

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.
(THE "APPLICANT")**

**SECOND REPORT TO THE COURT SUBMITTED BY
MNP LTD. IN ITS CAPACITY AS COURT APPOINTED MONITOR OF DEL
EQUIPMENT INC.**

FEBRUARY 24 , 2019

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- A. Initial Order dated October 22, 2019
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CONFIDENTIAL APPENDICES

- 1. Infinity Appraisal
- 2. Asset Purchase Agreement dated February 21, 2020
- 3. KERP Summary

INTRODUCTION

1. On October 22, 2019 (the “**Filing Date**”), the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) made an initial order (the “**Initial Order**”) granting DEL Equipment Inc. (“**DEL**” or the “**Company**”) relief pursuant to the *Companies’ Creditors Arrangement Act* (the “**CCAA**”). DEL’s CCAA proceedings are referred to herein as the “**CCAA Proceedings**”. A copy of the Initial Order is attached as **Appendix “A”**.
2. The Initial Order provided for, *inter alia*:
 - a. a stay of proceedings (the “**Stay of Proceedings**”) in favour of DEL until November 21, 2019 (the “**Stay Period**”);
 - b. the appointment of MNP Ltd. (“**MNP**” or the “**Monitor**”) as Monitor in the CCAA Proceedings;
 - c. approval of the appointment of a Chief Restructuring Officer (“**CRO**”);
 - d. approval of a \$1 million debtor-in-possession interim financing arrangement with Diesel Equipment Limited, the Company’s parent company and senior secured lender (“**Diesel**” or the “**DIP Lender**”);
 - e. approval of the commencement of a sale and investment solicitation process in respect of the Company (the “**SISP**”); and
 - f. approval for DEL to pay amounts owing for goods and services supplied prior to the Filing Date (the “**Pre-CCAA Payments**”), if in the opinion of DEL and with the consent of the Monitor, such payment is necessary to maintain the operations of the Company.
3. The Monitor filed a pre-filing report (the “**Pre-filing Report**”) with the Court prior to the commencement of the CCAA Proceedings. A copy of the Pre-filing Report, without appendices, is attached as **Appendix “B”**.
4. On November 19, 2019 the Company sought and obtained an order (the “**First Extension Order**”) which approved, among other things, additional DIP financing (the “**Additional**”).

DIP Financing”) to be provided by the DIP Lender and an extension of the Stay Period to and including February 28, 2020.

5. A first report of the Monitor (the “**First Report**”) was filed on November 14, 2019 in connection with the Company’s Motion returnable November 19, 2019. A copy of the First Report, without appendices, is attached as **Appendix “C”**.
6. The purpose of this report (the “**Second Report**”) is to provide the Court with information and as applicable, the Monitor’s comments and recommendations concerning:
 - a. the Company’s and Monitor’s activities since the First Report;
 - b. the results of the SISP that was conducted to solicit bids for DEL’s assets and business as a going concern;
 - c. the actual receipts and disbursement of the Company through February 9, 2020, as well as any material variances between the actual receipts and disbursements and the revised cash flow forecast (the “**Revised Cash Flow Forecast**”), which was appended to the First Report;
 - d. DEL’s revised cash flow forecast through May 31, 2020 (the “**Extended Cash Flow Forecast**”);
 - e. DEL’s request for an extension to the Stay Period to May 29, 2020; and
 - f. the Monitor’s support for, and observations in respect of DEL’s request that this Court grant Orders:
 - i. approving the transaction (the “**Transaction**”) contemplated by an Asset Purchase Agreement dated February 21, 2020 between DEL and Drive Products Inc (“**DPI**”) pursuant to which DPI has agreed to purchase certain assets (the “**Purchased Assets**” or “**DPI Assets**”) owned by DEL (the “**DPI APA**”);

- ii. upon completion of the Transaction, vesting DEL's right, title and interest in and to the Purchased Assets in DPI, free and clear of all interests, liens, charges and encumbrances, other than permitted encumbrances;
 - iii. approving the KERP (as detailed and defined below), *nunc pro tunc*;
 - iv. authorizing the Company, in consultation with the Monitor, to continue to explore opportunities with respect to the remaining branches and assets not included within the scope of the Transaction (the "**Residual Assets**");
 - v. extending the Stay of Proceedings to and including 11:59 p.m. (Toronto time) on May 29, 2020 (the "**Requested Stay Extension**"); and
 - vi. sealing the Confidential Appendices pending further Order of the Court.
7. The Second Report and other materials filed with the Court and all orders granted in connection with the CCAA Proceedings have been and will continue to be made available on the Monitor's website at <https://mnpdebt.ca/en/corporate/engagements/DELEquipment>.

DISCLAIMER AND TERMS OF REFERENCE

8. In preparing this Second Report, MNP has necessarily relied upon the Lucky Affidavits (defined below), the unaudited financial statements and other information supplied, and representations made, by certain management of the Company ("**Management**") and SRA (as defined in the Pre-filing Report). Although the Monitor has reviewed the information for reasonableness, MNP has not conducted an audit or otherwise attempted to verify the accuracy or completeness of the information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants of Canada Handbook. Accordingly, MNP expresses no opinion and does not provide any other form of assurance on or relating to the accuracy of any information contained in this Second Report, or otherwise used to prepare this Report.
9. MNP also bases its report on the Company's cash flow projections and underlying assumptions and notes that its review and commentary thereon were performed in accordance with the requirements set out in the Canadian Association of Insolvency and

Restructuring Professionals' Standards of Professional Practice No. 9 (Cash Flow Statement) (the "**Professional Standards**"). Certain of the information referred to in this Report consists of financial forecasts and/or projections. An examination or review of financial forecasts and projections and procedures, in accordance with standards set by the Chartered Professional Accountants of Canada, has not been performed. Future oriented financial information referred to in this Report was prepared based on estimates and assumptions provided by Management. Readers are cautioned that since financial forecasts and/or projections are based upon assumptions about future events and conditions that are not ascertainable, actual results will vary from the projections, and such variations could be material.

10. Capitalized terms not defined in this Report are used as defined in the affidavits of Douglas Lucky sworn October 20, 2019, November 13, 2019 and February 22, 2020 (the "**February 22nd Affidavit**", and collectively the "**Lucky Affidavits**") filed in support of the Applicant's application for relief under the CCAA and the current motion.
11. Unless otherwise stated, all monetary amounts contained in this Second Report are expressed in Canadian dollars.

ACTIVITIES OF THE MONITOR SINCE FILING DATE

12. Since the First Report, the Monitor has undertaken the following activities, *inter alia*:
 - a. updated the Monitor's Website as necessary;
 - b. responded to electronic messages sent to the Monitor's email at DELEquipment@mnp.ca and responded to other inquiries regarding the CCAA Proceedings;
 - c. attended several of the weekly meetings of DEL's senior management;
 - d. monitored DEL's actual cash flows in comparison to the Revised Cash Flow Forecast;

- e. corresponded and communicated with the Company and its advisors with respect to the SISP, including reviewing and providing comments in connection with the DPI APA;
- f. carried out a liquidation value analysis in contemplation of having to assess whether bids received are more beneficial to the creditors than a sale or disposition through a liquidation ;
- g. Requisitioned a desktop liquidation value appraisal of DEL’s equipment and certain of DEL’s inventory from Infinity Asset Solutions (the “**Infinity Appraisal**”, a copy of which is attached as **Confidential Appendix “1”**;
- h. through its legal counsel obtained opinions confirming the validity, subject to the usual assumptions and qualifications, of Diesel’s security as against DEL’s assets;
- i. prepared this Second Report of the Monitor; and
- j. otherwise monitoring and assisting the Company in the performance of its operations.

SALES AND INVESTMENT SOLICITATION PROCESS

13. The focus of the CCAA Proceedings has been for DEL, in consultation with its CRO and advisors, to carry out the SISP while, concurrently, providing a stabilized environment for DEL to maintain normal course operations. The purpose of the SISP was to identify and assess the strategic alternatives available to DEL to maximize the value of its business and assets (the “**DEL Assets**”) for its stakeholders.
14. DEL, with the assistance of its advisors and CRO, conducted the SISP in accordance with the provisions of the Initial Order. The SISP contemplated that parties which had signed a non-disclosure agreement (each a “**Prospective Bidder**”) would have to submit a non-binding Expression of Interest (“**EOI**”) by December 6, 2019 (the “**EOI Deadline**”). Prospective Bidders that had submitted an EOI could be selected to participate in a second phase of the SISP (the “**Phase 2 Parties**”) to conduct detailed due diligence. Binding offers were due by the Phase 2 Parties on January 31, 2020 (the “**Offer Deadline**”).

15. An overview of the implementation of the SISP is as follows:

- a. following the issuance of the Initial Order and approval of the SISP, DEL, under the direction of the CRO and with the assistance of its financial advisor, Grant Thornton LLP (the “**Financial Advisor**”) and the Monitor, began to solicit indications of interest from prospective parties;
- b. the Financial Advisor prepared an interest solicitation letter (i.e. a teaser) for DEL that was sent by the Financial Advisor and the CRO to one-hundred and twenty-five (125) potentially interested strategic and financial parties;
- c. the sale opportunity was advertised in the Globe & Mail (National Edition) on November 5, 2019 and in the Insolvency Insider e-mail publication on November 11, 2019, November 18, 2019, November 25, 2019 and December 2, 2019;
- d. twenty-six (26) parties signed non-disclosure agreements and were provided with a confidential information memorandum and given access to an online data room containing non-public information with respect to DEL and its business;
- e. over the course of the SISP, the Company and the CRO facilitated diligence requests from a number of the interested parties, including working with management to update the data room with current financial and other information, as required;
- f. DEL received four (4) EOIs by the EOI Deadline. None of the EOIs received contemplated a complete going concern transaction with respect to DEL’s entire business. The EOIs received contemplated either the acquisition of certain assets of DEL and consolidation of the assets into the parties’ existing business, or the acquisition of certain of DEL’s branches or specified assets;
- g. all of the Prospective Bidders that had submitted an EOI by the EOI Deadline were invited to participate in the second phase of the SISP as one of the Phase 2 Parties;
- h. DEL and the CRO facilitated additional due diligence requests for the Phase 2 Parties, including providing further site visits, additional information regarding

DEL, and participated in detailed discussions with certain of the Phase 2 Parties; and

- i. DEL received three (3) offers from Phase 2 Parties by the Offer Deadline, all of which were similar to the EOIs received from the same parties in that none offered a going concern transaction for DEL's entire business.
16. DEL, its advisors and the Monitor reviewed the offers submitted by the Phase 2 Parties by the Offer Deadline. In reviewing the offers received, DEL, with agreement of the Monitor, determined that the offer from DPI was the superior offer in that it would provide for the greatest value to DEL's stakeholders and could preserve employment for certain of DEL employees (the "**DPI Offer**"). DEL and its advisors held an in-person meeting with DPI to discuss its offer and proposed improvements. On February 10, 2020, DEL and DPI entered into an exclusivity agreement (the "**Exclusivity Agreement**") to continue negotiating the terms and conditions of a definitive transaction as between DEL and DPI for the DPI Assets.
 17. The Exclusivity Agreement, including extensions made to the Exclusivity Agreement, permitted DEL to continue to market the Residual Assets.
 18. DEL, in consultation with its advisors determined that it should proceed with the Transaction and finalize the DPI APA.

The Transaction

19. The key provisions of the DPI APA, a unredacted copy of which is attached hereto as **Confidential Appendix 2** (a redacted version is attached to the Motion Record as **Tab 2d**), are as follows:
 - a. The Purchased Assets include:
 - i. all equipment and personal property owned by DEL and located at DEL's Newmarket, Ontario premises (the "**Purchased Equipment**"), subject to the exclusions noted below;

- ii. DEL's benefit in (i) the Ford Converter Agreement; and (ii) certain contracts and customer purchase orders ("**Assumed Contracts**");
 - iii. certain of DEL's inventories of products and merchandise, including raw materials, supplies, packaging, parts, components and assemblies ("**Purchased Inventory and Supplies**");
 - iv. DEL's rights, interests and benefits (through ownership, licensing or otherwise) in the Intellectual Property used in the business or to which DEL has rights;
 - v. the goodwill of DEL's business;
 - vi. all warranty rights against manufacturers, contractors or suppliers relating to the DPI Assets, to the extent the foregoing are transferable to DPI; and
 - vii. all of the books and records of DEL associated to the DPI Assets.
- b. The Transaction does not include, *inter alia*, the following:
- i. all cash, bank balances, tax refunds and receivables relating to periods ending on or before the Closing Date;
 - ii. all of DEL's accounts receivables, including: (i) intercompany receivables; and (ii) any receivable owing under or in connection with Gin-Cor Agreements and Claims; and
 - iii. equipment and most of the inventory and supplies located at DEL's five (5) other branches;
- c. The DPI Assets are being acquired on an "as is, where is" basis;
- d. The Purchase Price is comprised of: (i) a Base Purchase Price; (ii) Purchased Equipment Purchase Price; (iii) Purchased Inventory and Supplies Purchase Price; and (iv) a payment in respect of prepayments and deposited funded by DEL under assumed supplier purchase orders;

- e. DPI has paid a deposit representing approximately 8.5% of the purchase price
- f. the Purchased Inventory and Supplies Purchase Price is determined as of December 31, 2019 based on the Purchased Inventory and Supplies specifically listed in the DPI APA. There is a mechanism to adjust this part of the purchase price to account for changes in the value based on a physical count of the Purchased Inventory and Supplies that is to occur following the close of business that is no later than two days prior to the Closing Date;
- g. The balance of the purchase price, after deducting the deposit, is payable in cash on closing;
- h. In addition to the Purchase Price, DPI is to assume certain liabilities and obligations in respect of, among other things, the DPI Assets arising on or after the Closing Date;
- i. DPI and DEL have concurrently agreed to a one-year transition services agreement whereby DPI agrees, at the written request of DEL, to provide services in respect of collecting DEL's accounts receivable and completing on behalf of DEL work in process under a purchase order or agreement that is an excluded customer purchase order from the Transaction;
- j. The Transaction is conditional on, among other things, the issuance of an order of this Court approving the Transaction and vesting the DPI Assets in and to the purchaser; and
- k. At least fourteen (14) days prior to the Closing Date, DPI shall make a written offer of employment effective as of the Closing Date and contingent upon Closing, to certain of DEL's employees listed in the DPI APA

Recommendation

- 20. The Monitor has considered the factors set out in Section 36(3) of the CCAA with respect to the granting of a Court order authorizing the DPI APA and completing the sale of the

DPI Assets to DPI. The Monitor respectfully recommends that the Court make the order sought by the Company for the following reasons:

- a. the SISP was carried out in accordance with the terms of the Initial Order and provided all prospective bidders with the opportunity to submit offers for DEL's assets;
- b. the Transaction, coupled with the sale of the Residual Assets, will maximize the value of the DEL Assets;
- c. by finding a strategic purchaser in DPI, DEL has realized going concern value for its Newmarket branch, which branch represents a significant part of DEL's overall business;
- d. the Purchased Inventory and Supplies Purchase Price exceeds the estimated forced liquidation value estimated per the Infinity Appraisal and the Purchased Equipment Purchase Price is greater than the value DEL would likely realize on the Purchased Equipment after deducting liquidation fees and expenses;
- e. selling the Newmarket branch as a going concern is favourable as:
 - i. employment for certain of DEL's employees will be preserved;
 - ii. supplier relationships may be preserved; and
 - iii. customers will have a continued source of supply;
- f. the transition agreement provides a mechanism for completion of any of DEL's work in process in respect of any purchase order or agreement that is excluded from the Transaction and to have DPI service the warranty claims in respect of its workmanship for a period of a year from the date of delivery to the end customer. This may enhance recovery from the Residual Assets, particularly the accounts receivable, as it reduces the likelihood of set-offs or damages being claimed on account of DEL's inability to complete pending orders;

- g. Diesel, as DIP Lender and principal secured creditor, is supportive of the Transaction; and
- h. the Monitor does not believe that further time spent marketing the DPI Assets will result in a superior transaction.

Sealing Order

21. The Second Report includes the Infinity Appraisal and the unredacted version of the DPI APA, both of which contain commercially sensitive information inasmuch as: (i) the closing of the Transaction is pending; and (ii) the information in the Infinity Appraisal may adversely impact on the realizations of the Residual Assets. The unredacted DPI APA also includes employee and customer information. Given the foregoing, the Monitor recommends that the Court order the sealing of the unredacted DPI APA (Confidential Appendix “2”) and the Infinity Appraisal (Confidential Appendix “1”).

RESIDUAL ASSETS

22. The Transaction is only for the DPI Assets, and DEL would retain its interest in the Residual Assets such that it can then seek to realize on same in order to maximize value for DEL’s stakeholders. DEL is continuing to consider its options with respect to the Residual Assets.
23. DEL is seeking authority to continue to explore opportunities for the sale of the Residual Assets, and with 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 provided that DEL shall seek the Court’s approval for any Residual Asset Transaction in excess of such amount.
24. To date, DEL has kept the Monitor informed of its activities under the SISF and have consulted the Monitor in respect of the negotiations relating to the Transaction. Accordingly, the Monitor recommends the Court authorize DEL to continue to explore opportunities for the sale of the Residual Assets in the manner requested.

KEY EMPLOYEE RETENTION PLAN

25. As per the February 22nd Affidavit, subsequent to the issuance of the First Extension Order, DEL began to experience an erosion of confidence of certain of its employees. To prevent the loss of certain specialized and skilled employees, which were considered by DEL and the CRO to be critical to the ongoing operations, and encourage the continued participation of senior and operational management and other key employees during the CCAA Proceedings, DEL established a key employee retention program (the “**KERP**”). The KERP, which was established on or around January 19, 2020, was designed to encourage certain selected employees (the “**Eligible Employees**”) to continue their employment with DEL through the completion of a transaction arising from the SISP.
26. Pursuant to the terms of the KERP, the Eligible Employees are entitled to receive a specified amount in two installments, with the first instalment being paid following acceptance of the KERP by the Eligible Employee (the “**First KERP Payment**”) and the second installment payable if the Eligible Employee remains employed by DEL until the closing of a transaction resulting from the SISP (the “**Second KERP Payment**”). An Eligible Employee forfeits their entitlement to the Second KERP Payment and is required to repay the First KERP Payment if the Eligible Employee resigns or is terminated with cause prior to the closing of a transaction pursuant to the SISP. The Eligible Employee is entitled to a *pro rata* amount of the Second KERP Payment if their employment is terminated without cause prior to the closing of a transaction pursuant to the SISP.
27. As detailed in the February 22nd Affidavit, given a high rate of unplanned employee departures during the ongoing SISP and restructuring efforts, the ability for DEL’s skilled workers to seek alternative employment or opportunities with competitors, and the importance of DEL’s skilled and experienced workers to DEL’s operations, DEL, in consultation with its advisors and the Monitor, determined that it was in the best interest of DEL’s stakeholders to immediately implement the KERP and issue the First KERP Payments. The First KERP Payments totalled approximately \$45M.
28. The Second KERP Payments for the Eligible Employees, which would total a maximum of approximately \$170M (for an aggregate KERP amount totalling \$215M inclusive of the First KERP Payments), is subject to DEL obtaining the Court’s approval of the KERP.

29. DEL, having already entered into agreements with the Eligible Employees with respect of the KERP and having already made the First KERP Payments, is therefore seeking the *nunc pro tunc* approval of the KERP.
30. A copy of the KERP is appended as **Confidential Appendix “3”**. As the KERP contains commercially sensitive and personal information, the proposed Order sought by DEL includes a provision that Confidential Appendices be sealed and not form part of the court record pending further Order of the Court. The Monitor believes that it is appropriate to seal this exhibit as this type of information is typically sealed in order to avoid disruption to the debtor company and to protect the beneficiaries of the KERP. The Monitor does not believe that any stakeholder will be prejudiced if the KERP information is sealed.
31. The Monitor supported the creation and implementation of the KERP as:
- a. it has provided and will continue to provide stability to DEL’s business and facilitate the successful completion of a sale transaction under the SISP and/or preserve the value of realizable assets by encouraging key employees to remain with the Company;
 - b. Eligible Employees are considered to be key to a sale transaction and their participation will assist in maximizing realizations for the benefit of DEL’s stakeholders;
 - c. the KERP is supported by Diesel; and
 - d. the terms of the KERP and the quantum of the payouts are reasonable both in the circumstances and when compared to other key employee retention and incentive plans approved by this Court in the past.

CASH FLOW VARIANCE ANALYSIS

32. The Monitor has undertaken a weekly review of DEL’s actual cash flows in comparison to those contained in the Revised Cash Flow Forecast. A summary of DEL’s actual cash receipts and disbursements as compared to the Revised Cash Flow Forecast for the fourteen weeks ended February 9, 2020 (the “**Monitored Period**”) is summarized below:

DEL Equipment Inc.			
Actual Receipts and Disbursements			
For the fourteen week period ending February 09, 2020			
(Unaudited, in \$'000s CAD)			
	Cumulative Fourteen-Week Period Ended February 9, 2019		
	Actual	Forecast	Variance (\$)
Receipts	10,596	10,571	25
Disbursements			
Merchandise Vendors	5,425	8,245	2,820
Non-Merchandise Vendors	1,527	1,956	429
Payroll	1,908	1,730	(179)
Tax	767	223	(544)
Total Disbursements	9,627	12,153	2,526
Operating Net Cash Flow	969	(1,583)	2,552
Administrative Fees	444	615	171
Regina Assets Sale	(130)	(130)	-
Snow Equipment Sale	(38)	(38)	-
Net Cash Flow	693	(2,029)	2,722
Beginning Cash	4,223	4,223	-
Net Cash Flow	693	(2,029)	2,722
Interim Financing/(repayment)	-	-	-
Ending Cash	4,916	2,194	2,722

33. Overall, DEL realized a favorable net cash flow variance of approximately \$2.722 MM during the Monitored Period. The key components of the variance are as follows:

- a. Receipts: Actual receipts were in line with the Revised Cash Flow Forecast and a minor favourable variance of only \$25M has been reported.
- b. Merchandise Vendors: The \$2.820MM favorable variance in merchandise vendor purchases is largely attributable to DEL being able to fulfill a greater than anticipated portion of customer orders from existing inventory. DEL also anticipated it was going to have to make Pre-CCAA Payments to certain vendors in order to secure delivery of post-CCAA goods and services. During the

Monitored Period, DEL had a favourable variance of approximately \$576M in its Pre-CCAA Payments.

- c. Non-Merchandise Vendors: The reduction is primarily on account of non-payment/ short payment of rent at the branches outside of Ontario, each owned by Diesel, and lower than anticipated indirect costs. A significant portion of the \$429M variance is timing in nature as DEL intends on paying post-CCAA rent to Diesel.
- d. Payroll: Payroll cost is approximately 10% greater than projected, with the variance partially being attributable to the First KERP Payment, which was originally not contemplated in the Revised Cash Flow Forecast;
- e. Sales Tax: The approximately \$544M unfavourable variance in tax payments is attributable to the favourable variance in merchandise and non-merchandise vendor payments. DEL has lower than anticipated input tax credits to apply against HST collected, and consequently, has had larger than projected tax remittances; and
- f. Administrative Fees: \$171M favourable variance is largely permanent in nature, attributable to lower than projected payments to the Monitor's legal counsel, payment of the Financial Advisor's invoices by related parties to DEL and a contingency created for payment to other professionals has not been utilized.

EXTENDED CASH FLOW FORECAST

34. As described above, DEL is requesting that the stay of proceedings be extended to allow it to complete the Transaction and market the Residual Assets. DEL, with the assistance of the Financial Advisor, has extended the cash flow projection through to May 31, 2020 (the "**Extended Cash Flow Forecast Period**"). A copy of the Extended Cash Flow Forecast including the notes and assumptions is attached hereto as **Appendix "D"**.

35. A summary of the Extended Cash Flow Forecast is provided in the following table:

DEL Equipment Inc.
Projected Statement of Extended Cash Flow Forecast
For the period ending May 31, 2020
(Unaudited, in \$'000s CAD)

Week Beginning	Total 16 Weeks
Receipts	8,991
Disbursements	
Merchandise Vendors	3,795
Non-Merchandise Vendors	1,460
Payroll	1,244
Tax	411
Total Disbursements	6,910
Operating Net Cash Flow	2,081
Administrative Fees	594
Net Cash Flow	1,487
Opening cash balance	4,917
Net Cash Flow	1,487
Interim Financing/(repayment)	-
Closing cash balance	6,404

36. During the Extended Cash Flow Forecast Period, the Company projects a net cash flow surplus of \$1.487MM and have a remaining cash balance of \$6.404MM at the end of the Extended Cash Flow Forecast Period.

37. The Monitor notes the following with respect to the Extended Cash Flow Forecast:

- a. Receipts: DEL continues to assume its average collection period to be 60 days, which is consistent with its past experience. However, DEL is projecting reduced sales activity as compared with the Revised Cash Flow Forecast. The reduced sales forecast is based on DEL's expectation that it will only fulfill existing orders and

not take new orders during the period of the Extended Cash Flow as they plan to focus efforts on realizing on the Residual Assets.

Although the Transaction is likely to close during the Extended Cash Flow Period, the proceeds from sale of the DPI Assets are not included in Extended Cash Flow Forecast as to avoid publicly disclosing the purchase price.

DEL assumes that any sale of the Residual Assets will be consummated after the Extended Cash Flow Forecast Period.

- b. Merchandise Vendors (Direct Materials): The anticipated reduction in expected sales will result in a corresponding reduction in expected material purchases as material orders will be restricted to materials needed for the fulfilment of the existing orders. The Extended Cash Flow Forecast Period reflects a reduction in payments to Merchandise Vendors from weekly average of \$515M in February to \$458M in March to \$84M in April and eventually Nil in May 2020.
- c. Non-Merchandise Vendors: Rent to Gin-Cor in respect of the Newmarket premises is presently projected to be paid until April 30, 2020, to coincide with the outside date for closing of the Transaction. A reduction is proposed in other indirect costs as well in line with the reduction in operations.
- d. Payroll: As DEL is focusing on fulfilling existing orders and selling inventory on hand, there will be a reduced labour requirement and cost.
- e. Second KERP Payments: As detailed in KERP section in paragraphs 25 to 31, the Second KERP Payments for the Eligible Employees, which would total approximately \$170,000, are assumed to be paid in the week of March 30, 2020. The Second KERP Payments are included under Payroll disbursements;
- f. DEL has not required the utilization of the DIP Financing and is projected to have enough cash and operational cash flow during the Extended Cash Flow Period such that no use of the DIP Financing is expected;

38. Management's Representation Letter and the Monitor's report to the Court regarding the adequacy of the Extended Cash Flow Forecast, are attached hereto as **Appendix "E" and "F"**.
39. The Monitor has reviewed the Extended Cash Flow Forecast to the standard required of a Court-Appointed Monitor by subsection 23(1)(b) of the CCAA and in accordance with the Professional Standards. Based on the Professional Standards, the Monitor's review of the Extended Cash Flow Forecast consisted of enquiries, analytical procedures and discussions related to information supplied to us by Management. Since hypothetical assumptions need not be supported, the procedures with respect to those assumptions were limited to evaluating whether they were consistent with the purpose of the forecast. The Monitor has also reviewed the support provided by Management for the probable assumptions and the preparation and presentation of the forecast.
40. Based on the Monitor's review, nothing has come to its' attention that causes it to believe that, in all material respects:
- a. The hypothetical assumptions are not consistent with the purpose of the forecast;
 - b. As at the date of the Second Report, the probable assumptions developed by management are not suitably supported and consistent with the plans of the Company or do not provide a reasonable basis for the forecast, given the hypothetical assumptions; and
 - c. The Extended Cash Flow Forecast does not reflect the probable and hypothetical assumptions.
41. Since the Extended Cash Flow Forecast is based on assumptions about future events, actual results will vary from the information presented even if the hypothetical assumptions occur, and the variations may be material. Accordingly, the Monitor expresses no assurance as to whether the results shown in the Extended Cash Flow Forecast will be achieved. The Monitor also expresses no opinion or other form of assurance with respect to the accuracy of any financial information presented in this Second Report or relied upon by it in preparing this Second Report.

42. The Extended Cash Flow Forecast has been prepared solely for the purpose described in the notes to the Extended Cash Flow Forecast and readers are cautioned that it may not be appropriate for other purposes.

OTHER MATTERS

43. As noted in the Monitor's pre-filing report to these CCAA Proceedings, DEL has been involved in a dispute regarding a payment made in August of 2019 to Gin-Cor Industries Inc. ("**Gin-Cor**") by Mack Defense LLC (the "**Disputed Payment**") on account of a series of DEL invoices issued on or around June 6, 2019. The Disputed Payment has given rise to a legal action by DEL as against Gin-Cor. (the "**Gin-Cor Litigation**")

44. DEL's legal counsel and legal counsel to Gin-Cor have established a litigation protocol with respect of the Gin-Cor Litigation (the "**Litigation Protocol**") outlining the timeline and procedure to resolve the Disputed Payment. The Litigation Protocol contemplates that this Court will determine certain issues relating to the Payment Dispute at a hearing to be held the week of May 4, 2020.

45. While the Monitor has not been involved with the Gin-Cor Litigation or the discussions regarding the creation of the Litigation Protocol, DEL has made the Monitor aware of the Litigation Protocol. The Monitor does not object to the Litigation Protocol.

EXTENSION OF THE STAY OF PROCEEDINGS

46. The current stay period expires on February 28, 2020, which is the date by which it was anticipated that the Court would have approved a Successful Bid.

47. The Monitor supports the Company's request for an extension of the Stay of Proceedings from February 28, 2020 to May 29, 2020 for the following reasons:

- a. the Monitor is of the view that the Company has acted and is continuing to act in good faith and with due diligence;
- b. the extension will provide the opportunity to complete the Transaction, if approved, and to market the Residual Assets;

- c. the Extended Cash Flow Forecast reflects that the Company is projected to have sufficient funding to continue to operate in the normal course through the proposed stay extension period;
- d. Diesel, the principal economic stakeholder in these proceedings, supports the stay extension;
- e. the other secured creditors will be served with the Company's motion record and will have the opportunity to advise of any objections that they may have; and
- f. no creditor will be materially prejudiced if the extension is granted.

MONITOR'S RECOMMENDATIONS

48. Accordingly, the Monitor respectfully recommends that this Honourable Court make an order granting the relief details in paragraph 6(f) of this Report.

All of which is respectfully submitted this 24th day of February 2020.

**MNP Ltd., in its capacity as
Court-Appointed Monitor of
DEL Equipment Inc.**



**Sheldon Title, CPA, CA, CIRP, LIT
Senior Vice-President**

Appendix "A"

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE) TUESDAY, THE 22ND
JUSTICE HAINEY) DAY OF OCTOBER, 2019

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

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

Applicant



INITIAL ORDER

THIS APPLICATION, 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 at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Douglas Lucky sworn October 20, 2019, and the Exhibits thereto (the "**Initial Affidavit**"), and the pre-filing report of MNP Ltd. in its capacity as the proposed Monitor of the Applicant (the "**Monitor**"), and on hearing the submissions of counsel for the Applicant, the Monitor, Diesel Equipment Limited, and those other parties present as indicated on the counsel sheet, and on reading the consent of MNP Ltd. to act as the Monitor,

SERVICE

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

APPLICATION

2. THIS COURT ORDERS AND DECLARES that the Applicant is a company to which the CCAA applies.

PLAN OF ARRANGEMENT

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

POSSESSION OF PROPERTY AND OPERATIONS

4. THIS COURT ORDERS that the Applicant shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Applicant shall continue to carry on business in a manner consistent with the preservation of its business (the "**Business**") and Property. The Applicant is authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. THIS COURT ORDERS that the Applicant shall be entitled to continue to utilize the central cash management system currently in place as described in the Initial Affidavit or replace it with another substantially similar central cash management system (the "**Cash Management System**") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to

the use or application by the Applicant of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicant, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

6. THIS COURT ORDERS that the Applicant shall be entitled to continue to use the corporate credit cards in place with Bank of Montreal and shall make full repayment of all amounts outstanding thereunder, including with respect to any pre-filing charges.

7. THIS COURT ORDERS that the Applicant shall be entitled but not required to pay the following expenses and satisfy the following obligations whether incurred prior to or after this Order:

- (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 Applicant 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;
- (d) amounts owing by the Applicant to insurance premium financiers as necessary to ensure continued coverage for the Applicant under its existing insurance policies, including director and officer insurance; and

- (e) amounts owing for goods or services supplied to the Applicant prior to the date of this Order if, in the opinion of the Applicant and with the consent of the Monitor, such payment is necessary to maintain the operations of the Business.

8. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, the Applicant shall be entitled but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order and any other Order of this Court, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance and including payments to entities who provide insurance premium financing), maintenance and security services; and
- (b) payment for goods or services actually supplied to the Applicant following the date of this Order.

9. THIS COURT ORDERS that the Applicant shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and

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

10. THIS COURT ORDERS that, except as specifically permitted herein, the Applicant is hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant to any of its creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business or pursuant to this Order of any other Order of this Court.

RESTRUCTURING

11. THIS COURT ORDERS that the Applicant shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as hereinafter defined), have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its Business or operations, and to dispose of redundant or non-material assets not exceeding \$650,000 in any one transaction or \$1,000,000 in the aggregate;
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate;
- (c) disclaim such of its arrangements or agreements of any nature whatsoever with whomsoever, whether oral or written, as the Applicant deems appropriate, in accordance with Section 32 of the CCAA; and
- (d) pursue all avenues of refinancing or restructuring of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

all of the foregoing to permit the Applicant to proceed with an orderly restructuring of the Business (the “**Restructuring**”).

12. THIS COURT ORDERS that until a real property lease is disclaimed in accordance with the CCAA, the Applicant shall pay, without duplication, all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease, but, for greater certainty, excluding accelerated rent or penalties, fees or other charges arising as a result of the insolvency of the Applicant or the making of this Order) or as otherwise may be negotiated between the Applicant and landlord from time to time (“**Rent**”), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

13. THIS COURT ORDERS that the Applicant shall provide each of the relevant landlords with notice of the Applicant’s intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicant’s entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicant, or by further Order of this Court upon application by the Applicant on at least two (2) days notice to such landlord and any such secured creditors. If the Applicant disclaims or resiliates the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer or resiliation of the lease shall be without prejudice to the Applicant’s claim to the fixtures in dispute.

14. THIS COURT ORDERS that if a notice of disclaimer or resiliation is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicant and the Monitor five (5) business

days' prior written notice, and (b) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicant in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY

15. THIS COURT ORDERS that until and including November 21, 2019, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

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

NO INTERFERENCE WITH RIGHTS

17. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, lease, sublease, licence or permit in favour of or held by the Applicant (in

each case whether written or oral), except with the written consent of the Applicant and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

18. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all truck chassis, truck equipment and parts suppliers, computer software, communication and other data services, centralized banking services, payroll and benefits services, insurance, transportation, utility, maintenance, security or other services to the Business or the Applicant, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicant, and that the Applicant shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicant in accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider and each of the Applicant and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

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

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

20. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicant with respect to any claim

against the directors or officers that arose before the date hereof and that relates to any obligation of the Applicant whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligation.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

21. THIS COURT ORDERS that the Applicant shall indemnify its current and future directors and officers (the “**D&Os**”) against obligations and liabilities that they may incur as directors or officers of the Applicant after the commencement of the within proceedings, including, without limitation, in respect of any failure to pay wages and source deductions, vacation pay, or other payments of the nature referred to in subparagraphs 7(a), 9(a), 9(b) or 9(c) of this Order except to the extent that, with respect to any director or officer, the obligation or liability was incurred as a result of such director’s or officer’s gross negligence or wilful misconduct.

22. THIS COURT ORDERS that the D&Os of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the “**Directors’ Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$1,200,000, as security for the indemnity provided in paragraph 21 of this Order. The Directors’ Charge shall have the priority set out in paragraphs 44 and 46 herein.

23. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors’ Charge, and (b) the D&Os shall only be entitled to the benefit of the Directors’ Charge to the extent that they do not have coverage under any directors’ and officers’ insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 21 of this Order.

APPROVAL OF CHIEF RESTRUCTURING OFFICER ENGAGEMENT

24. THIS COURT ORDERS that:

- (a) the engagement agreement dated as of October 18, 2019 pursuant to which the Applicant has engaged 2255987 Ontario Limited operating as Strategic Results Advisors (“**SRA**”) to provide the services of Douglas Lucky to act as chief

restructuring officer to the Applicant (the “**CRO**”), a copy of which is attached as Exhibit “K” to the Initial Affidavit (the “**CRO Engagement Letter**”), and the appointment of the CRO pursuant to the terms thereof is hereby approved, including, without limitation, the payment of the fees and expenses contemplated thereby, including the success fee stipulated therein (the “**Success Fee**”);

- (b) the CRO shall not be or be deemed to be a director of the Applicant;
- (c) the CRO, in its capacity as an officer of the Applicant, shall be entitled to the benefit of the indemnity provided in paragraph 21 hereof and the Directors’ Charge;
- (d) neither SRA nor the CRO shall, as a result of the performance of their respective obligations and Duties under the CRO Engagement Letter in accordance with the terms of the CRO Engagement Letter, be deemed to be in Possession (as defined below) of any of the Property within the meaning of any Environmental Legislation (as defined below); provided, however, if SRA or the CRO is nevertheless later found to be in Possession of any Property, then SRA or the CRO, as the case may be, shall be deemed to be a person who has been lawfully appointed to take, or has lawfully taken, possession or control of such Property for the purposes of section 14.06(1.1)(c) of the *Bankruptcy and Insolvency Act* (“**BIA**”) and shall be entitled to the benefits and protections in relation to the Applicant and such Property as provided by section 14.06(2) of the BIA to a “trustee” in relation to an insolvent person and its property;
- (e) SRA and the CRO shall not have any liability with respect to any losses, claims, damages or liabilities, of any nature or kind, to any person from and after the date of this Order except to the extent such losses, claims, damages or liabilities result from the gross negligence or willful misconduct on the part of SRA or the CRO, provided further that in no event shall the liability of the CRO exceed the quantum of fees paid to SRA and the CRO;
- (f) no action or other proceeding shall be commenced directly, or by way of counterclaim, third party claim or otherwise, against or in respect of SRA and the

CRO, and all rights and remedies of any Person against or in respect of them are hereby stayed and suspended, except with the written consent of the CRO or with leave of this court on notice to the Applicant, the Monitor and the CRO. Notice of any such motion seeking leave of this Court shall be served upon the Applicant, the Monitor and the CRO at least seven (7) days prior to the return date of any such motion for leave; and

- (g) the obligations of the Applicant to SRA and the CRO pursuant to the CRO Engagement Letter shall be treated as unaffected and may not be compromised in any Plan or proposal filed under the BIA in respect of the Applicant.

APPOINTMENT OF MONITOR

25. THIS COURT ORDERS that MNP Ltd. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicant with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

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

- (a) monitor the Applicant's receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) assist the Applicant, to the extent required by the Applicant, in its dissemination, to the DIP Lender and its counsel of financial and other information as agreed to between the Applicant and the DIP Lender which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender;

- (d) advise the Applicant in its preparation of the Applicant's cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on the terms agreed to by the Applicant and the DIP Lender;
- (e) advise the Applicant in its development of the Plan and any amendments to the Plan;
- (f) assist the Applicant, to the extent required by the Applicant, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicant to the extent that is necessary to adequately assess the Applicant's business and financial affairs or to perform its duties arising under this Order;
- (h) assist the Applicant with respect to the consideration, development and implementation of any Restructuring initiatives, including with respect to the Sale Process (as defined below);
- (i) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable, including the services or employees of its affiliates, respecting the exercise of its powers and performance of its obligations under this Order;
- (j) carry out such duties and responsibilities as set out in this Order, including in respect of the Sale Process; and
- (k) perform such other duties as are required by this Order or by this Court from time to time.

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

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

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

30. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

31. THIS COURT ORDERS that the Monitor, counsel to the Monitor, counsel to the Applicant, the financial advisor to the Applicant and the CRO (as defined below) shall be paid their reasonable fees and disbursements, in each case on the terms set forth in their respective

engagement letters and at their standard rates and charges and whether incurred prior to, on or after the date hereof, by the Applicant as part of the costs of these proceedings. The Applicant is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor, counsel for the Applicant, the financial advisor for the Applicant and the CRO in accordance with the payment terms agreed between the Applicant and such parties and, in addition, the Applicant is hereby authorized to pay to the Monitor, counsel to the Monitor, counsel to the Applicant, the financial advisor to the Applicant and the CRO retainers in the amounts agreed with such parties, to be held by each of them as security for payment of their respective fees and disbursements outstanding from time to time.

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

33. THIS COURT ORDERS that the Monitor, counsel to the Monitor, the Applicant's counsel, the Applicant's financial advisor and the CRO shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$400,000, as security for their professional fees and disbursements (but excluding the Success Fee) incurred both before and after the granting of this Order at the standard rates and charges of the Monitor, such counsel and advisors and the CRO, subject to the terms set forth in their respective engagement letters, and the CRO shall be entitled to the benefit of and is hereby granted a charge (the "**Success Fee Charge**") on the Property, as security for the Success Fee. The Administration Charge and the Success Fee Charge shall have the priority set out in paragraphs 44 and 46 hereof.

SALE PROCESS

34. THIS COURT ORDERS that the Sale Process (as defined in the Initial Affidavit and appended as Exhibit "L" to the Initial Affidavit) be and is hereby approved.

35. THIS COURT ORDERS that the Applicant and its advisors (including, without limitation, the CRO), and the Monitor and its advisors, are authorized and directed to commence the Sale Process in accordance with its terms. The Applicant, the CRO and the Monitor are hereby authorized and directed to perform their respective obligations in connection with the

Sale Process and to do all things reasonably necessary in relation to such obligations, subject to the terms of the Sale Process.

36. THIS COURT ORDERS that the Applicant, the CRO and the Monitor and their respective affiliates, partners, directors, employees, counsel, advisors, agents, shareholders and controlling persons shall have no liability with respect to any and all losses, claims, damages or liability of any nature or kind to any person in connection with or as a result of the Sale Process, except to the extent such losses, claims, damages or liabilities result from the gross negligence or wilful misconduct of such party in performing its obligations under the Sale Process, as determined by this Court.

37. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Applicant, the CRO and the Monitor are hereby authorized and permitted to disclose and transfer to each potential bidder (the “**Bidders**”) and to their representatives (the “**Representatives**”), if requested by such Bidders, personal information of identifiable individuals, including, without limitation, all human resources and payroll information in the Applicant’s records pertaining to the Applicant’s past and current employees, but only to the extent desirable or required to negotiate or attempt to complete a sale or other strategic transaction as contemplated by the Sale Process (a “**Sale**”). Each Bidder or Representative to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation for the purpose of effecting a Sale, and if it does not complete a Sale, shall return all such information to the Applicant, or in the alternative destroy all such information and provide confirmation of its destruction if requested by the Applicant or the Monitor. Any Bidder under a Successful Bid (as defined in the Sale Process) (a “**Successful Bidder**”) shall maintain and protect the privacy of such information and, upon closing of the transaction contemplated in any Successful Bid, shall be entitled to use the personal information provided to it that is related to the Property acquired pursuant to the Sale Process in a manner that is in all material respects identical to the prior use of such information by the Applicant, and shall return all other personal information to the Applicant or the Monitor, or ensure that all other personal information is destroyed and provide confirmation of its destruction if requested by the Applicant or the Monitor.

DIP FINANCING

38. THIS COURT ORDERS that the Applicant is hereby authorized and empowered to obtain and borrow under a credit facility from Diesel Equipment Limited (the “**DIP Lender**”) in order to finance the Applicant’s working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed \$1 million (plus accrued and unpaid interest) unless permitted by further Order of this Court.

39. THIS COURT ORDERS THAT such credit facility shall be on the terms and subject to the conditions set forth in the DIP Financing Term Sheet between the Applicant and the DIP Lender dated as of October 21, 2019 (the “**DIP Credit Agreement**”), filed.

40. THIS COURT ORDERS that the Applicant is hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the “**Definitive Documents**”), as are contemplated by the DIP Credit Agreement or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicant is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the DIP Credit Agreement and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

41. THIS COURT ORDERS that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the “**DIP Lender’s Charge**”) on the Property, which charge shall not exceed the aggregate amount owed to the DIP Lender under the DIP Credit Agreement and the other Definitive Documents. The DIP Lender’s Charge shall have the priority set out in paragraphs 44 and 46 hereof.

42. THIS COURT ORDERS that, notwithstanding any other provision of this Order:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender’s Charge or any of the Definitive Documents;

- (b) upon the occurrence of an event of default under the DIP Credit Agreement, the other related Definitive Documents or the DIP Lender's Charge, the DIP Lender, may, subject to the provisions of the DIP Credit Agreement with respect to the giving of notice or otherwise, and in accordance with the DIP Lender's Charge, as applicable, cease making advances to the Applicant, make demand, accelerate payment and give other notices; provided that, the DIP Lender must apply to this Court on five (5) business days' prior written notice (which may include the service of materials in connection with such an application to this Court) to the Applicant and the Monitor, to enforce against or exercise any other rights and remedies with respect to the Applicant or any of the Property (including to set off and/or consolidate any amounts owing by the DIP Lender to the Applicant against the obligations of the Applicant to the DIP Lender under the DIP Credit Agreement, the other related Definitive Documents or the DIP Lender's Charge, to appoint a receiver, receiver and manager or interim receiver, or to seek a bankruptcy order against the Applicant and to appoint a trustee in bankruptcy of the Applicant; and
- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant or the Property.

43. THIS COURT ORDERS AND DECLARES that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicant under the CCAA, or any proposal filed by the Applicant under the BIA with respect to any advances made under the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

44. THIS COURT ORDERS that the priorities of the Administration Charge, the Directors' Charge, the DIP Lender's Charge and the Success Fee Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$400,000);

Second – Directors’ Charge (to the maximum amount of \$1,200,000);

Third – DIP Lender’s Charge; and

Fourth – Success Fee Charge (to the maximum amount of \$100,000).

45. THIS COURT ORDERS that the filing, registration or perfection of the Administration Charge, the Directors’ Charge, the DIP Lender’s Charge and the Success Fee Charge (collectively, the “**Charges**”) shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

46. THIS COURT ORDERS that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, “**Encumbrances**”) in favour of any Person, except for any secured creditor of the Applicant who did not receive notice of the application for this Order.

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

48. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicant also obtains the prior written consent of the Monitor, the DIP Lender and the beneficiaries of the applicable Charges, or further Order of this Court.

49. THIS COURT ORDERS that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the “**Chargees**”) thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of

creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the DIP Credit Agreement or the Definitive Documents shall create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicant entering into the DIP Credit Agreement, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the Applicant pursuant to this Order, the DIP Credit Agreement or the Definitive Documents and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

50. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicant’s interest in such real property leases.

SERVICE AND NOTICE

51. THIS COURT ORDERS that the Monitor shall (i) without delay, publish in The Globe and Mail (National Edition) a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicant of more than \$1,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it

publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

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

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

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

55. THIS COURT ORDERS that the Applicant and the Monitor and their counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably

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

56. THIS COURT ORDERS that, except with respect to any motion to be heard on the Comeback Date (as defined below), and subject to further Order of this Court in respect of urgent motions, any interested party wishing to object to the relief sought in a motion brought by the Applicant or Monitor in these proceedings shall, subject to further Order of this Court, provide the Service List with responding motion materials or a written notice (including by e-mail) stating its objection to the motion and the grounds for such objection by no later than 5:00 p.m. (Toronto time) on the date that is four (4) days prior to the date such motion is returnable (the "**Objection Deadline**"). The Monitor shall have the ability to extend the Objection Deadline after consulting with the Applicant.

57. THIS COURT ORDERS that following the expiry of the Objection Deadline, counsel to the Monitor or counsel to the Applicant shall inform the Court including by way of a 9:30 a.m. appointment, of the absence or the status of any objections to the motion and the judge having carriage of the motion may determine whether the motion should proceed at a 9:30 a.m. chambers appointment or otherwise on consent, or whether a hearing will be held in the ordinary course on the date specified in the notice of motion.

GENERAL

58. THIS COURT ORDERS that the Applicant or the Monitor may from time to time apply to this Court to amend, vary or supplement this Order, or for advice and directions concerning the discharge of their respective powers and duties under this Order or the interpretation of application of this Order.

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

60. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States or 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, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

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

62. THIS COURT ORDERS that any interested party (other than the Applicant and the Monitor) that wishes to amend or vary this Order shall bring a motion before this Court on a date to be fixed by this Court upon the granting of this Order (the "**Comeback Date**"), and any such interested party shall give not less than seven (7) days notice to the Service List and any other party or parties likely to be affected by the relief sought by such party in advance of the Comeback Date; provided, however that the Chargees shall be entitled to rely on this Order as issued and entered and on the Charges with respect to any fees and disbursement incurred until the date this Order may be amended, varied or stayed.

63. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. (Toronto time) on the date of this Order.

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

OCT 22 2019

PER / PAR: JP



**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: CJ-14-629552
-0000

Applicant

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

INITIAL ORDER

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Lawyers for Del Equipment Inc.

Appendix “B”

**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.
(THE "APPLICANT")**

**PRE-FILING REPORT OF THE PROPOSED MONITOR
MNP LTD.**

OCTOBER 21, 2019

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Exhibits

Exhibit "A" — Corporate Structure

Exhibit "B" — Cash Flow Forecast for the 13-Week Period Ending January 13, 2020

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Exhibit "D" — The Proposed Monitor's Prescribed Report to the Court Regarding the Adequacy of the Cash Flow Forecast

Exhibit "E" — Analysis of Approved DIP provisions

INTRODUCTION

1. MNP Ltd. ("**MNP**" or the "**Proposed Monitor**") understands that DEL Equipment Inc., ("**DEL**" or the "**Company**" or the "**Applicant**") intends to bring an application before the Ontario Superior Court of Justice (Commercial List) (the "**Court**") seeking certain relief (the "**Initial Order**") under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") granting, among other things, a stay of proceedings until November 21, 2019 and appointing MNP as Monitor. The proceedings to be commenced by the Company under the CCAA will be referred to herein as the "**CCAA Proceedings**".
2. This report (the "**Pre-Filing Report**") has been prepared by the Proposed Monitor prior to and in contemplation of its appointment as Monitor in the CCAA Proceedings to provide information to the Court for its consideration on the Company's initial hearing seeking protection pursuant to the CCAA.

PURPOSE

3. The purpose of the Pre-Filing Report is to provide information to the Court regarding the following:
 - (a) MNP's qualifications to act as Monitor (if appointed);
 - (b) General background to the proposed CCAA Proceedings and the Company;
 - (c) DEL's 13-week cash flow forecast;
 - (d) The proposed Sale Process (defined below);
 - (e) The proposed debtor-in-possession (the "**DIP Facility**") financing facility in the maximum principal amount of \$1 million to be made available to the Company by Diesel Equipment Limited ("**Diesel**" or the "**DIP Lender**", as usage dictates),

pursuant to a DIP term sheet to be executed on or about October 21, 2019 (the “**DIP Term Sheet**”);

- (f) The proposed Initial Order, including the proposed Court-ordered charges; and
- (g) The Proposed Monitor's recommendations.

TERMS OF REFERENCE

4. In preparing this Pre-Filing Report, MNP has necessarily relied upon the Lucky Affidavit (defined below), the unaudited financial statements and other information supplied, and representations made, by certain management of the Company (“**Management**”) and SRA (defined below). Although the Proposed Monitor has reviewed the information for reasonableness, MNP has not conducted an audit or otherwise attempted to verify the accuracy or completeness of the information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants of Canada Handbook. Accordingly, MNP expresses no opinion and does not provide any other form of assurance on or relating to the accuracy of any information contained in this Pre-Filing Report, or otherwise used to prepare this Report.
5. MNP also bases its report on the Company’s cash flow projections and underlying assumptions and notes that its review and commentary thereon were performed in accordance with the requirements set out in the Canadian Association of Insolvency and Restructuring Professionals’ Standards of Professional Practice No. 9 (Cash Flow Statement) (the “**Professional Standards**”). Certain of the information referred to in this Report consists of financial forecasts and/or projections. An examination or review of financial forecasts and projections and procedures, in accordance with standards set by the Chartered Professional Accountants of Canada, has not been performed. Future oriented financial

information referred to in this Report was prepared based on estimates and assumptions provided by Management. Readers are cautioned that since financial forecasts and/or projections are based upon assumptions about future events and conditions that are not ascertainable, actual results will vary from the projections, and such variations could be material.

6. Capitalized terms not defined in this Report are used as defined in the affidavit of Douglas Lucky sworn October 20, 2019 (the “**Lucky Affidavit**”) filed in support of the Applicant’s application for relief under the CCAA.
7. Unless otherwise stated, all monetary amounts contained in this Pre-Filing Report are expressed in Canadian dollars.

MNP'S QUALIFICATION TO ACT AS MONITOR

8. The proposed Initial Order contemplates that MNP will be appointed as Monitor of the Company in the CCAA Proceedings.
9. MNP is a trustee within the meaning of subsection 2(1) of the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”). MNP is not the auditor of the Applicant. MNP 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.
10. MNP first became involved with DEL in August 2019 and was engaged by the Company on October 7, 2019, to assist the Company to prepare for a potential CCAA filing. In preparation for its potential appointment as Monitor, MNP has spent time with Management reviewing and familiarizing itself with the Company’s issues, its financial affairs and the concerns and interests of the Company’s various stakeholders. MNP has reviewed certain of the Company’s books and records, all of which appear to have been

made fully available to MNP, as necessary, in order to obtain a sufficient level of understanding of DEL's business, including its operations, assets and obligations for MNP to fulfill its mandate. This mandate also included consultation with the Company's legal advisors and MNP's independent legal advisors. MNP is, therefore, in a position to immediately assist the Company in their CCAA proceedings.

11. MNP is an independent national professional services firm providing among other things, bankruptcy, insolvency and restructuring services. The senior MNP professional personnel with carriage of this matter include experienced insolvency and restructuring practitioners who are Chartered Professional Accountants, Chartered Insolvency and Restructuring Professionals and Licensed Insolvency Trustees in Canada, all of whom have acted in CCAA or BIA matters of a similar nature, business type and scale in Canada.
12. MNP has consented to act as Monitor of the Applicant should the Court grant the Company's request to commence the CCAA Proceedings.
13. The Proposed Monitor has retained Goldman Sloan Nash & Haber LLP to act as its independent legal counsel.

GENERAL BACKGROUND TO THE PROPOSED CCAA PROCEEDINGS

14. This Pre-Filing report should be read in conjunction with the Lucky Affidavit.
15. As set out in the Lucky Affidavit, headquartered in Newmarket, Ontario, DEL is a private corporation incorporated under the laws of Ontario and is a Canadian truck body and equipment "up-fitter" that engineers, designs, manufactures and sells special truck bodies, attachments, equipment and work-ready vehicles through its nation-wide distribution network. It is an authorized "chassis-holder" for several original equipment manufacturer partners.

DEL's products serve the requirements of utility service providers, municipalities, construction companies and landscapers.

16. The shares of DEL are held by Diesel, a corporation controlled by Paul Martin, the current secretary and sole director of DEL. A corporate chart of the Company and related entities is attached hereto as Exhibit "A".

17. DEL employs approximately 174 people, including hourly and salaried employees, located in Vancouver, Calgary, Edmonton, Newmarket, Montreal and Moncton. Five of the six operating facilities (the "**Real Property**") are owned by Diesel; the Newmarket location is subleased from Gin-Cor Industries Inc. ("**Gin-Cor**"). DEL's employees participate in one of two multi-employer defined contribution pension plans (one for salaried employees and the other for hourly employees) administered by Sun Life Financial Canada. None of DEL's employees are unionized.

18. In June 2017, DEL entered into an agreement (the "**Gin-Cor Transaction**") with Gin-Cor, a company that operates in the same industry sector as DEL, pursuant to which Gin-Cor would acquire a 40% equity interest in and management control of DEL. MNP understands that the purpose of the Gin-Cor Transaction was intended to:

- (a) enhance DEL's performance, largely through creating efficiencies through synergies;
and
- (b) serve as a potential succession plan for the ownership group, with Gin-Cor eventually being able to earn 100% equity interest upon DEL achieving certain profitability related milestones.

19. DEL did not achieve the improvement in its performance arising from anticipated synergies. Conversely, DEL suffered declining financial results after entering into the Gin-Cor Transaction, as demonstrated by the following table:

Currency: CAD						
000'	YTD19*	FY18	FY17	FY16	FY15	FY14
Revenue	23,465	39,970	52,294	41,276	45,003	43,013
Cost of Goods Sold	20,593	40,094	46,483	36,599	39,489	37,431
Gross Profit	2,872	(125)	5,811	4,677	5,514	5,581
Operating expense	4,167	6,230	7,836	7,052	5,397	8,132
EBITDA	(1,295)	(6,355)	(2,026)	(2,375)	118	(2,551)
Gross Profit %	12%	0%	11%	11%	12%	13%
EBITDA %	-6%	-16%	-4%	-6%	0%	-6%

* YTD19 represents 6 months ended June 2019. Financial year ends on December 31.

20. In July 2019, Gin-Cor and Diesel agreed to terminate the Gin-Cor Transaction, resulting in Diesel becoming again the sole shareholder and reassuming management of DEL's business.

21. Diesel is also DEL's senior secured creditor as a result of having taken an assignment of DEL's secured creditor facility from Bank of Montreal. Approximately \$11.5 million is owing to Diesel under the Secured Credit Agreement. Should the Court appoint MNP as Monitor, a security opinion will be obtained regarding the above.

Causes of DEL's Financial Difficulties and Insolvency

22. As reported in the Lucky Affidavit, DEL is insolvent. DEL's financial difficulties and insolvency are attributable to:

- (a) An increasing cost base that was too high for the size of DEL's business;
- (b) Certain of DEL's branches were underperforming;
- (c) Certain of DEL's product offering was unprofitable;
- (d) Pressure on DEL's liquidity arising from:

- i. suppliers requiring compressed payment terms; and
- ii. The August 2019 misdirected payment by Mack Defense to Gin-Cor in the amount of \$874,107, which payment was meant to be paid to DEL on account of a series of DEL invoices issued on or around June 6, 2019. The misdirected payment has given rise to a dispute among Mack Defense, Gin-Cor and DEL. This dispute, which is ongoing, has contributed to DEL's liquidity crunch. To date, MNP has not been directly involved in any matters or correspondence relating to this dispute.

The Proposed Monitor has not independently verified the causes of DEL's insolvency.

23. In August 2019, the Company and its advisors undertook a rapid business assessment and identified and, in certain instances, implemented changes that have addressed certain of the financial challenges. Nonetheless, the Company has been unable to resolve its financial and operations challenges.
24. As noted in the Lucky Affidavit, the primary purpose of the CCAA Proceedings is to provide DEL with an opportunity to undertake a sale and investment solicitation process (the "**Sale Process**") to identify and assess the strategic alternatives available to it to maximize the value of its business for its stakeholders. The stay of proceedings is necessary to maintain the stability and value of DEL's business while such actions are undertaken.
25. Additional information in respect of the Company, including its assets and liabilities, is set out in the Lucky Affidavit. MNP has not repeated such details in this Report.

Engagement of Chief Restructuring Officer and MNP

26. As discussed in the Lucky Affidavit, 2255987 Ontario Limited o/a Strategic Results Advisors (“SRA”) was retained by DEL on July 23, 2019, to provide restructuring and turnaround advisory services to the Company. Douglas Lucky (“Lucky”) is the principal of SRA and was previously employed as the Chief Executive Office and Chief Operating Officer of DEL Equipment Limited¹ from April 2013 to November 2017.
27. Soon after SRA’s retention in July 2019, DEL completed a rapid business assessment and created a restructuring and recovery plan. Certain of the measures have been implemented, including the closure of DEL’s Regina branch, a reduction in head office expenses and process improvements designed to improve profitability and liquidity. The restructuring and recovery plan has not been fully implemented.
28. On October 18, 2019, DEL entered into an engagement letter with SRA wherein SRA is to provide the services of Lucky to act as DEL’s advisor and/or Chief Restructuring Officer (the “CRO”) 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. With the assistance of its advisors and given the ongoing financial challenges facing DEL and SRA’s familiarity with DEL’s business, DEL concluded that it was in the best interest of the Company and its stakeholders to commence the CCAA Proceedings with Lucky acting as its CRO.

¹ On April 30, 2018, pursuant to an asset purchase agreement, DEL completed an acquisition of a business through the purchase of certain of the net assets of Del Equipment Limited, a related party.

29. The CRO's engagement letter contemplates payment of a monthly work fee of \$25,000, reimbursement of reasonable expenses, and a \$100,000 success fee payable upon completion of a restructuring transaction.
30. The Initial Order provides certain protection typically afforded to CRO's in CCAA proceedings with respect to liabilities or obligations incurred as a result of this engagement save and except for any gross negligence or willful misconduct on the part of the CRO.
31. Based on the forgoing, the Proposed Monitor considers the relief sought in the Initial Order relating to the CRO's remuneration and limitation of liability is reasonable and appropriate in the circumstances, and consistent with other CCAA proceedings.

SALE PROCESS

32. These proceedings contemplate that, subject to Court approval, DEL will carry out the Sale Process, under the supervision of the Monitor, to seek to identify a potential going-concern sale of the Company's assets and business or restructuring that would maximize the value of DEL's assets or business for the benefit of the Company and its stakeholders.
33. The terms of the Sale Process were developed with the assistance of the CRO and in consultation with the Proposed Monitor and the Company's legal and financial advisors, and is summarized below:

	Event	Expected Timing
1	Publish notice of the Sale Process in the National Edition of the <i>Globe & Mail</i> Newspaper, <i>Insolvency Insider</i> , if possible, and other industry trade journals, as DEL shall elect	By no later than November 5, 2019
2	Contact parties that were either previously contacted or identified as Interested Parties	By no later than November 5, 2019

3	Distribute Teaser document to those identified as Interested Parties	By no later than November 5, 2019
4	Confidentiality Agreement distributed to Interested Parties	Commencing by no later than November 5, 2019
5	Confidential Information Memorandum and data room access provided to Prospective Offerors after receipt of signed Confidentiality Agreement	Commencing November 5, 2019
6	Due diligence, site tours and access to management	Commencing November 6, 2019 to Non-Binding EOI Deadline
7	Deadline for Submissions of initial non-binding expressions of interest (“EOI”)	December 6, 2019 (“ Non-Binding EOI Bid Deadline ”)
8	Selection from parties that submitted an EOI by the Non-Binding EOI Bid Deadline those parties invited to enter into the second phase (“ Phase 2 Parties ”) of the Sale Process	Mid-December 2019
8	Deadline for submission of bids (“ Binding Bid ”) by Phase 2 Parties, with the Binding Bids to, <i>inter alia</i> , contain a blackline to the form of transaction	January 31, 2020 (5:00 PM Toronto time)

9	Negotiation/Selection	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 of selecting one or more non-overlapping Binding Bids as the successful Bids (the “ Successful Bids ”), and take such steps as necessary to finalize and consummate the Successful Bids.
10	Court motion to approve Successful Bid	As soon as reasonably possible following selection of Successful Bids
11	Complete transaction	As soon as reasonably possible following Court approval

34. The Proposed Monitor notes that the DIP Facility contemplates milestones of Court approval of a Successful Bid by February 29, 2020, and that any Successful Bid be closed by March 31, 2020.

35. The Sale Process also contemplates:

- (a) Any amendments to the Sale Process by DEL require the written consent of the Monitor or by further order of the Court;
- (b) The Sale Process shall also include the marketing of the Real Property, it being understood that: (i) any transaction involving the Real Property shall require the approval of Diesel; and (ii) bidders shall be permitted to submit and DEL shall be

permitted to consider transaction proposals that do not include an acquisition of the Real Property; and

(c) that Diesel will be entitled to be consulted throughout the Sale Process on a strictly confidential basis, including obtaining access to information in respect of any EOI's Binding Bids and/or Successful Bid and any definitive agreement(s) in connection therewith.

36. The Proposed Monitor considers the Sale Process to be reasonable in the circumstances and supports the Company's application for approval of the Sales Process. The Proposed Monitor reached this conclusion on the basis that the Sale Process is consistent with insolvency industry practices in such proceedings and in like circumstances, is supported by Diesel and, if successful, could result in greater recoveries than in a liquidation, to the benefit of all stakeholders, including secured and unsecured creditors.

OTHER

37. Part of DEL's business involves the manufacturing of pneumatic control valves (the "**Hydraulic Lines**") for sale to DEL Hydraulics Inc ("**DHI**"). DHI is based in the State of New York and is an indirect subsidiary company to Diesel. As part of its restructuring and recovery plan, DEL plans to reorganize its manufacturing operations by exiting the Hydraulic Lines business, as this activity is not related to its core business.

38. The Initial Order contemplates that DEL would "have the right to permanently or temporarily cease, downsize or shut down any of its Business or operations, and to dispose of redundant or non-material assets not exceeding \$650,000 in any one transaction or \$1,000,000 in the aggregate" (the "**Initial Order Threshold**").

39. The transaction of the assets related to the Hydraulic Lines would be sold to DHI at net book value and will be completed at a sale price lower than the Initial Order Threshold. DEL advises that there are likely no other purchasers for this inventory, equipment and tooling other than DHI, as the Hydraulic Lines SKU's are DHI designs and DHI is its only buyer of this product.
40. The sale of the Hydraulic Lines to DHI will reduce DEL's working capital requirements and delay its need to access the DIP Facility.

CASH FLOW FORECAST FOR THE PERIOD ENDING JANUARY 13, 2020

41. The Company, with the assistance of its advisors and the CRO, have prepared the cash flow forecast for the Company (the "Cash Flow Forecast") for the 13-week period ending January 13, 2020 (the "Cash Flow Period"). The Cash Flow Forecast has been prepared by Management using the probable and hypothetical assumptions set out in the notes.
42. A copy of the Cash Flow Forecast and the prescribed report of the Proposed Monitor is attached hereto as Exhibit "B". A summary of the cash flow forecast is set out below:

Currency: CAD 000'	Notes	Total
Receipts	Note 1 Note 2	11,013
Disbursements		
Merchandise Vendors	Note 3	9,025
Non-Merchandise Vendors	Note 4	1,904
Payroll	Note 5	1,788
Tax		(2)
Total Disbursements		12,717
Operating Net Cash Flow		(1,704)
Administrative Fees		(732)
DEL Hydraulics Inc. Sale	Note 6	589
Net Cash Flow		(1,847)
Beginning Cash	Note 7	1,500
Net Cash Flow		(1,847)
Interim Financing/(repayment)		400
Ending Cash		53

Notes:

- 1) The purpose of the projection is to present a cash forecast of DEL for the period October 15, 2019 to January 13, 2020 in respect of its proceedings under the CCAA.
- 2) Receipts are forecast based on the Company's current sales forecast, inclusive of sales tax. Existing accounts receivable will be collected in approximately 60 days. Historically, the Company's DSO (days of sales outstanding) has been in the range of 34-42 days in 2017 and 2018 and it is 55 days as on September 30, 2019. Hence, the collection period of 60 days for the 13-week cash flows is in line with the past results.
- 3) Merchandise vendors include disbursements to both domestic and foreign third-party merchandise suppliers. Disbursements are based on the Company's current inventory receipts and cost of sales schedule with certain vendors forecast to be paid on COD terms. In addition, the Company has identified certain pre-CCAA Proceedings balances of \$1.05 million pertaining to international vendors and have considered weekly payment of \$ 80,769 for them in the 13-week cash flows. The Proposed Monitor notes that the Applicant has requested the authority, with the consent of the Monitor, to make pre-filing payments as necessary to maintain the operation of its business. The Proposed Monitor has reviewed these matters with the Applicant on a preliminary basis and intends to further review with the Applicant any such proposed payments and implement a process to review and, as appropriate, consent to any such payments.
- 4) Non-Merchandise vendors include disbursement to landlords, logistics, procurement, IT and ecommerce, marketing and facilities management. Disbursements are based on COD terms.

- 5) Disbursements include salaries, wages, remittances and employee benefits for salaried and hourly employees, including any outstanding wages and vacation pay.
- 6) As noted above, DEL expects to close an asset sale of limited assets to the Hydraulic Lines and cash proceeds are expected to be received in the week ended October 28, 2019.
- 7) The Beginning Cash Position is subject to further review and reconciliation, and may, accordingly, vary from the \$1.5 million reflected herein.

43. The Proposed Monitor notes the following with respect to the Cash Flow Forecast:

- (a) The Company's current cash resources are approximately \$1.5 million;
- (b) The Cash Flow Forecast reflects a draw on the DIP Facility (as defined below) for the amount of \$400,000;
- (c) Over the course of the Cash Flow Period, the Company forecasts cash receipts of \$11.01 million relating to sale of truck bodies and truck equipment. Cash disbursements are forecast to total \$12.72 million which relates to the expense proposed to be incurred to consummate the sale of their products; and
- (d) In addition, the Company expects to pay Restructuring Professional fees of \$732,000 pertaining to the Administrative Expenses.

44. Management's Representation Letter and the Proposed Monitor's report to the Court regarding the adequacy of the Cash Flow Forecast, are attached hereto as Exhibits "C" and "D".

45. The Proposed Monitor has reviewed the Cash Flow Statement to the standard required of a Court-Appointed Monitor by section 23(1)(b) of the CCAA and in accordance with the Professional Standards. Based on the Professional Standards, the Proposed Monitor's review of the Cash Flow Forecast consisted of enquiries, analytical procedures and discussions related

to information supplied to us by Management. Since hypothetical assumptions need not be supported, the procedures with respect to those assumptions were limited to evaluating whether they were consistent with the purpose of the forecast. The Proposed Monitor has also reviewed the support provided by Management for the probable assumptions and the preparation and presentation of the forecast.

46. Based on our review, nothing has come to our attention that causes us to believe that, in all material respects:

- (a) The hypothetical assumptions are not consistent with the purpose of the forecast;
- (b) As at the date of the Pre-Filing Report, the probable assumptions developed by Management are not suitably supported and consistent with the plans of the Company or do not provide a reasonable basis for the forecast, given the hypothetical assumptions; and
- (c) The Cash Flow Forecast does not reflect the probable and hypothetical assumptions.

47. The Cash Flow Forecast is the DIP Budget contemplated by the DIP Facility.

Debtor-in-Possession Financing²

48. The terms of the DIP Facility are detailed in the DIP Term Sheet. A copy of the DIP Term Sheet is attached to the Lucky Affidavit. The significant terms of the DIP Facility are summarized below:

- (a) Borrower: DEL
- (b) Lender: Diesel

² Terms not defined in this section have the meaning provided to them in the DIP Term Sheet.

(c) Loan Amount: \$1,000,000

(d) Maturity Date: The DIP Facility shall be repayable in full on the earlier of:

- i. the occurrence of any Event of Default which is continuing and has not been cured and a demand for repayment in writing having been made by the DIP Lender to the Borrower with a copy to the Monitor (and each of their respective counsel);
- ii. the implementation of a transaction pursuant to the Sales Process or a plan of compromise or arrangement under the CCAA, in which case the DIP Financing Obligations shall be treated in the manner contemplated thereunder; and
- iii. April 15, 2020 (the earliest of such dates being the “**Maturity Date**”).

The Maturity Date may be extended from time to time at the request of the Borrower and with the prior written consent of the DIP Lender for such period and on such terms and conditions as the Borrower and the DIP Lender 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.

(e) Interest Rate: 6.5 percent per annum compounded monthly and payable in full on the Maturity Date

(a) Fees and Expenses: there are no commitment or other fees included in the DIP Term Sheet other than the Company covering the DIP Lender’s reasonable and documented out-of-pocket expenses, including all reasonable and documented legal expenses, incurred by the DIP Lender in connection with these proceedings.

(b) DIP Lender's Charge: all obligations of the Company under the DIP Facility are to be secured by a Court-ordered charge over the Company's property, assets and undertaking.

(c) Permitted Payments: The Borrower shall use proceeds of the DIP Facility solely for the following purposes, in each case in accordance with the Initial Order and the DIP Budget (as attached to the DIP Term Sheet) (subject to the Permitted Variance):

- i. to pay (i) the reasonable and documented legal fees and expenses of the DIP Lender (ii) the reasonable and documented financial advisory fees and legal fees and expenses of the Borrower (including, without limitation, any fees and expenses SRA (including legal fees), including as relates to the services of Douglas Lucky to the extent appointed as chief restructuring officer of the Borrower) and (iii) the reasonable and documented fees and expenses of the Monitor and its legal counsel;
- ii. to pay the fees and interest owing to the DIP Lender under the DIP Financing Term Sheet; and
- iii. to fund the Borrower's general corporate and working capital needs, including funding the CCAA Proceedings and the pursuit of the Sales Process.

The Borrower may use the proceeds of the DIP Facility 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.

(d) Reporting: Within ten (10) days of the end of a month, the Borrower shall deliver to the DIP Lender's counsel, a variance calculation (the "**Variance Report**") setting

forth (i) actual receipts and disbursements for the preceding month and (ii) actual receipts and disbursements on a cumulative basis since the beginning of the period covered by the then-current DIP Budget, in each case as against the then-current DIP Budget, and setting forth all the variances, on an aggregate basis in comparison to the amounts set forth in respect thereof in the DIP Budget; each such Variance Report to be promptly discussed with the DIP Lender and its advisors upon request.

(e) Conditions: Key conditions include:

- i. The Borrower shall provide the DIP Lender and its advisors with reasonable access to the books, records, financial information and electronic data rooms of or maintained by the Borrower, and (ii) cause management, the financial advisor and legal counsel of the Borrower, to cooperate with reasonable requests for information by the DIP Lender and its advisors, in each case subject to solicitor-client privilege, all Court Orders and applicable privacy laws and the Borrower's confidentiality obligations to third parties, in connection with matters reasonably related to the DIP Facility or compliance of the Borrower with its obligations pursuant to this DIP Financing Term Sheet;
- ii. Keep the DIP Lender apprised on a timely basis of all material developments with respect to the CCAA Proceedings, including all matters relating to the Sales Process;
- iii. Promptly notify the DIP Lender of the occurrence of any Event of Default;
- iv. Provide the DIP Lender's counsel with draft copies of all material motions, applications or proposed orders that the Borrower intends to file in the CCAA Proceedings as soon as is reasonably practicable in advance of the service of

such materials to the service list in respect of the CCAA Proceedings; provided that all such filings by the Borrower shall be in form and substance reasonably acceptable to the DIP Lender and its counsel to the extent that any such filings materially affect the rights and interests of the DIP Lender or the Sales Process;

v. The Borrower shall achieve the following milestones (the “**Milestones**”) by the dates set out below

1. The Sales Process Order shall have been entered on or before the date on which is five (5) days following the entry of the Initial Order;
2. a Court Order approving the Successful Bid pursuant to the Sales Process shall have been entered on or before February 29, 2020; and
3. the transaction contemplated by the Successful Bid shall be implemented on or before March 31, 2020.

(f) Events of Default: The following is a summary of the material Events of Default:

- i. Failure by the Borrower to pay: (i) principal, interest or other amounts within three (3) Business Days of such amounts becoming due under the DIP Financing Term Sheet; or (ii) costs and expenses of the DIP Lender in accordance with Section 6, thereof within ten (10) Business Days of receiving an invoice therefor;
- ii. Failure by the Borrower to:
 1. meet any Milestone within three (3) Business Days;
 2. delivery of any Variance Report within three (3) days; or
 3. perform or comply with any of the other covenants set out in the DIP Term Sheet and such failure remains unremedied for ten

(10) Business Days following receipt of notice thereof from the DIP Lender.

iii. Issuance of a Court Order:

1. dismissing the CCAA Proceedings or lifting the stay in the CCAA Proceedings to permit the enforcement of any security against the Borrower or the Collateral, the appointment of a receiver, interim receiver or similar official, an assignment in bankruptcy, or the making of a bankruptcy order against or in respect of the Borrower;
2. granting any other Lien in respect of the Collateral that is in priority to or pari passu with the DIP Lender Charge; or
3. staying, reversing, vacating or otherwise modifying the DIP Term Sheet or the DIP Lender Charge.

iv. Unless consented to in writing by the DIP Lender, the expiry without further extension of the stay of proceedings provided for in the Initial Order.

v. As at the date of any Variance Report, there shall exist a net negative variance from the DIP Budget in excess of [20%] (the “**Permitted Variance**”) on a cumulative basis since the beginning of the period covered by the then-current DIP Budget.

49. MNP has considered the factors set out in Section 11.2 of the CCAA with respect to the granting of a Court order for interim financing and recommends the Court approve the DIP Facility for the following reasons:

- a) MNP understands that the DIP Lender is not willing to provide the required interim financing other than on the terms and conditions set out in the DIP Term Sheet;

- b) DEL is of the view that the CCAA proceedings provide the best option for implementing the Sale Process and addressing the other issues within DEL's business including resolution of the Gin-Cor and Mack Defense payment dispute. MNP believes that approval of the DIP Facility is in the best interests of the Company's stakeholders and will enhance the prospects of maximizing value in the circumstances. The DIP Facility is projected to be sufficient to fund the normal course operations of the Company through the completion of the Sale Process;
- c) DEL, with the assistance of SRA, approached other prospective lenders, all of whom were requiring a significantly higher rate of interest than is being charged by the DIP Lender and additional fees and expenses and other terms that are not being imposed by the DIP Lender;
- d) without the DIP Facility, there is risk that the Company will be unable to fund its business and its continued operations including payroll, maintenance and other capital expenditures and general operating expenses. Accordingly, absent funding under the DIP Facility, the operations of the Company may be discontinued;
- e) MNP compared the terms of the DIP Facility to other DIP facilities approved by Canadian courts in CCAA proceedings commenced December 1, 2017 and September 23, 2019.³³ The comparison is attached as **Exhibit "E"**. Based on MNP's analysis, the cost of the proposed DIP Facility is lower than other recent DIP financings approved by this and other Canadian courts;
- f) The Company is not proposing to prime certain other creditors that have floor plan financing facilities in priority to the Secured Credit Agreement – MNP believes it is

³³ *Insolvency Insider*, Document Library, Approved Debtor-in-Possession Financing Facilities for Canadian Debtors Current as at September 23, 2019.

unlikely any other third-party lender would agree to provide DIP funding on such terms;

- g) substantially all of the other DIP facilities approved by Canadian courts provide a corresponding super-priority DIP charge over all other creditors; and
- h) MNP does not believe that creditors will be prejudiced from approval of the DIP Facility – to the contrary, they will benefit from it as it will allow the business to continue to operate, which will enhance value versus the alternative, which is the discontinuation of operations and the potential liquidation of its assets.

50. Based on the foregoing, MNP believes that the terms of the DIP Facility are reasonable in the circumstances.

PROPOSED INITIAL CCAA ORDER SOUGHT

51. The relief requested by the Company includes, *inter alia*:

- (a) the granting of a stay of proceedings against the Company;
- (b) the appointment of MNP as Monitor;
- (c) the appointment of the CRO;
- (d) the authorization of debtor-in-possession financing for the Company;
- (e) authorization to make certain pre-filing payments to employees, customers and, with the consent of the Monitor, amounts owing for goods or services supplied to DEL prior to the CCAA Proceedings if, in the opinion of DEL and with the consent of the Monitor such payment is necessary maintain the operation of DEL's business; and
- (f) the granting of various charges over the assets of the Company, including to secure the indemnity in favour of the directors and officers, the CRO (including in respect of its

success fee) and the professional fees and disbursements necessary to undertake proceedings under the CCAA Proceedings.

Such relief will provide the Company with the time and protection they require to undertake a restructuring of their business for the benefit of their stakeholders.

52. MNP has reviewed the Initial Order and provides comments and observations on certain provisions below. It is noted that matters relating to the DIP Facility and the appointment of the CRO and MNP as referenced in the Initial Order are referred to in the previous section of the Report.

Proposed Court Ordered Charges Over DEL's Assets

Administration Charge

53. In order to protect the fees and expenses of the Administrative Professionals, DEL is proposing that the Monitor, counsel to the Monitor, DEL's counsel and financial advisor and the CRO (but only in respect of its monthly fee) (the "**Administrative Professionals**") be entitled to the benefit of a charge (the "**Administration Charge**") on the Property in the amount of \$400,000 as security for their professional fees and disbursements incurred at the standard rates and charges of the Administrative Parties, both before and after the making of this Order in respect of these proceedings.

54. The Administration Charge is reasonable and appropriate in the circumstances having regard to, among other things:

- (a) Each of the professionals whose fees are to be secured by the Administration Charge has played and will continue to play a critical role in DEL's restructuring or the Sale Process;

- (b) DEL intends to satisfy the fees and disbursements of the Administrative Professionals from cash flow during the CCAA Proceedings. The Administration Charge is sought to protect the Administrative Professionals in the event that the restructuring is not successful or a sale as a going concern is not completed;
- (c) The complexity of these CCAA proceedings; and
- (d) DEL's primary secured creditor (Diesel) has been notified of the Administration Charge sought. MNP notes that the Company has indicated it may seek to provide further notice to additional secured creditors in connection with the priority of the charges on the comeback date.

Directors' Charge

55. The Cash Flow Statement contemplates that post-CCAA obligations, including all statutorily required remittances will be paid in the ordinary course of business, subject to the Company obtaining interim financing. The directors and officers have requested protection from statutory claims and liabilities that may arise during the restructuring. Accordingly, DEL is proposing that the Company shall indemnify DEL's directors and officers against all obligations and liabilities that they may incur as directors and officers of the Company after the commencement of the within proceedings, except to the extent that the obligation or liability was incurred as a result of such director's or officer's gross negligence or willful misconduct. As security for this indemnity, it is proposed that DEL's directors and officers be entitled to the benefit of a charge not to exceed an aggregate amount of \$1,200,000 (the "**Directors' Charge**"). The CRO will be appointed as an officer of the Company and will have the benefit of the Directors' Charge.

56. The Directors' Charge is proposed to rank behind the Administration Charge. On the basis of information provided to the Proposed Monitor by the Company, the Directors' Charge has been calculated with reference to exposure to potential unpaid wages, vacation pay, pension obligations, employee benefits and certain tax liabilities accruing during the CCAA Proceedings. The Initial Order provides that the availability of the Directors' Charge is only to the extent the existing insurance coverage does not apply or is insufficient to cover a liability. The Proposed Monitor understands that the Company (through its parent Diesel) recently renewed its umbrella director and officer policy for coverage of up to \$3 million which policy.
57. The Proposed Monitor is of the view that the Directors' Charge is reasonable and appropriate in the circumstances.

DIP Lender's Charge

58. It is proposed that the Company be authorized to borrow up to \$1 million from the DIP Lender in accordance with the terms of the DIP Facility. As security for the DIP financing, it is proposed that the DIP Lender be entitled to the benefit of a charge (the "**DIP Lender's Charge**") on the Property, which DIP Lender's Charge shall not secure an obligation that exists before this Order is made.

Priority of Charges Created by the Initial Order

59. The priorities of the Administration Charge, the CRO Charge and the DIP Lender's Charge (the "**Charges**") are proposed to be as follows:
- (a) First – Administration Charge (to the maximum amount of \$400,000);
 - (b) Second – Directors' Charge (to the maximum amount of \$1,200,000);
 - (c) Third – DIP Lender's Charge; and

(d) Fourth – Success Fee Charge (to the maximum amount of \$100,000).

60. In summary, MNP in its capacity as Proposed Monitor has reviewed the calculations that support the Administration Charge, the Directors' Charge, the DIP Lender's Charge and the Success Fee Charge and believes that the amounts are reasonable in the circumstances. The Charges will have priority over all other debts and obligations of the Company (including under the Secured Credit Agreement) other than those parties who have not been notified of the Company's application. MNP understands that the Company may seek further priority over other such priorities in connection with the comeback motion other than the Company has advised it does not intend to seek priority over RBC or Ford as more specifically set out in the Lucky Affidavit. The Proposed Monitor notes that the quantum and priority ranking of all proposed charges is not objected to by Diesel.

PROPOSED MONITOR'S RECOMMENDATIONS

For the reasons set out above, the Proposed Monitor's recommendations are summarized below:

CCAA Proceedings and Cash Flow Forecast

61. The Proposed Monitor concurs with the Company's view that it is insolvent and is facing imminent liquidity issues which supports the need to commence the CCAA Proceedings.

62. The Cash Flow Forecast indicates that it is likely that DIP Financing will be necessary during the CCAA Proceedings.

Necessity for the DIP Facility

63. The Proposed Monitor has concluded that the DIP Facility is required in order for the Company to continue to operate on an uninterrupted basis through the projected restructuring

period, pay the Administrative Expenses, and carry out the Sale Process. While DEL approached other potential lenders, the Proposed Monitor believes that, in the circumstances, there is no reasonable prospect of obtaining interim financing on as favourable terms as being offered by the DIP Lender.

CCAA Relief Sought

64. DEL is insolvent, and the Proposed Monitor considers the relief sought in the Initial Order to be reasonable in the circumstances.

65. The proposed Sale Process is consistent with insolvency industry practices in such proceedings and in like circumstances and appears to be reasonable in the circumstances. The Sale Process is also consistent with the Company's purpose of commencing these proceedings.


66. The Proposed Monitor supports the amounts and rankings of the Court-ordered charges and the financial thresholds proposed in the draft Initial Order, namely:

- (a) First — Administration Charge (to the maximum amount of \$400,000);
- (b) Second — the DIP Lenders' Charge;
- (c) Third — Directors' Charge (to the maximum amount of \$1,200,000); and
- (d) Fourth — Success Fee Charge (to the maximum amount of \$100,000)

All of which is respectfully submitted this 21st day of October 2019.

**MNP Ltd., in its capacity
as Proposed Monitor of DEL Equipment Inc.**

Per:



Sheldon Title, CPA, CA, CIRP, LIT
Senior Vice-President

Appendix "C"

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.
(THE "APPLICANT")**

**FIRST REPORT TO THE COURT SUBMITTED BY
MNP LTD. IN ITS CAPACITY AS COURT APPOINTED MONITOR OF DEL
EQUIPMENT INC.**

NOVEMBER 14, 2019

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APPENDICES

- A. Initial Order
- B. Monitor’s Pre-Filing Report
- C. Revised Cash Flow Forecast for the Period Ending March 1, 2020
- D. Management’s Representation Letter Regarding the Revised Cash Flow Forecast
- E. Monitor’s Prescribed Report to the Court on the Adequacy of the Revised Cash Flow Forecast

INTRODUCTION

1. On October 22, 2019 (the “**Filing Date**”), the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) made an initial order (the “**Initial Order**”) granting DEL Equipment Inc. (“**DEL**” or the “**Company**”) relief pursuant to the *Companies’ Creditors Arrangement Act* (the “**CCAA**”). DEL’s CCAA proceedings are referred to herein as the “**CCAA Proceedings**”. A copy of the Initial Order is attached as **Appendix “A”**.
2. The Initial Order provides for, *inter alia*:
 - a. a stay of proceedings (the “**Stay of Proceedings**”) in favour of DEL until November 21, 2019 (the “**Stay Period**”);
 - b. the appointment of MNP Ltd. (“**MNP**” or the “**Monitor**”) as Monitor in the CCAA Proceedings;
 - c. approval of the appointment of a Chief Restructuring Officer (“**CRO**”);
 - d. approval of a \$1 million debtor-in-possession interim financing arrangement with the Company’s parent company and senior secured lender;
 - e. approval of the commencement of a sale and investment solicitation process in respect of the Company (the “**SISP**”); and
 - f. approval for DEL to pay amounts owing for goods and services supplied prior to the Filing Date (the “**Pre-CCAA Payments**”), if in the opinion of DEL and with the consent of the Monitor, such payment is necessary to maintain the operations of the Company.
3. The Monitor filed a pre-filing report (the “**Pre-filing Report**”) with the Court prior to the commencement of the CCAA Proceedings. The Pre-filing Report is available on the Monitor’s website at <https://mnpdebt.ca/en/corporate/engagements/DELEquipment> (the “**Monitor’s Website**”). A copy of the Pre-filing Report, without appendices, is attached as **Appendix “B”**.

4. The purpose of this report (the “**First Report**”) is to provide the Court with information concerning:
- a. an update on the Company’s and Monitor’s activities since the Filing Date;
 - b. activities of the Company with respect to the SISP;
 - c. the actual receipts and disbursement of the Company during the Stay Period as well as any material variances between the actual receipts and disbursements and the initial cash flow forecast (the “**Initial Cash Flow Forecast**”), which was appended to the Pre-filing Report;
 - d. DEL’s cash flow forecast for the proposed extension of the Stay Period (the “**Revised Cash Flow Forecast**”) including a comparative analysis to the Initial Cash Flow Forecast;
 - e. the status of the Preservation Order (defined below);
 - f. DEL’s motion for the following relief:
 - i. authorization to borrow up to an additional \$1.5 million (\$2.5 million in the aggregate) pursuant to the DIP Credit Agreement (as defined in the Initial Order) (the “**Requested DIP Increase**”); and
 - ii. that the Stay of Proceedings be extended to and including 11:59 p.m. (Toronto time) on February 28, 2020 (the “**Requested Stay Extension**”); and
 - g. the Monitor’s conclusions and recommendations in connection with the foregoing.

DISCLAIMER AND TERMS OF REFERENCE

5. In preparing this First Report, MNP has necessarily relied upon the Lucky Affidavits (defined below), the unaudited financial statements and other information supplied, and representations made, by certain management of the Company (“**Management**”) and SRA (as defined in the Pre-filing Report). Although the Monitor has reviewed the

information for reasonableness, MNP has not conducted an audit or otherwise attempted to verify the accuracy or completeness of the information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants of Canada Handbook. Accordingly, MNP expresses no opinion and does not provide any other form of assurance on or relating to the accuracy of any information contained in this First Report, or otherwise used to prepare this Report.

6. MNP also bases its report on the Company's cash flow projections and underlying assumptions and notes that its review and commentary thereon were performed in accordance with the requirements set out in the Canadian Association of Insolvency and Restructuring Professionals' Standards of Professional Practice No. 9 (Cash Flow Statement) (the "**Professional Standards**"). Certain of the information referred to in this Report consists of financial forecasts and/or projections. An examination or review of financial forecasts and projections and procedures, in accordance with standards set by the Chartered Professional Accountants of Canada, has not been performed. Future oriented financial information referred to in this Report was prepared based on estimates and assumptions provided by Management. Readers are cautioned that since financial forecasts and/or projections are based upon assumptions about future events and conditions that are not ascertainable, actual results will vary from the projections, and such variations could be material.
7. Capitalized terms not defined in this Report are used as defined in the affidavits of Douglas Lucky sworn October 20, 2019 and November 13, 2019 (the "**Lucky Affidavits**") filed in support of the Applicant's application for relief under the CCAA and the current motion.
8. Unless otherwise stated, all monetary amounts contained in this First Report are expressed in Canadian dollars.

ACTIVITIES OF THE MONITOR SINCE FILING DATE

9. Since the Filing Date, the Monitor has undertaken the following activities:

- a. activated its website at mnpdebt.ca/en/corporate/engagements/DELEquipment. All prescribed materials filed and/or sent by DEL and the Monitor relating to the CCAA Proceedings are available to creditors and other interested parties in electronic format on the Monitor's website. The Monitor makes regular updates to the website and adds prescribed materials as they become available to ensure creditors and interested parties are kept current with respect to the CCAA Proceedings;
- b. completed its notice requirements pursuant to subsection 23(1)(a) of the CCAA and as provided in paragraph 51 of the Initial Order. In particular:
 - i. the Initial Order and the list of known creditors, including their names, addresses, and amounts owed, pursuant to DEL's books and records was posted on the Monitor's website;
 - ii. by October 29, 2019, a notice containing the prescribed information on the CCAA Proceedings was sent to all known creditors of DEL who have claims greater than \$1,000 against DEL; and
 - iii. notices of the CCAA Proceedings, containing the prescribed information, were published in the Globe and Mail (National Edition) on October 28, 2019 and November 4, 2019 pursuant to subsection 23(1)(a) of the CCAA.
- c. completed statutory forms 1 and 2. Form 1 and Form 2 were filed with the Office of the Superintendent of Bankruptcy pursuant to subsection 23(1)(f) of the CCAA on October 23, 2019 and October 24, 2019, respectively.
- d. reviewed the Company's requests for consent of the Monitor for the Pre-CCAA Payments;
- e. reviewed and assisted in the preparation of various cash flow statements and financial projections prepared by Management;
- f. prepared this First Report of the Monitor; and

- g. responded to numerous enquiries from creditors and other stakeholders.

SISP UPDATE

10. As discussed in the Pre-filing Report, DEL, prior to the CCAA Proceedings, implemented certain changes after undertaking a rapid business assessment. Nonetheless, the changes were insufficient to fully address the Company's financial and operational difficulties. As a result, DEL entered into the CCAA Proceedings to undertake, among other things, the SISP for the purpose of identifying and assessing the strategic alternatives available to it to maximize the value of its business for its stakeholders.
11. Pursuant to the Initial Order, DEL and its advisors (including, without limitation, the CRO) are to carry out the SISP under the supervision of the Monitor.
12. Since the date of the Initial Order the Company, in consultation with its CRO and its advisors and under the supervision of the Monitor has conducted the following activities:
 - a. prepared marketing materials, including a Confidential Information Memorandum (the "**CIM**") and a form of notice of the SISP to be published in various media outlets;
 - b. prepared a form of confidentiality agreement and written acknowledgement (the "**Confidentiality Agreement**"), which has been approved by the Monitor and legal counsel to both DEL and the Monitor, that is required to be executed by Prospective Bidders (defined below) wishing to participate in the SISP and access an online data room (the "**Data Room**");
 - c. placed advertisements in the Globe and Mail (National Edition) on November 5 2019, and in the Insolvency Insider e-mail publication on November 11, 2019;
 - d. compiled a list of prospective purchasers and/or investors (the "**Prospective Bidders**"). DEL has commenced the process of contacting the Prospective Bidders by sending out its teaser to the Prospective Bidders, and entering into the Confidentiality Agreement with those Prospective Purchasers interested in pursuing the opportunity;

- e. established and populated the Data Room, which contains information and documentation to enable Prospective Bidders to conduct their due diligence in the first phase of the Sale Process, including the CIM; and
- f. provided access to the Data Room, to Prospective Bidders that have signed a Confidentiality Agreement.

13. Key milestones with respect to the SISP are as follows:

- a. Prospective Bidders are to submit non-binding Expressions of Interest (“**EOI**”) by December 6, 2019.
- b. Parties that have submitted an EOI may be selected to enter into the second phase of the SISP (the “**Phase 2 Parties**”) to conduct detailed due diligence.
- c. Phase 2 Parties are to submit binding offers together with duly executed proposed transaction document(s) by 5:00 p.m. (Toronto Time) on January 31, 2020.

CASH FLOW VARIANCE ANALYSIS

14. The Monitor has undertaken a weekly review of DEL’s actual cash flows in comparison to those contained in the Initial Cash Flow Forecast. A summary of DEL’s actual cash receipts and disbursements as compared to the Initial Cash Flow Forecast for the two weeks ended November 3, 2019 (the “**Monitored Period**”) is summarized below.

DEL Equipment Inc.
 Weekly Cash Flow Variance Report
 (Unaudited, in 000s CAD)

Cumulative Two-Week Period Ended November 3, 2019			
	<u>Actual</u>	<u>Budget</u>	<u>Variance</u>
Receipts	2,060	2,057	4
Disbursements			
Merchandise Vendors	593	1,677	(1,084)
Non-Merchandise Vendors	188	292	(104)
Payroll	289	312	(23)
Tax	-	-	-
Total Disbursements	1,070	2,280	(1,210)
Operating Net Cash Flow	990	(223)	1,214
Administrative Fees	129	304	(175)
DEL Hydraulics Inc. Sale	(589)	(589)	(0)
Net Cash Flow	1,451	61	1,390
Beginning Cash	2,772	1,500	1,272
Net Cash Flow	1,451	61	1,390
Interim Financing/(repayment)	-	-	-
Ending Cash	4,223	1,561	2,662

15. Overall, DEL realized a favourable net cash flow variance of approximately \$2,662,000.

The key components of the variance are as follows:

- a. Beginning Cash: As noted in the Pre-filing Report, the Beginning Cash position as presented in the Initial Cash Flow Forecast was subject to further review and reconciliation, as such figure reflected all cheques issued but had not necessarily cleared the bank, as well as certain amounts anticipated to have been paid prior to the filing. The \$1,272,000 favorable variance is primarily attributable to: (i) DEL stopping approximately \$600,000 in outstanding cheques largely in respect of the supply of pre-CCAA goods and services; and (ii) the non-payment of approximately \$450,000 in HST and payroll (including Source deductions) amounts that had originally been projected to be paid prior to the filing (and subsequently paid).

- b. Receipts: Actual receipts are in line with the projections and a minor variance has been reported.
- c. Disbursements - Merchandise Vendors: The \$1,084,000 favorable variance is primarily a timing difference as a result of the Company spending the first two weeks stabilizing the business and negotiating mutually agreeable payment terms and the logistics for the ongoing supply of goods and services. This had the impact of delaying ordering and the purchase of materials as compared to what had been projected.
- d. Disbursements - Administrative Fees: \$175,000 favourable variance is a result of lower than expected professional fee expenses, which is expected to reverse in the Remaining Period.

DISPOSITION OF REDUNDANT OR NON-MATERIAL ASSETS

- 16. As noted in the Pre-filing Report, DEL, as part of its restructuring plan was to exit from certain activities not related to its core business. In doing so, DEL anticipated selling certain equipment, tooling and its inventory of pneumatic control valves to DEL Hydraulics, Inc. The sale of these assets for \$588,721 was completed during the week ended October 25, 2019 and the funds were received by DEL in the same week.
- 17. As noted in the Lucky Affidavit and the Pre-filing Report, prior to the Filing Date, DEL closed its branch in Regina. DEL arranged to auction the remaining redundant contents of the Regina branch by retaining the services of McDougall Auctioneers Ltd. in Saskatchewan. The online auction resulted in gross and net recoveries of \$159,639 and \$130,390, respectively. DEL is expecting receipt of the net proceeds soon.
- 18. DEL also arranged for a sale of certain dated snow-clearing inventory, which sale produced recoveries of \$33,834 plus applicable sales tax. The proceeds of this sale are expected to be received by November 15, 2019.
- 19. The aggregate of the sales noted in paragraphs 16-18 is \$752,94 and has provided additional liquidity to the Company. The Initial Order contemplates that DEL would

“have the right to permanently or temporarily cease, downsize or shut down any of its Business or operations, and to dispose of redundant or non-material assets not exceeding \$650,000 in any one transaction or \$1,000,000 in the aggregate”.

REVISED CASH FLOW FORECAST

20. The Initial Cash Flow Forecast prepared by DEL and included in the Pre-Filing Report covered the period from the week ending October 27, 2019 through to the week ending January 19, 2020. To reflect the Requested Stay Extension, the Revised Cash Flow Forecast has been prepared to extend through to the week ended March 1, 2020 (the **“Revised Forecast Period”**). A copy of the Revised Cash Flow Forecast is attached as **Appendix “C”**.
21. In comparison of the Initial Cash Flow Forecast and the Revised Cash Flow Forecast, the Monitor notes the following with respect to the changes in assumptions other than the extension of the time period to which the forecasts relate:
- a. Receipts: DEL has revised its sales projections for the Revised Forecast Period, which results in a forecasted reduction in receipts from sales by approximately \$503,000 in the remaining 11 weeks of the Initial Cash Flow Forecast (the **“Remaining Period”**).
 - b. Merchandise Vendors (Direct Materials): The Merchandise Vendors payments in the Initial Cash Flow Forecast included the purchase of materials to support sales that would be expected subsequent to January 19, 2020, being the end of the 13-week period of the Initial Cash Flow. The Revised Cash Flow Forecast includes a reduction in sales beyond the period up to January 19, 2020. The reduction to DEL’s material purchase requirements is commensurate with the reduction in sales. The Revised Cash Flow Forecast reflects a reduction in material purchases of approximately \$751,000 in the Remaining Period.
 - c. Administrative Fees: DEL has revised the forecasted administrative fees by an increase of \$90,000 during the Remaining Period.

- d. Sales Taxes: As a result of strong sales in October and November, including the sale of the redundant and/or non-material assets, there has been a reduction in the expected sales tax refund forecast for the week ended December 8, 2019.
 - e. Operational Restructuring: DEL continues to assess its operations with a view to improving its performance and promoting efficiencies. The Revised Cash Flow Forecast reflects certain measures being considered by the Company.
22. Overall, DEL is forecasting to incur net cash outflow of approximately \$2.110 Million during the Revised Forecast Period and have a remaining cash balance of \$2.113 Million at the end of the Revised Forecast Period.
23. Management’s Representation Letter and the Monitor’s report to the Court regarding the adequacy of the Revised Cash Flow Forecast, are attached hereto as **Exhibits “D” and “E”**.
24. The Monitor has reviewed the Revised Cash Flow Statement to the standard required of a Court-Appointed Monitor by subsection 23(1)(b) of the CCAA and in accordance with the Professional Standards. Based on the Professional Standards, the Monitor’s review of the Revised Cash Flow Forecast consisted of enquiries, analytical procedures and discussions related to information supplied to us by Management. Since hypothetical assumptions need not be supported, the procedures with respect to those assumptions were limited to evaluating whether they were consistent with the purpose of the forecast. The Monitor has also reviewed the support provided by Management for the probable assumptions and the preparation and presentation of the forecast.
25. Based on the Monitor’s review, nothing has come to its’ attention that causes it to believe that, in all material respects:
- a. The hypothetical assumptions are not consistent with the purpose of the forecast;
 - b. As at the date of the First Report, the probable assumptions developed by management are not suitably supported and consistent with the plans of the

Company or do not provide a reasonable basis for the forecast, given the hypothetical assumptions; and

- c. The Revised Cash Flow Forecast does not reflect the probable and hypothetical assumptions.

FUNDS SUBJECT TO PRESERVATION ORDER

26. Concurrent with the Initial Order, the Court granted an additional order (the “**Preservation Order**”), which required certain funds that were paid by a DEL customer to Gin-Cor Industries Inc. (“**Gin-Cor**”) to be transferred by Gin-Cor to the Monitor forthwith to be held by the Monitor until further Order of the Court.
27. Pursuant to the Preservation Order, Gin-Cor was to transfer funds in the amount of \$874,107.08 (the “**Funds**”) to the Monitor, representing the funds received by Gin-Cor from Mack Defense, LLC (“**Mack Defense**”) via wire transfers made on or about August 28, 2019 and September 5, 2019 by no later than October 25, 2019. Although counsel for Gin-Cor and the Company exchanged correspondence, the Monitor did not receive the Funds by the October 25, 2019 deadline.
28. On November 5, 2019, the Company brought a second motion seeking an Order of the Court requiring Gin-Cor to deliver the Funds to the Monitor notwithstanding any alleged comingling of the Funds with other funds or dissipation of the Funds, and granting DEL an equitable lien on all of Gin-Cor’s current and future assets, undertakings and properties until such a time as Gin-Cor delivers the Funds to the Monitor. Gin-Cor brought a cross-motion seeking to, among other things, set aside the Preservation Order.
29. On November 5, 2019, on the consent of the Company, Gin-Cor and the Monitor, the Court issued an Order revising the Preservation Order, *inter alia*:
 - a. directing Gin-Cor to pay the Funds to its counsel, Kagan Shastri LLP (“**KS**”), in trust, forthwith, and by no later than November 19, 2019; and
 - b. KS shall hold the Funds in a segregated interest-bearing trust account pending further Court Order or the consent of DEL, Gin-Cor and the Monitor.

30. On November 13, 2019, KS confirmed receipt of the Funds.

DIP FINANCING

31. The Initial Order authorized DEL to borrow up to \$1 million pursuant to the DIP Credit Agreement (the “**DIP Financing**”).

32. During the Monitored Period, DEL has not been required to draw on the DIP Financing and has been able to fund its cash needs from its cash on hand, receipts from the sale of non-core assets and its continuing receipts in the normal course.

33. Although the Company expects to be able to operate its business through the Revised Forecast Period without drawing on its DIP Financing, the Company is seeking the Requested DIP Increase to ensure that it has sufficient cash on hand to address any unexpected expenses that may arise, and to otherwise provide it with a liquidity buffer. Beyond the increased amount of the DIP Financing, all other terms and conditions of the DIP Financing would remain the same.

34. The Monitor supports the Requested DIP Increase for the following reasons:

- c. As further discussed in the Lucky Affidavits, the nature of DEL’s business presents challenges in its ability to forecast its cash needs three to four months in the future. During the normal course of business, although projected to have sufficient cash flow, there may be cash requirements as a result of higher than forecast expenses. The higher expenses, while potentially from unforeseeable circumstances also may relate to expenses that are challenging to precisely quantify (including the litigation expenses in relation to the dispute with Gin-Cor and Mack Defense in respect of the Funds);
- d. DEL will not incur any additional charges for the Requested DIP Increase, subject only to the interest that would be charged on the amounts borrowed beyond the \$1 million that has been authorized in the Initial Order;

- e. The approval of the Requested DIP Increase avoids the potential expenses should a further Court attendance be necessary for any incremental increases to the DIP Financing before the end of the Requested Stay Extension; and
- f. The only party being primed is the DIP Lender in respect of its pre-filing secured debt (and who consents to the Requested DIP Increase).

EXTENSION OF THE STAY OF PROCEEDINGS

35. The Company has asked the Court to approve an extension of the Stay Period from November 21, 2019 to February 28, 2020. The basis for this request is primarily to permit the Company to continue to conduct the SISP without having to incur the cost of coming back to Court prior to the final bid deadline, which the Monitor is of the view is appropriate in the circumstances. The Requested Stay Extension would also permit DEL to continue its operations in the normal course as it has done since the commencement of the CCAA Proceedings.
36. The Revised Cash Flow Forecast includes the Company's forecast for the weekly cash receipts and disbursements to the period ending February 28, 2020. These projections indicate that the Company will have sufficient liquidity during the period of the requested extension. The Monitor is of the view that no creditor will be materially prejudiced by an extension of the Stay Period.
37. The Monitor is of the view that the Company has acted and is continuing to act in good faith and with due diligence and supports the Requested Stay Extension.

MONITOR'S RECOMMENDATIONS

38. Accordingly, the Monitor respectfully recommends that the Court grant the following orders:
- a. the Stay Period, as defined in the Initial Order, be extended until February 28, 2020; and
 - b. DEL be authorized to borrow up to an additional \$1.5 million (\$2.5 million in the aggregate) pursuant to the DIP Credit Agreement.

All of which is respectfully submitted this 14th day of November 2019.

**MNP Ltd., in its capacity as
Court-Appointed Monitor of
DEL Equipment Inc.**



**Sheldon Title, CPA, CA, CIRP, LIT
Senior Vice-President**

Appendix “D”

DEL Equipment Inc.
Projected Statement of Extended Cash Flow Forecast
For the period ending May 31, 2020
(Unaudited, in S'000s CAD)

Week Beginning		<i>Week 17</i>	<i>Week 18</i>	<i>Week 19</i>	<i>Week 20</i>	<i>Week 21</i>	<i>Week 22</i>	<i>Week 23</i>	<i>Week 24</i>	<i>Week 25</i>	<i>Week 26</i>	<i>Week 27</i>	<i>Week 28</i>	<i>Week 29</i>	<i>Week 30</i>	<i>Week 31</i>	<i>Week 32</i>
	Notes	10-Feb-20	17-Feb-20	24-Feb-20	2-Mar-20	9-Mar-20	16-Mar-20	23-Mar-20	30-Mar-20	6-Apr-20	13-Apr-20	20-Apr-20	27-Apr-20	4-May-20	11-May-20	18-May-20	25-May-20
		<i>Forecast</i>	<i>Forecast</i>	<i>Forecast</i>	<i>Forecast</i>	<i>Forecast</i>	<i>Forecast</i>	<i>Forecast</i>	<i>Forecast</i>	<i>Forecast</i>	<i>Forecast</i>	<i>Forecast</i>	<i>Forecast</i>	<i>Forecast</i>	<i>Forecast</i>	<i>Forecast</i>	<i>Forecast</i>
Receipts	1 2, 3, 4	864	864	864	491	491	491	491	402	402	402	402	402	606	606	606	606
Disbursements																	
Merchandise Vendors	5	515	515	515	458	458	458	458	84	84	84	84	84	-	-	-	-
Non-Merchandise Vendors	6	153	153	153	101	101	101	101	81	63	63	63	63	62	68	68	68
Payroll	7	119	119	119	143	143	143	143	195	25	25	25	25	5	5	5	5
Tax		-	-	-	-	-	-	-	(35)	-	-	-	166	-	-	-	279
Total Disbursements		786	786	786	702	702	702	702	324	172	172	172	338	67	73	73	353
Operating Net Cash Flow		78	78	78	(210)	(210)	(210)	(210)	78	230	230	230	64	539	532	532	253
Administrative Fees		29	29	29	39	39	39	39	39	39	39	39	39	39	39	39	39
Net Cash Flow		49	49	49	(249)	(249)	(249)	(249)	39	191	191	191	25	500	493	493	214
Opening cash balance		4,917	4,965	5,014	5,063	4,813	4,564	4,314	4,065	4,104	4,295	4,487	4,678	4,703	5,203	5,697	6,190
Net Cash Flow		49	49	49	(249)	(249)	(249)	(249)	39	191	191	191	25	500	493	493	214
Interim Financing/(repayment)		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Closing cash balance		4,965	5,014	5,063	4,813	4,564	4,314	4,065	4,104	4,295	4,487	4,678	4,703	5,203	5,697	6,190	6,404

To be read in conjunction with the Notes to Projected Statement of Cash Flow

DEL Equipment Inc.
Projected Statement of Extended Cash Flow Forecast
For the period ending May 31, 2020
(Unaudited, in \$'000s CAD)

Purpose and General Assumptions

1. The purpose of the projection is to present a cash forecast of DEL Equipment Inc. for the period February 10, 2020 to May 31, 2020 (the "Period") in respect of their proceedings under the *Companies' Creditors Arrangement Act*.

Hypothetical Assumptions

2. Receipts are forecast based on the Company's current sales forecast, inclusive of sales tax.

3. Although the Transaction is likely to close during the Extended Cash Flow Period, the proceeds from sale of the DPI Assets are not included in Extended Cash Flow Forecast as to avoid publicly disclosing the purchase price.

In addition, DEL assumes that any sale of the Residual Assets will be consummated after the Extended Cash Flow Forecast Period.

Most Probable Assumptions

4. Existing accounts receivable will be collected in approximately 60 days. Historically, the Company's DSO (days of sales outstanding) has been in the range of 34-42 days in 2017 and 2018 and it is 55 days as on September 30, 2019. Hence, the collection period of 60 days for the 16-week cash flows is in line with the past results.

5. Merchandise vendors include disbursements to both domestic and foreign third-party merchandise suppliers. Disbursements are based on the Company's current inventory receipts and cost of sales schedule with certain vendors forecast to be paid on COD terms.

6. Non-Merchandise vendors include disbursement to landlords, logistics, procurement, IT and ecommerce, marketing and facilities management. Disbursements are based on COD terms.

7. Disbursements include salaries, wages, remittances, KERP Payments and employee benefits for salaried and hourly employees, including any outstanding wages and vacation pay.

Appendix "E"

**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.
(THE "APPLICANT")
MANAGEMENT'S REPORT ON CASH FLOW STATEMENT
(paragraph 10(2)(b) of the CCAA)**

Del Equipment Inc. have developed the assumptions and prepared the attached Projected Statement of Cash Flow as of the 24th day of February 2020 for the period February 10, 2020 to May 31, 2020 ("**Cash Flow**"). All such assumptions are disclosed in the Notes to Projected Statement of Cash Flow.

The hypothetical assumptions are reasonable and consistent with the purpose of the Cash Flow as described in Note 1 to the Cash Flow, and the probable assumptions are suitably supported and consistent with the plans of the Applicant and provide a reasonable basis for the Cash Flow. Since the Cash Flow is based on assumptions regarding future events, actual results will vary from the information presented and the variations may be material.

The Cash Flow has been prepared solely for the purpose outlined in Note 1 using a set of hypothetical and probable assumptions set out therein. Consequently, readers are cautioned that the Cash Flow may not be appropriate for other purposes.

Dated at Toronto, Ontario this 24 day of February 2020.



Doug Lucky
Chief Restructuring Officer

Appendix "F"

**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.
(THE "APPLICANT")**

MONITOR'S REPORT ON CASH FLOW STATEMENT

(paragraph 23(1)(b) of the CCAA)

FEBRUARY 24, 2020

The attached Projected Statement of Cash Flow of DEL Equipment Inc. as at the 24 day of February 2020, consisting of a weekly projected cash flow statement for the period February 10, 2020 to May 31, 2020 (“**Cash Flow**”) has been prepared by the management of the Applicant for the purpose described in Note 1, using the probable and hypothetical assumptions set out in the Notes to the Projected Statement of Cash Flow.

Our review consisted of inquiries, analytical procedures and discussion related to information supplied by the management, employees and the representatives of the Applicant. Since hypothetical assumptions need not be supported, our procedures with respect to them were limited to evaluating whether they were consistent with the purpose of the Cash Flow. We have also reviewed the support provided by management of the Applicant for the probable assumptions, and the preparation and presentation of the Cash Flow.

Based on our review, nothing has come to our attention that causes us to believe that, in all material respects:

- a) the hypothetical assumptions are not consistent with the purpose of the Cash Flow.
- b) as at the date of this report, the probable assumptions developed by management are not suitably supported and consistent with the plans of the Applicant or do not provide a reasonable basis for the Cash Flow, given the hypothetical assumptions; or
- c) the Cash Flow does not reflect the probable and hypothetical assumptions.

Since the Cash Flow is based on Assumptions regarding future events, actual results will vary from the information presented even if the hypothetical assumptions occur, and the variations may be material. Accordingly, we express no assurance as to whether the Cash Flow will be achieved. We

express no opinion or other forms of assurance with respect to the accuracy of any financial information presented in this report or relied upon in preparing this report.

The Cash Flow has been prepared solely for the purpose described in Note 1 and readers are cautioned that it may not be appropriate for other purposes.

Dated at Toronto, this 24 day of February 2020.

MNP LTD.

IN ITS CAPACITY AS PROPOSED CCAA MONITOR OF DEL EQUIPMENT INC.

Per:



Sheldon Title, CPA, CA, CIRP, LIT

Senior Vice-President

**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

**SECOND REPORT OF THE
MONITOR, MNP LTD.
DATED FEBRUARY 24, 2020**

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