Costs and Expenses	DEL shall reimburse Diesel for all reasonable and documented expenses (including reasonable and documented legal fees and expenses of its legal counsel) in connection with the CCAA proceedings and the DIP Financing.
Use of Funds	<p>DEL shall use the proceedings of the DIP Financing (in accordance with the DIP Budget, subject to the Permitted Variance (each as defined below)) to:</p> <ul style="list-style-type: none"> (a) pay (i) the reasonable and documented legal fees and expenses of Diesel in accordance with the DIP Term Sheet, (ii) the reasonable and documented financial advisory fees and legal fees and expenses of DEL (including, without limitation, any fees and expenses of SRA, including legal fees), including as relates to the services of the CRO and (iii) the reasonable and documented fees and expenses of the Monitor and its legal counsel; (b) pay the fees and interest owing to Diesel under the DIP Term Sheet; and (c) fund the Company’s general corporate and working capital needs, including funding these CCAA proceedings and the pursuit of the Sale Process. <p>The Company may use the proceeds of the DIP Financing to pay pre-filing obligations, provided that such amounts are permitted to be paid pursuant to the Initial Order and the aggregate amount of all such pre-filing amounts shall not exceed the amount set out in the DIP Budget.</p>
Maturity	The earlier of (i) the occurrence of any Event of Default in respect of which a demand for repayment has been made in writing by Diesel; (ii) the implementation of a transaction pursuant to the Sale Process or a plan of compromise or arrangement under the CCAA; and (iii) April 15, 2020 (the “ Maturity Date ”).

- 29 -

Summary of Certain Key Terms of the DIP Financing	
	The Maturity Date may be extended from time to time at the request of the Company and with the prior written consent of Diesel for such period and on such terms and conditions as the Company and Diesel may agree, provided that any material amendments to the terms and conditions shall be also be subject to the prior written consent of the Monitor.
Certain Key Conditions Precedent	<ul style="list-style-type: none"> • The Initial Order, in a form reasonably acceptable to Diesel, including the approval of the DIP Lender's Charge on the terms set forth in the DIP Term Sheet, shall have been issued and entered by the Court. • The DIP Term Sheet shall have been duly executed. • No Event of Default under the DIP Term Sheet shall have occurred or will occur as a result of the requested advance. • All reasonable and documented expenses (including all reasonable and documented legal fees and expenses) of Diesel incurred in connection with the DIP Financing and invoiced to the Company no later than two business days' prior to the initial funding shall have been paid in full. Such expenses may be deducted from the advance.
Milestones	<ul style="list-style-type: none"> • The Company shall achieve the following milestones (as such dates may be extended on consent of Diesel, acting reasonably): <ul style="list-style-type: none"> ○ the Sale Process shall have been approved by an order of the Court (which may be the Initial Order) on or before the date which is 5 days following the entry of the Initial Order; ○ a Successful Bid(s) pursuant to the Sale Process shall have been approved by an order of the Court on or before February 29, 2020; and ○ the transaction contemplated by the Successful Bid(s) shall be implemented on or before March 31, 2020.
Certain Key Events of Default	<ul style="list-style-type: none"> • Failure by the Company to pay (i) principal, interest or other amounts within three business days of such amounts becoming due under the DIP Term Sheet; or (ii) costs and expenses of Diesel in accordance with the DIP Term Sheet within 10 business days of receiving an invoice therefor. • Any representation or warranty by the Company made in the DIP Term Sheet is or proves to be incorrect or misleading in any material respect as of the date made. • Issuance of a Court Order: (i) dismissing the CCAA proceedings or lifting the stay to permit the enforcement of any security against the Company or the Collateral; (ii) granting any other Lien in respect of the Collateral that is in priority to or pari passu with the DIP Lender's Charge other than as permitted pursuant to the DIP Term Sheet, or (iii) staying, reversing, vacating or otherwise modifying the DIP Term Sheet or the DIP Lender's Charge, in each case unless otherwise consented to by Diesel. • The expiry without further extension of the stay under the Initial Order.
Security and DIP Lender's Charge	All obligations of the Company under the DIP Term Sheet shall be secured by the DIP Lender's Charge on the Collateral.
Priority of the DIP Charge	The DIP Lender's Charge shall have priority on the Collateral over all Liens other than the "Permitted Priority Liens," which is defined to mean (i) the Administration Charge, (ii) the Directors' Charge, (iii) charges securing the RBC Floor Plan Facility (but solely in respect of the RBC Collateral (as such term is defined in the applicable Priority Agreement), and (iv) any amounts payable by the Company for certain unpaid employment and tax obligations to the extent such amounts have priority by applicable law and have not been subordinated to the DIP Lender's Charge pursuant to an order of the Court entered in connection with these CCAA proceedings.

- 30 -

75. Based on my review of interim financings approved in other CCAA cases, I believe that the economic terms of the DIP Term Sheet (including the interest rate and the absence of any commitment or other fees) are significantly below market, and that the structure and terms of the DIP Term Sheet otherwise provide significant flexibility to DEL to allow it to explore and implement a comprehensive restructuring transaction.
76. In August and September 2019, DEL, with the assistance of SRA, also sought bridge financing proposals from nine financial institutions, including providing preliminary diligence information to the extent an expression of interest was received. All of the preliminary expressions of interest received from potential third-party lenders proposed interest rates that were significantly higher than the 6.5% interest rate under the DIP Term Sheet and also included significant additional fees and other terms that would provide significantly less flexibility to DEL in pursuing its restructuring options. Accordingly, the Company believes that the DIP Financing is being offered on more favourable terms than any other potentially available third-party financing and that no third-party would be prepared to provide non-priming financing on acceptable terms in these circumstances.
77. The DIP Term Sheet provides for a super-priority court-ordered charge over the assets, property and undertaking of the Company (the “**DIP Lender’s Charge**”) to secure the obligations outstanding from time to time in connection with the DIP Financing. It is not proposed, however, that the DIP Lender’s Charge prime RBC’s security in any GM chassis financed through RBC or impair Ford’s rights in any Ford chassis held by DEL as bailee from time to time (in short, it is contemplated that, as amongst Diesel, RBC and Ford, their respective rights and priorities will remain as set forth in the Priority Agreements). Further,

- 31 -

the DIP Lender's Charge will not secure any obligation that existed prior to the date of the Initial Order.

D. Approval of the Engagement of the CRO and Corporate Governance Matters

78. As noted above, SRA was engaged in July 2019 to provide the Company with restructuring advisory services and to assist with developing and implementing the Sale Process. On October 18, 2019, the Company entered into an engagement letter with SRA (the "**CRO Engagement Letter**"), a copy of which is attached hereto as Exhibit "K". The CRO Engagement Letter contemplates a monthly work fee of \$25,000 per month payable to SRA, along with payment of a success fee of \$100,000 (the "**Success Fee**") upon the implementation of a successful restructuring transaction in respect of DEL (on and subject to the terms described in the CRO Engagement Letter).
79. The Engagement Letter also contemplates that I will be appointed as chief restructuring officer of the Company (the "**CRO**") upon the commencement of these proceedings, with full authority to oversee and exercise decision making authority in respect of all restructuring matters concerning DEL, subject to the approval of DEL's sole director where necessary.
80. As I understand is customary, the Initial Order contemplates that certain protections will be extended to me in my capacity as CRO, including the Director's Charge and related indemnity and a declaration that I will not be deemed to be in control of the Property (as defined in the Initial Order). Given the challenging circumstances facing DEL and the prospect of potential liability, I would not be willing to serve as CRO absent the granting of such protections and the other protections contemplated by the CRO Engagement Letter.

- 32 -

81. The proposed Initial Order also provides for the CRO's fees and expenses under the CRO Engagement Letter (other than the Success Fee) will be secured by the Administration Charge (as defined and described below), and that the Success Fee will be secured by a charge over DEL's property (the "**Success Fee Charge**") with the priority described below.
82. I note that following recent resignations, the sole remaining director and officer of DEL is Mr. Paul Martin, DEL's former president who is also the majority shareholder of Diesel (who is both DEL's senior secured lender and its sole shareholder). Given the circumstances facing DEL, I believe it would be very difficult to identify another individual who would be willing to serve on DEL's board, and were Mr. Martin to resign it would create a potential governance vacuum. Further, given Mr. Martin's extensive experience with DEL, his involvement is critical to executing a successful restructuring. I understand that Mr. Martin has been informed of the duties of directors and officers of DEL by restructuring counsel to the Company and further believe that with the assistance of the CRO and the Company's other advisors, and under the supervision of both the Monitor and this Court, DEL's current governance regime is appropriate in the circumstances.

E. Proposed Sale Process

83. The Company is also seeking the Court's approval of the Sale Process attached hereto as Exhibit "L". Diesel, in its capacity as both senior secured lender to DEL and its sole shareholder, has indicated a preference to exit its investments in DEL and provide for an orderly and value maximizing transition of DEL's business to a third party for the benefit of all stakeholders, either by way of a sale of DEL's business or assets or a strategic investment in DEL. In connection with such a transaction, Diesel has also expressed a desire to sell the real property DEL operates from to a purchaser of, or investor in, DEL,

- 33 -

and it is contemplated that such real property will be marketed along with DEL’s business. Accordingly, the Company believes that it is appropriate at this time and in the interests of all stakeholders to proceed with the Sale Process to seek to identify a potential going-concern sale or restructuring transaction that would maximize the value of DEL’s business for the benefit of the Company and its stakeholders.

84. The material terms of the Sale Process are summarized in the below table.

Summary of Certain Key Terms of the Sale Process	
Conduct	The Sale Process shall be conducted by DEL under the supervision of the Monitor. DEL will, among other things, prepare marketing materials, prepare a data room, and solicit interest from parties to enter into non-disclosure agreements and participate in the Sale Process.
Process and Timeline	<ul style="list-style-type: none"> • <u>Non-Binding EOI Bid Deadline</u> – Interested parties must submit initial non-binding expressions of interest (an “EOI”) by a target date of December 6, 2019 (as may be extended by DEL) (the “Non-Binding EOI Bid Deadline”). • <u>Phase 2 Parties</u> – DEL may select from parties that submit an EOI by the Non-Binding EOI Bid Deadline the parties invited to the second phase of the Sale Process (the “Phase 2 Parties”) to conduct detailed due diligence. • <u>Binding Bid Deadline</u> – Phase 2 Parties must submit binding offers (“Binding Bids”) with duly executed proposed transaction documents by 5:00 p.m. (Toronto time) on January 31, 2020 (as may be extended by the Company with the consent of the Monitor or further order from the Court) (the “Binding Bid Deadline”).
Requirements for Binding Bids	<ul style="list-style-type: none"> • Contains (i) duly executed binding transaction document(s), (ii) the identity and contact information of the bidder, (iii) a blackline to the form of transaction document(s) provided by the Company, and (iv) evidence of authorization and approval from the bidder’s board of directors (or comparable governing body). • Includes a letter stating that the bid is irrevocable for a period of at least 15 business days after the Binding Bid Deadline, as may be extended by such bidder. • Provides written evidence of a firm, irrevocable financial commitment for all required funding or financing. • Does not include any request for or entitlement to any break fee, expense reimbursement or similar type of payment. • Does not include any due diligence or financing conditions. • Specifies any regulatory or other third party approvals the party anticipates would be required to complete the transaction. • Includes a cash deposit of 10% of the total cash purchase price contemplated by such bid. The cash deposit shall be paid to and held in trust by the Monitor. • Is received by the Binding Bid Deadline. <p>The Company, in consultation with the Monitor, may waive compliance with any one or more of the above requirements and deem a non-compliant bid to be a Binding Bid.</p>

- 34 -

Summary of Certain Key Terms of the Sale Process	
Review, Selection and Court Approval of Successful Bid	<p>Following the Binding Bid Deadline, the Company may, in consultation with the Monitor, determine to continue negotiations with a selected number of bidders that have submitted Binding Bids with a view to selecting one or more non-overlapping Binding Bids as the successful bid(s) (the “Successful Bid(s)”), and take such steps as are necessary to finalize and consummate the Successful Bid(s). The Company shall be under no obligation to accept the highest bid as the Successful Bid.</p> <p>Following the selection of a Successful Bid(s), if any, the Company will finalize any necessary definitive documentation in respect of such Successful Bid(s) and may apply to the Court for an order approving the Successful Bid(s).</p> <p>The Company shall have no obligation to conclude a sale or other transaction arising out of the Sale Process and reserves the right to reject any bid or proposal (including any Binding Bid), or to complete a standalone restructuring transaction outside of the Sale Process, subject to consultation with the Monitor.</p>
Amendments	Any amendments to the Sale Process by the Company require the written consent of the Monitor or by further order of the Court.

85. The terms of the Sale Process were developed with the assistance of SRA and in consultation with the proposed Monitor and the Company’s legal and financial advisors. The Company believes that the Sale Process is appropriate in the circumstances, and in particular will provide sufficient time and flexibility to allow DEL to explore all strategic alternatives available to it.

F. Proposed Monitor

86. The Company seeks the appointment of MNP Ltd. (“**MNP**”) as the monitor (the “**Monitor**”) in these proceedings. MNP has consented to act as the Monitor of the Company in the within proceedings, subject to Court approval. I understand a copy of the Consent to Act as Monitor provided by MNP will be included in the Company’s application record.

87. MNP became involved with the Company in August 2019 to assist the Company in its review of certain financial and restructuring matters, and has reviewed the Company’s financial and liquidity position (including the Cash Flow Forecast), the development of the

- 35 -

Sale Process, the terms of the DIP Financing and the other relief requested by the Company in connection with the CCAA proceedings.

88. MNP is a trustee within the meaning of Section 2 of the *Bankruptcy and Insolvency Act* (Canada), as amended, and is not subject to any of the restrictions on who may be appointed as monitor set out in Section 11.7(2) of the CCAA.
89. The professionals at MNP who will have carriage of this matter have acquired knowledge of the Company, its business, financial circumstances and strategic and restructuring efforts to date. I believe that MNP is in a position to assist the Company with its restructuring efforts in these CCAA proceedings.

G. Administration Charge

90. It is contemplated that a Court-ordered charge over the Property would be granted in favour of the Monitor, counsel to the Monitor, the Company's financial advisor (Grant Thornton LLP), counsel to the Company and the CRO to secure the payment of their respective professional fees and disbursements (but excluding with respect to the Success Fee, which will be secured by the Success Fee Charge), whether incurred prior to, on or after the date of the Initial Order (the "**Administration Charge**"). The proposed Administration Charge is in an aggregate amount of \$400,000. All of the beneficiaries of the Administration Charge have contributed, and will continue to contribute, to the Company's restructuring efforts.

H. Directors' Charge

91. Both Mr. Martin, as the sole remaining director and officer of the Company, and myself (as a restructuring advisor and proposed CRO) have been actively involved in the

- 36 -

Company's efforts to address its challenging circumstances, including its efforts to unwind the Gin-Cor Transaction, the review and consideration of the Company's financial circumstances and business challenges, the development of the Sale Process, and the preparation for and commencement of these proceedings.

92. It is my understanding, based on information from Goodmans LLP ("**Goodmans**"), the Company's restructuring counsel, that in certain circumstances, directors and officers may be held personally liable for certain corporate obligations, including in connection with salary, wages, payroll remittances, vacation pay, harmonized sales taxes, workers compensation remittances, and certain other corporate obligations.
93. Diesel maintains directors and officers insurance policies (collectively, the "**D&O Policy**"). The D&O Policy insures DEL's directors and officers for certain claims that may arise against them in their capacity as directors and/or officers of the Company. However, the D&O Policy contains exclusions and limitations to the coverage provided. Further, there is the potential for coverage limits to be exhausted and for there to be insufficient coverage.
94. Both Mr. Martin and I have expressed the desire for certainty with respect to any potential personal liability arising from our respective roles. The Company requires the active and committed involvement of its director and officers during the CCAA proceedings as it pursues strategic options and alternatives to address its current circumstances.
95. Accordingly, the Company requests a Court-ordered charge in the amount of \$1,200,000 over the Property (the "**Directors' Charge**") to secure the indemnity provided to the directors, officers and CRO in the Initial Order in respect of liabilities they may incur

- 37 -

during the CCAA proceedings in their capacities as such. The amount of the Directors' Charge has been calculated by the Company based on the estimated potential exposure of the directors and officers and has been reviewed with the proposed Monitor. The proposed Directors' Charge would apply only to the extent that the directors and officers do not have coverage under the D&O Policy.

I. Payments During the CCAA Proceedings

96. The Company is seeking the authorization to pay certain expenses, whether incurred prior to, on or after the date of the proposed Initial Order, in respect of:

- (a) all outstanding and future wages, salaries, compensation, employee benefits, pension contributions, vacation pay and expenses (including, without limitation, payroll and benefits processing and servicing 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;
- (b) the fees and disbursements of any Assistants retained or employed by the Company in respect of these proceedings, at their standard rates and charges;
- (c) all outstanding and future amounts related to honouring customer obligations, whether existing before or after the date of this Order, including with respect to customer warranty obligations and as relates to customer deposits and pre-payments, in each case incurred in the ordinary course of business and consistent with existing policies and procedures;

- 38 -

- (d) amounts owing by the Company to insurance premium financiers as necessary to ensure continued coverage for the Company under its existing insurance policies, including director and officer insurance; and
 - (e) amounts owing for goods or services supplied to the Company prior to the date of this Order if, in the opinion of the Company and with the consent of the Monitor, such payment is necessary to maintain the operations of the Business.
97. The Company is also seeking the authority to pay all reasonable expenses incurred in carrying on its business in the ordinary course after the date of the Initial Order, including expenses and capital expenditures reasonably necessary for the preservation of its business and payment for goods and services supplied to the Company during the CCAA proceedings.
98. The authority to make the foregoing payments is necessary for the continued preservation of the Company's business and assets during the CCAA proceedings, as well as to advance the restructuring initiatives described herein. The Company requires the commitment and support of its employees and key suppliers and service providers while it attempts to address its current challenges.
99. Of particular note, the Company's ability to operate its business in the normal course is dependent on its ability to obtain an uninterrupted supply of inventory on commercially reasonable terms. The Company has maintained long-term relationships with key industry suppliers, many of which are critical to the operation of its business. The Company has already experienced tightening of the trade terms of certain suppliers in advance of these proceedings and is concerned that certain suppliers may discontinue supplying on existing

- 39 -

preferred terms. Any such discontinuance could have a material adverse impact on the operation and value of DEL's business.

100. Moreover, DEL obtains some of its equipment from suppliers outside Canada. While I understand foreign suppliers will be subject to the relief granted in the CCAA proceedings, I also understand from Goodmans that there may be practical difficulties with enforcing the stay of proceedings and other relief granted extraterritorially and there is no guarantee that foreign suppliers will continue to supply the Company without continued payment of invoices, including pre-filing amounts. A failure to pay these amounts may lead to the relevant supplier refusing to supply the Company and cause significant harm to the Company's business.
101. In light of the foregoing, DEL believes that the payment of certain pre-filing amounts to certain suppliers may be necessary to ensure an uninterrupted supply of merchandise during the CCAA proceedings and the maintenance of existing trade terms. The Company intends to work closely with the Monitor with respect to these matters and to seek the consent of the Monitor before making any such payment.

J. Priority of Proposed Charges

102. It is contemplated that the priorities of the various charges over the assets of the Company proposed to be granted pursuant to the Initial Order (collectively, the "**Charges**"), as among them, will be as follows:
- (a) First – the Administration Charge;
 - (b) Second – the Directors' Charge;

- 40 -

(c) Third – the DIP Lender’s Charge; and

(d) Fourth – the Success Fee Charge.

103. The Initial Order sought by the Company provides for the Charges to rank in priority to all other security interests, trusts, liens, charges, encumbrances and claims of secured creditors, statutory or otherwise in favour of any person, save and except for those secured creditors which did not receive notice of the application for this Order. The proposed Initial Order authorizes the Company to seek an Order granting priority of the Charges ahead of those secured creditors on the comeback motion in these proceedings.

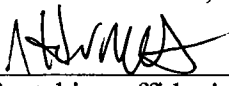
104. The Company believes the amounts of the Charges are fair and reasonable in the circumstances.

VI. CONCLUSION

105. The Company has initiated these CCAA proceedings to obtain the protection and breathing room necessary to stabilize its business while it seeks to implement the Sale Process to identify a sale or other restructuring transaction that enables DEL’s business to continue on a going-concern basis for the benefit of the Company and its stakeholders, as well as to achieve an expedited and efficient resolution of the Payment Dispute with Mack Defense and Gin-Cor.

106. I believe the granting of the requested relief is in the best interest of the Company and its stakeholders.

SWORN before me at the City of Toronto, in the Province of Ontario, on October 20, 2019



A Commissioner for taking affidavits

ANDREW HARMS



DOUGLAS LUCKY

Applicant

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceeding commenced at Toronto

AFFIDAVIT OF DOUGLAS LUCKY
(Sworn October 20, 2019)

GOODMANS LLP
Barristers & Solicitors
333 Bay Street, Suite 3400
Toronto, Canada M5H 2S7

Christopher G. Armstrong LSO# 55148B
carmstrong@goodmans.ca

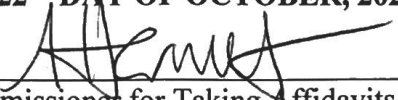
Andrew Harmes LSO# 73221A
aharmes@goodmans.ca

Tel: (416) 979-2211
Fax: (416) 979-1234

Lawyers for Del Equipment Inc.

B

**THIS IS EXHIBIT "B"
TO THE AFFIDAVIT OF DOUGLAS LUCKY
SWORN BEFORE ME OVER VIDEOCONFERENCE
THIS 22nd DAY OF OCTOBER, 2020**



Commissioner for Taking Affidavits

Court File No. CV-19-629552-00CL

**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 DEL EQUIPMENT INC.**

Applicant

**AFFIDAVIT OF DOUGLAS LUCKY
(sworn September 8, 2020)**

I, Douglas Lucky, of the City of Toronto, in the Province of Ontario, **MAKE OATH
AND SAY:**

1. I am the Chief Restructuring Officer (“**CRO**”) of Del Equipment Inc. (“**DEL**” or the “**Company**”). DEL retained 2255987 Ontario Limited o/a Strategic Results Advisors (a company which I am the principal of) on July 23, 2019, to provide restructuring and turn-around advisory services. I was appointed by DEL as CRO immediately prior to the Company’s commencement of the within proceedings under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), with such appointment becoming effective upon the issuance by this Court of the Initial Order (as defined below). Accordingly, I have personal knowledge of the matters to which I depose in this affidavit. Where I do not possess

personal knowledge, I have stated the source of my information and, in all such cases, believe it to be true.¹

2. On October 22, 2019, DEL sought and obtained an order of this Court (the “**Initial Order**”) providing creditor protection and related relief under the CCAA. The Initial Order, among other things, appointed MNP Ltd. (“**MNP**”) as the Court-appointed monitor of DEL in these CCAA proceedings (the “**Monitor**”), granted a stay of proceedings in respect of DEL, its business and property (the “**Stay of Proceedings**”), and approved DEL’s proposed sale and investment solicitation process (the “**Sale Process**”) pursuant to which the Company would seek to identify a going-concern solution or other transaction that maximizes the value of DEL and its business for the benefit of the Company and all stakeholders.

3. On February 27, 2020, this Court granted an Order (the “**Approval and Vesting Order**”), among other things, approving a sale transaction (the “**DPI Transaction**”) between DEL and Drive Products Inc. (“**DPI**”) resulting from the Sale Process. The DPI Transaction, among other things, resulted in the going concern sale of DEL’s Ontario business (which represented a significant portion of its overall business) and certain of DEL’s additional assets to DPI, as well as the employment by DPI of 36 of DEL’s employees. The DPI Transaction closed on March 31, 2020.

4. On May 27, 2020, this Court granted an Order (the “**Auction Approval Order**”) approving an auction services agreement entered into between DEL and Infinity Asset Solutions Inc. (the “**Auctioneer**”) dated May 19, 2020 (the “**Auction Services Agreement**”) pursuant to

¹ Capitalized terms not defined herein shall have the meaning given to them in the Initial Affidavit (as defined below). Unless otherwise indicated, monetary references in this affidavit are references to Canadian dollars.

which the Auctioneer would conduct online or webcast auctions of DEL's remaining assets not included within the scope of the DPI Transaction (the "**Residual Assets**") located at the Company's Vancouver (Port Coquitlam), Calgary, Edmonton and Moncton branches. The Auctioneer conducted the auctions pursuant to the Auction Services Agreement between June 9 and June 24, 2020, generating approximately \$1.04 million of net proceeds for DEL. The Company also has carried out a self-liquidation of the relatively small amount of Residual Assets located at its Montreal branch, generating an approximately \$63,000 of additional net proceeds to DEL.

5. In addition to the closing of the DPI Transaction and the completion of the sale of Residual Assets pursuant to the Auction Services Agreement and the Montreal self-liquidation, the Company and its advisors have been working diligently to maximize the value of DEL's remaining assets for the benefit of stakeholders and otherwise wind-up its affairs, including by collecting the vast majority of DEL's outstanding accounts receivable, responding to Gin-Cor's leave to appeal application in the Payment Dispute (which was denied by the Ontario Court of Appeal earlier today) and entering into an agreement to sell DEL's interest in certain unsold demonstrator vehicles to Diesel, for which approval is being sought from this Court.

6. The Stay of Proceedings granted by the Court currently expires on September 18, 2020 (the "**Stay Period**"). In light of today's decision of the Ontario Court of Appeal denying leave in the Payment Dispute and the anticipated recovery of the \$874,107.08 (the "**Funds**") related thereto in the near term, together with the expected conclusion of substantially all other remaining asset realization efforts, the Company, in consultation with its advisors and the Monitor, is in the process of considering and evaluating available options to address and finalize the remaining outstanding matters in these proceedings, including a claims process and

distributions to creditors. In these circumstances, DEL seeks an Order (the “**Stay Extension Order**”) granting a six-week extension of the Stay Period to and including October 30, 2020, in order for DEL to further evaluate and determine next steps, and to return to this Court to seek approval of same. As DEL’s operating costs are currently minimal, the Company believes that its stakeholders will not be prejudiced by a six-week extension of the Stay Period.

II. OVERVIEW OF DEVELOPMENTS IN THE CCAA PROCEEDINGS

7. Prior to the commencement of these CCAA proceedings, DEL operated a truck body and equipment “up-fitting” business pursuant to which DEL engineered, designed, manufactured and sold special truck bodies, attachments, equipment and work-ready vehicles across Canada through its six manufacturing and distribution locations. My affidavit previously sworn in these proceedings on October 20, 2019 (the “**Initial Affidavit**”) in support of the Initial Order, a copy of which (without exhibits) is attached as Exhibit “A” to this affidavit, sets out comprehensive background information with respect to DEL, its business operations, financial position, and the circumstances that precipitated the commencement of these CCAA proceedings.

8. As described in the Initial Affidavit, DEL initiated these CCAA proceedings to provide stability and breathing space necessary for it to advance the Sale Process to seek to identify a going-concern solution or other transaction that would maximize the value of DEL and its business for the benefit of the Company and all stakeholders. The Sale Process culminated in the completion of the DPI Transaction, which resulted in the going concern sale of DEL’s Ontario business (which represented a significant portion of the Company’s overall business) and certain additional DEL assets to DPI. DEL has also now completed an orderly liquidation of the Residual Assets not included within the scope of the DPI Transaction pursuant to the Auction

Services Agreement and by self-liquidation, which, together with the DPI Transaction and efforts by the Company to collect outstanding accounts receivable, have been essential to maximizing value and potential recoveries for the benefit of DEL stakeholders.

9. As explained in the Initial Affidavit, the Company's only material secured debt obligation at the time of its CCAA filing consisted of amounts owing to Diesel under the Secured Credit Agreement. The Bank of Montreal was the original lender under the Secured Credit Agreement, but assigned all of its rights thereunder to Diesel in July 2019. As discussed further below, pursuant to the Stay Extension and Distribution Order (as defined below), DEL has now repaid in full all amounts owing to Diesel under the Secured Credit Agreement.

10. In addition, as set out in more detail in the Initial Affidavit, DEL's liquidity at the time of commencing these proceedings was negatively impacted by the Payment Dispute involving Gin-Cor Industries Inc. ("**Gin-Cor**") and Mack Defense, LLC ("**Mack Defense**"). Since commencing these CCAA proceedings, DEL and its legal counsel have worked diligently to advance the Payment Dispute, pursuant to which DEL seeks to recover the Funds attributable to work performed by DEL and invoiced to Mack Defense, for which payment had instead been made by Mack Defense to Gin-Cor. On May 7, 2020, this Court held, among other things, that Gin-Cor had been unjustly enriched by the receipt and retention of the Funds and ordered that Gin-Cor return the Funds to DEL (the "**Payment Dispute Decision**").

11. As discussed further below, Gin-Cor sought leave to appeal the Payment Dispute Decision and it had been stayed pending determination of such motion pursuant to a consent Order of the Ontario Court of Appeal dated June 24, 2020, a copy of which is attached as Exhibit "B" hereto (the "**Stay Order**"). Earlier today, the Ontario Court of Appeal released its decision

dismissing Gin-Cor’s leave to appeal motion. As a result of the Ontario Court of Appeal’s decision, pursuant to the Stay Order the Funds are to be paid to DEL within two business days (i.e. by September 10, 2020).

12. The following chart sets out a summary of certain key dates and developments in the CCAA proceedings:

Date	Development
October 22, 2019	Initial Order is issued which, among other things, approved the Sales Process.
February 27, 2020	Approval and Vesting Order is issued approving the DPI Transaction.
March 31, 2020	Closing of the DPI Transaction.
April 29, 2020	<p>Stay Extension and Distribution Order is issued, among other things, authorizing DEL to make certain distributions to Diesel in respect of the Secured Credit Agreement until the amounts outstanding thereunder are repaid in full.</p> <p>MNP is appointed as receiver, without security, over certain accounts of DEL pursuant to the <i>Bankruptcy and Insolvency Act</i>, R.S.C., 1985, c. B-3, as amended, for the sole purpose of allowing former employees of DEL to benefit from payments provided under the <i>Wage Earner Protection Program Act</i>, S.C. 2005, c. 47, s. 1, which they may be entitled to.</p> <p>The Stay Period was extended to and including September 18, 2020.</p>
May 7, 2020	Payment Dispute Decision is issued, among other things, ordering that Gin-Cor return the Funds to DEL.
May 27, 2020	Auction Approval Order is issued.
June 24, 2020	Completion of the final auction pursuant to the Auction Approval Order.
July/August, 2020	Disclaimer of most remaining contracts, collection of remaining accounts receivable and responding to leave to appeal in respect of Payment Dispute Decision.
September 8, 2020	Decision of the Ontario Court of Appeal is issued dismissing Gin-Cor’s motion for leave to appeal the Payment Dispute Decision.

III. RECENT ACTIVITIES OF THE COMPANY

A. Results of Auction and Self-Liquidation

13. In accordance with the Auction Services Agreement, the Auctioneer conducted online or webcast auctions for the Residual Assets located at the Company's Vancouver (Port Coquitlam), Calgary, Edmonton and Moncton branches beginning on June 9, 2020 and concluding on June 24, 2020. The Residual Assets located at the aforementioned branches that were included in the auction consisted of, without limitation, DEL's remaining serialized and non-serialized inventory and shop machinery and equipment.

14. The Auction Services Agreement provided for DEL to receive a net minimum guarantee of \$725,000, of which \$150,000 was paid by the Auctioneer to DEL as a deposit upon execution of the Auction Services Agreement. Additionally, the Auction Services Agreement provided for 85% of the proceeds resulting from the auction in excess of \$875,000 to be allocated to DEL.

15. In accordance with the Auction Services Agreement, the Auctioneer completed the reconciliation of accounts associated with the auction and provided DEL with such report on or about July 20, 2020. The Auctioneer's reconciliation listed total cash receipts equal to approximately \$1.25 million. DEL's net entitlement to the auction proceeds totalled approximately \$1.04 million in the aggregate, with the outstanding balance owing being paid to DEL in two installments on July 15 and July 20, 2020.

16. In total, the auctions in respect of the Residual Assets located at the Company's Vancouver (Port Coquitlam), Calgary, Edmonton and Moncton branches, and DEL's self-liquidation of Residual Assets located at its Montreal branch, generated net proceeds to DEL of approximately \$1.1 million in the aggregate.

B. Collection of Outstanding Accounts Receivable

17. The Company has continued to work diligently to solicit the collection of outstanding accounts receivable in order to maximize recoveries.

18. DEL estimates that it has collected approximately 96% of the accounts receivable due and owing to it as at March 31, 2020, being the closing date of the DPI Transaction and the time at which DEL's operations were substantially discontinued, and that only approximately \$88,000 remains outstanding. In addition to collections from third parties, due to the reconciliation of certain intercompany accounts between DEL and Diesel relating to DEL's normal course business operations, DEL has received payment from Diesel of approximately \$350,000.

19. DEL intends to continue its efforts, with the assistance of its counsel and the Monitor, to collect the Company's outstanding accounts receivable pending completion of these CCAA proceedings. However, due to the current economic circumstances relating to COVID-19 and the nature of the accounts that remain outstanding, among other factors, DEL is of the view that the collection of its outstanding accounts receivable is substantially complete.

C. Sale of Equipment Installed on Unsold Demonstration Vehicles

20. DEL, pursuant to the terms of its converter pool agreements with various OEMs and as part of its normal business practice, would, from time to time, install equipment on customer supplied truck chassis in order to build a limited number of demonstration vehicles for display without having reached an agreement for the purchase or sale of the completed vehicle. As DEL's interests in such demonstration vehicles were excluded from the DPI Transaction, DEL has continued efforts since the closing of the DPI Transaction to market and sell such demonstration vehicles. While DEL has been able to sell the majority of the demonstration

vehicles in which it has an interest, the Company has been unable to find any third-party buyers for three unsold demonstration vehicles (the “**Unsold Demonstration Vehicles**”), all of which were completed by DEL at its Calgary branch. In order to generate additional proceeds for the benefit of DEL’s creditors, Diesel has agreed to purchase the Unsold Demonstration Vehicles, which will include purchasing DEL’s rights in the equipment installed by DEL on the Unsold Demonstration Vehicles (the “**Equipment**”) for an aggregate purchase price of approximately \$108,000. The Equipment will be conveyed pursuant to a bill of sale to be entered into by DEL and Diesel, substantially in the form attached hereto as Exhibit “C”.

21. DEL believes that the purchase price for the Equipment installed on the Unsold Demonstration Vehicles is appropriate in the circumstances. The Unsold Demonstration Vehicles are in the range of one to three years old and have been widely marketed, including in connection with the comprehensive Sale Process and as part of efforts in connection with the liquidation of the Residual Assets not included within the scope of the DPI Transaction. In addition to marketing the Unsold Demonstration Vehicles as part of DEL’s broader sale efforts, the availability of these Unsold Demonstration Vehicles has been advertised by DEL on its website and on the websites for the Peterbilt Motor Company and Freightliner Trucks dealerships at which the Unsold Demonstration Vehicles are located, existing customers (both of DEL itself and of the specific dealerships) have been directly contacted and advised of the existence of the Unsold Demonstration Vehicles, and the listing price of the Unsold Demonstration Vehicles has been significantly reduced. The \$108,000 payable by Diesel for DEL’s interest in the Equipment installed on the Unsold Demonstration Vehicles represents the combined price at which the Equipment had most recently been marketed.

22. DEL believes in the circumstances that selling the Equipment installed on the remaining Unsold Demonstration Vehicles in which it has an interest to Diesel will maximize value by preventing any further depreciation, generate proceeds for creditors, and also assist DEL in its efforts to wind-up its affairs. Granting of the proposed Demonstration Vehicle Equipment Approval and Vesting Order will facilitate completion of this sale by vesting out any existing claims so that DEL's rights in the Equipment can be transferred to Diesel free and clear.

D. Update on Payment Dispute

23. As referenced above, DEL and its legal counsel have worked diligently to advance the Payment Dispute and on May 7, 2020, obtained the Payment Dispute Decision, pursuant to which this Court, among other things, ordered that Gin-Cor return the Funds in the amount of \$874,107.08 to DEL. As noted, the Payment Dispute Decision was subject to a leave to appeal motion filed by Gin-Cor on May 26, 2020, and the Payment Dispute Decision was stayed pending appeal pursuant to the Stay Order, which was issued on a consensual basis following discussions between DEL and Gin-Cor's respective legal counsel, and also provided that the leave to appeal motion would be heard by the Ontario Court of Appeal in writing on an expedited timeline. In addition, pursuant to the Stay Order, if Gin-Cor's leave to appeal motion was dismissed, or if leave was granted and the ultimate appeal dismissed, the Funds (which have been held by Gin-Cor's legal counsel in trust pursuant to a prior Order of this Court) are to be paid to DEL within two business days.

24. In accordance with the timeline set by the Stay Order, DEL's counsel finalized and delivered the Company's responding leave to appeal materials on July 27, 2020.

25. In a decision released earlier today, the Ontario Court of Appeal dismissed Gin-Cor's leave to appeal motion. A copy of the Court of Appeal decision is attached as Exhibit "D" to this affidavit.

26. As a result of the dismissal of Gin-Cor's leave to appeal motion, pursuant to the Stay Order the Funds are to be paid to DEL within two business days, i.e. by September 10, 2020.

E. Disclaimer of Agreements

27. Over the course of these CCAA proceedings, in order to reduce operating costs and otherwise wind-down its business affairs, DEL has issued a number of disclaimer notices pursuant to section 32(1) of the CCAA. As of the date of this affidavit, DEL has issued a total of 12 disclaimer notices, each of which was issued with the approval of the Monitor, and each of which have now become effective.

IV. ESTATE VALUE

28. As authorized pursuant to the Stay Extension and Distribution Order issued by this Court on April 29, 2020 (the "**Stay Extension and Distribution Order**"), the Company, shortly following the issuance of the Stay Extension and Distribution Order, completed an initial distribution of \$9 million to Diesel in respect of Diesel's secured claim against DEL under the Secured Credit Agreement. On or about June 1, 2020, the Company, as authorized pursuant to the Stay Extension and Distribution Order and with the consent of the Monitor, completed a further distribution to Diesel of approximately \$2.5 million, resulting in the repayment in full of all amounts owing by DEL to Diesel under the Secured Credit Agreement.

29. Although Diesel also agreed to provide DEL with DIP Financing of up to \$2.5 million in the aggregate, no amounts were ever drawn by DEL under the DIP Financing and so no repayment was required. The DIP Financing matured pursuant to its terms upon the closing of the DPI Transaction.

30. As set out in the cash flow forecast to be attached to the Monitor's fifth report (the "**Monitor's Fifth Report**"), which I understand will be filed in connection with this motion, the Company currently has approximately \$3.687 million of cash on hand.

V. EXTENSION OF THE CCAA STAY OF PROCEEDINGS

31. As referenced above, the current Stay Period expires on September 18, 2020. DEL is seeking a six-week extension of the Stay Period to and including October 30, 2020, pursuant to the proposed Stay Extension Order.

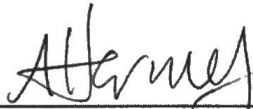
32. DEL continues to act diligently and in good faith to advance the wind-down of the Company's affairs and the eventual completion of these CCAA proceedings. In light of today's Ontario Court of Appeal decision and the anticipated near-term recovery of the Funds, together with the expected completion of most remaining asset realization efforts, the Company, in consultation with its advisors and the Monitor, is in the process of considering and evaluating available options to address and finalize the remaining outstanding matters in these proceedings, including a claims process and distributions to creditors. The extension of the Stay Period is necessary in such circumstances to maintain stability for the Company while it determines the best manner in which to address these matters and bring these proceedings to a conclusion, and returns to Court to seek approval of same. As DEL's operating costs are currently minimal, the Company believes that its stakeholders will not be prejudiced by a six-week extension of the

Stay Period to October 30, 2020. I also understand that the Monitor supports the proposed six-week extension of the Stay Period.

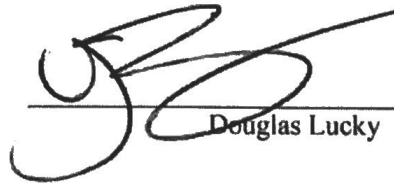
VI. CONCLUSION

33. For the reasons set out herein, the Company respectfully requests that this Court grant the Stay Extension Order and the Demonstration Vehicle Equipment Approval and Vesting Order.

SWORN BEFORE ME over
videoconference by Douglas Lucky stated
as being located in the City of Toronto in
the Province of Ontario, before me at the
City of Toronto in the Province of Ontario,
on September 8, 2020, in accordance with
O. Reg 431/20, Administering Oath or
Declaration Remotely



A Commissioner for taking affidavits
Name: Andrew Harnes



Douglas Lucky

**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 DEL
EQUIPMENT INC.**

Applicant

<p>ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST) Proceeding commenced at Toronto</p>	
<p>AFFIDAVIT OF DOUGLAS LUCKY (Sworn September 8, 2020)</p>	
<p>GOODMANS LLP Barristers & Solicitors 333 Bay Street, Suite 3400 Toronto, Canada M5H 2S7</p> <p>Christopher G. Armstrong LSO# 55148B carmstrong@goodmans.ca</p> <p>Andrew Harmes LSO# 73221A aharmes@goodmans.ca</p> <p>Tel: (416) 979-2211 Fax: (416) 979-1234</p> <p>Lawyers for Del Equipment Inc.</p>	

**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 DEL
EQUIPMENT INC.**

Court File No: CV-19-629552-00CL

Applicant

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

Proceeding commenced at Toronto

**AFFIDAVIT OF DOUGLAS LUCKY
(Sworn October 22, 2020)**

GOODMANS LLP

Barristers & Solicitors
333 Bay Street, Suite 3400
Toronto, Canada M5H 2S7

Christopher G. Armstrong LSO# 55148B
carmstrong@goodmans.ca

Andrew Harmes LSO# 73221A
aharmes@goodmans.ca

Tel: (416) 979-2211
Fax: (416) 979-1234

Lawyers for Del Equipment Inc.

3

Court File No. CV-19-629552-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)	THURSDAY, THE 29 TH
)	
JUSTICE HAINEY)	DAY OF OCTOBER, 2020

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF DEL EQUIPMENT INC.**

Applicant

CCAA TERMINATION ORDER

THIS MOTION, made by Del Equipment Inc. (the “**Applicant**”), pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) for an order (this “**Order**”), among other things, (i) approving the activities, conduct and certain reports of MNP Ltd. (“**MNP**”) in its capacity as monitor of the Applicant (the “**Monitor**”), (ii) approving the fees and disbursements of the Monitor and the Monitor’s legal counsel, as described in the Sixth Report of the Monitor dated October 1, 2020 (the “**Sixth Report**”) and the affidavits attached thereto sworn in support thereof, (iii) terminating these CCAA proceedings upon the service of the Monitor’s Certificate (as defined below) on the Service List, (iv) terminating the Charges upon the service of the Monitor’s Certificate on the Service List, and (v) discharging Douglas Lucky as the chief restructuring officer of the Applicant (the “**CRO**”) as at the time of the service of the Monitor’s Certificate on the Service List, was heard this day by videoconference in light of the COVID-19 crisis.

ON READING the affidavit of Douglas Lucky sworn October 22, 2020 (the “**Lucky Affidavit**”), and the Exhibits thereto, the Sixth Report and the affidavits attached thereto sworn in support of the approval of the fees and disbursements of the Monitor and its counsel, and on

- 2 -

hearing the submissions of counsel for the Applicant, the Monitor, and such other counsel as were present and wished to be heard, and on reading the affidavit of service, filed:

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Applicant's Notice of Motion, the Motion Record and the Sixth Report 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 capitalized terms used herein and not otherwise defined have the meanings given to them in the Initial Order of this Court made in the within proceedings dated October 22, 2019 (as amended, the "**Initial Order**").

APPROVAL OF MONITOR'S ACTIVITIES

3. **THIS COURT ORDERS** that the Fourth Report of the Monitor dated May 22, 2020, the Fifth Report of the Monitor dated September 10, 2020 and the Sixth Report are each hereby approved, and the activities and conduct of the Monitor prior to or on the date hereof in relation to the Applicant and these CCAA proceedings (including as described in each of the foregoing reports) are hereby ratified and approved; provided, however, that only the Monitor, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approvals.

APPROVAL OF FEES AND DISBURSEMENTS OF THE MONITOR

4. **THIS COURT ORDERS** that the fees and disbursements of the Monitor for the period from April 15, 2020 to September 30, 2020, all as set out in the affidavit of Sheldon Title sworn October 1, 2020, are hereby approved.
5. **THIS COURT ORDERS** that (a) the fees and disbursements of Goldman, Sloan, Nash and Haber LLP and of Norton Rose Fulbright Canada LLP ("**NRFC**"), as former and current legal counsel to the Monitor, for the period from April 1, 2020 to September 30, 2020, (b) the fees and disbursements of Stewart McKelvey LLP, New Brunswick agent to the Monitor, all as set out in the affidavit of Jennifer Stam sworn October 1, 2020, are hereby approved.

- 3 -

6. **THIS COURT ORDERS** that the fees and disbursements of the Monitor and NRFC, estimated not to exceed \$25,000 in aggregate, for the completion of remaining activities in connection with these CCAA proceedings, are hereby approved.

TERMINATION OF CCAA PROCEEDINGS

7. **THIS COURT ORDERS** that upon service by the Monitor of an executed certificate in substantially the form attached hereto as Schedule “A” (the “**Monitor’s Certificate**”) on the Service List certifying that, to the knowledge of the Monitor, all matters to be attended to in connection with these CCAA proceedings have been completed, these CCAA proceedings shall be terminated without any further act or formality (the “**CCAA Termination Time**”), provided that nothing herein impacts the validity of any Orders made in these CCAA proceedings or any action or steps taken by any Person pursuant thereto.
8. **THIS COURT ORDERS** that the Monitor is hereby directed to file a copy of the Monitor’s Certificate with the Court as soon as practicable following service thereof on the Service List.
9. **THIS COURT ORDERS** that the Charges shall be and are hereby terminated, released and discharged as of the CCAA Termination Time without any further act or formality.

DISCHARGE OF THE MONITOR

10. **THIS COURT ORDERS** that effective at the CCAA Termination Time, MNP shall be and is hereby discharged from its duties at the Monitor and shall have no further duties, obligations or responsibilities as Monitor from and after the CCAA Termination Time, provided that, notwithstanding its discharge as Monitor, MNP shall have the authority to carry out, complete or address any matters in its role as Monitor that are ancillary or incidental to these CCAA proceedings following the CCAA Termination Time, as may be required.
11. **THIS COURT ORDERS** that, notwithstanding any provision of this Order, the Monitor’s discharge or the termination of these CCAA proceedings, nothing herein shall affect, vary, derogate from, limit or amend, and the Monitor shall continue to have the

- 4 -

benefit of, any of the rights, approvals and protections in favour of the Monitor at law or pursuant to the CCAA, the Initial Order, any other Order of this Court in these CCAA proceedings or otherwise, all of which are expressly continued and confirmed following the CCAA Termination Time, including in connection with any actions taken by the Monitor following the CCAA Termination Time with respect to the Applicant or these CCAA proceedings.

12. **THIS COURT ORDERS** that no action or other proceeding shall be commenced against the Monitor in any way arising from or related to its capacity or conduct as Monitor except with prior leave of this Court on not less than fifteen (15) days prior written notice to the Monitor.

DISCHARGE OF THE CRO

13. **THIS COURT ORDERS** that effective at the CCAA Termination Time, Douglas Lucky shall be and is hereby discharged from his duties as the CRO and shall have no further duties, obligations or responsibilities as CRO of the Applicant from and after the CCAA Termination Time, provided that, notwithstanding his discharge as CRO, the CRO shall have the authority to carry out, complete or address any matters in its role as CRO that are ancillary or incidental to these CCAA proceedings following the CCAA Termination Time, as may be required.
14. **THIS COURT ORDERS** that, notwithstanding any provision of this Order, the CRO's discharge or the termination of these CCAA proceedings, nothing herein shall affect, vary, derogate from, limit or amend, and the CRO shall continue to have the benefit of, any of the rights, approvals and protections in favour of the CRO pursuant to the Initial Order and any other Order of this Court in these CCAA proceedings or otherwise, all of which are expressly continued and confirmed following the CCAA Termination Time, including in connection with any actions taken by the CRO following the CCAA Termination Time with respect to the Applicant or these CCAA proceedings.
15. **THIS COURT ORDERS** that no action or other proceeding shall be commenced against the CRO in any way arising from or related to his capacity or conduct as CRO except

- 5 -

with prior leave of this Court on not less than fifteen (15) days prior written notice to the CRO.

BANKRUPTCY

16. **THIS COURT ORDERS** that (i) the Applicant is authorized, in its discretion or at the discretion of the Monitor, to make an assignment in bankruptcy pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) on or after the CCAA Termination Time, (ii) the CRO and/or the Monitor are each authorized to execute and file any assignment in bankruptcy and related documents on behalf of the Applicant, and (iii) MNP is authorized to act as trustee in bankruptcy of the Applicant.

RELEASE

17. **THIS COURT ORDERS** that effective at the CCAA Termination Time, (i) the direct and indirect shareholders, directors, officers, employees, legal counsel and advisors of the Applicant, (ii) the Monitor and its legal counsel, and (iii) the CRO and 2255987 Ontario Limited operating as Strategic Results Advisors (the persons listed in clauses (i) to (iii) being collectively, the “**Released Parties**”) shall hereby be forever irrevocably released and discharged from any and all present and future claims (including, without limitation, claims for contribution or indemnity), liabilities, indebtedness, demands, actions, causes of action, counterclaims, suits, damages, judgments, executions, recoupments, debts, sums of money, expenses, accounts, liens, recoveries, and obligations of whatever nature or kind whatsoever (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or equity and whether based in statute or otherwise) based in whole or in part on any act, omission, transaction, dealing, matter or other occurrence existing or taking place prior to the CCAA Termination Time or completed pursuant to the terms of this Order in respect of or relating to the Applicant, the business, operations, assets, property and affairs of the Applicant wherever, whenever or however conducted or governed, the administration or management of the Applicant, the Secured Credit Agreement (as defined in the Lucky Affidavit) or these CCAA proceedings, including any transaction or other matter approved or otherwise undertaken pursuant to or in

- 6 -

connection with these CCAA proceedings (collectively, the “**Released Claims**”), which Released Claims are hereby fully, finally, irrevocably and forever waived, discharged, released, cancelled and barred as against the Released Parties, provided that nothing in this paragraph 17 shall waive, discharge, release, cancel or bar any claim against the Applicant’s current and former directors that is not permitted to be released pursuant to section 5.1(2) of the CCAA.

EXTENSION OF THE STAY PERIOD

18. **THIS COURT ORDERS** that the Stay Period be and is hereby extended to and including the earlier of (i) the CCAA Termination Time, and (ii) such other date as this Court may order.

GENERAL

19. **THIS COURT ORDERS** that the Applicant or the Monitor may apply to the Court as necessary to seek further orders and directions to give effect to this Order.
20. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.
21. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States or any other foreign jurisdiction, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant 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 the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.
-

**SCHEDULE “A”
FORM OF MONITOR’S CERTIFICATE**

Court File No. CV-19-629552-00CL

**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 DEL EQUIPMENT INC.**

Applicant

MONITOR’S CERTIFICATE

RECITALS

- A. MNP Ltd. (“**MNP**”) was appointed as the Monitor of Del Equipment Inc. (the “**Applicant**”) in the within proceedings commenced under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) pursuant to an Initial Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated October 22, 2019 (as amended, the “**Initial Order**”).
- B. Pursuant to an Order of this Court dated October 29, 2020 (the “**CCAA Termination Order**”), among other things, MNP shall be discharged as the Monitor and the Applicant’s CCAA proceedings shall be terminated upon the filing of this Monitor’s Certificate on the Service List, all in accordance with the terms of the CCAA Termination Order.
- C. Unless otherwise indicated herein, capitalized terms used in this Monitor’s Certificate shall have the meaning given to them in the Initial Order or the CCAA Termination Order, as applicable.

- 2 -

THE MONITOR CERTIFIES the following:

1. To the knowledge of the Monitor, all matters to be attended to in connection with the Applicant's CCAA proceedings (Court File No. CV-19-629552-00CL) have been completed.

ACCORDINGLY, the CCAA Termination Time as defined in the CCAA Termination Order has occurred.

DATED at Toronto, Ontario this _____ day of _____, 2020.

MNP LTD., in its capacity as Court-appointed Monitor of Del Equipment Inc. and not in its personal or corporate capacity

Per: _____

Name:

Title:

**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 DEL EQUIPMENT INC.**

Court File No: CV-19-629552-00CL

Applicant

<p>ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST) Proceeding commenced at Toronto</p>
<p>CCAA TERMINATION ORDER</p>
<p>GOODMANS LLP Barristers & Solicitors 333 Bay Street, Suite 3400 Toronto, Canada M5H 2S7</p>
<p>Christopher G. Armstrong LSO#: 55148B carmstrong@goodmans.ca</p>
<p>Andrew Harmes LSO#: 73221A aharmes@goodmans.ca</p>
<p>Tel: (416) 979-2211 Fax: (416) 979-1234</p>
<p>Lawyers for Del Equipment Inc.</p>

**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 DEL
EQUIPMENT INC.**

Court File No: CV-19-629552-00CL

Applicant

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceeding commenced at Toronto

MOTION RECORD
(Motion returnable October 29, 2020)

GOODMANS LLP
Barristers & Solicitors
333 Bay Street, Suite 3400
Toronto, Canada M5H 2S7

Christopher G. Armstrong LSO#: 55148B
carmstrong@goodmans.ca

Andrews Harmes LSO#: 73221A
aharmes@goodmans.ca

Tel: (416) 979-2211
Fax: (416) 979-1234

Lawyers for Del Equipment Inc.