

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. as Proposed Interim Receiver of Alaska-Alberta Railway Development Corporation

DOCUMENT **APPLICATION (Extension of Stay Period)**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTIES FILING THIS DOCUMENT
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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:	July 12, 2021
Time:	3:00 p.m.
Where:	Virtual WebEx Hearing on the Edmonton Commercial List
Before Whom:	The Honourable Justice D.L. Shelley

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. An Order, substantially in the form attached hereto as Schedule “A”, for the following relief:
 - (a) 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 July 18, 2021 (i.e. to August 31, 2021); and
2. Such further and other relief as counsel may request and this Honourable Court may grant.

Grounds for Making this Application:

3. Alaska-Alberta Railway Development Corporation (“**AARDC**”) filed a Notice of Intention to Make a Proposal under the *BIA* on June 18, 2021 (the “**NOI**”). MNP Ltd. consented to act as trustee of AARDC’s proposal.
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 “**Stay Period**”).
5. Pursuant to section 50.4(8) of the *BIA*, AARDC has until July 18, 2021 to file a proposal or apply for an extension of time to file a proposal under section 50.4(9) of the *BIA*, failing which the Stay Period will terminate and AARDC will be deemed to have made an assignment in bankruptcy.
6. AARDC’s primary secured creditor is Bridging Income Fund LP (“**Bridging**”), which appears to hold a first-ranking security interest over all of AARDC’s present and after-acquired property.
7. On April 30, 2021, the Ontario Superior Court of Justice (the “**Ontario Court**”) appointed PricewaterhouseCoopers Inc., LIT, as receiver and manager (in such capacity, the “**Receiver**”) of, *inter alia*, Bridging. An Additional Appointment Order (Appointment of Receiver) was issued by the Ontario Court on May 3, 2021, appointing the Receiver as receiver and manager of three additional entities.

8. To the best of MNP Ltd.'s knowledge, AARDC's primary assets are 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, for the purposes of a freight railway connecting Alaska and Alberta (the "**Presidential Permit**"), and 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 as well as other related intellectual property.
9. MNP Ltd. is in the process of determining the nature and value of AARDC's assets, including those noted above and any other assets AARDC may own, the identity or value of may not be currently known to MNP Ltd.
10. MNP Ltd., in its capacity as trustee under the NOI of AARDC, has been in communication with the Receiver, which represents the Companies' single largest creditor (having an estimated claim of approximately \$208,000,000), and has been advised that the Receiver intends to apply under section 47.1 of the *BIA* for the appointment of MNP Ltd. as interim receiver of AARDC, for the purpose of preserving the Presidential Permit and AARDC's other assets for the benefit of its creditors, including Bridging.
11. If the Receiver's application to appoint MNP Ltd. as interim receiver of AARDC (MNP Ltd. in such capacity is referred to herein as the "**Proposed Interim Receiver**") is successful, the Proposed Interim Receiver intends to bring an application immediately after the hearing of the Receiver's application for an extension of time under section 50.4(9) of the *BIA* for AARDC to file a proposal.
12. An extension of the Stay Period under section 50.4(9) is necessary to ensure that the value of AARDC's assets, and in particular, the Presidential Permit, is preserved for the benefit of AARDC's creditors, and to allow an orderly process to determine the nature and value of AARDC's assets and how best to monetize those assets, as well as determining if a proposal is a possibility.

13. For these reasons, the Proposed Interim Receiver is of the view that an extension of the Stay Period will not prejudice AARDC's creditors, and in fact will be to the benefit of those creditors.
14. The Proposed Interim Receiver understands that AARDC's sole director and officer, Sean McCoshen, is currently undergoing medical treatment. At the outset of the NOI proceedings and as set out in the Proposal Trustee's engagement letter, it was agreed that Mr. McCoshen would have very limited, if any, participation in the Companies' restructuring. Further, the Receiver has advised that they are investigating certain of Mr. McCoshen's activities pre-dating the NOI proceedings.
15. Mr. McCoshen has not been involved in the day-to-day management and operation of the Companies and the Companies have been unable to arrange for another individual to obtain the necessary corporate authority to act in his place. The Proposal Trustee has noted that those of AARDC's current and former contractors with whom MNP Ltd. has engaged as trustee under AARDC's proposal appear to have acted in good faith and with due diligence over the course of MNP Ltd.'s engagement.
16. The Proposed Interim Receiver understands that the Receiver supports the within application for an extension of the Stay Period.

Material or Evidence to be Relied On:

17. The Preliminary Report of the Proposed Interim Receiver dated July 7, 2021.
18. The First Report of the Proposal Trustee dated July 7, 2021.
19. Such further and other material or evidence as counsel may advise and this Honourable Court may permit.

Applicable Rules:

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

Applicable Acts and Regulations

21. The *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended, and in particular, sections 50.4(8), 50.4(11), and 64.2 thereof;
22. The Bankruptcy and Insolvency General Rules, CRC, c 368; and
23. Such further and other Acts and Regulations as counsel may advise and this Honourable Court may permit.

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

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
ALBERTA RAILWAY DEVELOPMENT CORPORATION

APPLICANT MNP LTD. as proposed Interim Receiver of Alaska-Alberta
Railway Development Corporation

DOCUMENT **ORDER (Stay Extension)**

ADDRESS FOR SERVICE AND CONTACT
INFORMATION OF PARTIES FILING THIS
DOCUMENT

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Fax: (403) 269-9494
Email: ateasdale@lawsonlundell.com
File No.: 26420-158262

DATE ON WHICH ORDER WAS PRONOUNCED: July 12, 2021

NAME OF JUDGE WHO MADE THIS ORDER: The Honourable Justice D.L. Shelley

LOCATION OF HEARING: Edmonton, Alberta

UPON THE APPLICATION of MNP Ltd. in its capacity as interim receiver (in such capacity, the "**Interim Receiver**") of Alaska-Alberta Railway Development Corporation ("**AARDC**"); **AND UPON** having read the Preliminary Report of the Proposed Interim Receiver, dated July 7, 2021 (the "**Preliminary Interim Receiver's Report**") and the First Report of the Proposal Trustee, dated July 7, 2021; **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 (the "**BIA**"), which resulted an automatic stay of proceedings against AARDC or its property for 30 days from the date of filing (the "**Initial Stay Period**"); **AND**

UPON hearing the submissions of counsel for the Proposed Interim Receiver, counsel for the Proposal Trustee, counsel for PricewaterhouseCoopers Inc., LIT in its capacity as Court-appointed receiver of Bridging Income Fund LP, 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 (the "**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 Initial Stay Period in respect of Alaska-Alberta Railway Development Corporation is extended for an additional period of forty-five (45) days, until August 31, 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.

Justice of the Court of Queen's Bench of Alberta