**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")**

# SECOND REPORT TO THE COURT SUBMITTED BY MNP LTD. IN ITS CAPACITY AS COURT APPOINTED MONITOR OF DEL EQUIPMENT INC.

**FEBRUARY 24 , 2019**

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## APPENDICES



## CONFIDENTIAL APPENDICES

## 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 provided 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 Diesel Equipment Limited, the Company's parent company and senior secured lender ("**Diesel**" or the "**DIP 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. A copy of the Pre-filing Report, without appendices, is attached as **Appendix "B"**.

4. On November 19, 2019 the Company sought and obtained an order (the "**First Extension Order**") which approved, among other things, additional DIP financing (the "**Additional**

**DIP Financing**") to be provided by the DIP Lender and an extension of the Stay Period to and including February 28, 2020.

5. A first report of the Monitor (the "**First Report**") was filed on November 14, 2019 in connection with the Company's Motion returnable November 19, 2019. A copy of the First Report, without appendices, is attached as **Appendix "C"**.

6. The purpose of this report (the "**Second Report**") is to provide the Court with information and as applicable, the Monitor's comments and recommendations concerning:

    a. the Company's and Monitor's activities since the First Report;

    b. the results of the SISP that was conducted to solicit bids for DEL's assets and business as a going concern;

    c. the actual receipts and disbursement of the Company through February 9, 2020, as well as any material variances between the actual receipts and disbursements and the revised cash flow forecast (the "**Revised Cash Flow Forecast**"), which was appended to the First Report;

    d. DEL's revised cash flow forecast through May 31, 2020 (the "**Extended Cash Flow Forecast**");

    e. DEL's request for an extension to the Stay Period to May 29, 2020; and

    f. the Monitor's support for, and observations in respect of DEL's request that this Court grant Orders:

        i. approving the transaction (the "**Transaction**") contemplated by an Asset Purchase Agreement dated February 21, 2020 between DEL and Drive Products Inc ("**DPI**") pursuant to which DPI has agreed to purchase certain assets (the "**Purchased Assets**" or "**DPI Assets**") owned by DEL (the "**DPI APA**");

ii. upon completion of the Transaction, vesting DEL's right, title and interest in and to the Purchased Assets in DPI, free and clear of all interests, liens, charges and encumbrances, other than permitted encumbrances;

iii. approving the KERP (as detailed and defined below), *nunc pro tunc*;

iv. authorizing the Company, in consultation with the Monitor, to continue to explore opportunities with respect to the remaining branches and assets not included within the scope of the Transaction (the "**Residual Assets**");

v. extending the Stay of Proceedings to and including 11:59 p.m. (Toronto time) on May 29, 2020 (the "**Requested Stay Extension**"); and

vi. sealing the Confidential Appendices pending further Order of the Court.

7. The Second Report and other materials filed with the Court and all orders granted in connection with the CCAA Proceedings have been and will continue to be made available on the Monitor's website at https://mnpdebt.ca/en/corporate/engagements/DELEquipment.

**DISCLAIMER AND TERMS OF REFERENCE**

8. In preparing this Second 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 Second Report, or otherwise used to prepare this Report.

9. 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.

10. Capitalized terms not defined in this Report are used as defined in the affidavits of Douglas Lucky sworn October 20, 2019, November 13, 2019 and February 22, 2020 (the "**February 22nd Affidavit**", and collectively the **"Lucky Affidavits"**) filed in support of the Applicant's application for relief under the CCAA and the current motion.

11. Unless otherwise stated, all monetary amounts contained in this Second Report are expressed in Canadian dollars.

**ACTIVITIES OF THE MONITOR SINCE FILING DATE**

12. Since the First Report, the Monitor has undertaken the following activities, *inter alia*:

    a. updated the Monitor's Website as necessary;

    b. responded to electronic messages sent to the Monitor's email at DELEquipment@mnp.ca and responded to other inquiries regarding the CCAA Proceedings;

    c. attended several of the weekly meetings of DEL's senior management;

    d. monitored DEL's actual cash flows in comparison to the Revised Cash Flow Forecast;

e. corresponded and communicated with the Company and its advisors with respect to the SISP, including reviewing and providing comments in connection with the DPI APA;

f. carried out a liquidation value analysis in contemplation of having to assess whether bids received are more beneficial to the creditors than a sale or disposition through a liquidation ;

g. Requisitioned a desktop liquidation value appraisal of DEL's equipment and certain of DEL's inventory from Infinity Asset Solutions (the "**Infinity Appraisal**", a copy of which is attached as **Confidential Appendix "1";**

h. through its legal counsel obtained opinions confirming the validity, subject to the usual assumptions and qualifications, of Diesel's security as against DEL's assets;

i. prepared this Second Report of the Monitor; and

j. otherwise monitoring and assisting the Company in the performance of its operations.

## SALES AND INVESTMENT SOLICITATION PROCESS

13. The focus of the CCAA Proceedings has been for DEL, in consultation with its CRO and advisors, to carry out the SISP while, concurrently, providing a stabilized environment for DEL to maintain normal course operations. The purpose of the SISP was to identify and assess the strategic alternatives available to DEL to maximize the value of its business and assets (the "**DEL Assets**") for its stakeholders.

14. DEL, with the assistance of its advisors and CRO, conducted the SISP in accordance with the provisions of the Initial Order. The SISP contemplated that parties which had signed a non-disclosure agreement (each a "**Prospective Bidder**") would have to submit a non-binding Expression of Interest ("**EOI**") by December 6, 2019 (the "**EOI Deadline**"). Prospective Bidders that had submitted an EOI could be selected to participate in a second phase of the SISP (the "**Phase 2 Parties**") to conduct detailed due diligence. Binding offers were due by the Phase 2 Parties on January 31, 2020 (the "**Offer Deadline**").

15. An overview of the implementation of the SISP is as follows:

   a. following the issuance of the Initial Order and approval of the SISP, DEL, under the direction of the CRO and with the assistance of its financial advisor, Grant Thornton LLP (the "**Financial Advisor**") and the Monitor, began to solicit indications of interest from prospective parties;

   b. the Financial Advisor prepared an interest solicitation letter (i.e. a teaser) for DEL that was sent by the Financial Advisor and the CRO to one-hundred and twenty-five (125) potentially interested strategic and financial parties;

   c. the sale opportunity was advertised in the Globe & Mail (National Edition) on November 5, 2019 and in the Insolvency Insider e-mail publication on November 11, 2019, November 18, 2019, November 25, 2019 and December 2, 2019;

   d. twenty-six (26) parties signed non-disclosure agreements and were provided with a confidential information memorandum and given access to an online data room containing non-public information with respect to DEL and its business;

   e. over the course of the SISP, the Company and the CRO facilitated diligence requests from a number of the interested parties, including working with management to update the data room with current financial and other information, as required;

   f. DEL received four (4) EOIs by the EOI Deadline. None of the EOIs received contemplated a complete going concern transaction with respect to DEL's entire business. The EOIs received contemplated either the acquisition of certain assets of DEL and consolidation of the assets into the parties' existing business, or the acquisition of certain of DEL's branches or specified assets;

   g. all of the Prospective Bidders that had submitted an EOI by the EOI Deadline were invited to participate in the second phase of the SISP as one of the Phase 2 Parties;

   h. DEL and the CRO facilitated additional due diligence requests for the Phase 2 Parties, including providing further site visits, additional information regarding

DEL, and participated in detailed discussions with certain of the Phase 2 Parties; and

i. DEL received three (3) offers from Phase 2 Parties by the Offer Deadline, all of which were similar to the EOIs received from the same parties in that none offered a going concern transaction for DEL's entire business.

16. DEL, its advisors and the Monitor reviewed the offers submitted by the Phase 2 Parties by the Offer Deadline. In reviewing the offers received, DEL, with agreement of the Monitor, determined that the offer from DPI was the superior offer in that it would provide for the greatest value to DEL's stakeholders and could preserve employment for certain of DEL employees (the "**DPI Offer**"). DEL and its advisors held an in-person meeting with DPI to discuss its offer and proposed improvements. On February 10, 2020, DEL and DPI entered into an exclusivity agreement (the "**Exclusivity Agreement**") to continue negotiating the terms and conditions of a definitive transaction as between DEL and DPI for the DPI Assets.

17. The Exclusivity Agreement, including extensions made to the Exclusivity Agreement, permitted DEL to continue to market the Residual Assets.

18. DEL, in consultation with its advisors determined that it should proceed with the Transaction and finalize the DPI APA.

**The Transaction**

19. The key provisions of the DPI APA, a unredacted copy of which is attached hereto as **Confidential Appendix 2** (a redacted version is attached to the Motion Record as **Tab 2d**), are as follows:

    a. The Purchased Assets include:

        i. all equipment and personal property owned by DEL and located at DEL's Newmarket, Ontario premises (the "**Purchased Equipment**"), subject to the exclusions noted below;

ii. DEL’s benefit in (i) the Ford Converter Agreement; and (ii) certain contracts and customer purchase orders (“**Assumed Contracts**”);

iii. certain of DEL’s inventories of products and merchandise, including raw materials, supplies, packaging, parts, components and assemblies (“**Purchased Inventory and Supplies**”);

iv. DEL’s rights, interests and benefits (through ownership, licensing or otherwise) in the Intellectual Property used in the business or to which DEL has rights;

v. the goodwill of DEL’s business;

vi. all warranty rights against manufacturers, contractors or suppliers relating to the DPI Assets, to the extent the foregoing are transferable to DPI; and

vii. all of the books and records of DEL associated to the DPI Assets.

b. The Transaction does not include, *inter alia*, the following:

i. all cash, bank balances, tax refunds and receivables relating to periods ending on or before the Closing Date;

ii. all of DEL’s accounts receivables, including: (i) intercompany receivables; and (ii) any receivable owing under or in connection with Gin-Cor Agreements and Claims; and

iii. equipment and most of the inventory and supplies located at DEL’s five (5) other branches;

c. The DPI Assets are being acquired on an “as is, where is” basis;

d. The Purchase Price is comprised of: (i) a Base Purchase Price; (ii) Purchased Equipment Purchase Price; (iii) Purchased Inventory and Supplies Purchase Price; and (iv) a payment in respect of prepayments and deposited funded by DEL under assumed supplier purchase orders;

e. DPI has paid a deposit representing approximately 8.5% of the purchase price

f. the Purchased Inventory and Supplies Purchase Price is determined as of December 31, 2019 based on the Purchased Inventory and Supplies specifically listed in the DPI APA. There is a mechanism to adjust this part of the purchase price to account for changes in the value based on a physical count of the Purchased Inventory and Supplies that is to occur following the close of business that is no later than two days prior to the Closing Date;

g. The balance of the purchase price, after deducting the deposit, is payable in cash on closing;

h. In addition to the Purchase Price, DPI is to assume certain liabilities and obligations in respect of, among other things, the DPI Assets arising on or after the Closing Date;

i. DPI and DEL have concurrently agreed to a one-year transition services agreement whereby DPI agrees, at the written request of DEL, to provide services in respect of collecting DEL's accounts receivable and completing on behalf of DEL work in process under a purchase order or agreement that is an excluded customer purchase order from the Transaction;

j. The Transaction is conditional on, among other things, the issuance of an order of this Court approving the Transaction and vesting the DPI Assets in and to the purchaser; and

k. At least fourteen (14) days prior to the Closing Date, DPI shall make a written offer of employment effective as of the Closing Date and contingent upon Closing, to certain of DEL's employees listed in the DPI APA

**Recommendation**

20. The Monitor has considered the factors set out in Section 36(3) of the CCAA with respect to the granting of a Court order authorizing the DPI APA and completing the sale of the

DPI Assets to DPI. The Monitor respectfully recommends that the Court make the order sought by the Company for the following reasons:

a. the SISP was carried out in accordance with the terms of the Initial Order and provided all prospective bidders with the opportunity to submit offers for DEL's assets;

b. the Transaction, coupled with the sale of the Residual Assets, will maximize the value of the DEL Assets;

c. by finding a strategic purchaser in DPI, DEL has realized going concern value for its Newmarket branch, which branch represents a significant part of DEL's overall business;

d. the Purchased Inventory and Supplies Purchase Price exceeds the estimated forced liquidation value estimated per the Infinity Appraisal and the Purchased Equipment Purchase Price is greater than the value DEL would likely realize on the Purchased Equipment after deducting liquidation fees and expenses;

e. selling the Newmarket branch as a going concern is favourable as:

    i. employment for certain of DEL's employees will be preserved;

    ii. supplier relationships may be preserved; and

    iii. customers will have a continued source of supply;

f. the transition agreement provides a mechanism for completion of any of DEL's work in process in respect of any purchase order or agreement that is excluded from the Transaction and to have DPI service the warranty claims in respect of its workmanship for a period of a year from the date of delivery to the end customer. This may enhance recovery from the Residual Assets, particularly the accounts receivable, as it reduces the likelihood of set-offs or damages being claimed on account of DEL's inability to complete pending orders;

g. Diesel, as DIP Lender and principal secured creditor, is supportive of the Transaction; and

h. the Monitor does not believe that further time spent marketing the DPI Assets will result in a superior transaction.

**Sealing Order**

21. The Second Report includes the Infinity Appraisal and the unredacted version of the DPI APA, both of which contain commercially sensitive information inasmuch as: (i) the closing of the Transaction is pending; and (ii) the information in the Infinity Appraisal may adversely impact on the realizations of the Residual Assets. The unredacted DPI APA also includes employee and customer information. Given the foregoing, the Monitor recommends that the Court order the sealing of the unredacted DPI APA (Confidential Appendix "2") and the Infinity Appraisal (Confidential Appendix "1").

**RESIDUAL ASSETS**

22. The Transaction is only for the DPI Assets, and DEL would retain its interest in the Residual Assets such that it can then seek to realize on same in order to maximize value for DEL's stakeholders. DEL is continuing to consider its options with respect to the Residual Assets.

23. DEL is seeking authority to continue to explore opportunities for the sale of the Residual Assets, and with prior approval of the Monitor, to enter into and complete any transaction for the Residual Assets for proceeds equal to or less than $250,000 provided that DEL shall seek the Court's approval for any Residual Asset Transaction in excess of such amount.

24. To date, DEL has kept the Monitor informed of its activities under the SISP and have consulted the Monitor in respect of the negotiations relating to the Transaction. Accordingly, the Monitor recommends the Court authorize DEL to continue to explore opportunities for the sale of the Residual Assets in the manner requested.

## KEY EMPLOYEE RETENTION PLAN

25. As per the February 22nd Affidavit, subsequent to the issuance of the First Extension Order, DEL began to experience an erosion of confidence of certain of its employees. To prevent the loss of certain specialized and skilled employees, which were considered by DEL and the CRO to be critical to the ongoing operations, and encourage the continued participation of senior and operational management and other key employees during the CCAA Proceedings, DEL established a key employee retention program (the "**KERP**"). The KERP, which was established on or around January 19, 2020, was designed to encourage certain selected employees (the "**Eligible Employees**") to continue their employment with DEL through the completion of a transaction arising from the SISP.

26. Pursuant to the terms of the KERP, the Eligible Employees are entitled to receive a specified amount in two installments, with the first instalment being been paid following acceptance of the KERP by the Eligible Employee (the "**First KERP Payment**") and the second installment payable if the Eligible Employee remains employed by DEL until the closing of a transaction resulting from the SISP (the "**Second KERP Payment**"). An Eligible Employee forfeits their entitlement to the Second KERP Payment and is required to repay the First KERP Payment if the Eligible Employee resigns or is terminated with cause prior to the closing of a transaction pursuant to the SISP. The Eligible Employee is entitled to a *pro rata* amount of the Second KERP Payment if their employment is terminated without cause prior to the closing of a transaction pursuant to the SISP.

27. As detailed in the February 22nd Affidavit, given a high rate of unplanned employee departures during the ongoing SISP and restructuring efforts, the ability for DEL's skilled workers to seek alternative employment or opportunities with competitors, and the importance of DEL's skilled and experienced workers to DEL's operations, DEL, in consultation with its advisors and the Monitor, determined that it was in the best interest of DEL's stakeholders to immediately implement the KERP and issue the First KERP Payments. The First KERP Payments totalled approximately $45M.

28. The Second KERP Payments for the Eligible Employees, which would total a maximum of approximately $170M (for an aggregate KERP amount totalling $215M inclusive of the First KERP Payments), is subject to DEL obtaining the Court's approval of the KERP.

29. DEL, having already entered into agreements with the Eligible Employees with respect of the KERP and having already made the First KERP Payments, is therefore seeking the *nunc pro tunc* approval of the KERP.

30. A copy of the KERP is appended as **Confidential Appendix "3"**. As the KERP contains commercially sensitive and personal information, the proposed Order sought by DEL includes a provision that Confidential Appendices be sealed and not form part of the court record pending further Order of the Court. The Monitor believes that it is appropriate to seal this exhibit as this type of information is typically sealed in order to avoid disruption to the debtor company and to protect the beneficiaries of the KERP. The Monitor does not believe that any stakeholder will be prejudiced of the KERP information is sealed.

31. The Monitor supported the creation and implementation of the KERP as:
    a. it has provided and will continue to provide stability to DEL's business and facilitate the successful completion of a sale transaction under the SISP and/or preserve the value of realizable assets by encouraging key employees to remain with the Company;
    b. Eligible Employees are considered to be key to a sale transaction and their participation will assist in maximizing realizations for the benefit of DEL's stakeholders;
    c. the KERP is supported by Diesel; and
    d. the terms of the KERP and the quantum of the payouts are reasonable both in the circumstances and when compared to other key employee retention and incentive plans approved by this Court in the past.

## CASH FLOW VARIANCE ANALYSIS

32. The Monitor has undertaken a weekly review of DEL's actual cash flows in comparison to those contained in the Revised Cash Flow Forecast. A summary of DEL's actual cash receipts and disbursements as compared to the Revised Cash Flow Forecast for the fourteen weeks ended February 9, 2020 (the "**Monitored Period**") is summarized below:

**DEL Equipment Inc.**
**Actual Receipts and Disbursements**
**For the fourteen week period ending February 09, 2020**
**(Unaudited, in $'000s CAD)**

| | *Cumulative Fourteen-Week Period Ended February 9, 2019* | | |
|---|---|---|---|
| | **Actual** | **Forecast** | ***Variance ($)*** |
| **Receipts** | **10,596** | **10,571** | ***25*** |
| **Disbursements** | | | |
| Merchandise Vendors | 5,425 | 8,245 | *2,820* |
| Non-Merchandise Vendors | 1,527 | 1,956 | *429* |
| Payroll | 1,908 | 1,730 | *(179)* |
| Tax | 767 | 223 | *(544)* |
| **Total Disbursements** | **9,627** | **12,153** | ***2,526*** |
| **Operating Net Cash Flow** | **969** | **(1,583)** | ***2,552*** |
| Administrative Fees | 444 | 615 | *171* |
| Regina Assets Sale | (130) | (130) | - |
| Snow Equipment Sale | (38) | (38) | - |
| **Net Cash Flow** | **693** | **(2,029)** | ***2,722*** |
| **Beginning Cash** | 4,223 | 4,223 | - |
| Net Cash Flow | 693 | (2,029) | *2,722* |
| Interim Financing/(repayment) | - | - | - |
| **Ending Cash** | **4,916** | **2,194** | ***2,722*** |

33. Overall, DEL realized a favorable net cash flow variance of approximately $2.722 MM during the Monitored Period. The key components of the variance are as follows:

a. <u>Receipts:</u> Actual receipts were in line with the Revised Cash Flow Forecast and a minor favourable variance of only $25M has been reported.

b. <u>Merchandise Vendors:</u> The $2.820MM favorable variance in merchandise vendor purchases is largely attributable to DEL being able to fulfill a greater than anticipated portion of customer orders from existing inventory. DEL also anticipated it was going to have to make Pre-CCAA Payments to certain vendors in order to secure delivery of post-CCAA goods and services. During the

Monitored Period, DEL had a favourable variance of approximately $576M in its Pre-CCAA Payments.

c. Non-Merchandise Vendors: The reduction is primarily on account of non-payment/ short payment of rent at the branches outside of Ontario, each owned by Diesel, and lower than anticipated indirect costs. A significant portion of the $429M variance is timing in nature as DEL intends on paying post-CCAA rent to Diesel.

d. Payroll: Payroll cost is approximately 10% greater than projected, with the variance partially being attributable to the First KERP Payment, which was originally not contemplated in the Revised Cash Flow Forecast;

e. Sales Tax: The approximately $544M unfavourable variance in tax payments is attributable to the favourable variance in merchandise and non-merchandise vendor payments. DEL has lower than anticipated input tax credits to apply against HST collected, and consequently, has had larger than projected tax remittances; and

f. Administrative Fees: $171M favourable variance is largely permanent in nature, attributable to lower than projected payments to the Monitor's legal counsel, payment of the Financial Advisor's invoices by related parties to DEL and a contingency created for payment to other professionals has not been utilized.

**EXTENDED CASH FLOW FORECAST**

34. As described above, DEL is requesting that the stay of proceedings be extended to allow it to complete the Transaction and market the Residual Assets. DEL, with the assistance of the Financial Advisor, has extended the cash flow projection through to May 31, 2020 (the "**Extended Cash Flow Forecast Period**"). A copy of the Extended Cash Flow Forecast including the notes and assumptions is attached hereto as **Appendix "D"**.

35. A summary of the Extended Cash Flow Forecast is provided in the following table:

**DEL Equipment Inc.**
**Projected Statement of Extended Cash Flow Forecast**
**For the period ending May 31, 2020**
**(Unaudited, in $'000s CAD)**

| **Week Beginning** | **Total 16 Weeks** |
|---|---|
| **Receipts** | **8,991** |
| **Disbursements** | |
| Merchandise Vendors | 3,795 |
| Non-Merchandise Vendors | 1,460 |
| Payroll | 1,244 |
| Tax | 411 |
| **Total Disbursements** | **6,910** |
| **Operating Net Cash Flow** | **2,081** |
| Administrative Fees | 594 |
| **Net Cash Flow** | **1,487** |
| **Opening cash balance** | 4,917 |
| Net Cash Flow | 1,487 |
| Interim Financing/(repayment) | - |
| **Closing cash balance** | **6,404** |

36. During the Extended Cash Flow Forecast Period, the Company projects a net cash flow surplus of $1.487MM and have a remaining cash balance of $6.404MM at the end of the Extended Cash Flow Forecast Period.

37. The Monitor notes the following with respect to the Extended Cash Flow Forecast:

    a. Receipts: DEL continues to assume its average collection period to be 60 days, which is consistent with its past experience. However, DEL is projecting reduced sales activity as compared with the Revised Cash Flow Forecast. The reduced sales forecast is based on DEL's expectation that it will only fulfill existing orders and not take new orders during the period of the Extended Cash Flow as they plan to focus efforts on realizing on the Residual Assets.

Although the Transaction is likely to close during the Extended Cash Flow Period, the proceeds from sale of the DPI Assets are not included in Extended Cash Flow Forecast as to avoid publicly disclosing the purchase price.

DEL assumes that any sale of the Residual Assets will be consummated after the Extended Cash Flow Forecast Period.

b. Merchandise Vendors (Direct Materials): The anticipated reduction in expected sales will result in a corresponding reduction in expected material purchases as material orders will be restricted to materials needed for the fulfilment of the existing orders. The Extended Cash Flow Forecast Period reflects a reduction in payments to Merchandise Vendors from weekly average of $515M in February to $458M in March to $84M in April and eventually Nil in May 2020.

c. Non-Merchandise Vendors**:** Rent to Gin-Cor in respect of the Newmarket premises is presently projected to be paid until April 30, 2020, to coincide with the outside date for closing of the Transaction. A reduction is proposed in other indirect costs as well in line with the reduction in operations.

d. Payroll**:** As DEL is focusing on fulfilling existing orders and selling inventory on hand, there will be a reduced labour requirement and cost.

e. Second KERP Payments: As detailed in KERP section in paragraphs 25 to 31, the Second KERP Payments for the Eligible Employees, which would total approximately $170,000, are assumed to be paid in the week of March 30, 2020. The Second KERP Payments are included under Payroll disbursements;

f. DEL has not required the utilization of the DIP Financing and is projected to have enough cash and operational cash flow during the Extended Cash Flow Period such that no use of the DIP Financing is expected;

38. Management's Representation Letter and the Monitor's report to the Court regarding the adequacy of the Extended Cash Flow Forecast, are attached hereto as **Appendix "E" and "F"**.

39. The Monitor has reviewed the Extended Cash Flow Forecast 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 Extended 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.

40. 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 Second 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 Extended Cash Flow Forecast does not reflect the probable and hypothetical assumptions.

41. Since the Extended Cash Flow Forecast is based on assumptions about future events, actual results will vary from the information presented even if the hypothetical assumptions occur, and the variations may be material. Accordingly, the Monitor expresses no assurance as to whether the results shown in the Extended Cash Flow Forecast will be achieved. The Monitor also expresses no opinion or other form of assurance with respect to the accuracy of any financial information presented in this Second Report or relied upon by it in preparing this Second Report.

42. The Extended Cash Flow Forecast has been prepared solely for the purpose described in the notes to the Extended Cash Flow Forecast and readers are cautioned that it may not be appropriate for other purposes.

## OTHER MATTERS

43. As noted in the Monitor's pre-filing report to these CCAA Proceedings, DEL has been involved in a dispute regarding a payment made in August of 2019 to Gin-Cor Industries Inc. ("**Gin-Cor**") by Mack Defense LLC (the "**Disputed Payment**") on account of a series of DEL invoices issued on or around June 6, 2019. The Disputed Payment has given rise to a legal action by DEL as against Gin-Cor. (the "**Gin-Cor Litigation**")

44. DEL's legal counsel and legal counsel to Gin-Cor have established a litigation protocol with respect of the Gin-Cor Litigation (the "**Litigation Protocol**") outlining the timeline and procedure to resolve the Disputed Payment. The Litigation Protocol contemplates that this Court will determine certain issues relating to the Payment Dispute at a hearing to be held the week of May 4, 2020.

45. While the Monitor has not been involved with the Gin-Cor Litigation or the discussions regarding the creation of the Litigation Protocol, DEL has made the Monitor aware of the Litigation Protocol. The Monitor does not object to the Litigation Protocol.

## EXTENSION OF THE STAY OF PROCEEDINGS

46. The current stay period expires on February 28, 2020, which is the date by which it was anticipated that the Court would have approved a Successful Bid.

47. The Monitor supports the Company's request for an extension of the Stay of Proceedings from February 28, 2020 to May 29, 2020 for the following reasons:

    a. the Monitor is of the view that the Company has acted and is continuing to act in good faith and with due diligence;

    b. the extension will provide the opportunity to complete the Transaction, if approved, and to market the Residual Assets;

c. the Extended Cash Flow Forecast reflects that the Company is projected to have sufficient funding to continue to operate in the normal course through the proposed stay extension period;

d. Diesel, the principal economic stakeholder in these proceedings, supports the stay extension;

e. the other secured creditors will be served with the Company's motion record and will have the opportunity to advise of any objections that they may have; and

f. no creditor will be materially prejudiced if the extension is granted.

## MONITOR'S RECOMMENDATIONS

48. Accordingly, the Monitor respectfully recommends that this Honourable Court make an order granting the relief details in paragraph 6(f) of this Report.

All of which is respectfully submitted this 24th day of February 2020.

**MNP Ltd., in its capacity as**
**Court-Appointed Monitor of**
**DEL Equipment Inc.**

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**Sheldon Title, CPA, CA, CIRP, LIT**
**Senior Vice-President**