

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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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**