

COURT FILE NUMBER

COURT/ESTATE NUMBER 24-2746532

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE EDMONTON

IN THE MATTER OF THE NOTICE OF INTENTION TO  
MAKE A PROPOSAL UNDER THE *BANKRUPTCY AND  
INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED,  
OF ALASKA-ALBERTA RAILWAY DEVELOPMENT  
CORPORATION

APPLICANT MNP LTD., in its capacity as Court-appointed Interim  
Receiver of Alaska-Alberta Railway Development  
Corporation

DOCUMENT **APPLICATION (Extension of Stay)**

ADDRESS FOR SERVICE AND CONTACT  
INFORMATION OF PARTIES FILING THIS  
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File No.: 26420-158262

#### NOTICE TO RESPONDENT(S)

This application is made against you. You are Respondents.

You have the right to state your side of this matter before the Judge.

To do so, you must be in Court when the application is heard as shown below:

Date:	August 26, 2021
Time:	2:00 p.m.
Where:	Virtual WebEx Hearing on the Calgary Commercial List
Before Whom:	The Honourable Justice R.A. Neufeld

Go to the end of this document to see what else you can do and when you must do it.

### **Remedy Claimed or Sought:**

1. MNP Ltd. (“**MNP**”), in its capacity as the Court-appointed Interim Receiver (the “**Interim Receiver**”) of all of the property, assets and undertakings (collectively, the “**Property**”) of Alaska-Alberta Railway Development Corporation (“**AARDC**” or the “**Company**”) seeks an Order substantially in the form attached hereto as **Schedule “A”**, for the following relief:
  - (a) Abridging the time for service of this Application and any supporting materials, waiving service on any other party, and deeming service thereof to be good and sufficient; and
  - (b) Extending the Stay Period (as defined herein) pursuant to section 50.4(9) of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3, as amended (the “**BIA**”), for an additional period of 45 days from August 31, 2021 (i.e. to October 15, 2021);
2. Such further and other relief as counsel may request and this Honourable Court may deem just and reasonable in all of the circumstances.

### **Grounds for Making this Application:**

#### ***Background***

3. On June 18, 2021, AARDC filed a Notice of Intention to Make a Proposal (the “**NOI**”) under the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the **BIA**). MNP consented to act as trustee under the NOI (in such capacity, the “**Trustee**”).
4. As a result of AARDC filing the NOI, all proceedings against AARDC and its assets were automatically stayed for an initial period of thirty (30) days (the “**Initial Stay Period**”), to July 18, 2021.
5. AARDC’s operations were undertaken to advance the Company’s stated purpose of building and operating a railway that would extend from Alberta to Alaska and allow for the transport of resource commodities to global markets via the ports of Southcentral Alaska (the “**Railway**”). To the Interim Receiver’s knowledge some of AARDC’s most notable milestones with respect to realizing the railway project include obtaining a

Presidential Permit issued by former U.S. President, Donald J. Trump, granting permission to AARDC to construct, connect, operate and maintain railway facilities at the international border of United States and Canada (the “**Presidential Permit**”) and the execution of a master agreement with the Alaska Railroad Corporation that includes cooperation in permitting, selection of right-of-way, economic terms and authorization to operate on their track and extend several portions of their system (the “**ARC Agreement**”).

6. To the Interim Receiver’s knowledge, AARDC’s assets consist of intangible and intellectual property and confidential, technical, and proprietary information related to the development of the Railway, including the Presidential Permit and the ARC Agreement.
7. AARDC’s primary secured creditor is Bridging Income Fund LP (“**Bridging**”). AARDC is indebted to Bridging in the amount of approximately \$212.9 million pursuant to a non-revolving credit facility (the “**AARDC Loan**”). As security for the AARDC Loan, Bridging holds a security interest over all of AARDC’s present and after-acquired property. The Trustee’s counsel has reviewed Bridging’s security over AARDC and has provided an opinion that Bridging’s security interest is valid and enforceable, subject to certain assumptions and qualifications.
8. On April 30, 2021, the Ontario Superior Court of Justice (the “**Ontario Court**”) appointed PricewaterhouseCoopers Inc., LIT (“**PwC**”), as receiver and manager (in such capacity, the “**Bridging Receiver**”) of, *inter alia*, Bridging. An Additional Appointment Order (Appointment of Receiver) was issued by the Ontario Court on May 3, 2021, appointing the Bridging Receiver as receiver and manager of three additional entities.
9. Following AARDC’s filing of the NOI, MNP Ltd., as Trustee, and the Bridging Receiver engaged in various discussions regarding the best path forward in respect of AARDC.
10. These discussions resulted in the Bridging Receiver applying to this Honourable Court on July 12, 2021 in accordance with section 47.1 of the *BIA* to appoint MNP as interim receiver of AARDC’s Property, to protect and safeguard AARDC’s assets and the interest of the creditors and other stakeholders of AARDC, and MNP consented to act in that capacity. The Bridging Receiver’s application was successful, and by an Order dated July

12, 2021 (the “**Interim Receivership Order**”), MNP was appointed as the Interim Receiver of the Property.

11. Also on July 12, 2021, immediately after the Interim Receivership Order was granted, MNP, in its capacity as interim receiver, successfully applied to this Honourable Court under section 50.4(9) of the *BIA* for an extension of the Initial Stay Period to August 31, 2021 (as extended, the “**Stay Period**”).
12. The Bridging Receiver supported the Interim Receiver’s application to extend the Stay Period, in order to preserve the value of AARDC’s assets while the Interim Receiver took possession of the same, with a view to determining if there is a benefit to continuing AARDC’s proceedings under the NOI. This was particularly so given that the impact of bankruptcy on the Presidential Permit is unknown.
13. The continuation of the NOI proceedings provided, and will continue to provide, optionality in terms of being able to realize on AARDC’s assets either through the proceedings under the NOI or through a subsequent insolvency proceeding.
14. In consultation with the Bridging Receiver, the Interim Receiver has been working with individuals who formerly were contractors of AARDC to prepare the material necessary to support a realization strategy for AARDC’s business and assets.
15. The Interim Receiver understands that a sale and investment solicitation process is currently underway for Bridging’s assets, and that the deadline for the first phase of that process is September 16, 2021. The Bridging Receiver has indicated their view that it would be in Bridging’s best interest to wait for the results of the first phase of the Bridging sales process to determine and formalize a realization strategy for AARDC.

### ***Extension of Stay Period***

16. The Interim Receiver is of the view that AARDC, under the oversight of the Interim Receiver, is acting in good faith and with due diligence.
17. An extension of the Stay Period under section 50.4(9) of the *BIA* is necessary to preserve AARDC’s business and Property while the Interim Receiver and the Bridging Receiver

continue to work together on a realization strategy for AARDC, to monetize and maximize the value of its assets and business. The preservation of AARDC's business and Property will also maintain the potential for AARDC to make a viable proposal to its creditors.

18. The Bridging Receiver, as receiver of the only creditor with an economic interest in the Property, supports the extension of the Stay Period.

**Material or Evidence to be Relied On:**

19. The Preliminary Report of the Interim Receiver, dated July 7, 2021;
20. The First Report of the Trustee, dated July 7, 2021;
21. The First Report of the Interim Receiver, dated August 16, 2021;
22. The Second Report of the Trustee, dated August 16, 2021;
23. All pleadings, affidavits and other materials filed in this Action; and
24. Such further and other material or evidence as counsel may advise and this Honourable Court may permit.

**Applicable Rules:**

25. *Alberta Rules of Court*, Alta Reg 124/2010, as amended.

**Applicable Acts and Regulations:**

26. The *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended, and in particular, sections 47.1(2), and 50.4(9), thereof; and
27. Such further and other Acts and Regulations as counsel may advise and this Honourable Court may permit.

**Any irregularity complained of or objection relied on:**

28. None.

**How the Application is proposed to be heard or considered:**

29. In person, via WebEx videoconference, before the Honourable Justice R. A Neufeld, with some or all of the parties present.

**WARNING**

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.

## **SCHEDULE “A”**

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COURT COURT OF QUEEN'S BENCH OF ALBERTA

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IN THE MATTER OF THE NOTICE OF INTENTION TO  
MAKE A PROPOSAL UNDER THE *BANKRUPTCY AND  
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ALBERTA RAILWAY DEVELOPMENT CORPORATION

APPLICANT MNP LTD., in its capacity as Court-appointed Interim  
Receiver of Alaska-Alberta Railway Development Corporation

DOCUMENT **ORDER (Extension of Stay)**

ADDRESS FOR SERVICE AND CONTACT  
INFORMATION OF PARTIES FILING THIS  
DOCUMENT

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File No.: 26420-158262

**DATE ON WHICH ORDER WAS PRONOUNCED:** August 26, 2021

**NAME OF JUDGE WHO MADE THIS ORDER:** The Honourable Justice R.A. Neufeld

**LOCATION OF HEARING:** Calgary, Alberta

**UPON THE APPLICATION** of MNP Ltd. in its capacity as interim receiver (in such capacity, the “**Interim Receiver**”) of the current and future assets, undertakings and property of Alaska-Alberta Railway Development Corporation (“**AARDC**”); **AND UPON** having read the First Report of the Interim Receiver, dated August 16, 2021 (the “**Interim Receiver’s First Report**”); **AND UPON** having read the Notice of Intention to Make a Proposal of AARDC (the “**NOI**”) under section 50.4 of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3, as amended, which resulted an automatic stay of proceedings against AARDC or its property for 30 days from the date of filing (“**Initial Stay Period**”); **AND UPON** having read the Second Report of the Trustee, dated August 16, 2021; **AND UPON** having read the Order granted by the Honourable



Justice D.L. Shelley on July 12, 2021, extending the Initial Stay Period until August 31, 2021 (as extended, the “**Stay Period**”); **AND UPON** noting the Affidavit of Service of Sherry Stern, affirmed on August \_\_\_\_, to be filed; **AND UPON** it appearing that all interested and affected parties have been served with notice of the Application; **AND UPON** hearing the submissions of counsel for the Interim Receiver, and any other counsel or interested parties present;

**IT IS HEREBY ORDERED THAT:**

**Service**

1. The time for service of the notice of application for this order (“**this Order**”) is hereby abridged and deemed good and sufficient and this application is properly returnable today, and no other than those persons served is entitled to service of the notice of application.

**Extension of Stay Period**

2. The Stay Period in respect of Alaska-Alberta Railway Development Corporation is extended for an additional period of forty-five (45) days from August 31, 2021, until October 15, 2021.

**General**

3. Service of this Order may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following transmission or delivery of this Order.

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Justice of the Court of Queen's Bench of Alberta