

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

BETWEEN:

DIESEL EQUIPMENT LIMITED

Applicant

- and -

DEL EQUIPMENT INC.

Respondent

**IN THE MATTER OF AN APPLICATION UNDER
SECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED**

**MOTION RECORD OF MNP LTD., RECEIVER OF
THE LIMITED RECEIVERSHIP PROPERTY**
(Motion returnable October 29, 2020)

October 26, 2020

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Receivership Property

TO: THE SERVICE LIST

AND TO: THE PPSA SERVICE LIST

**ONTARIO
SUPERIOR COURT OF JUSTICE
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TAB 1

Court File No.: CV-20-640027-00CL

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

B E T W E E N :

DIESEL EQUIPMENT LIMITED

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- and -

DEL EQUIPMENT INC.

Respondent

**IN THE MATTER OF AN APPLICATION UNDER
SECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED**

NOTICE OF MOTION
(Returnable October 29, 2020)

MNP Ltd. ("**MNP**") in its capacity as the Court-appointed receiver (the "**Receiver**") of the Limited Receivership Property (defined below) will make a motion to Justice Hainey of the Superior Court of Justice via videoconference on **Thursday October 29, 2020**, at 10:00 a.m. or as soon thereafter as the motion can be heard.

PROPOSED METHOD OF HEARING: The motion is to be heard via videoconference.

THE MOTION IS FOR AN ORDER:

1. approving the activities of the Receiver as set out in the first report of the Receiver dated October 26, 2020 to be filed in the CCAA proceedings (the "**First Report**");¹
2. discharging MNP as Receiver of the undertaking, property and assets of the Limited Receivership Property upon the Receiver filing a certificate certifying that it has completed the other activities described in the First Report;

¹ The First Report of the Receiver is also the sixth report of the MNP in its capacity as monitor in the CCAA proceedings.

3. releasing MNP from any and all liability, as set out in paragraph 4 of the requested Order; and
4. such other relief as this Court may grant.

THE GROUNDS FOR THE MOTION ARE:

5. 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**");
6. Pursuant to an Order of this Court made on April 29, 2020 (the "**Limited Receivership Order**"), MNP was appointed as Receiver over no more than \$20 of the Company (the "**Limited Receivership Property**");
7. The Limited Receivership Order was made in conjunction with the CCAA proceedings in order to allow former employees of DEL to access funds that may be available to them pursuant to the Wage Earner Protection Program ("**WEPP**");
8. The Receiver's duties were limited to exercising control over the Limited Receivership Property, performing its statutory obligations under the Wage Earner Protection Program Act, and taking any steps reasonably incidental to the exercise of these powers or performance of any statutory obligations;
9. In carrying out its duties as Receiver, the Receiver has:
 - (a) taken possession of the Limited Receivership Property;
 - (b) in accordance with the Limited Receivership Order, filed its Notice and Statement of Receiver with the Office of the Superintendent of Bankruptcy; and
 - (c) administered the WEPP for 95 former DEL employees
10. The Receiver has been advised that certain former DEL employees who are eligible for WEPP, for various reasons, did not file a proof of claim in the permitted time frame under the WEPP to file a claim and receive a payment under the WEPP;

11. Steps are now being taken by the Receiver to seek an extension of time for those employees to file a claim;
12. The Receiver's discharge would be effective upon the completion of these matters;
13. The discharge is being sought as part of this motion for the sake of efficiency and to minimize professional costs;
14. The activities of the Receiver as described in the First Report have been consistent with its mandate;
15. The fees and disbursements of the Receiver (including those of its counsel) will be subject to approval within the CCAA proceedings at a motion returnable on the same date as this motion;

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (a) the First Report;
- (b) Such further and other materials as counsel may advise and this Honourable Court may permit.

October 26, 2020

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Lawyers for MNP Ltd., Receiver of the Limited
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TO: THE SERVICE LIST

AND TO: THE PPSA SERVICE LIST

DIESEL EQUIPMENT LIMITED - and - DEL EQUIPMENT INC.

Court File No.: CV-20-640027-00CL

Applicant Respondent

IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF THE BANKRUPTCY
AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED

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

Proceeding commenced at TORONTO

NOTICE OF MOTION
(Returnable October 29, 2020)

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Lawyers for MNP Ltd., Receiver of the Limited
Receivership Property

TAB 2

Court File No.: CV-20-640027-00CL

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

THE HONOURABLE)	THURSDAY, THE 29TH
)	
JUSTICE HAINEY)	DAY OF OCTOBER, 2020
)	

B E T W E E N :

DIESEL EQUIPMENT LIMITED

Applicant

- and -

DEL EQUIPMENT INC.

Respondent

**IN THE MATTER OF AN APPLICATION UNDER
SECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED**

**DISCHARGE ORDER
(Receivership Discharge)**

THIS MOTION, made by MNP Ltd. ("**MNP**") in its capacity as the Court-appointed receiver (the "**Receiver**") of the Limited Receivership Property (as defined in the Order of this Court made on April 29, 2020 in these proceedings, the "**Limited Receivership Order**"), for an order:

1. approving the activities of the Receiver as set out in the first report of the Receiver dated October 26, 2020 to be filed in the CCAA proceedings (the "**First Report**");¹
2. discharging MNP as Receiver of the undertaking, property and assets of the Limited Receivership Property upon the Receiver filing a certificate certifying that it has completed the other activities described in the Sixth Report; and

¹ The First Report of the Receiver is also the sixth report of the MNP in its capacity as monitor in the CCAA proceedings.

3. releasing MNP from any and all liability, as set out in paragraph 4 of this Order,

was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the First Report, and on hearing the submissions of counsel for the Receiver, no one else appearing although served as evidenced by the Affidavit of Service of Gianni Bianchi sworn October 26, 2020, filed;

1. **THIS COURT ORDERS** that the time for service of the Receiver's Notice of Motion, the Motion Record and the Report is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that the activities of the Receiver, as set out in the Report, are hereby approved.

3. **THIS COURT ORDERS** that upon the Receiver filing a certificate in the form attached hereto as **Schedule "A"**, certifying that it has completed the remaining activities of the Receiver described in the Sixth Report (the "**Receiver's Remaining Activities**"), the Receiver shall be discharged as Receiver of the Limited Receivership Property, provided however that notwithstanding its discharge herein (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein, and (b) the Receiver shall continue to have the benefit of the provisions of the Limited Receivership Order, including all approvals, protections and stays of proceedings in favour of MNP in its capacity as Receiver.

4. **THIS COURT ORDERS AND DECLARES** that MNP is hereby released and discharged from any and all liability that MNP now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of MNP while acting in its capacity as Receiver herein, save and except for any gross negligence or wilful misconduct on the Receiver's part. Without limiting the generality of the foregoing, MNP is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within receivership proceedings, save and except for any gross negligence or wilful misconduct on the Receiver's part.

5. **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 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 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 Monitor and their respective agents in carrying out the terms of this Order.

Schedule "A"
Form of Receiver's Discharge Certificate

Court File No.: CV-20-640027-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N :

DIESEL EQUIPMENT LIMITED

Applicant

- and -

DEL EQUIPMENT INC.

Respondent

**IN THE MATTER OF AN APPLICATION UNDER
SECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED**

RECEIVER'S DISCHARGE CERTIFICATE

RECITALS

A. 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**");

B. Pursuant to an Order of this Court made on April 29, 2020 (the "**Limited Receivership Order**"), MNP Ltd. ("**MNP**") was appointed as Receiver (the "**Receiver**") over no more than \$20 of the Company (the "**Limited Receivership Property**");

C. Pursuant to an Order of the Court dated October 29, 2020 (the "**Order**"), the Court, among other things, ordered that the Receiver shall be discharged as Receiver of the Limited Receivership Property upon the filing of the certificate of the Receiver certifying that it has completed the Receiver's Remaining Activities (as defined in the Discharge Order).

THE RECEIVER CERTIFIES the following:

- 1. The Receiver has completed the Receiver’s Remaining Activities.

DATED as of [TIME] on the ___ day of _____, 20__.

MNP Ltd. in its capacity as the Court-appointed Receiver of the Limited Receivership Property

Per:

Name:

Title:

Applicant Respondent

IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED

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

Proceeding commenced at TORONTO

RECEIVER'S DISCHARGE CERTIFICATE

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Lawyers for MNP Ltd., Receiver of the Limited
Receivership Property

DIESEL EQUIPMENT LIMITED - and - DEL EQUIPMENT INC.

Court File No.: CV-20-640027-00CL

Applicant Respondent

IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF THE BANKRUPTCY
AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED

**ONTARIO
SUPERIOR COURT OF JUSTICE
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Proceeding commenced at TORONTO

**DISCHARGE ORDER
(Receivership Discharge)**

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Lawyers for MNP Ltd., Receiver of the Limited
Receivership Property

TAB 3

1. approving the activities of the Receiver as set out in the first report of the Receiver dated ~~[DATE]~~October 26, 2020 to be filed in the CCAA proceedings (the "Report");

~~2. approving the fees and disbursements of the Receiver and its counsel; 3. approving the distribution of the remaining proceeds available in the estate of the Debtor; and First Report");¹~~

2. 4. discharging ~~[RECEIVER'S NAME]~~MNP as Receiver of the undertaking, property and assets of the ~~Debtor~~; and Limited Receivership Property upon the Receiver filing a certificate certifying that it has completed the other activities described in the Sixth Report; and

3. 5. releasing ~~[RECEIVER'S NAME]~~MNP from any and all liability, as set out in paragraph 54 of this Order¹,

was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the First Report, ~~the affidavits of the Receiver and its counsel as to fees (the "Fee Affidavits")~~, and on hearing the submissions of counsel for the Receiver, no one else appearing although served as evidenced by the Affidavit of ~~[NAME]~~Service of Gianni Bianchi sworn ~~[DATE]~~October 26, 2020, filed²;

1. THIS COURT ORDERS that the time for service of the Receiver's Notice of Motion, the Motion Record and the Report is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

2. 1. **THIS COURT ORDERS** that the activities of the Receiver, as set out in the Report, are hereby approved.

3. 2. **THIS COURT ORDERS** that ~~the fees and disbursements of the Receiver and its counsel, as set out in the Report and the Fee Affidavits, are hereby approved.~~

~~3. THIS COURT ORDERS that, after payment of the fees and disbursements herein approved, the Receiver shall pay the monies remaining in its hands to [NAME OF PARTY]³. 4.~~

¹ The First Report of the Receiver is also the sixth report of the MNP in its capacity as monitor in the CCAA proceedings.

¹ If this relief is being sought, stakeholders should be specifically advised, and given ample notice. See also Note 4, below.

² This model order assumes that the time for service does not need to be abridged.

³ This model order assumes that the material filed supports a distribution to a specific secured creditor or other party.

~~THIS COURT ORDERS that upon payment of the amounts set out in paragraph 3 hereof [and upon the Receiver filing a certificate in the form attached hereto as Schedule "A", certifying that it has completed the other remaining activities of the Receiver described in the Sixth Report], (the "Receiver's Remaining Activities"), the Receiver shall be discharged as Receiver of the undertaking, property and assets of the Debtor Limited Receivership Property, provided however that notwithstanding its discharge herein (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein, and (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding the Limited Receivership Order, including all approvals, protections and stays of proceedings in favour of [RECEIVER'S NAME]MNP in its capacity as Receiver.~~

~~4. 5. THIS COURT ORDERS AND DECLARES that [RECEIVER'S NAME]MNP is hereby released and discharged from any and all liability that [RECEIVER'S NAME] MNP now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of [RECEIVER'S NAME]MNP while acting in its capacity as Receiver herein, save and except for any gross negligence or wilful misconduct on the Receiver's part. Without limiting the generality of the foregoing, [RECEIVER'S NAME]MNP is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within receivership proceedings, save and except for any gross negligence or wilful misconduct on the Receiver's part.~~⁴

~~5. 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 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 Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant~~

~~⁴The model order subcommittee was divided as to whether a general release might be appropriate. On the one hand, the Receiver has presumably reported its activities to the Court, and presumably the reported activities have been approved in prior Orders. Moreover, the Order that appointed the Receiver likely has protections in favour of the Receiver. These factors tend to indicate that a general release of the Receiver is not necessary. On the other hand, the Receiver has acted only in a representative capacity, as the Court's officer, so the Court may find that it is appropriate to insulate the Receiver from all liability, by way of a general release. Some members of the subcommittee felt that, absent a general release, Receivers might hold back funds and/or wish to conduct a claims bar process, which would unnecessarily add time and cost to the receivership. The general release language has been added to this form of model order as an option only, to be considered by the presiding Judge in each specific case. See also Note 1, above.~~

representative status to the Monitor in any foreign proceeding, or to assist the Monitor and their respective agents in carrying out the terms of this Order.



Schedule "A"
Form of Receiver's Discharge Certificate

Court File No.: CV-20-640027-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

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Applicant

- and -

DEL EQUIPMENT INC.

Respondent

IN THE MATTER OF AN APPLICATION UNDER
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INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED

RECEIVER'S DISCHARGE CERTIFICATE

RECITALS

A. 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");

B. Pursuant to an Order of this Court made on April 29, 2020 (the "Limited Receivership Order"), MNP Ltd. ("MNP") was appointed as Receiver (the "Receiver") over no more than \$20 of the Company (the "Limited Receivership Property");

C. Pursuant to an Order of the Court dated October 29, 2020 (the "Order"), the Court, among other things, ordered that the Receiver shall be discharged as Receiver of the Limited Receivership Property upon the filing of the certificate of the Receiver certifying that it has completed the Receiver's Remaining Activities (as defined in the Discharge Order).

THE RECEIVER CERTIFIES the following:

1. The Receiver has completed the Receiver's Remaining Activities.

DATED as of [TIME] on the ____ day of _____, 20____.

MNP Ltd. in its capacity as the
Court-appointed Receiver of the Limited
Receivership Property

Per:

Name:

Title:

DIESEL EQUIPMENT LIMITED - and - DEL EQUIPMENT INC.

Court File No.: CV-20-640027-00CL

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<p><u>RECEIVER'S DISCHARGE CERTIFICATE</u></p>	
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<p><u>DISCHARGE ORDER</u> <u>(Receivership Discharge)</u></p>	
<p><u>NORTON ROSE FULBRIGHT CANADA LLP</u> <u>222 Bay Street, Suite 3000, P.O. Box 53</u> <u>Toronto, ON M5K 1E7</u></p> <p><u>Jennifer Stam (LSO# 46735J)</u></p> <p><u>Tel: 416-202-6707</u> <u>Fax: 416-216-3930</u> <u>Email: Jennifer.stam@nortonrosefulbright.com</u></p> <p><u>Lawyers for MNP Ltd., Receiver of the Limited Receivership Property</u></p>	

CAN_DMS:135975764

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**ONTARIO
SUPERIOR COURT OF JUSTICE
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Proceeding commenced at TORONTO

**MOTION RECORD OF MNP LTD., RECEIVER OF
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(Motion returnable October 29, 2020)

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