

**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

FACTUM OF THE APPLICANT

Motion for Stay Extension and Distribution Order
(Returnable April 29, 2020)

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**ONTARIO
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Motion for Stay Extension and Distribution Order
(Returnable April 29, 2020)

PART I – INTRODUCTION

1. On October 22, 2019, Del Equipment Inc. (“**DEL**” or the “**Company**”) sought and obtained an Initial Order under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”). The Initial Order, among other things: (i) granted a stay of proceedings in favour of DEL; (ii) appointed MNP Ltd. (“**MNP**”) as the monitor (the “**Monitor**”); and (iii) approved DEL’s commencement of a sale and investment solicitation process to 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.¹ The CCAA stay of proceedings was subsequently extended by further orders of this Court to May 29, 2020.

¹ Capitalized terms used but not defined herein have the meaning given to such terms in the Affidavit of Douglas Lucky sworn February 21, 2020 (the “**Lucky Affidavit**”). Unless otherwise stated, all monetary amounts are expressed in Canadian dollars.

2. 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, totaling \$5,097,099, were paid to DEL on closing.
3. 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.
4. This factum is filed in support of the Company’s motion to approve an Order (the “**Stay Extension and Distribution Order**”) which, among other things, (i) approves 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 the Monitor or pursuant to such further Order of the Court, until the amounts outstanding under the Secured Credit Agreement are paid in full; and (ii) extends the CCAA stay of proceedings in respect of DEL to September 18, 2020.
5. The Company also consents to and supports the application by Diesel seeking an Order (the “**Limited Receivership Order**”), among other things, (i) appointing MNP as receiver (in such capacity, the “**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 (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 the 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.

PART II – SUMMARY OF THE FACTS

A. BACKGROUND

6. Prior to completing the DPI Transaction, 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.

Lucky Affidavit at para. 1; Motion Record of the Applicant, returnable April 29, 2020 (the “**Motion Record**”), Tab 2.

7. As referenced above, on February 27, 2020 this Court approved the DPI Transaction which, among other things, resulted in the going concern sale of DEL’s core Ontario business and certain additional assets to DPI, as well as the employment by DPI of 36 of DEL’s employees.

Lucky Affidavit, at paras. 5-6; Motion Record, Tab 2.

8. The DPI Transaction closed on March 31, 2020. Proceeds paid to DEL at closing (inclusive of the good faith deposit) totaled \$5,097,099, representing a slight overall purchase price adjustment in favour of DEL based on certain purchase price components calculated at closing. Final payments to employees under the key employee retention program were paid by DEL on or about April 13, 2020.

Lucky Affidavit, at paras. 9-10; Motion Record, Tab 2.

9. In connection with the closing of the DPI Transaction, 36 of DEL's employees were offered and 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 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.

Lucky Affidavit, at para. 21; Motion Record, Tab 2.

B. DISTRIBUTIONS UNDER THE SECURED CREDIT AGREEMENT

10. DEL's only material secured debt obligation is the amounts owed under its 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 at April 10, 2020, Diesel is owed approximately \$11.7 million under the Secured Credit Agreement, including interest, but exclusive of certain costs and expenses.

Lucky Affidavit, at para. 17; Motion Record, Tab 2.

11. 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.

Lucky Affidavit, at para. 17; Motion Record, Tab 2.

Third Report of the Monitor dated April 22, 2020 (the "**Third Report**"), at para. 21(a).

12. 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 DEL as its senior secured creditor. Pursuant to the Stay Extension and Distribution Order, it is intended that DEL will distribute \$9 million to Diesel on

account of the amounts outstanding under the Secured Credit Agreement. This proposed distribution amount was arrived at following discussions amongst DEL (represented by its chief restructuring officer), Diesel and the Monitor.

Lucky Affidavit, at paras. 17-18; Motion Record, Tab 2.

13. Notice of DEL's motion seeking issuance of the proposed Stay Extension and Distribution Order has been provided to the service list in these CCAA proceedings, which includes all taxation authorities in the jurisdictions where DEL has or had business operations, and to all parties with registrations against DEL under provincial personal property security legislation.

Third Report, at para. 21(d).

Affidavit of Service of Andrew Harmes sworn April 21, 2020.

14. The form of Stay Extension and Distribution Order also provides DEL with the authority 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, provided that in no circumstances shall the aggregate amount of distributions to Diesel exceed the total amount of secured indebtedness plus interest accrued thereon owing by DEL to Diesel under the Secured Credit Agreement.

Stay Extension and Distribution Order, at para. 5; Motion Record, Tab 3.

C. EXTENSION OF THE STAY PERIOD

15. Since the issuance of the Initial Order, the Company has acted diligently and in good faith in carrying out the terms of the Initial Order and subsequent Orders issued by the Court in these CCAA proceedings.

Lucky Affidavit, at para. 32; Motion Record, Tab 2.

16. The extension of the Stay Period to September 18, 2020, 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.

Lucky Affidavit, at para. 32; Motion Record, Tab 2.

PART III – ISSUES AND THE LAW

A. DISTRIBUTIONS UNDER THE SECURED CREDIT AGREEMENT

17. It is well established that the Court has the authority to approve distributions to creditors in the course of a CCAA process. This Court has noted that courts often order payments to creditors outside of a CCAA plan.

[*Nortel Networks Corp., Re, 2014 ONSC 4777*](#) at paras 53-55.

18. In this case, the Company submits that it is reasonable and appropriate for the Court to exercise its discretion and approve the initial distribution by DEL to Diesel of \$9 million and such other distributions from time to time as DEL and Diesel may agree, with the consent of the Monitor or further Order of this Court, given that:

- (a) Diesel is owed approximately \$11.7 million as at April 10, 2020 under the Secured Credit Agreement;

- (b) 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;
- (c) the proposed Stay Extension and Distribution Order provides that distributions to Diesel will not, in the aggregate, exceed the total amount of the secured indebtedness plus interest accrued thereon owing by DEL to Diesel under the Secured Credit Agreement;
- (d) distributions to Diesel will reduce DEL's ongoing interest expense; and
- (e) the Monitor supports the proposed distribution process set out in the Stay Extension and Distribution Order.

Lucky Affidavit, at para. 17; Motion Record, Tab 2.

Stay Extension and Distribution Order, at para. 5; Motion Record, Tab 3.

Third Report, at para. 21.

19. The Company believes that the distribution framework set forth in the Stay Extension and Distribution Order is appropriate in the current circumstances and provides an appropriate process for DEL to make distributions to Diesel, its senior secured creditor, on an efficient basis until the secured amounts owing to Diesel are repaid in full. Accordingly, the Company submits that the distribution process proposed in the Stay Extension and Distribution Order is in the best interests of the Company and its stakeholders and should be approved.

B. IT IS APPROPRIATE TO EXTEND THE STAY OF PROCEEDINGS

20. The Company's CCAA stay currently expires on May 29, 2020. DEL is seeking an extension of the CCAA stay until and including September 18, 2020.

21. Section 11.02(2) of the CCAA provides the Court the discretion to make an Order extending the stay granted in an initial order. Specifically, Section 11.02(2) states:

11.02(2) *Stays, etc.* – A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

(a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

CCAA, Section 11.02(2).

22. In order to make an order pursuant to Section 11.02(2), the Court must be satisfied that:
- (i) circumstances exist that make the order appropriate; and (ii) the applicant has acted, and is acting, in good faith and with due diligence.

[CCAA](#), Section 11.02(3).

23. The Company submits that an Order extending the CCAA stay until and including September 18, 2020, is appropriate in the circumstances because, among other things:

(a) the Company has acted, and continues to act, in good faith and with due diligence in respect of all matters relating to these CCAA proceedings to carry out the terms of the Initial Order and advance these proceedings, including with respect to the completion of the DPI Transaction and related matters;

(b) the extension of the Stay Period to September 18, 2020 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 maximizing the value of DEL's remaining assets while working towards the eventual completion of these CCAA proceedings in an efficient manner for the benefit of DEL and its stakeholders;

- (c) while the Company hopes to complete the sale of its remaining Residual Assets as expeditiously as possible, given the impact of COVID-19, a longer stay extension to September 18, 2020 will reduce unnecessary professional fees associated with an additional court appearance;
- (d) the Updated Cash Flow Forecast shows 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;
- (e) creditors will not suffer any material prejudice if the Stay Period is extended; and
- (f) the Monitor supports the proposed extension of the Stay Period on the terms set out in the Stay Extension and Distribution Order.

Lucky Affidavit at paras. 31-33; Motion Record, Tab 2.

Third Report, at para. 51.

24. Accordingly, DEL submits that this Court ought to extend the Stay Period to and including September 18, 2020.

C. **APPOINTMENT OF THE RECEIVER OVER THE LIMITED RECEIVERSHIP PROPERTY**

25. The Wage Earner Protection Program under the WEPPA provides for “payments to individuals in respect of wages owed to them by employers who are bankrupt or subject to a receivership”.

[WEPPA](#), section 4.

26. In order for an individual to be eligible to receive a payment under the WEPPA, section 5 of the WEPPA requires the following conditions to be satisfied:

- (a) the individual’s employment ended for a reason prescribed by regulation;
- (b) the former employer is bankrupt or subject to a receivership; and
- (c) the individual is owed eligible wages by the former employer.

[WEPPA](#), section 5.

27. With respect to subsection 5(a) of the WEPPA, the Wage Earner Protection Program Regulations (the “**WEPPA Regulations**”) stipulate that the following reasons for termination of employment satisfy the condition in 5(a) of the WEPPA: (i) the individual resigned or retired; (ii) the individual’s employment has terminated; or (iii) the term of the individual’s employment has expired.

[WEPPA Regulations](#), section 3.

28. Regarding subsection 5(b) of the WEPPA, although this provision has been amended to include circumstances where the former employer is subject to CCAA proceedings, the amendments are not yet in effect with the result being 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.

29. For the purposes of the current subsection 5(b) of the WEPPA, an employer is subject to a receivership when any property of the employer is under the possession or control of a receiver within the meaning of section 243(2) of the BIA.

[WEPPA](#), sections 2(2) and (3).

30. Subsection 243(2) of the BIA defines a “receiver” as a person who, among other things, is appointed under subsection 243(1) of the BIA. Diesel is a secured creditor of DEL and is thus entitled to bring a receivership application under subsection 243(1) of the BIA.

[BIA](#), section 243(1) and (2).

31. Granting Diesel’s request that MNP be appointed as the Receiver over the bank account listed at Schedule “A” to the proposed Limited Receivership Order (the “**Limited Receivership Property**”) would result in DEL becoming an employer subject to a receivership for purposes of the WEPPA. Such an appointment is just and convenient in the circumstances.

32. With respect to the requirement under subsection 5(c) of the WEPPA that an individual be owed eligible wages by the former employer, “eligible wages” are defined under the WEPPA as:

(a) wages other than severance pay and termination pay that were earned during the longer of the following periods:

(i) the six-month period ending on the date of the bankruptcy or the first day on which there was a receiver in relation to the former employer; and

(ii) the period beginning on the day that is six months before the day on which a proposal under Division I of Part III of the BIA is filed by or in respect of the employer or the day on which proceedings under the CCAA are commenced and

ending on the date of the bankruptcy or the first day on which there was a receiver in relation to the former employer; and

- (b) severance pay and termination pay that relate to employment that ended:
 - (i) during the period referred to in paragraph (a), or
 - (ii) during the period beginning on the day after the day on which the period referred to in paragraph (a) ends and ending on the day on which the trustee is discharged or the receiver completes their duties, as the case may be.

[WEPPA](#), section 2(1).

33. Accordingly, subject to the appointment of the Receiver, under part (b)(i) of the WEPPA's definition of "eligible wages", amounts owed to DEL's former employees for severance or termination pay in respect of the period outlined in part (a)(ii) of the "eligible wages" definition, in particular, the period beginning on the day that is six months before the day on which DEL commenced these proceedings under the CCAA and ending on the day of the Receiver's appointment, would constitute "eligible wages" for purposes of subsection 5(c) of the WEPPA. In addition, under part (b)(ii) of the WEPPA's definition of "eligible wages", any severance or termination pay owing to DEL's employees whose employment is terminated during the period following the appointment of the Receiver and ending on the day on which the Receiver completes its duties, would also constitute "eligible wages" for purposes of subsection 5(c) of the WEPPA.
34. In light of the foregoing, DEL consents to and supports the application by Diesel to appoint the Receiver over the Limited Receivership Property as a means of providing additional support to its eligible former employees in these challenging times.

Lucky Affidavit, at paras. 23-24, and 25; Motion Record, Tab 2.

35. The Monitor also supports the proposed appointment of the Receiver over the Limited Receivership Property.

Third Report, at para. 38.

36. This Court has granted limited receivership orders in similar circumstances in order to allow the former employees of CCAA applicant to benefit from payments provided under the WEPPA.

[*Cinram International Inc. et al, Order \(Appointment Order\) granted October 19, 2012, Court File No. CV-12-9767-00CL \(Ont. Sup. Ct. J. \[Commercial List\]\).*](#)

[*Sears Canada Inc. et al, Receivership Order granted October 16, 2018, Court File No. CV-17-11846-00CL \(Ont. Sup. Ct. J. \[Commercial List\]\).*](#)

D. WAIVING COMPLIANCE WITH CERTAIN PROVISIONS OF THE BIA

37. The form of order sought appointing the Receiver relieves the Receiver from compliance with sections 245(1), 245(2), 246 and 248(2) of the BIA.

Limited Receivership Order, paras. 6 and 14; Application Record of Diesel, returnable April 29, 2020, Tab 3.

38. Sections 245(1) and (2) of the BIA impose certain notice requirements on a receiver upon its appointment, including that a receiver is to provide notice within ten days of its appointment to the Superintendent of Bankruptcy (the “**Superintendent**”) and to the debtor and all of its creditors. Section 246 of the BIA sets out various reporting requirements which, among other things, require a receiver to prepare a statement of accounts after taking possession or control of the debtor’s property, every six months, and following the completion of its duties. Section 248(2) of the BIA permits the Superintendent, the debtor or a creditor, within six months of a final statement of accounts being delivered, to apply to the Court to seek an order requiring the receiver to submit its statement of accounts to the Court for review.

[BIA](#), sections 245(1), 245(2), 246 and 248(2).

39. Waiving the requirement that the Receiver comply with these provision is appropriate given that creditors of DEL have already received ample notice of Diesel's application for issuance of the Limited Receivership Order. DEL has provided the service list in these CCAA proceedings, which includes all taxation authorities in the jurisdictions where DEL has or had business operations, with a copy of its Motion Record (which references Diesel's application for the Limited Receivership Order) and given notice of this motion to all parties with registrations against it under provincial personal property security legislation. The service list has also been provided with a copy of the Third Report, as well as Diesel's Application Record. All of the foregoing materials are also posted on the Monitor's website.

Affidavit of Service of Andrew Harmes sworn April 21, 2020.

Affidavit of Service of Katie Parent sworn April 23, 2020.

Affidavit of Service of Christopher A.L. Caruana sworn April 23, 2020.

Third Report, at para. 21(d).

40. In addition, DEL also submits that the relief from compliance with sections 245(1), 245(2), 246 and 248(2) of the BIA is appropriate as:

- (a) MNP is also serving as the Court-appointed Monitor of DEL in these CCAA proceedings with respect to which it is subject to notice and reporting requirements under the CCAA and the Initial Order;
- (b) relieving the Receiver from compliance with sections 245(1), 245(2), 246 and 248(3) of the BIA is unlikely to cause prejudice to any party;
- (c) relieving the Receiver from compliance with sections 245(1), 245(2), 246 and 248(3) of the BIA will avoid an unnecessary duplication of efforts resulting in reduced costs to the benefit of the Company's stakeholders; and

- (d) following its appointment, the Receiver will provide notice of its appointment to the Superintendent by providing a copy of the Limited Receivership Order.

PART IV - CONCLUSION

41. For the reasons set out above, the Company respectfully requests that this Court grant the Stay Extension and Distribution Order and also approve the relief requested by Diesel in its application for the Limited Receivership Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

April 27, 2020

GOODMANS LLP
Goodmans LLP

SCHEDULE A

LIST OF AUTHORITIES

1. [*Nortel Networks Corp., Re*, 2014 ONSC 4777](#)
2. [*Cinram International Inc. et al*, Order \(Appointment Order\) granted October 19, 2012, Court File No. CV-12-9767-00CL \(Ont. Sup. Ct. J. \[Commercial List\]\)](#).
3. [*Sears Canada Inc. et al*, Receivership Order granted October 16, 2018, Court File No. CV-17-11846-00CL \(Ont. Sup. Ct. J. \[Commercial List\]\)](#).

SCHEDULE B

STATUTORY REFERENCES

COMPANIES' CREDITORS ARRANGEMENT ACT
RSC 1985, c C-36, as amended

s. 11

General power of court. – Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

s. 11.02(2)

Stays, etc. — other than initial application. – A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

- (a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

s. 11.02(3)

Burden of proof on application – The court shall not make the order unless

- (a) the applicant satisfies the court that circumstances exist that make the order appropriate; and
- (b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

BANKRUPTCY AND INSOLVENCY ACT
R.S.C., 1985, c. B-3, as amended

s. 243(1)

Court may appoint receiver – Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

- (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
- (b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or
- (c) take any other action that the court considers advisable.

s. 245(1)

Receiver to give notice – A receiver shall, as soon as possible and not later than ten days after becoming a receiver, by appointment or otherwise, in respect of property of an insolvent person or a bankrupt, send a notice of that fact, in the prescribed form and manner, to the Superintendent, accompanied by the prescribed fee, and (a) in the case of a bankrupt, to the trustee; or (b) in the case of an insolvent person, to the insolvent person and to all creditors of the insolvent person that the receiver, after making reasonable efforts, has ascertained.

s. 245(2)

Idem – A receiver in respect of property of an insolvent person shall forthwith send notice of his becoming a receiver to any creditor whose name and address he ascertains after sending the notice referred to in subsection (1).

s. 246 (1)

Receiver's statement – A receiver shall, forthwith after taking possession or control, whichever occurs first, of property of an insolvent person or a bankrupt, prepare a statement containing the prescribed information relating to the receivership, and shall forthwith provide a copy thereof to the Superintendent and

- (a) to the insolvent person or the trustee (in the case of a bankrupt); and
- (b) to any creditor of the insolvent person or the bankrupt who requests a copy at any time up to six months after the end of the receivership.

s. 246(2)

Receiver's interim reports – A receiver shall, in accordance with the General Rules, prepare further interim reports relating to the receivership, and shall provide copies thereof to the Superintendent and

- (a) to the insolvent person or the trustee (in the case of a bankrupt); and
- (b) to any creditor of the insolvent person or the bankrupt who requests a copy at any time up to six months after the end of the receivership.

s. 246(3)

Receiver's final report and statement of accounts – A receiver shall, forthwith after completion of duties as receiver, prepare a final report and a statement of accounts, in the prescribed form and containing the prescribed information relating to the receivership, and shall forthwith provide a copy thereof to the Superintendent and (a) to the insolvent person or the trustee (in the case of a bankrupt); and (b) to any creditor of the insolvent person or the bankrupt who requests a copy at any time up to six months after the end of the receivership.

s. 248(2)

Idem – On the application of the Superintendent, the insolvent person, the trustee (in the case of a bankrupt) or a creditor, made within six months after the statement of accounts was provided to the Superintendent pursuant to subsection 246(3), the court may order the receiver to submit the statement of accounts to the court for review, and the court may adjust, in such manner and to such extent as it considers proper, the fees and charges of the receiver as set out in the statement of accounts.

WAGE EARNER PROTECTION PROGRAM ACT
S.C. 2005, c. 47, s. 1

s. 2(1)

Definitions – The following definitions apply in this Act.

“eligible wages” means

(a) wages other than severance pay and termination pay that were earned during the longer of the following periods:

(i) the six-month period ending on the date of the bankruptcy or the first day on which there was a receiver in relation to the former employer, and

(ii) the period beginning on the day that is six months before the day on which a proposal under Division I of Part III of the Bankruptcy and Insolvency Act is filed by or in respect of the employer or the day on which proceedings under the Companies' Creditors Arrangement Act are commenced and ending on the date of the bankruptcy or the first day on which there was a receiver in relation to the former employer; and

(b) severance pay and termination pay that relate to employment that ended during the period referred to in paragraph (a).

s. 2.2(2)

Employers subject to a receivership – For the purposes of this Act, an employer is subject to a receivership when any property of the employer is under the possession or control of a receiver.

s. 2(3)

Meaning of “receiver” – In this Act, “receiver” means a receiver within the meaning of subsection 243(2) of the *Bankruptcy and Insolvency Act*.

s. 4

Establishment – The Wage Earner Protection Program is established to make payments to individuals in respect of wages owed to them by employers who are bankrupt or subject to a receivership.

s. 5

Conditions of eligibility – An individual is eligible to receive a payment if

- (a) the individual’s employment ended for a reason prescribed by regulation;
- (b) the former employer is bankrupt or subject to a receivership; and
- (c) the individual is owed eligible wages by the former employer.

WAGE EARNER PROTECTION PROGRAM REGULATIONS
SOR/2008-222

s. 3

Termination of Employment – An individual’s employment has ended for the purposes of paragraph 5(a) of the Act if it has ended for any of the following reasons:

- (a) the individual resigned or retired;
- (b) the individual’s employment has terminated; or
- (c) the term of the individual’s employment has expired.

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

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

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

Applicant

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

Proceeding commenced at Toronto

**FACTUM OF THE APPLICANT
(Returnable April 29, 2020)**

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