

**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

**MOTION RECORD**

(Motion returnable November 19, 2019)

**GOODMANS LLP**  
Barristers & Solicitors  
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333 Bay Street, Suite 3400  
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Lawyers for Del Equipment Inc.

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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.**

Applicant

**NOTICE OF MOTION**

(returnable November 19, 2019)

Del Equipment Inc. (“**DEL**”) will make a motion before Justice Hainey of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) on November 19, 2019, at 9:30 a.m. or as soon thereafter as the motion can be heard at 330 University Avenue, Toronto, Ontario.

**PROPOSED METHOD OF HEARING:** The motion is to be heard orally.

**THE MOTION IS FOR:**

1. An Order substantially in the form attached at Tab 3 of DEL’s Motion Record dated November 13, 2019 (the “**Motion Record**”), *inter alia*:
  - (a) abridging the time for and validating the service of this Notice of Motion and the Motion Record and dispensing with further service thereof;
  - (b) extending the Stay Period (as defined below) until and including February 28, 2020; and

- (c) authorizing DEL to obtain and borrow up to an additional \$1.5 million in DIP Financing (as defined below) from Diesel Equipment Limited (“**Diesel**”) for a total aggregate amount of \$2.5 million pursuant to the DIP Amendment (as defined below), and
2. Such further and other relief as counsel may request and this Court may permit.

**THE GROUNDS FOR THE MOTION** are as follows:

Overview

3. DEL is a leading Canadian truck body and equipment “up-fitter” that engineers, designs, manufactures and sells special truck bodies, attachments, equipment and work-ready vehicles.
4. On October 22, 2019, DEL sought protection from its creditors under the *Companies’ Creditors Arrangement Act* (the “**CCAA**”) and obtained an Order (the “**Initial Order**”) which, among other things, (i) granted a stay of proceedings in respect of DEL until and including November 21, 2019, or such later date as the Court order (the “**Stay Period**”), (ii) appointed MNP Ltd. as the monitor (the “**Monitor**”) of DEL in the CCAA proceedings, and (iii) approved DEL’s commencement of a sale and investment solicitation process (the “**Sale Process**”).
5. Since the Initial Order, DEL has continued to act diligently and in good faith in respect of all matters relating to the CCAA proceedings.

Extension of the Stay Period

6. As noted above, the Initial Order granted a stay of proceedings in favour of DEL during the Stay Period. DEL is requesting an extension of the Stay Period until and including February 28, 2020.
7. Since the granting of the Initial Order, DEL and its advisors have largely focused on maintaining the stability of DEL's business, communicating with stakeholders, addressing matters relating to the initiation of the CCAA proceedings and commencing the Sale Process. In respect of the Sale Process, the Company has begun to contact a wide range of interested parties and is focused on continuing the Sale Process and identifying a potential value-maximizing transaction for the benefit of all stakeholders.
8. DEL requires the ongoing benefit of the CCAA stay of proceeding while it continues to operate its business while conducting the Sale Process and also advances a resolution of its dispute with Gin-Cor Industries Inc. and Mack Defense, LLC.
9. DEL is forecasted to have sufficient liquidity to operate in the normal course throughout the proposed Stay Period.
10. The Monitor supports the extension of the Stay Period.

Increase to DIP Financing

11. The Initial Order authorized and empowered DEL to obtain from Diesel up to \$1 million in financing (the "**DIP Financing**") to fund DEL's operation and expenses during the CCAA proceedings.

12. DEL has been able to, and expects to continue to be able to, fund its business based on its cash on hand, receipts from the sale of non-core assets and continuing receipts in the normal course, and has not been required to draw on its DIP Financing to date.
13. Although DEL expects to be able to operate its business through the proposed Stay Period without drawing on its DIP Financing, the Company is seeking an increase in the availability under its DIP Financing from \$1 million to \$2.5 million in the aggregate 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 as DEL works toward achieving a value maximizing transaction through the Sale Process.
14. No fees or additional expenses will be incurred by DEL as a result of the proposed increase in the available DIP Financing.
15. Beyond the increased amount of DIP Financing available to DEL pursuant to the DIP Amendment (as defined in the Lucky Affidavit), all other terms and conditions of the DIP Financing are proposed to remain the same.
16. The Monitor supports the approval of the DIP Amendment and the incremental DIP Financing availability.

General

17. The provisions of the CCAA, including sections 11 and 11.02(2), and 11.2.
18. Rules 1.04, 1.05, 2.03, 3.02, 16, 37, and 39 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended.



19. Such further and other grounds as counsel may advise and this Court may permit.

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

20. The affidavit of Douglas Lucky sworn November 13, 2019 (the “**Lucky Affidavit**”), and the exhibits attached thereto;

21. The First Report of the Monitor to be filed in connection with this Motion; and

22. Such further and other materials as counsel may advise and this Court may permit.

November 13, 2019

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**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C.  
1985, c. C-36, AS AMENDED  
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF DEL  
EQUIPMENT INC.**

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

Applicant

<p><b>ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)</b> Proceeding commenced at Toronto</p>
<p><b>NOTICE OF MOTION (returnable November 19, 2019)</b></p>
<p><b>GOODMANS LLP</b> Barristers &amp; Solicitors 333 Bay Street, Suite 3400 Toronto, Canada M5H 2S7</p>
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<p>Lawyers for Del Equipment Inc.</p>

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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.**

Applicant

**AFFIDAVIT OF DOUGLAS LUCKY**

(sworn November 13, 2019)

I, Douglas Lucky, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am the principal of 2255987 Ontario Limited o/a Strategic Results Advisors (“SRA”), which was retained on July 23, 2019, to provide restructuring and turn-around advisory services to Del Equipment Inc. (“DEL” or the “Company”). The Company appointed me as its Chief Restructuring Officer (the “CRO”) immediately prior to the filing, with such appointment becoming effective upon the issuance of the Initial Order (as defined below). I was previously employed as the chief executive officer and chief operating officer of DEL Equipment Limited (the previous entity through which DEL’s business was operated) from April 2013 to November 2017. Based on my previous experience with DEL’s business, SRA’s recent engagement in an advisory capacity and my engagement as CRO, I have

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personal knowledge of the Company and the matters to which I depose in this affidavit. Where I do not possess personal knowledge, I have stated the source of my information and, in all such cases, believe it to be true.

2. DEL is a leading Canadian truck body and equipment “up-fitter” that engineers, designs, manufactures and sells special truck bodies, attachments, equipment and work-ready vehicles. The Company has operations nation-wide at six manufacturing and distribution locations where it employs approximately 170 employees. DEL has been serving the Canadian market for over 70 years, and has a broad and diverse customer base, including municipalities, truck dealerships, national fleet accounts and business operators.
3. On October 22, 2019, DEL was granted creditor protection and related relief under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) pursuant to an Order (the “**Initial Order**”) of this Court and MNP Ltd. was appointed Monitor of DEL in the CCAA proceedings (the “**Monitor**”). The Initial Order also approved the Company’s commencement of a sale and investment solicitation process (the “**Sale Process**”) to pursue a going-concern solution that maximizes the value of its business for the benefit of all stakeholders.
4. This affidavit is sworn in support of a motion by DEL for an Order (the “**Stay Extension and DIP Amendment Order**”), among other things, extending the Stay Period (as defined in the Initial Order) from November 21, 2019 to February 28, 2020, and approving a \$1.5 million increase in the DIP Financing (as defined below) available to DEL (for a total of \$2.5 million in the aggregate).

## **I. ACTIVITIES SINCE THE INITIAL ORDER**

### **A. Overview**

5. Since the granting of the Initial Order on October 22, 2019, the Company, under the oversight and with the assistance of the Monitor, has been working diligently to maintain the stability of its business, manage relationships with key stakeholders, and carry out the terms of the Initial Order. These efforts have been successful and DEL has continued to operate its business in the normal course without significant disruption.
  
6. The Company's activities since the Initial Order include the following:
  - (a) commencing on October 22, 2019, the Company undertook various outreach initiatives to inform its stakeholders of the commencement of the CCAA proceedings and its intention to continue business operations in the normal course while it pursued the Sale Process. Among other efforts, the Company held "town hall" sessions with its employees to explain the CCAA process, the Sale Process, and its plan for normal operations through the CCAA proceedings, and sent emails and letters to its supplier and customer base;
  
  - (b) on October 23, 2019, the Company posted on its website and distributed to certain key stakeholders a statement announcing the commencement of the CCAA proceedings and the Company's pursuit of the Sale Process;

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- (c) the Company has made payments to suppliers, landlords, employees and other stakeholders in accordance with the terms of the Initial Order;<sup>1</sup>
- (d) as discussed in greater detail below, the Company and I, in my capacity as CRO, have worked with the Company's professional advisors to advance the Sale Process, including through the development of a teaser and confidential information memorandum (the "**CIM**") to be provided to interested parties in the Sale Process;
- (e) as described in my affidavit sworn October 20, 2019 (the "**Initial Affidavit**"), on October 23, 2019, DEL closed the sale of certain non-core assets to DEL Hydraulics, Inc., which transaction generated sale proceeds of approximately \$588,700 to provide incremental liquidity to finance DEL's business during these proceedings;
- (f) the Company engaged an auctioneer, McDougall Auctioneers Ltd. ("**McDougall**"), to conduct an auction for the sale of non-material redundant assets from the Company's recently closed Regina branch. These assets included inventory, tools and equipment that could not be readily used at other DEL locations. McDougall marketed the redundant assets during the period from September 21, 2019 to October 24, 2019, at which time final bids were received and bidding was closed. Certain assets were subject to minimum reserve bids, and business judgement was exercised by DEL, in consultation with McDougall and the Monitor, concerning

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<sup>1</sup> Diesel Equipment Limited ("**Diesel**"), the parent company of DEL, its DIP lender and the owner (and landlord) of five of the six premises from which DEL operates, has not required post-filing lease payments to be cash settled by DEL at this time.

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the negotiation and acceptance of certain bids below the applicable minimum reserve. Net proceeds from the auction payable to DEL are expected to be approximately \$130,000 and will be used to supplement DEL's working capital during these proceedings;

- (g) the Company has completed the sale of certain redundant spreader equipment inventory for cash consideration of approximately \$34,000, in the aggregate;
- (h) as described in the Initial Affidavit, on or about October 21, 2019, General Motors Financial of Canada, Ltd. ("**GM**") acquired the rights of Royal Bank of Canada ("**RBC**") under the RBC Floor Plan Facility (as defined in the Initial Affidavit) with respect to approximately 25 chassis financed thereunder which were designated for use by Unicell Limited. As was anticipated, following this assignment, on or about October 23, 2019, RBC advised GM that the RBC Floor Plan Facility was closed. DEL has since commenced discussions with GM with respect to a potential alternative financing arrangement for GM truck chassis on a go forward basis; and
- (i) the Company brought a second motion seeking a further preservation order as a result of the failure of Gin-Cor Industries Inc. ("**Gin-Cor**") to comply with the preservation order granted by this Court on October 22, 2019. On November 5, 2019, the Court granted a consent preservation order which, among other things, ordered Gin-Cor to transfer \$874,107.08 to its counsel, in trust, by no later than November 19, 2019.



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7. The Monitor and its counsel have received frequent updates with respect to the Company's business operations, interactions with key stakeholders, and other developments during the CCAA proceedings. I understand that the Monitor's first report, which is to be filed in connection with this motion, will detail the activities of the Monitor since the Initial Order, including the provision of various notices and filings required pursuant to the Initial Order and the CCAA.
  
8. In addition, the Company's counsel, Goodmans LLP ("**Goodmans**"), sent a letter to the service list on or about October 23, 2019 providing notice that the Company had scheduled a comeback hearing (as contemplated by paragraph 62 of the Initial Order) before the Court on November 14, 2019 to seek, among other things, an extension of the stay of proceedings. I am advised by Goodmans that the letter was also delivered to representatives of, or counsel for, the Canada Revenue Agency (the "**CRA**"), each provincial taxing authority, and each person with a registered security interest in the Company's property pursuant to the *Personal Property Security Act* (Ontario) or other applicable provincial legislation. A copy of the letter is attached hereto as Exhibit "A". I understand Goodmans has sent a supplementary letter to the service list and the above noted parties advising that the comeback date and stay extension motion date had been changed from November 14 to November 19.

**B. Sale Process**

9. Since the Initial Order, the Company, with the assistance of its professional advisors and the Monitor, has continued its efforts to develop and has recently commenced the Sale Process to assess market interest in the Company and its business and to pursue a strategic transaction. These efforts have included:

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- (a) compiling a list of parties who may be interested in participating in the Sale Process;
  - (b) preparing a form of letter and teaser to be circulated to interested parties in the Sale Process, along with a form of non-disclosure agreement (“NDA”);
  - (c) preparing the form of CIM to be circulated to interested parties who execute an NDA;
  - (d) advertising the Sale Process in: (i) the Globe & Mail (National Edition) on November 5, 2019; and (ii) Insolvency Insider on November 11, 2019, and considering additional potential advertising opportunities in trade publications; and
  - (e) beginning to compile diligence materials in an electronic data room for interested parties who have executed an NDA to access.
10. The Company began its outreach to a wide range of interested parties on November 5, 2019. Interested parties have been provided with teasers and parties who have signed NDAs have started to be provided with the CIM and/or access to the data room. The Company expects to spend the next several weeks discussing the opportunity with potentially interested parties, providing the CIM and additional diligence information to parties who execute NDAs, and otherwise working to advance the Sale Process and respond to preliminary inquiries.
11. The Sale Process contemplates that interested parties are to submit initial non-binding expressions of interest by December 6, 2019 (as such date may be extended by DEL). Thereafter, it is anticipated that the Company will commence phase 2 of the Sale Process,

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with a contemplated binding bid deadline of January 31, 2020 (as such date may be extended by the Company with the consent of the Monitor or further order from the Court).

12. In light of the foregoing, DEL requires an extension of the CCAA stay to continue to advance the Sale Process for the benefit of all stakeholders. Once DEL has had the opportunity to further advance the Sale Process, the Company will be in a better position to update the Court with respect to any potential strategic options and alternatives that may be available to the Company in connection with the Sale Process.

## **II. DIP FINANCING AND CASH FLOW MATTERS**

13. In advance of the CCAA proceedings, the Company obtained a commitment from Diesel to provide the Company with up to \$1 million (the “**DIP Financing**”) to fund DEL’s operations and expenses during the CCAA proceedings.
14. The Initial Order authorized DEL to obtain the DIP Financing pursuant to the DIP Term Sheet (as defined in the Initial Affidavit) substantially in the form attached to the Initial Affidavit. The DIP Term Sheet was executed on October 21, 2019.
15. As at the swearing of this affidavit, the Company has been able to fund its business based on its cash on hand, receipts from the sale of non-core assets and continuing receipts in the normal course, and has not been required to draw on its DIP Financing. The cash flow of the business since the commencement of the CCAA proceedings has been in line with expectations and projections, subject to certain timing variances. I understand the Monitor’s first report will provide detailed information on the Company’s cash flow for the period since October 22, 2019, and an updated cash flow forecast through the proposed

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extension period. The same information has or will be provided to Diesel in accordance with the terms of the DIP Term Sheet.

16. The Company is forecasted to have sufficient liquidity to operate in the normal course throughout the proposed Stay Period. It is anticipated that DEL will generate in excess of \$12.7 million in revenue through the forecast period.
17. Although the Company expects to be able to operate its business through the proposed Stay Period without drawing on its DIP Financing, the Company is seeking an increase in the availability under its DIP Financing from \$1 million to \$2.5 million in the aggregate 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 as DEL works toward achieving a value maximizing transaction through the Sale Process. Beyond the increased amount of DIP Financing available to the Company, all other terms and conditions of the DIP Financing will remain the same. The proposed form of the amending agreement to the DIP Term Sheet (the “**DIP Amendment**”) is attached hereto as Exhibit “B”.
18. I have considered and discussed this proposed increase in the Company’s DIP Financing availability with DEL’s professional advisors and the Monitor (whom I understand is supportive of the proposed increase in available DIP Financing) and believe it is in the best interests of the Company and its stakeholders for the following reasons:
  - (a) while I am confident in the Company’s cash flow forecast, the nature of DEL’s business and internal processes present certain challenges in forecasting its cash needs three to four months into the future. Moreover, the Company anticipates incurring certain expenses (e.g. litigation expense relating to the dispute with Gin-

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Cor and Mack Defense, LLC (“**Mack Defense**”)) that are challenging to precisely quantify. In the circumstances, I believe it is prudent for DEL to have an additional liquidity buffer as it continues normal course operations while pursuing a strategic transaction;

- (b) no standby fee or other similar charges are being charged on undrawn amounts, and no amendment fee is being charged. As such, the Company will not incur any additional expense as a result of the increase in available DIP Financing unless and until funds are actually required to be borrowed; and
- (c) increasing the Company’s DIP Financing availability now avoids the potential expense of a further Court attendance if incremental financing turns out to be required before the end of the proposed Stay Period.

### **III. GIN-COR AND MACK DEFENSE PAYMENT DISPUTE**

19. As outlined in the Initial Affidavit, the Company is involved in an ongoing dispute with Gin-Cor and Mack Defense regarding the payment of approximately \$874,107 by Mack Defense to Gin-Cor in respect of work performed by DEL, which payment was improperly retained by Gin-Cor. In addition to the efforts previously described to seek protective orders against Gin-Cor to protect DEL’s interest in such funds for the benefit of its creditors, DEL, through counsel, has commenced discussions with Gin-Cor regarding a process to have the dispute between DEL and Gin-Cor resolved on an expedited basis. At the same time, the Company also intends to explore whether a settlement of the dispute could be achieved that avoids the time and expense of a litigation process.

**IV. STAY EXTENSION AND DIP AMENDMENT ORDER**

20. Since the Initial Order, the Company has continued to act diligently and in good faith in respect of all matters relating to the CCAA proceedings. To date, the Company and its advisors have largely focused on maintaining the stability of the business, communicating with stakeholders, addressing matters relating to the initiation of the CCAA proceedings and commencing the Sale Process. The Company is focused on continuing the Sale Process and identifying a potential value-maximizing transaction for the benefit of all stakeholders. It is critical that the CCAA stay continue during this period as the Company works to achieve strong operational performance while conducting the Sale Process. At the same time, the Company also intends to continue to advance the resolution of its dispute with Gin-Cor and Mack Defense.
21. The Company requires the ongoing benefit of the CCAA stay of proceedings to preserve the value of the its business while it pursues these initiatives.
22. The Stay Period granted in the Initial Order is in effect until November 21, 2019. The Company is requesting an extension of the Stay Period until February 28, 2020, to provide stability to its business while it conducts the Sale Process to pursue a going-concern solution that maximizes the value of its business for the benefit of all stakeholders.
23. Given the Company's access to necessary liquidity during the proposed Stay Period, I do not believe that any creditor will suffer material prejudice as a result of the extension of the Stay Period.

V. CONCLUSION

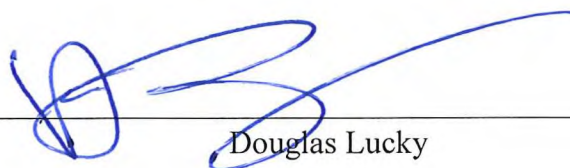
24. I understand that the Monitor supports the relief sought by the Company on this motion. I believe that the granting of the Stay Extension and DIP Amendment Order is appropriate in the circumstances and in the best interests of DEL and its stakeholders.

SWORN before me at the City of Toronto, in the Province of Ontario, on November 13, 2019.



A Commissioner for taking affidavits

ANDREW HARMES

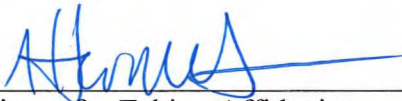


Douglas Lucky

A



**THIS IS EXHIBIT "A"  
TO THE AFFIDAVIT OF DOUGLAS LUCKY  
SWORN BEFORE ME THIS 13<sup>th</sup> DAY OF NOVEMBER, 2019**

A handwritten signature in blue ink, appearing to read "H. Jones", written over a horizontal line.

Commissioner for Taking Affidavits



Barristers & Solicitors

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carmstrong@goodmans.ca

October 23, 2019

**TO: THE SERVICE LIST**

Dear Sirs/Mesdames:

**Re: *Companies' Creditors Arrangement Act* ("CCAA") Proceedings (the "CCAA Proceedings") of Del Equipment Inc.**

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

We are counsel to Del Equipment Inc. (the "**Applicant**").

Please be advised that on October 22, 2019, the Applicant obtained an Initial Order (the "**Initial Order**") granted by the Ontario Superior Court of Justice (Commercial List) (the "**Court**") under the CCAA. A copy of the Initial Order is enclosed for your reference.

The Initial Order, among other things, approves the Applicant's proposed sale and investment solicitation process, grants a stay of proceedings in favour of the Applicant, and appoints MNP Ltd. as monitor (the "**Monitor**") of the Applicant. Additional materials filed in respect of the CCAA Proceedings are available on the Monitor's website, which can be accessed at [www.mnpdebt.ca/DELEquipment](http://www.mnpdebt.ca/DELEquipment).

Please be advised that a comeback hearing in respect of the Initial Order has been scheduled before the Court for **November 14, 2019 at 9:30 am (Toronto time)** (the "**Comeback Hearing**"), to be held at 330 University Avenue, Toronto, Ontario, 8<sup>th</sup> Floor. Interested parties wishing to bring a motion at the Comeback Hearing are required to provide notice to the Applicant, the Monitor and the service list in the CCAA proceedings prior to the Comeback Hearing pursuant to the requirements set forth in the Initial Order.

At the Comeback Hearing, the Applicant will be seeking an Order, among other things, extending the stay of proceedings granted pursuant to the Initial Order. The Applicant may also seek an Order giving the Court-ordered charges granted under the Initial Order priority above secured creditors of the Applicant who did not receive notice of the initial CCAA application.

To the extent you wish to be added to the ongoing service list in this matter, you or your counsel should prepare a Notice of Appearance in the prescribed form and serve it on the Applicant, the Monitor and the service list, and file it with the Court.

**Goodman's**<sup>LLP</sup>

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To the extent you have any questions in respect of the foregoing, you may contact the undersigned.

Yours truly,

**Goodmans LLP**



Christopher Armstrong

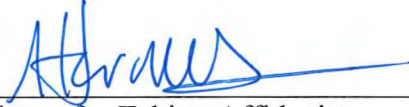
CA/  
Encl.

cc. Jennifer Stam, *Goldman, Sloan, Nash and Haber LLP*  
Sheldon Title, *MNP Ltd.*

6996795

**B**

**THIS IS EXHIBIT "B"  
TO THE AFFIDAVIT OF DOUGLAS LUCKY  
SWORN BEFORE ME THIS 13<sup>th</sup> DAY OF NOVEMBER, 2019**

A handwritten signature in blue ink, appearing to read "Adraus", written over a horizontal line.

Commissioner for Taking Affidavits

**FIRST AMENDMENT AGREEMENT**

**THIS AGREEMENT** is made as of November \_\_\_\_, 2019

**B E T W E E N:**

DEL EQUIPMENT INC.

(the “**Borrower**”)

- and -

DIESEL EQUIPMENT LIMITED

(the “**Lender**”)

**RECITALS:**

- A. The Borrower and the Lender are parties to a DIP financing term sheet dated as of October 21, 2019, pursuant to which the Lender has established a senior secured debtor-in-possession, interim, non-revolving multiple draw credit facility for the benefit of the Borrower (the “**DIP Financing Term Sheet**”);
- B. On October 22, 2019, the Borrower commenced the CCAA Proceedings;
- C. The Borrower has determined that it requires access to additional incremental financing to continue to operate its business and pursue restructuring initiatives in the CCAA Proceedings, including the Sales Process; and
- D. Accordingly, the Borrower and the Lender have agreed to make certain amendments to the DIP Financing Term Sheet that are set out in this agreement;

**NOW THEREFORE** in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties hereto agree as follows:

**1. Interpretation**

All capitalized terms used but not defined in this agreement will have the meanings attributed to such terms in the DIP Financing Term Sheet.

**2. Amendment to Section 4**

The first sentence of Section 4 of the DIP Financing Term Sheet is deleted and replaced with the following:

A senior secured debtor-in-possession, interim, non-revolving multiple draw credit facility (the “**DIP Facility**”) up to a maximum principal amount of \$2.5 million (the “**Facility Amount**”), subject to the terms and conditions contained herein.

**3. Conditions Precedent to Effectiveness**

This agreement shall become effective upon: (i) receipt by the Lender of a signed counterpart by each party hereto; and (ii) approval of this agreement by the Court in the CCAA Proceedings pursuant to an Order in form and substance satisfactory to the Lender, such order to authorize the Borrower to enter into this Agreement and confirm that the DIP Lender Charge shall secure the increased Facility Amount contemplated hereby (the “**DIP Amendment Order**”).

**4. Confirmation of Representations and No Default**

The Borrower represents that no Event of Default has occurred and is continuing and that the representations of the Borrower in Section 15 of the DIP Financing Term Sheet are true and correct in all material respects as if made on and as of the date hereof, except for any representations and warranties that are expressly stated to be made as of a specific date, and provided that the term Initial Order as used in Section 15 of the DIP Financing Term Sheet shall be construed so as to refer to both the Initial Order and the DIP Amendment Order.

**5. Supplemental**

This agreement is supplemental to the DIP Financing Term Sheet and the DIP Financing Term Sheet will henceforth be read in conjunction with this agreement. The DIP Financing Term Sheet and this agreement will henceforth be read, interpreted, construed and have effect so far as is practicable as if all the provisions of the DIP Financing Term Sheet and this agreement were contained in one instrument.

**6. Ratification**

Except as amended hereby, the DIP Financing Term Sheet and all of its terms, conditions and obligations are ratified and confirmed.

**7. Headings**

The headings of the sections of this agreement are inserted for convenience of reference only and will not affect the construction or interpretation of this agreement.

**8. Governing Law**

The parties agree that this agreement will be governed by and construed and interpreted in accordance with the laws of the Province of Ontario.

**9. Counterparts**

This agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which will constitute an original, but all of which when taken together will constitute a single contract. Delivery of an executed original counterpart of a signature page of this agreement by facsimile or electronic pdf will be as effective as delivery of a manually executed original counterpart of this agreement.

*[Signature Page Follows]*

**IN WITNESS WHEREOF** the parties hereto have executed this agreement.

**DIESEL EQUIPMENT LIMITED**, as Lender

Per: \_\_\_\_\_

Name:

Title:

I have authority to bind the corporation.

**DEL EQUIPMENT INC.** , as Borrower

Per: \_\_\_\_\_

Name:

Title:

I have authority to bind the corporation.



**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

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

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**AFFIDAVIT OF DOUGLAS LUCKY**  
**(Sworn November 13, 2019)**

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**GOODMANS LLP**  
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Lawyers for Del Equipment Inc.

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

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

THE HONOURABLE	)	TUESDAY, THE 19 <sup>TH</sup>
	)	
JUSTICE HAINEY	)	DAY OF NOVEMBER, 2019

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

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

Applicant

**STAY EXTENSION AND DIP AMENDMENT ORDER**

THIS MOTION, made by Del Equipment Inc. (the "**Applicant**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Douglas Lucky sworn November 13, 2019 (the "**Lucky Affidavit**"), and the Exhibits thereto, and the First Report (the "**First Report**") of MNP Ltd. in its capacity as monitor of the Applicant (the "**Monitor**"), and on hearing the submissions of counsel for the Applicant, the Monitor, and those other parties present as indicated on the counsel sheet,

**SERVICE AND DEFINITIONS**

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

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2. **THIS COURT ORDERS** that capitalized terms used herein and not otherwise defined have the meanings given to them in the Initial Order of this Court made in the within proceedings dated October 22, 2019 (the “**Initial Order**”).

#### **EXTENSION OF STAY PERIOD**

3. **THIS COURT ORDERS** that the Stay Period be and is hereby extended to and including 11:59 p.m. (Toronto time) on February 28, 2020, and that all other terms of the Initial Order shall remain in full force and effect during the Stay Period.

#### **AMENDED DIP FINANCING**

4. **THIS COURT ORDERS** that the execution by the Applicant of the DIP Amendment (as defined in the Lucky Affidavit and substantially in the form attached to the Lucky Affidavit as Exhibit “B”) is hereby authorized and approved, and the Applicant is hereby authorized and empowered 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) as amended by the DIP Amendment.
5. **THIS COURT ORDERS** that: (a) paragraphs 38 to 50 of the Initial Order shall apply to the DIP Credit Agreement as amended by the DIP Amendment and all references to the DIP Credit Agreement contained in the Initial Order shall be deemed to be references to the DIP Credit Agreement as amended by the DIP Amendment; (b) the DIP Lender’s Charge shall secure all amounts owing by the Applicant to the DIP Lender under the DIP Credit Agreement as amended by the DIP Amendment and the Definitive Documents; and (c) for greater certainty, paragraph 38 of the Initial Order is hereby amended to replace the reference to “\$1 million” with “\$2.5 million”.

#### **GENERAL**

6. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States or any other foreign jurisdiction, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make

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such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

7. **THIS COURT ORDERS** that each of the Applicant and the Monitor be at liberty and are 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.
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**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED  
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF DEL EQUIPMENT INC.**

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

Applicant

<p><b>ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)</b> Proceeding commenced at Toronto</p>
<p><b>STAY EXTENSION AND DIP AMENDMENT ORDER (November 19, 2019)</b></p>
<p><b>GOODMANS LLP</b> Barristers &amp; Solicitors 333 Bay Street, Suite 3400 Toronto, Canada M5H 2S7</p> <p><b>Christopher G. Armstrong</b> LSO#: 55148B carmstrong@goodmans.ca</p> <p><b>Andrew Harmes</b> LSO#: 73221A aharmes@goodmans.ca</p> <p>Tel: (416) 979-2211 Fax: (416) 979-1234</p> <p>Lawyers for Del Equipment Inc.</p>

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

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

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

Applicant

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

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**MOTION RECORD**  
(Motion returnable November 19, 2019)

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