

**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
STAY EXTENSION AND DISTRIBUTION ORDER**
(Motion returnable April 29, 2020)

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3.	Draft Stay Extension and Distribution Order

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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 April 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 April 29, 2020, at 10:00 a.m. or as soon thereafter as the motion can be heard by videoconference call in light of the COVID-19 crisis.

PROPOSED METHOD OF HEARING: The motion is to be heard by videoconference or, alternatively, in writing.

THE MOTION IS FOR:

1. An Order (the “**Stay Extension and Distribution Order**”), in substantially the form attached at Tab 3 of DEL’s Motion Record dated April 20, 2020, among other things:

- (a) extending the Stay Period (as defined below) until and including September 18, 2020;

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- (b) authorizing (A) an interim distribution in the amount of \$9 million to Diesel Equipment Limited (“**Diesel**”) in respect of its secured claim against DEL, and (B) such further distributions to Diesel from time to time as may be agreed between DEL and Diesel, with the consent of the Monitor (as defined below) or pursuant to such further Order of this Court, provided that the aggregate amount of distributions to Diesel does not exceed the total amount of the secured indebtedness (including any applicable costs or expenses) plus interest accrued thereon owing by DEL to Diesel under the Secured Credit Agreement (as defined in the Lucky Affidavit);
 - (c) approving the following reports of the Monitor: the Pre-Filing Report of the Proposed Monitor dated October 21, 2019, the First Report of the Monitor dated November 14, 2019, the Second Report of the Monitor dated February 24, 2020 and the Third Report (as defined below), and approving the activities and conduct of the Monitor as reported therein; and
 - (d) approving the fees and disbursements of the Monitor and its counsel in these proceedings; 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**”). The Initial Order, among other things, (i) appointed MNP Ltd. 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.

4. The Stay Period was subsequently extended by further orders of this Court to May 29, 2020.

5. On February 27, 2020, this Court granted an Order (the “**Approval and Vesting Order**”), among other things, approving a sale transaction (the “**DPI Transaction**”) pursuant to an asset purchase agreement dated as of February 21, 2020 (as amended, the “**Purchase Agreement**”) between DEL and Drive Products Inc. (“**DPI**”). The DPI Transaction closed on March 31, 2020, and the proceeds in respect thereof were paid to DEL.

6. The completion of the DPI Transaction has resulted, among other things, in the going concern sale of DEL’s Ontario business (which represents a significant portion of its overall business) and certain additional assets to DPI, as well as the employment by DPI of 36 of DEL’s employees. Having completed the DPI Transaction, the Company has now sold its core assets and business.

7. Since the granting of the Approval and Vesting Order, DEL has continued to act diligently and in good faith in respect of all matters relating to the CCAA proceedings, including in its efforts to complete the DPI Transaction, assist in the orderly transition of the DEL business to DPI, collect outstanding accounts receivable, wind-down DEL’s remaining business activities

and pursue additional value maximizing transactions in respect of its remaining branches and assets not included within the scope of the DPI Transaction (the “**Residual Assets**”).

Distribution to Diesel

8. As a result of the closing of the DPI Transaction as well as the Company’s efforts to collect its accounts receivable and monetize work in process more generally, the Company is now in a position to make a distribution to its senior secured creditor, Diesel. Diesel is currently owed \$11.7 million under the Secured Credit Agreement (as defined in the Lucky Affidavit), including interest accrued through April 10, 2020, but exclusive of certain costs and expenses.

9. The Monitor’s special counsel has completed a review of Diesel’s security granted in connection with the Secured Credit Agreement, and subject to standard assumptions and qualifications, confirmed its validity.

10. The proposed initial distribution to be made to Diesel is \$9 million, which amount has been agreed to by DEL (as represented by its chief restructuring officer), Diesel and the Monitor.

Extension of Stay Period

11. DEL is requesting an extension of the Stay Period until and including September 18, 2020. The Company is forecast to have sufficient liquidity to continue these CCAA proceedings throughout the proposed Stay Period taking into account the proposed interim distribution to Diesel pursuant to the Stay Extension and Distribution Order.

12. DEL requires the ongoing benefit of the CCAA stay of proceedings while the Company, with the assistance of its advisors and the Monitor, continues to support the transition of DEL’s

Ontario business to DPI pursuant to the DPI Transaction and undertakes and completes certain remaining restructuring and wind-down activities, including the collection of its remaining accounts receivables and the orderly disposition of the Residual Assets, all with a view to working towards the eventual completion of these CCAA proceedings in an efficient manner for the benefit of DEL and its stakeholders.

13. The Company has been acting in and continues to act in good faith and with due diligence in these CCAA proceedings.

14. Creditors will not suffer any material prejudice if the Stay Period is extended.

15. The Monitor supports the extension of the Stay Period and the interim distribution to Diesel.

16. Such other grounds as further set out in the affidavit of Douglas Lucky sworn April 20, 2020 (the "**Lucky Affidavit**").

17. The provisions of the CCAA, including sections 11 and 11.02(2), and this Court's equitable jurisdiction thereunder.

18. Rules 1.04, 1.05, 2.03, 3.02, 16, 37, and 39 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended.

19. 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:

20. The Lucky Affidavit and the exhibits attached thereto;

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21. The Third Report of the Monitor (the “**Third Report**”) to be filed in connection with this Motion;
22. The fee affidavits to be filed by representatives of the Monitor and its counsel; and
23. Such further and other materials as counsel may advise and this Court may permit.

April 20, 2020

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**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c.
C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF 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 April 29, 2020)</p>	
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<p>Lawyers for Del Equipment Inc.</p>	

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**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**IN THE MATTER OF THE *COMPANIES' CREDITORS
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Applicant

**AFFIDAVIT OF DOUGLAS LUCKY
(sworn April 20, 2020)**

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

I. INTRODUCTION

1. I am the Chief Restructuring Officer (“**CRO**”) of Del Equipment Inc. (“**DEL**” or the “**Company**”). Prior to completing the DPI Transaction (as defined below), DEL was a Canadian truck body and equipment “up-fitter” that engineered, designed, manufactured and sold special truck bodies, attachments, equipment and work-ready vehicles nationwide through its six manufacturing and distribution locations. 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. This Affidavit is sworn in support of the motion by the Company for an Order (the “**Stay Extension and Distribution Order**”), among other things:

- (a) approving an interim distribution in the amount of \$9 million to Diesel Equipment Limited (“**Diesel**”), and such further amounts from time to time as may be agreed between DEL and Diesel, with the consent of MNP Ltd. (“**MNP**”) as the Court-appointed monitor of DEL in these CCAA proceedings (the “**Monitor**”), or pursuant to such further Order of the Court;
- (b) extending the stay of proceedings in respect of DEL to and including September 18, 2020; and
- (c) approving the activities of the Monitor and the fees and disbursements of the Monitor and its counsel.

3. In addition, I understand that at the same time the Court will be asked to hear an application brought by Diesel seeking an Order (the “**Limited Receivership Order**”), among other things, (i) appointing MNP as receiver, without security, of the Limited Receivership Property (as defined below) pursuant to the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3, as amended (the “**BIA**”), for the sole purpose of allowing former employees of DEL to benefit from payments provided under the *Wage Earner Protection Program Act*, S.C. 2005, c. 47, s. 1

¹ Capitalized terms not defined herein shall have the meaning given to them in my affidavit previously sworn in these proceedings on October 20, 2019, in support of the Initial Order (the “**Initial Affidavit**”).

(the “**WEPPA**”) which they may be entitled to, and (ii) lifting the stay of proceedings in the CCAA proceedings for the limited purpose of allowing the appointment of MNP as receiver. The Company is fully supportive of the Limited Receivership Order as a means of providing additional support to its eligible former employees in these challenging times.

II. BACKGROUND

4. 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 also appointed MNP as the Monitor and approved DEL’s proposed sale and investment solicitation 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.

5. On February 27, 2020, this Court granted an Approval and Vesting Order, among other things, approving a sale transaction (the “**DPI Transaction**”) pursuant to an asset purchase agreement dated as of February 21, 2020 (as amended, the “**Purchase Agreement**”) between DEL and Drive Products Inc. (“**DPI**”). The DPI Transaction closed on March 31, 2020.

6. The completion of the DPI Transaction has resulted, among other things, in the going concern sale of DEL’s Ontario business (which represents a significant portion of its overall business) and certain additional assets to DPI, as well as the employment by DPI of 36 of DEL’s employees. Having completed the DPI Transaction, the Company has now sold its core assets and business.

7. Since the closing of the DPI Transaction, the Company and its advisors, with the assistance and oversight of the Monitor, have been working diligently to assist in the orderly transition of the DEL business to DPI while also, among other things, seeking to collect DEL's outstanding accounts receivable, wind-down its remaining business activities and complete additional value maximizing transactions in respect of its remaining branches and assets not included within the scope of the DPI Transaction (the "**Residual Assets**"). While the timing for completion of any transactions in respect of the Residual Assets has been impacted by the COVID-19 pandemic, the Company expects to continue its efforts in this regard and hopes to be in a position to complete various transactions in respect of the Residual Assets once the COVID-19 pandemic subsides.

8. The Company is of the view that the requested relief will enable DEL, with the assistance of its professional advisors and with the assistance and oversight of the Monitor, to finalize remaining wind-down activities and work towards the eventual conclusion of these CCAA proceedings in a cost-effective and efficient manner.

III. UPDATE SINCE THE APPROVAL AND VESTING ORDER

A. The DPI Transaction

9. As referenced above, the DPI Transaction closed on March 31, 2020. Proceeds paid to DEL at closing (inclusive of the good faith deposit) totalled \$5,097,099, representing a slight overall purchase price adjustment in favour of DEL based on certain purchase price components calculated at closing. Although it was originally contemplated that DPI would not be acquiring any work-in-process of DEL and that DEL could elect to have any such work-in-process completed by DPI on its behalf pursuant to a transition services arrangement provided for under

the Purchase Agreement, the parties agreed, in consultation and with the consent of the Monitor, to amend the Purchase Agreement prior to closing such that DPI acquired the work-in-process of DEL for its book value.

10. In connection with the closing of the DPI Transaction: (a) 36 of DEL's employees, the significant majority of which were employed at DEL's Newmarket branch, were offered and commenced employment with DPI; (b) most other remaining DEL employees were advised that their employment with DEL would no longer continue; and (c) final payments to employees under the key employee retention program described in my affidavit sworn February 22, 2020, were paid by DEL on or about April 13, 2020.

B. Residual Assets

11. Pursuant to the Stay Extension, KERP and Litigation Protocol Approval Order granted by this Court on February 27, 2020, DEL has the authority, with the prior approval of the Monitor, to enter into and complete any transaction for the Residual Assets for proceeds equal to or less than \$250,000. Residual Assets are primarily comprised of certain equipment, inventories of equipment, parts, components and raw materials, and demo trucks located at DEL's branches in Vancouver, Calgary, Edmonton, Montreal and Moncton. In this regard, while the Company, with the assistance of the Monitor, had commenced efforts to pursue various options with respect to the Residual Assets, these efforts have been delayed due to the impact of the COVID-19 pandemic which, among other things, presents challenges for the Company in marketing the Residual Assets and for interested parties to perform necessary due diligence. The Company expects to continue its efforts to market the Residual Assets and hopes be in a position to complete an orderly disposition of the Residual Assets once the COVID-19 pandemic subsides.

C. Accounts Receivable Collection

12. DEL continues to make efforts to collect its outstanding accounts receivable from its customers as a means of generating recoveries for its stakeholders. At present, DEL's outstanding accounts receivable total approximately \$3.4 million, with invoicing amounting to over \$8.9 million to date in calendar year 2020, and over \$10.5 million being collected to date in calendar year 2020.

D. Remaining Contracts

13. The Company, with the assistance of the Monitor and its professional advisors, is in the process of reviewing its remaining contracts, agreements and leases in order to determine whether there are any contracts that DEL wishes to disclaim in these CCAA proceedings.

E. Cost Reductions

14. The Company has otherwise taken measures to minimize its ongoing costs in these CCAA proceedings. In addition to reducing its employees to only a "skeleton crew" necessary to assist in the sale of Residual Assets, collect accounts receivable and otherwise assist in the orderly wind-down of DEL's operations, the Company has orderly terminated vendor services and equipment leases, transferred and assigned certain lease and service relationships to DPI and exited facility lease obligations, among various other cost saving measures.

F. Gin-Cor Payment Dispute

15. The Company has continued to progress the Payment Dispute with Gin-Cor in accordance with the litigation protocol previously approved by this Court, subject to modifications to address certain timing delays arising from the COVID-19 pandemic. Cross-examinations are scheduled to take place via video conference on April 20, 2020, following

which DEL expects to complete briefing of the motion in advance of the previously scheduled May 5 hearing date.

G. Monitor's Activities and Fees

16. I understand that the Monitor will be filing the Third Report of the Monitor (the “**Third Report**”) in connection with this motion and that the Third Report will detail the activities of the Monitor since the issuance of the Approval and Vesting Order and will also include affidavits in support of the request to approve the fees and disbursements of the Monitor and its counsel. The Company is supportive of the approval of the activities of the Monitor, as well as the approval of the fees and disbursements of the Monitor and its counsel.

IV. DISTRIBUTIONS UNDER SECURED CREDIT AGREEMENT

17. As a result of the closing of the DPI Transaction as well as the Company's efforts to collect its accounts receivable and monetize work in process more generally, the Company is now in a position to make a distribution to its senior secured creditor, Diesel. Based on DEL's books and records, Diesel is currently owed approximately \$11.7 million under the Secured Credit Agreement, including interest accrued through April 10, 2020, but exclusive of certain costs and expenses. I understand the Monitor's counsel has reviewed Diesel's security granted in connection with the Secured Credit Agreement and, subject to standard assumptions and qualifications, confirmed its validity.

18. Accordingly, the Company is requesting authority from this Court pursuant to the Stay Extension and Distribution Order to distribute the sum of \$9 million to Diesel on account of the

amounts outstanding under the Secured Credit Agreement.² The proposed distribution amount was arrived at following discussions amongst DEL (as represented by me, in my capacity as the CRO), Diesel and the Monitor. The Company is also seeking authority pursuant to the Stay Extension and Distribution Order to distribute such further amounts to Diesel from time to time as may be agreed to between DEL and Diesel, with the consent of the Monitor, or pursuant to such further Order of the Court, until the amounts outstanding under the Secured Credit Agreement are paid in full.

19. As will be demonstrated in the updated cash-flow forecast (the “**Updated Cash Flow Forecast**”) to be attached to the Third Report to be filed in connection with this motion, after making the proposed interim distribution to Diesel, the Company will have sufficient cash remaining to continue these CCAA proceedings, including to continue efforts to wind-down its remaining activities and seek to complete additional value maximizing transactions in respect of the Residual Assets, among other things.

V. APPOINTMENT OF MNP AS LIMITED RECEIVER

20. As at the time of DEL’s CCAA filing, the Company employed approximately 174 employees, comprised of approximately 55 salaried and sales employees and 119 hourly employees, most of whom were located in Ontario and Alberta.

21. As referenced above, upon the closing of the DPI Transaction, 36 of DEL’s employees commenced employment with DPI. Except for: (i) approximately 36 employees who voluntarily terminated their employment with the Company during the case; and (ii) 25 employees who

² As detailed later on in my affidavit, Diesel is also the lender under DEL’s DIP Financing facility; however, no amounts have been borrowed under that facility.

remain with DEL temporarily in order to assist with its remaining restructuring and wind-down activities, the balance of the Company's employees (approximately 113 in total, including those contemporaneously terminated by DEL and hired by DPI on closing) have been terminated during the course of these CCAA proceedings.

22. It is my understanding, based on information from the Company's restructuring counsel, Goodmans LLP ("**Goodmans**"), that pursuant to WEPPA employees may be eligible to receive payments from the government in respect of wages and severance payments owed to them by employers who are bankrupt or subject to a receivership. I further understand from Goodmans that although WEPPA has been amended to apply to CCAA proceedings, those amendments are not yet in force with the result that DEL's former employees are not currently eligible to receive any such payments as DEL is currently not subject to bankruptcy or receivership proceedings.

23. In these circumstances, DEL believes that it is just and convenient for the Court to appoint MNP as receiver pursuant to the BIA over the bank account and the amounts contained therein that DEL is currently in the process of establishing and I understand will be referenced as a schedule to the Limited Receivership Order (the "**Limited Receivership Property**") in order to allow DEL's former employees to recover any amounts they may be entitled to under WEPPA. Accordingly, the Company consents to the application by Diesel seeking the Limited Receivership Order.

24. The appointment of MNP as receiver will not affect the Company's CCAA proceedings, and further, will not cause any prejudice to any party. The appointment of MNP as receiver will only serve to benefit DEL's former employees whose employment has or will be terminated and who may have entitlements under WEPPA as a result.

25. I understand that MNP has advised that it consents to its appointment as receiver in these circumstances.

26. The Company consents to and supports the granting of such relief in the present circumstances.

VI. INTERIM FINANCING AND CASH FLOW MATTERS

27. As part of the granting of the Initial Order, the Court approved the DIP Financing of up to \$1 million to be provided to the Company by Diesel pursuant to the DIP Term Sheet substantially in the form attached to the Initial Affidavit in order to fund DEL's operations and expenses during these CCAA proceedings, and granted a Court-ordered priority charge to secure the obligations under the DIP Term Sheet. Pursuant to the Stay Extension and DIP Amendment Order, the DIP Financing was increased by \$1.5 million (for total availability of \$2.5 million in the aggregate).

28. The Company has been able to fund its business to date in these CCAA proceedings in the normal course based largely on its cash on hand, receipts from the sale of non-core assets and continuing receipts, and has not drawn on its DIP Financing. Indeed, DEL's cash balance (excluding proceeds of the DPI Transaction) has grown from approximately \$1.5 million to approximately \$7 during these CCAA proceedings.

29. DEL, with the assistance of the Monitor, has prepared the Updated Cash Flow Forecast which covers the requested extension of the Stay Period (as defined below). The same information has or will be provided to Diesel in accordance with the terms of the DIP Term Sheet.

30. The Updated Cash Flow Forecast indicates that DEL, after making the proposed interim distribution to Diesel pursuant to the Stay Extension and Distribution Order, is forecast to have sufficient liquidity to continue these CCAA proceedings throughout the proposed Stay Period.

VII. EXTENSION OF THE CCAA STAY OF PROCEEDINGS

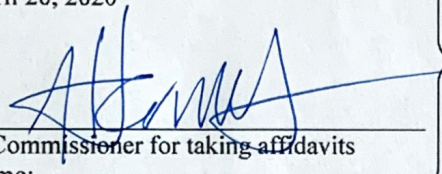
31. The Initial Order granted a stay of proceedings and other rights in favour of DEL until November 21, 2019 (the “**Stay Period**”). The Court subsequently granted extensions of the Stay Period so that the Stay Period currently expires on May 29, 2020. DEL is requesting a further extension of the Stay Period pursuant to the Stay Extension and Distribution Order until and including September 18, 2020. As set out above, although the Company hopes to complete the sale of its remaining Residual Assets as expediently as possible, given the impact of COVID-19 on the economy and commerce, a longer stay extension will reduce unnecessary professional fees of an additional court appearance.

32. The Company, with the assistance of its professional advisors, has continued to act diligently and in good faith to advance these proceedings, including with respect to the completion of the DPI Transaction and related matters. The stay extension is required while the Company, with the assistance of its advisors and the Monitor, continues to support the transition of DEL’s Ontario business to DPI pursuant to the DPI Transaction and undertakes and completes certain remaining restructuring and wind-down activities, including the collection of its remaining accounts receivables and the orderly disposition of the Residual Assets, all with a view to working towards the eventual completion of these CCAA proceedings in an efficient manner for the benefit of DEL and its stakeholders.

33. Given the Company's existing circumstances, I do not believe that any creditor will suffer any material prejudice as a result of the extension of the Stay Period. I understand that the Monitor supports the proposed extension of the Stay Period and the other relief being requested by DEL.

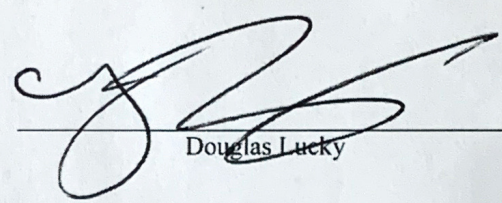
34. I swear this affidavit in support of the Stay Extension and Interim Distribution Order and for no improper purpose.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario, on April 20, 2020



A Commissioner for taking affidavits
Name:

ANDREW HARMES



Douglas Lucky

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c.
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ONTARIO
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(COMMERCIAL LIST)
 Proceeding commenced at Toronto

AFFIDAVIT OF DOUGLAS LUCKY
(Sworn April 20, 2020)

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3

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)	WEDNESDAY, THE 29 TH
)	
JUSTICE HAINEY)	DAY OF APRIL, 2020

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

Applicant

STAY EXTENSION AND DISTRIBUTION 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**”) was heard this day by videoconference in light of the COVID-19 crisis.

ON READING the affidavit of Douglas Lucky sworn April 20, 2020 (the “**Lucky Affidavit**”), and the Exhibits thereto, the Third Report (the “**Third Report**”) of MNP Ltd. in its capacity as monitor of the Applicant (the “**Monitor**”), the affidavit of Sheldon Title sworn April ●, 2020 (the “**Title Affidavit**”) and the affidavit of Jennifer Stam sworn April ●, 2020 (the “**Stam Affidavit**”), and on hearing the submissions of counsel for the Applicant, the Monitor, and those other parties present as indicated on the counsel sheet, and on reading the affidavit of service of Andrew Harmes sworn April ●, 2020:

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Applicant’s Notice of Motion, the Motion Record and the Third Report is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

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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**”) or the Lucky Affidavit, as applicable.

EXTENSION OF STAY PERIOD

3. **THIS COURT ORDERS** that the Stay Period be and is hereby extended to and including 11:59 p.m. (Toronto time) on September 18, 2020, and that all other terms of the Initial Order shall remain in full force and effect during the Stay Period.

DISTRIBUTIONS TO SECURED CREDITOR

4. **THIS COURT ORDERS** that the Applicant is hereby authorized and directed to distribute to Diesel Equipment Limited (“**Diesel**”) the amount of \$9 million in respect of its secured claim against the Applicant under the Secured Credit Agreement (the “**Interim Distribution**”).
5. **THIS COURT ORDERS** that the Applicant is hereby authorized to make one or more further distributions, at such time(s) as the Applicant and Diesel may agree, with the consent of the Monitor, or upon further Order of this Court, to Diesel in respect of its secured claim against the Applicant (collectively, with the Interim Distribution, the “**Distributions**”), provided that in no circumstance shall the aggregate amount of the Distributions exceed the total amount of the secured indebtedness (including any costs and expenses) plus interest accrued thereon owed by the Applicant to Diesel under the Secured Credit Agreement from time to time. The Applicant is hereby authorized to take all necessary steps and actions to effect the Distributions in accordance with the provisions of this Order.
6. **THIS COURT ORDERS** that, notwithstanding:
 - (a) the pendency of these proceedings;
 - (b) any application for a bankruptcy or receivership order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”) or other

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applicable legislation in respect of the Applicant and any bankruptcy or receivership order issued pursuant to any such application;

- (c) any assignment in bankruptcy made in respect of the Applicant; and
- (d) any provisions of any federal or provincial legislation,

the Distributions shall be made free and clear of all Encumbrances (including the Charges) and shall be binding on any trustee in bankruptcy or receiver that may be appointed in respect of the Applicant or its property and shall not be void or voidable nor deemed to be a preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall they constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

APPROVAL OF MONITOR'S REPORTS, ACTIVITIES AND FEES

7. **THIS COURT ORDERS** that the Pre-Filing Report of the Proposed Monitor dated October 21, 2019, the First Report of the Monitor dated November 14, 2019, the Second Report of the Monitor dated February 24, 2020 and the Third Report, and the activities and conduct of the Monitor described in each of the foregoing reports, be and are hereby 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.
8. **THIS COURT ORDERS** that the professional fees and disbursements of the Monitor in the amount of \$● as set out in the Title Affidavit are hereby approved.
9. **THIS COURT ORDERS** that the professional fees and disbursements of Goldman, Sloan, Nash and Haber LLP, legal counsel to the Monitor, in the amount of \$● as set out in the Stam Affidavit are hereby approved.

GENERAL

10. **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

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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.

11. **THIS COURT ORDERS** that each of the Applicant and the Monitor be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.
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**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C.
1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF DEL
EQUIPMENT INC.**

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

Applicant

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

STAY EXTENSION AND DISTRIBUTION ORDER

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF DEL
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MOTION RECORD
(Motion returnable April 29, 2020)

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