

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

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

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

Applicant

FACTUM OF THE APPLICANT

Motion for CCAA Termination Order
(Returnable October 29, 2020)

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PART I – INTRODUCTION

1. On October 22, 2019, Del Equipment Inc. (“**DEL**” or the “**Company**”) sought and obtained an Initial Order under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”). The Initial Order, among other things: (i) granted a stay of proceedings in favour of DEL; (ii) appointed MNP Ltd. (“**MNP**”) as the monitor (the “**Monitor**”); and (iii) approved DEL’s commencement of a sale and investment solicitation process (the “**Sale Process**”) to seek to identify a going-concern solution or other transaction that maximizes the value of DEL and its business for the benefit of the Company and all stakeholders.¹

¹ Capitalized terms used but not defined herein have the meaning given to such terms in the Affidavit of Douglas Lucky sworn October 22, 2020 (the “**Lucky Affidavit**”). All monetary amounts are expressed in Canadian dollars.

2. Over the course of these CCAA proceedings, DEL has, among other things, completed the going concern sale of its Ontario business (which represented a significant portion of DEL's overall business) and certain additional assets pursuant to the DPI Transaction (as defined and discussed below), completed an orderly liquidation of its remaining branches and assets, collected the vast majority of its outstanding accounts receivable, wound-down its business operations, repaid in full all amounts owing under the Secured Credit Agreement and successfully pursued and concluded the payment dispute (the "**Payment Dispute**") involving Gin-Cor Industries Inc. ("**Gin-Cor**") and Mack Defense, LLC ("**Mack Defense**") resulting in DEL's recovery of the \$874,107.08 (the "**Funds**") attributable to work performed by DEL, for which payment had instead been made by Mack Defense to Gin-Cor.
3. Not only have these efforts allowed DEL to satisfy its secured indebtedness in full, they have generated additional proceeds that DEL expects will ultimately be available for distributions to unsecured creditors.
4. With its wind-down now substantially complete and having considered the available options to advance the case, DEL has determined that it would be most efficient to address claims reconciliation and distributions within a bankruptcy process as opposed to under the CCAA. Accordingly, the Company has brought a motion seeking approval of an Order (the "**CCAA Termination Order**"), among other things, terminating these CCAA proceedings and authorizing the Company to make an assignment in bankruptcy.
5. For the reasons set out herein, the Company respectfully submits that the relief requested is in the best interest of the Company and its stakeholders and that it is fair, reasonable and appropriate for the Court to grant the requested CCAA Termination Order.

6. The Company also consents to and supports the motion by MNP, as Receiver, seeking an Order (the “**Receiver Discharge Order**”), among other things, discharging the Receiver. The Limited Receivership Proceedings were commenced in conjunction with these CCAA proceedings in order to assist DEL’s former employees who would have been entitled to benefit from payments provided under the *Wage Earner Protection Program Act*, S.C. 2005, c. 47, s. 1 (the “**WEPPA**”) had the Company been subject to bankruptcy or receivership proceedings. With the WEPPA administration now largely complete, the Company supports the issuance of the Receiver Discharge Order and the termination of the Limited Receivership Proceedings effective upon the filing of the Receiver’s Certificate (as defined below).

PART II – SUMMARY OF THE FACTS

A. BACKGROUND

7. Prior to completing the DPI Transaction, DEL was a Canadian truck body and equipment “up-fitter” that engineered, designed, manufactured and sold special truck bodies, attachments, equipment and work-ready vehicles nationwide through its six manufacturing and distribution locations.

Lucky Affidavit, at para. 5 and Exhibit “A”; Motion Record of the Applicant, returnable October 29, 2020 (the “**Motion Record**”), Tab 2.

8. DEL initiated these CCAA proceedings, among other reasons, to provide stability and breathing space necessary for it to advance the Sale Process to seek to identify a going-concern solution or other transaction that would maximize the value of DEL and its business for the benefit of the Company and all stakeholders.

Lucky Affidavit, at para. 6 and Exhibit “A”; Motion Record, Tab 2.

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

Lucky Affidavit, at para. 7; Motion Record, Tab 2.

10. DEL has also now completed an orderly liquidation of its remaining assets not included within the scope of the DPI Transaction (the “**Residual Assets**”) pursuant to the Auction Services Agreement and by self-liquidation (generating an additional approximately \$1.1 million of net proceeds in the aggregate), and has also collected the vast majority of accounts receivable owing to it.

Lucky Affidavit, at para. 8; Motion Record, Tab 2.

11. The Company and its legal counsel also worked diligently following the commencement of these CCAA proceedings to advance the Payment Dispute in respect of which DEL was seeking to recover the Funds (being the \$874,107.08 attributable to work performed by DEL and invoiced to Mack Defense, for which payment had instead been made by Mack Defense to Gin-Cor).

Lucky Affidavit, at para. 9; Motion Record, Tab 2.

12. On May 7, 2020 this Court released the Payment Dispute Decision in which it held that Gin-Cor had been unjustly enriched by the receipt and retention of the Funds and ordered that Gin-Cor return the Funds to DEL. On September 8, 2020, the Ontario Court of Appeal denied Gin-Cor’s

motion for leave to appeal the Payment Dispute Decision and on September 9, 2020, the Funds were transferred by Gin-Cor's legal counsel to DEL.

Lucky Affidavit, at para. 10; Motion Record, Tab 2.

13. DEL has also repaid in full all amounts owing to Diesel under the Secured Credit Agreement – the Company's only material secured debt obligation at the time of its CCAA filing – pursuant to the Stay Extension and Distribution Order made on April 29, 2020.

Lucky Affidavit, at para. 13; Motion Record, Tab 2.

14. At present, the Company has approximately \$4.5 million of cash on hand.

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

15. Subject to the completion of certain remaining administrative matters, the wind-down of the Company is almost complete and DEL is in a position to proceed with a reconciliation of claims and distributions to unsecured creditors. DEL has determined that it would be more cost-effective to undertake such efforts within a bankruptcy process as opposed to under the CCAA, and seeks the proposed CCAA Termination Order to facilitate the completion of remaining wind-down matters and the termination of the CCAA proceedings and the transition into a bankruptcy process in an efficient and cost-effective manner.

Lucky Affidavit, at para. 14; Motion Record, Tab 2.

B. THE CCAA TERMINATION ORDER

(i) Termination of the CCAA Proceedings, and Discharge of the Monitor and the CRO

16. The proposed CCAA Termination Order provides that these CCAA proceedings will be terminated once the Monitor has served the Monitor's Certificate on the Service List certifying

that, to the Monitor's knowledge, all matters to be attended to in these CCAA proceedings have been completed, thereby triggering the occurrence of the CCAA Termination Time.

Lucky Affidavit, at para. 16; Motion Record, Tab 2.

17. In addition, the proposed CCAA Termination Order also provides that MNP shall be discharged as Monitor and that Douglas Lucky shall be discharged as the CRO of DEL upon the CCAA Termination Time, provided that, notwithstanding such discharge, both the Monitor and the CRO shall have the authority to address any matters in their roles as Monitor or CRO, respectively, that are ancillary or incidental to these CCAA proceedings.

Lucky Affidavit, at para. 16(b); Motion Record, Tab 2.

(ii) Authorization to Make an Assignment in Bankruptcy

18. The CCAA Termination Order provides that DEL, in its discretion or at the discretion of the Monitor, shall be authorized to make an assignment in bankruptcy on or after the CCAA Termination Time, and that the CRO and/or the Monitor are each authorized to execute and file any assignment in bankruptcy and related documents on behalf of DEL, and that MNP is authorized to act DEL's trustee in bankruptcy.

Lucky Affidavit, at para. 16(a); Motion Record, Tab 2.

(iii) Release of the Released Parties

19. The proposed CCAA Termination Order provides for the release effective as at the CCAA Termination Time of the Released Parties, consisting of: (i) the direct and indirect shareholders, directors, officers, employees, legal counsel and advisors of DEL, (ii) the Monitor and its legal counsel, and (iii) the CRO and 2255987 Ontario Limited ("**Strategic Results Advisors**"). The proposed CCAA Termination Order provides for the release of all present and future claims and

obligations against the Released Parties based on any act, omission, transaction, dealing or other occurrence taking place prior to the CCAA Termination Time or completed pursuant to the terms of the CCAA Termination Order relating to DEL, the business operations, assets, property and affairs of DEL, the administration and/or management of DEL, the Secured Credit Agreement and these CCAA proceedings (the “**CCAA Release**”). The CCAA Release does not release any claim against any current or former director of DEL that is not permitted to be released pursuant to section 5.1(2) of the CCAA.

Lucky Affidavit, at para. 16(c); Motion Record, Tab 2.

20. The relief sought will facilitate the efficient administration and distribution of DEL’s estate through a bankruptcy process and avoid the expenses associated with developing and implementing a plan of compromise or arrangement.

Lucky Affidavit, at para. 18; Motion Record, Tab 2.

(iv) Extension of the Stay Period

21. The current stay of proceedings in respect of DEL expires on October 30, 2020. The Company expects to be in a position to terminate these CCAA proceedings in the near term, but is requesting an extension of the Stay Period until the CCAA Termination Time or such other date as this Court may order to enable it to complete certain remaining administrative matters before transitioning into a bankruptcy process.

Lucky Affidavit, at para.22; Motion Record, Tab 2.

22. DEL continues to act diligently and in good faith to advance and complete these CCAA proceedings. Moreover, the Company’s operating costs are minimal given that DEL has sold almost all of its assets and its wind-down is now substantially complete. In these circumstances,

there is no material prejudice as a result of the extension of the Stay Period as set forth in the CCAA Termination Order.

Lucky Affidavit, at para. 22; Motion Record, Tab 2.

C. THE RECEIVER DISCHARGE ORDER

23. Pursuant to the Limited Receivership Order granted by this Court on April 29, 2020, MNP was appointed as Receiver, without security, over certain accounts of DEL in order to allow former employees of DEL to access payments under the WEPPA to which they may be entitled.

Lucky Affidavit, at para. 23; Motion Record, Tab 2.

24. MNP, as Receiver, has provided support and information to representatives from Employment and Social Development Canada (“**ESDC**”) with respect to the WEPPA, as needed. To date, ESDC has paid 60 of DEL’s 95 former employees who were identified by DEL and who filed claims for payments under the WEPPA. On October 23, 2020, it became apparent that certain former employees who had not filed a proof of claim with the Receiver to be eligible for a payment under the WEPPA, are now desirous of seeking an extension of time from ESDC to file a claim.

Sixth Report of the Monitor and the First Report of the Receiver dated October 26, 2020 at paras. 34-35 (the “**MNP Report**”).

25. The Receiver Discharge Order contemplates that the Limited Receivership Proceedings would be terminated effective upon the Receiver filing a certificate (the “**Receiver’s Certificate**”) with the Court, which will occur once matters relating to the above-referenced extension request have been appropriately addressed by the Receiver.

MNP Report at para. 35.

PART III- ISSUES AND THE LAW

26. The issues to be considered on this motion are whether the Court should:
- (a) authorize the termination of the CCAA proceedings and the discharge of the Monitor and the CRO as at the CCAA Termination Time;
 - (b) approve the CCAA Release in favour of the Released Parties effective as at the CCAA Termination Time;
 - (c) extend the Stay Period to the earlier of (i) the CCAA Termination Time, and (ii) such other date as this Court may order; and
 - (d) grant the Receiver Discharge Order.

A. TERMINATION OF THE CCAA PROCEEDINGS

27. As a result of the completion of the DPI Transaction, the sale of the Residual Assets, the resolution of the Payment Dispute and the recovery of the Funds, among other efforts undertaken in connection with these CCAA proceedings, the wind-down of DEL is now substantially complete and DEL is in a position to proceed with a reconciliation of claims and distributions to unsecured creditors. DEL has determined that it would be more cost-effective to undertake such efforts within a bankruptcy process as opposed to under the CCAA, and accordingly believes it is appropriate at this time to seek the CCAA Termination Order, among other things, providing for the termination of these CCAA proceedings and authorizing DEL to file an assignment into bankruptcy on or after the CCAA Termination Time.

28. The proposed CCAA Termination Order also provides that MNP shall be discharged as Monitor and Douglas Lucky shall be discharged as CRO of DEL upon the CCAA Termination Time, provided that, notwithstanding such discharge, both the Monitor and the CRO shall have the authority to address any matters in their roles as Monitor or CRO, respectively, that are ancillary or incidental to these CCAA proceedings.

Lucky Affidavit, at para. 16(b); Motion Record, Tab 2.

29. It is well established that the Court may grant an Order terminating proceedings under the CCAA and discharging the Monitor and any chief restructuring officer appointed in the proceedings on terms similar to those sought in the proposed CCAA Termination Order.

[Golf Town Canada Holdings Inc. et al., CCAA Termination Order granted March 29, 2018, Court File No. CV-16-11527-00CL \(Ont. Sup. Ct. J. \[Commercial List\]\).](#)

9366016 Canada Inc., Distribution and CCAA Termination Order granted October 28, 2016, Court File No. CV-15-10869-00CL (Ont. Sup. Ct. J. [Commercial List]); Book of Authorities of the Applicant, Tab 1 [*Plasco Energy*].

22242749 Ontario Limited, CCAA Termination Order granted July 24, 2015, Court File No. CV-15-10950-00CL (Ont. Sup. Ct. J. [Commercial List]); Book of Authorities of the Applicant, Tab 2 [*Armtec*].

[Cline Mining Corporation, CCAA Termination Order granted July 30, 2015, Court File No. CV14-10781-00CL \(Ont. Sup. Ct. J. \[Commercial List\]\).](#)

30. DEL submits that it is appropriate for this Court to order that the CCAA proceedings shall be terminated and that MNP and Douglas Lucky shall be discharged as Monitor and CRO, respectively, as at the CCAA Termination Time because:
- (a) subject to the completion of certain outstanding administrative matters, the wind-down of the Company is substantially complete;
 - (b) the Company no longer has any employees or business operations;

- (c) the Company has duly complied with its obligations and carried out its responsibilities in these CCAA proceedings;
- (d) there are no amounts owing by DEL of the types described in subsections 6(4) through 6(6) of the CCAA;
- (e) the Company has determined that it would be more cost-effective to undertake a reconciliation of claims and distributions to unsecured creditors within a bankruptcy process as opposed to under the CCAA;
- (f) the proposed CCAA Termination Order provides for an effective and appropriate process for the termination of these CCAA proceedings that will avoid the cost and time of a further motion to seek termination of these CCAA proceedings once the remaining administrative matters have been completed; and
- (g) the Monitor supports the termination of these CCAA proceedings on the terms set forth in the Order.

Lucky Affidavit, at paras. 12-14, 16-19, and 26; Motion Record, Tab 2.

MNP Report, at paras. 18 and 49.

B. THE CCAA RELEASE IS APPROPRIATE

31. The CCAA Termination Order provides that the Released Claims shall be discharged and released as against the Released Parties effective as at the CCAA Termination Time. The Company seeks the approval of the CCAA Release so as to achieve certainty and finality for the Released Parties in the most effective and appropriate manner given the current circumstances.

Lucky Affidavit, at para. 16(c); Motion Record, Tab 2.

CCAA Termination Order at para. 17; Motion Record, Tab 3.

32. As referenced above, the CCAA Release covers the Released Parties, including, *inter alia*, the Company's directors and officers (except for any claim that is not permitted to be released pursuant to Section 5.1(2) of the CCAA) and its direct and indirect shareholders. The CCAA Release is sought in respect of such parties given their significant contributions to the Company's efforts in these CCAA proceedings.

Lucky Affidavit, at para. 19; Motion Record, Tab 2.

33. Section 11 of the CCAA provides that, despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, the Court may, subject to the restrictions in the CCAA, make any order that it considers appropriate in the circumstances.

[CCAA](#), Section 11.

34. The CCAA is remedial legislation and is to be given a liberal interpretation to facilitate its objectives. The requirements of appropriateness, good faith and due diligence are baseline considerations that a court should always bear in mind when exercising CCAA authority. Appropriateness under the CCAA is assessed by inquiring whether the order sought advances the policy objectives underlying the CCAA. The question to be asked is whether the order will usefully further efforts to achieve the remedial purpose of the CCAA.

[Re Stelco Inc. \(2005\), 253 D.L.R. \(4th\) 109 \(ONCA\)](#) at para. 32.

[Re Ted Leroy Trucking \[Century Services\] Ltd., 2010 SCC 60](#) at para. 70.

35. The CCAA does not limit the ability of the court to approve releases granted by one party to another or to grant releases to any party on a motion brought within the CCAA proceedings.

[Re Fraser Papers Inc., 2012 ONSC 4882](#) at para. 51.

36. Courts across Canada have confirmed that they have the jurisdiction to render orders approving third party releases in the context of CCAA proceedings. In [*Nelson Education Limited \(Re\)*](#), when determining the appropriateness of a third party release contained in an approval and vesting order, Newbould J. (as he then was) borrowed from the principles of issuing third party releases in the context of plans of arrangement:

Releases are a feature of approved plans of compromise and arrangement under the CCAA. The conditions for such a release have been laid down in *ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp.*, 2008 ONCA 587 (Ont. C.A.) at paras. 43 and 70. Third party releases are authorized under the CCAA if there is a reasonable connection between the third party claim being compromised in the plan and the restructuring achieved by the plan. In *Metcalfe*, Blair J.A. found compelling that the claims to be released were rationally related to the purpose of the plan and necessary for it and that the parties who were to have claims against them released were contributing in a tangible and realistic way to the plan.

While there is no CCAA plan in this case, I see no reason not to consider the principles established in *Metcalfe* when considering a sale such as this under the CCAA, with any necessary modifications due to the fact that it is not a sale pursuant to a plan. The application of those principles dictates in my view that the requested release by the first lien lenders should not be ordered.

[*Nelson Education Limited \(Re\)*, 2015 ONSC 5557](#) at paras. 48-49.

37. Today, there are multiple precedents in the context of insolvency cases where this Court has rendered orders providing for the release of a debtor company's directors and officers and other related parties, despite the absence of a plan of arrangement and compromise. For example, and without limitation:

- (a) [*Golf Town Canada Holdings Inc. et al.*, CCAA Termination Order granted March 29, 2018, Court File No. CV-16-11527-00CL \(Ont. Sup. Ct. J. \[Commercial List\]\)](#) at para. 14;

- (b) *9366016 Canada Inc.*, Distribution and CCAA Termination Order granted October 28, 2016, Court File No. CV-15-10869-00CL (Ont. Sup. Ct. J. [Commercial List]) at para. 12 [*Plasco Energy*];²
- (c) [*Cinram International Inc. et al.*, Administrative Reserve / Distribution / Transition Order granted October 19, 2012, Court File No. CV-12-9767-00CL \(Ont. Sup. Ct. J. \[Commercial List\]\)](#) at para. 29;
- (d) [*Comark Holdings Inc. et al.*, Approval and Vesting and CCAA Termination Order granted July 13, 2020, Court File No. CV-20-00642013-00CL \(Ont. S. Ct. J. \[Commercial List\]\)](#) at para. 18; and
- (e) [*Wayland Group Corp. et al.*, Approval and Vesting Order granted April 21, 2020, Court File No. CV-19-00632079-00CL \(Ont. Sup. Ct. J. \[Commercial List\]\)](#) at para. 31.

38. By analogy with Blair’s J.A. decision in [*ATB Financial v Metcalfe & Mansfield Alternative Investments II Corp.*](#), a persuasive request for a third-party release in the context of an Order terminating CCAA proceedings should demonstrate that:

- (a) the parties to be released were necessary and essential to the restructuring of the debtor;
- (b) the claims to be released are rationally related to the purpose of the debtor’s restructuring and necessary for it;
- (c) the restructuring cannot succeed without the proposed releases;

² Book of Authorities of the Applicant, Tab 1.

- (d) the parties who are to have claims against them released are contributing in a tangible and realistic way to the restructuring; and
- (e) the restructuring will benefit not only the debtor companies but creditors generally; and
- (f) the proposed releases are fair and reasonable and not overly broad or offensive to public policy.

[ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp., 2008 ONCA 587](#) at paras. 69-72 and 113.

See also, [Re Grace Canada Inc. \(2008\), 50 C.B.R. \(5th\) 25 \(Ont. Sup. Ct. J. \[Commercial List\]\)](#) at paras. 40 and 46.

39. Releases of third parties, including directors and officers, are also appropriate in circumstances where the releases protect the debtor against potential contribution and indemnity claims and facilitate the resolution of matters without undue delay or depletion of estate assets.

[Re Nortel Networks Corp., 2010 ONSC 1708](#) at para. 81.

40. DEL submits that all of the criteria listed above in paragraph 38 are satisfied and that the CCAA Release is reasonable and appropriate and should be granted by this Court because, among other things:

- (a) the Released Parties are (i) the direct and indirect shareholders, directors, officers, employees, legal counsel and advisors of DEL, (ii) the Monitor and its legal counsel, and (iii) the CRO and Strategic Results Advisors, all of whom have made significant contributions to these CCAA proceedings, including directing and/or assisting in the successful going concern transition of a material portion of DEL's business for the benefit of stakeholders and generating sufficient proceeds to enable the Company to make a distribution to its unsecured creditors;

- (b) the purpose of the CCAA Release is to achieve finality for the Released Parties and the conclusion of these CCAA proceedings in the most efficient and appropriate manner. The CCAA Release will facilitate the completion of these proceedings without the need to expend estate resources in connection with the development and implementation of a plan of compromise or arrangement and the completion of related procedural steps;
- (c) the time and expense associated with undertaking a claims process under the CCAA is not in the best interests of the Company or its economic stakeholders;
- (d) the Company's Motion Record for the CCAA Termination Order was provided to the Service List (including each of the federal and provincial taxation authorities in each province where DEL formerly operated) and parties with a PPSA registrations in respect of DEL were provided with a letter advising of this motion and providing a link to the Monitor's website. The Company is not aware of any objection to the relief sought in the CCAA Termination Order, including the CCAA Release;
- (e) the CCAA Release only releases parties that are closely connected to the Company and these CCAA proceedings. The CCAA Release is not overly broad and is consistent with the CCAA objectives of preserving value and resolving matters in a practical and efficient manner for the benefit of creditors with an economic interest;
- (f) the CCAA Release does not release any claim against a current or former director of DEL that is not permitted to be released pursuant to section 5.1(2) of the CCAA; and
- (g) the Monitor supports the Company's request for relief on the terms set out in the proposed CCAA Termination Order.

Lucky Affidavit, at para. 16(c) and 17-19; Motion Record, Tab 2.

MNP Report, at paras. 18 and 49.

41. Accordingly, DEL respectfully submits that the CCAA Release as set forth in the proposed CCAA Termination Order is reasonable and justified in the circumstances, and therefore should be approved by this Court.

C. EXTENSION OF THE STAY PERIOD

42. The Stay Period currently expires on October 30, 2020. DEL is seeking an extension of the Stay Period to and including the earlier of (i) the CCAA Termination Time, and (ii) such other date as this Court may order.

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

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

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

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

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

[CCAA](#), Section 11.02(2).

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

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

45. The Company submits that the extension of the Stay Period pursuant to the proposed CCAA Termination Order to and including the earlier of (i) the CCAA Termination Time, and (ii) such other date as this Court may order, is appropriate in the circumstances because, among other things:

- (a) the Company has acted, and continues to act, in good faith and with due diligence in respect of all matters relating to these CCAA proceedings to carry out the terms of the Initial Order and advance these proceedings;
- (b) the extension of the Stay Period will provide the Company with the time needed to complete certain remaining administrative matters in advance of terminating these CCAA proceedings and transitioning into a bankruptcy process;
- (c) as DEL's operating costs are currently minimal, no creditor will suffer any material prejudice if the Stay Period is extended as set forth in the CCAA Termination Order; and
- (d) the Monitor supports the proposed extension of the Stay Period on the terms set out in the proposed CCAA Termination Order.

Lucky Affidavit at para. 22; Motion Record, Tab 2.

MNP Report, at paras. 31 and 49.

46. Accordingly, DEL submits that this Court ought to extend the Stay Period to and including the earlier of (i) the CCAA Termination Time, and (ii) such other date as this Court may order, as set out in the proposed CCAA Termination Order.

D. TERMINATION OF THE LIMITED RECEIVERSHIP PROCEEDINGS

47. As described in the MNP Report, in accordance with the Limited Receivership Order, the Receiver has taken possession of the Limited Receivership Property, filed its Notice and Statement of Receiver with the Office of the Superintendent in Bankruptcy, and administered WEPPA for 95 former DEL employees, among certain other statutory, banking and administrative actions incidental to the Limited Receivership Proceedings.

MNP Report, at paras. 32-33 and 36.

48. The Receiver has substantially completed its mandate as contemplated by the Limited Receivership Order, and seeks approval of the Receiver Discharge Order terminating the Limited Receivership Proceedings and discharging the Receiver effective upon the Receiver filing the Receiver's Certificate with the Court.

MNP Report, at para. 35.

49. Prior to filing the Receiver's Certificate, the Receiver will complete its duties and responsibilities with respect certain former DEL employees who had not filed a proof of claim with the Receiver to be eligible for a payment under the WEPPA and now wish to seek an extension of time from ESDC to file a claim.

MNP Report, at para. 35.

50. DEL consents to and supports the motion by MNP, as Receiver, for approval of the Receiver Discharge Order and the termination of the Limited Receivership Proceedings pursuant to the terms thereof.

PART IV – CONCLUSION

51. For the reasons set out above, the Company respectfully requests that this Court grant the CCAA Termination Order and the Receiver Discharge Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

October 27, 2020

GOODMANS LLP

Goodmans LLP

SCHEDULE A

LIST OF AUTHORITIES

1. [*Golf Town Canada Holdings Inc. et al.*, CCAA Termination Order granted March 29, 2018, Court File No. CV-16-11527-00CL \(Ont. Sup. Ct. J. \[Commercial List\]\)](#).
2. *9366016 Canada Inc.*, Distribution and CCAA Termination Order granted October 28, 2016, Court File No. CV-15-10869-00CL (Ont. Sup. Ct. J. [Commercial List]) [*Plasco Energy*].
3. *22242749 Ontario Limited*, Order granted July 24, 2015, Court File No. CV-15-10950-00CL (Ont. Sup. Ct. J. [Commercial List]) [*Armtec*].
4. [*Cline Mining Corporation*, Order granted July 30, 2015, Court File No. CV14-10781-00CL \(Ont. Sup. Ct. J. \[Commercial List\]\)](#).
5. [*Re Stelco Inc.* \(2005\), 253 D.L.R. \(4th\) 109 \(ONCA\)](#).
6. [*Re Ted Leroy Trucking \[Century Services\] Ltd.*, 2010 SCC 60](#).
7. [*Re Fraser Papers Inc.*, 2012 ONSC 4882](#).
8. [*Nelson Education Limited \(Re\)*, 2015 ONSC 5557](#).
9. [*Cinram International Inc. et al.*, Administrative Reserve / Distribution / Transition Order granted October 19, 2012, Court File No. CV-12-9767-00CL \(Ont. Sup. Ct. J. \[Commercial List\]\)](#).
10. [*Comark Holdings Inc. et al.*, Approval and Vesting and CCAA Termination Order granted July 13, 2020, Court File No. CV-20-00642013-00CL \(Ont. S. Ct. J. \[Commercial List\]\)](#).
11. [*Wayland Group Corp. et al.*, Approval and Vesting Order granted April 21, 2020, Court File No. CV-19-00632079-00CL \(Ont. Sup. Ct. J. \[Commercial List\]\)](#).
12. [*ATB Financial v Metcalfe & Mansfield Alternative Investments II Corp.*, 2008 ONCA 587](#).
13. [*Re Grace Canada Inc.* \(2008\), 50 C.B.R. \(5th\) 25 \(Ont. Sup. Ct. J. \[Commercial List\]\)](#).
14. [*Re Nortel Networks Corp.*, 2010 ONSC 1708](#).

SCHEDULE B

STATUTORY REFERENCES

[COMPANIES' CREDITORS ARRANGEMENT ACT](#)
[RSC 1985, c C-36, as amended](#)

s. 11

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

s. 11.02(2)

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

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

s. 11.02(3)

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

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

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

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

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

Applicant

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

Proceeding commenced at Toronto

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

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