

COURT FILE NUMBER Q.B. 572 of 2021

COURT OF QUEEN'S BENCH FOR SASKATCHEWAN  
IN BANKRUPTCY AND INSOLVENCY

JUDICIAL CENTRE SASKATOON

APPLICANT AFFINITY CREDIT UNION 2013

RESPONDENTS RITCHIE INDUSTRIES INC. and DUCK MOUNTAIN  
ENVIRONMENTAL LTD.



\$20.00 [Signature]

**CONSENT INTERIM RECEIVERSHIP ORDER**

**IN THE MATTER OF THE INTERIM RECEIVERSHIP OF**

**RITCHIE INDUSTRIES INC. AND DUCK MOUNTAIN ENVIRONMENTAL LTD.**

Before the Honourable Madam Justice A.R. Rothery in Chambers the 1<sup>st</sup> day of June, 2021.

Upon the application of **AFFINITY CREDIT UNION 2013** (the "**Applicant**") in respect of **RITCHIE INDUSTRIES INC.** and **DUCK MOUNTAIN ENVIRONMENTAL LTD.** (collectively, the "**Debtors**"); and upon having read this Consent Interim Receivership Order; and upon reading the consent of MNP Ltd. to act as interim receiver; all filed; and upon hearing from Ryan Pederson and Wayne Pederson, lawyers on behalf of the Applicant, and upon hearing from Mike Russell, lawyer on behalf of the Debtors;

**The Court Orders:**

**SERVICE**

1. (Intentionally Deleted).

**SEALING ORDER**

1A. Counsel having complied with General Application Practice Directive #3, the Confidential Affidavit of Amie Bregenser, sworn May 25, 2021 (the "**Confidential Affidavit**"), shall be and is hereby sealed on a *nunc pro tunc* basis, effective as of the date of the filing of the Application materials, being May 25, 2021, and shall neither form part of the public record nor be disclosed to any party to this proceeding or otherwise, except by further Order of this Court. Notwithstanding the foregoing, any person shall have leave to apply to the court on notice to the Applicant and the Debtors for the unsealing of the Confidential Affidavit of Amie Bregenser upon any terms this Honourable Court shall deem appropriate.

**APPOINTMENT**

2. Pursuant to section 47.1 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the "**BIA**"), **MNP Ltd.** is hereby appointed Interim Receiver (the "**Interim Receiver**"), without security, of all of assets, undertakings and properties of the Debtors acquired for, or used in relation to the businesses carried on by the Debtors, including all proceeds thereof (collectively, the "**Property**").

2A. The appointment of the Interim Receiver under this Order shall continue in full force and effect until court approval of a proposal filed pursuant to the NOIs (as that term is defined below) or further Order of this Court extending such appointment (whichever shall first occur). If this Order is not extended by further Order of the Court, the Interim Receiver shall be automatically discharged (without further Order of the Court) upon court approval of a proposal filed pursuant to the NOIs.

2B. Subject to paragraph 3 of this Order, no provision in this Order shall be deemed, construed or interpreted so as to limit or restrict the powers of the board of directors of the Debtors to control and administer the business and financial affairs of the Debtors.

2C. For greater certainty, subject to the provisions of this Interim Receivership Order, the Debtors shall have the right to pursue all avenues of restructuring of their businesses or Property, including, without limitation, pursuant to the Notices of Intention to Make a Proposal filed on May 31, 2021 (collectively, the "NOIs"), pursuant to the BIA or the *Companies' Creditors Arrangement Act*. The Interim Receiver shall report to, meet with and share information with the Proposal Trustee under the NOIs, regarding all matters relating to the Property and the Debtors.

### **INTERIM RECEIVER'S POWERS**

3. The Interim Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property, and, without in any way limiting the generality of the foregoing, the Interim Receiver is hereby expressly empowered and authorized to do any of the following where the Interim Receiver considers it necessary or desirable solely for the protection and preservation of the Property:
- (a) to take possession of and exercise control over the Property and all proceeds, receipts and disbursements arising out of or from the Property;
  - (b) to preserve, protect and maintain control of the Property, or any part or parts thereof, including, but not limited to, upon first notifying and consulting with counsel for the Debtors, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
  - (c) to monitor the management, operation and carrying on of the business of the Debtors;
  - (d) to assist and direct Robert Ritchie in respect of the management, operation and carrying on of the businesses of the Debtors, including, upon first notifying and consulting with counsel for the Debtors, the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the businesses or cease to perform any contracts of the Debtors;
  - (e) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Interim Receiver's powers and duties including, without limitation, those conferred by this Order;
  - (f) to purchase or lease machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors or any part or parts thereof;
  - (g) upon first notifying and consulting with counsel for the Debtors, to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors;
  - (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property in the ordinary course of business, whether in the Interim Receiver's name or on behalf of the Debtors;
  - (i) to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtors;

- (j) to report to, meet with and discuss with such affected Persons (as defined below) as the Interim Receiver deems appropriate all matters relating to the Property and the interim receivership, and to share information, subject to such terms as to confidentiality as the Interim Receiver deems advisable;
- (k) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Interim Receiver, in the name of the Debtors and, upon first notifying counsel for the Debtors, to take any steps or action required by Saskatchewan Liquor & Gaming Authority, Saskatchewan Ministry of Environment, Petro Canada or otherwise as may be required to continue the businesses operated by the Debtors;
- (l) to fund (by means of money borrowed by the Interim Receiver or otherwise) payment of the employee payroll obligations, wages, salaries, rent, insurance, utilities and other obligations determined by the Interim Receiver to be integral to the preservation of the Property;
- (m) to report to the Court and the creditors of the Debtors regarding the status of the businesses and financial affairs of the Debtors, including their assets, liabilities, accounts payable including crown liabilities and other matters deemed relevant by the Interim Receiver; and
- (n) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations;

and in each case where the Interim Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtors, and without interference from any other Person.

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

4. (i) The Debtors, (ii) all of the Debtors' current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Interim Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Interim Receiver, and shall deliver all such Property (excluding Property subject to liens the validity of which is dependent on maintaining possession) to the Interim Receiver upon the Receiver's request.
5. All Persons shall forthwith advise the Interim Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtors, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Interim Receiver or permit the Interim Receiver to make, retain and take away copies thereof and grant to the Interim Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto provided, however, that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Interim Receiver due to the privilege attaching to solicitor-client communication or documents prepared in contemplation of litigation or due to statutory provisions prohibiting such disclosure.
6. If any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Interim Receiver for the

purpose of allowing the Interim Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Interim Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Interim Receiver with all such assistance in gaining immediate access to the information in the Records as the Interim Receiver may in its discretion require, including providing the Interim Receiver with instructions on the use of any computer or other system and providing the Interim Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

#### **NO PROCEEDINGS AGAINST THE INTERIM RECEIVER**

7. No proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against the Interim Receiver except with the written consent of the Interim Receiver or with leave of this Court.

#### **NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY**

8. No Proceeding against or in respect of the Debtors or the Property shall be commenced or continued except with the written consent of the Interim Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtors or the Property are hereby stayed and suspended pending further Order of this Court, provided, however, that nothing in this Order shall: (i) prevent any Person from commencing a Proceeding regarding a claim that might otherwise become barred by statute or an existing agreement, if such Proceeding is not commenced before the expiration of the stay provided by this paragraph; or (ii) affect a Regulatory Body's investigation in respect of the Debtors or an action, suit or proceeding that is taken in respect of the Debtors by or before the Regulatory Body, other than the enforcement of a payment order by the Regulatory Body or the Court. "**Regulatory Body**" means a person or body that has powers, duties or functions relating to the enforcement or administration of an Act of Parliament or of the legislature of a province.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

9. All rights and remedies (including, without limitation, set-off rights) against the Debtors or the Interim Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Interim Receiver or leave of this Court, provided however that nothing in this paragraph shall: (i) empower the Interim Receiver or the Debtors to carry on any business which the Debtors are not lawfully entitled to carry on; (ii) exempt the Interim Receiver or the Debtors from compliance with statutory or regulatory provisions relating to health, safety or the environment; (iii) prevent the filing of any registration to preserve or perfect a mortgage or security interest; or (iv) prevent the registration or filing of a lien or claim for lien or the commencement of a Proceeding to protect a lien or other rights that might otherwise be barred or extinguished by the effluxion of time, provided that no further steps shall be taken in respect of such lien, claim for lien or Proceeding except for service of the initiating documentation on the Debtors and the Interim Receiver.

#### **NO INTERFERENCE WITH THE INTERIM RECEIVER**

10. No Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtors, including, without limitation, insurance coverage, without written consent of the Interim Receiver or leave of this Court.

#### **CONTINUATION OF SERVICES**

11. All Persons having oral or written agreements with the Debtors or statutory or regulatory mandates for the supply of goods and/or services, including, without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtors, 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 Interim Receiver, and the Interim Receiver shall be entitled to the continued use of the Debtors' current 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 Interim Receiver in accordance with normal payment practices of the Debtors or such other practices as may be agreed upon by the supplier or service provider and the Interim Receiver, or as may be ordered by this Court.

#### **INTERIM RECEIVER TO HOLD FUNDS**

12. All funds, monies, cheques, instruments and other forms of payments received or collected by the Interim Receiver or the Debtors from and after the making of this Order from any source whatsoever, including without limitation the sale or disposition of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Interim Receiver or the operating accounts of the Debtors with the Applicant (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Interim Receiver to be paid in accordance with the terms of this Order or any further order of this Court.

#### **EMPLOYEES**

13. Subject to the employees' rights to terminate their employment, all employees of the Debtors shall remain the employees of the Debtors. The Interim Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Interim Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5), 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*, SC 2005, c 47.

#### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

14. (a) Notwithstanding anything in any federal or provincial law, the Interim Receiver is not personally liable in that position for any environmental condition that arose or environmental damage that occurred:
  - (i) before the Interim Receiver's appointment; or
  - (ii) after the Interim Receiver's appointment unless it is established that the condition arose or the damage occurred as a result of the Interim Receiver's gross negligence or wilful misconduct.
- (b) Nothing in sub-paragraph (a) exempts a Interim Receiver from any duty to report or make disclosure imposed by a law referred to in that sub-paragraph.
- (c) Notwithstanding anything in any federal or provincial law, but subject to sub-paragraph (a) hereof, where an order is made which has the effect of requiring the Interim Receiver to remedy any environmental condition or environmental damage affecting the Property, the Interim Receiver is not personally liable for failure to comply with the order, and is not personally liable for any costs that are or would be incurred by any person in carrying out the terms of the order,

- (i) if, within such time as is specified in the order, within ten (10) days after the order is made if no time is so specified, within ten (10) days after the appointment of the Interim Receiver, if the order is in effect when the Interim Receiver is appointed, or during the period of the stay referred to in clause (ii) below, the Interim Receiver:
  - A. complies with the order, or
  - B. on notice to the person who issued the order, abandons, disposes of or otherwise releases any interest in any real property affected by the condition or damage;
    - (ii) during the period of a stay of the order granted, on application made within the time specified in the order referred to in clause (i) above, within ten (10) days after the order is made or within ten (10) days after the appointment of the Interim Receiver, if the order is in effect when the Receiver is appointed, by,
      - A. the court or body having jurisdiction under the law pursuant to which the order was made to enable the Interim Receiver to contest the order; or
      - B. the court having jurisdiction in bankruptcy for the purposes of assessing the economic viability of complying with the order; or
    - (iii) if the Interim Receiver had, before the order was made, abandoned or renounced or been divested of any interest in any real property affected by the condition or damage.

Nothing in this Order shall derogate from the protection afforded to the Interim Receiver by section 14.06 of the BIA or any other applicable legislation.

**LIMITATION ON THE INTERIM RECEIVER'S LIABILITY**

- 15. Except for gross negligence or wilful misconduct, as a result of its appointment or carrying out the provisions of this Order the Interim Receiver shall incur no liability or obligation that exceeds an amount for which it may obtain full indemnity from the Property. Nothing in this Order shall derogate from any limitation on liability or other protection afforded to the Interim Receiver under any applicable law, including, without limitation, Sections 14.06, 81.4(5) or 81.6(3) of the BIA.

**INTERIM RECEIVER'S ACCOUNTS**

- 16. (Intentionally Deleted)
- 17. The Interim Receiver and its legal counsel shall pass their accounts from time to time.
- 18. (Intentionally Deleted.)

**FUNDING OF THE INTERIM RECEIVERSHIP**

- 19. The Interim Receiver shall be at liberty and is hereby empowered to borrow, by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not at any time exceed \$250,000.00 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Interim Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests,



trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the charges set out in sections 14.06(7), 81.4(4) and 81.6(2) of the BIA.

20. Neither the Interim Receiver's Borrowings Charge nor any other security granted by the Interim Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.
21. The Interim Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.
22. The monies from time to time borrowed by the Interim Receiver pursuant to this Order or any further order of this Court and any and all Interim Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Interim Receiver's Certificates.

#### **ALLOCATION**

23. Any interested party may apply to this Court, on notice to any other party likely to be affected, for an order allocating the Interim Receiver's Borrowings Charge amongst the various assets comprising the Property.

#### **GENERAL**

24. The Interim Receiver may, from time to time, apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
25. Nothing in this Order shall prevent the Interim Receiver from acting as a trustee in bankruptcy of the Debtors.
26. Unless otherwise ordered by this Court, the Interim Receiver will report to the Court from time to time, which reporting is not required to be in affidavit form and shall be considered by this Court as evidence.
27. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Interim Receiver and its 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 Interim Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Interim Receiver and its agents in carrying out the terms of this Order.
28. The Interim Receiver shall 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 for the recognition that the Interim Receiver 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.
29. The Applicant shall have its costs of this application, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Interim Receiver from the Debtors' estate with such priority and at such time as this Court may determine.
30. Any interested party (including the Debtors) may apply to this Court for advice and directions regarding, or to vary or amend, this Order on not fewer than three (3) days' notice to the Interim

Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

**NOTICE AND SERVICE**

31. INTENTIONALLY DELETED

32.A Service of this Order shall be deemed good and sufficient by service of the same upon the parties listed on the service list created in these proceedings.

PARAGRAPHS 33 to 37 ARE INTENTIONALLY DELETED

ISSUED at the City of Saskatoon, in the Province of Saskatchewan, this 1<sup>st</sup> day of June, 2021.

  
DEPUTY LOCAL REGISTRAR

This document was delivered by:

Leland Kimpinski LLP  
Lawyer in charge of file: Ryan A. Pederson  
336 6<sup>th</sup> Avenue North  
Saskatoon, SK S7K 2S5  
Telephone: (306) 653-6474  
Facsimile: (306) 653-7008  
E-mail: rpederson@lelandlaw.ca

The Applicant's address for service is as above.

- TO:**
- a) Ritchie Industries Inc.
  
  - b) Duck Mountain Environmental Ltd.



**SCHEDULE "A"**

**RECEIVER'S CERTIFICATE**

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that MNP Ltd., the interim receiver (the "**Interim Receiver**") of the assets, undertakings and properties of RITCHIE INDUSTRIES INC. and DUCK MOUNTAIN ENVIRONMENTAL LTD. (the "**Debtors**") acquired for, or used in relation to the Debtors' businesses, including all proceeds thereof (the "**Property**") appointed by Order of the Court of Queen's Bench of Saskatchewan (the "**Court**") issued the 1st day of June, 2021 (the "**Order**") made in action Q.B. 572 of 2021, Judicial Centre of Saskatoon, has received as such Interim Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$ \_\_\_\_\_, being part of the total principal sum of \$250,000.00 which the Interim Receiver is authorized to borrow under and pursuant to the Order.
2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded monthly not in advance on the last day of each month after the date hereof at a notional rate per annum equal to the rate of 5% per cent above the prime commercial lending rate of the Applicant from time to time.
3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Interim Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property (as defined in the Order), in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act* (Canada) and the right of the Interim Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.
4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at \_\_\_\_\_.
5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Interim Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.
6. The charge securing this certificate shall operate so as to permit the Interim Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.
7. The Interim Receiver does not undertake any personal liability to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_\_ day of \_\_\_\_\_, 2021. MNP Ltd., solely in its capacity as Interim Receiver of the Property, and not in its personal capacity.

Per: \_\_\_\_\_  
Name: Eric Sirrs  
Title: Senior Vice-President

Website at [www.MNPDebt.ca](http://www.MNPDebt.ca).

Schedule “B” is INTENTIONALLY DELETED

The Demand for Notice is INTENTIONALLY DELETED

Schedule “C” is INTENTIONALLY DELETED