

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

THE HONOURABLE
JUSTICE MCEWEN

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THURSDAY, THE 27TH
DAY OF AUGUST, 2020

B E T W E E N :

ROYAL BANK OF CANADA

Applicant

- and -

NATIONAL RECYLCING INC., SCRAPORT INC. and 2139483 ALBERTA LTD.

Respondents

IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 243(1) OF THE
BANKRTUPCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED; AND
SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED

DISTRIBUTION AND DISCHARGE ORDER

THIS MOTION, made by Deloitte Restructuring Inc. ("**Deloitte**"), in its capacity as the court-appointed receiver and manager (in such capacity, the "**Receiver**"), of the assets, undertakings and properties of National Recycling Inc. ("**NRI**"), Scraport Inc. ("**Scraport**") and 2139483 Alberta Ltd. ("**213**" and together with NRI and Scraport, the "**Companies**"), for an Order:

- (a) abridging the time for service of the Notice of Motion herein, the Notice of Motion and the Second Report of Deloitte, in its capacity as Receiver, dated August 12, 2020 (the

“**Second Report**”) so that this Motion is properly returnable on August 27, 2020, and dispensing with further service thereof;

- (b) approving and authorizing the proposed settlement agreement between the Receiver and MTL Alberta Ltd. (the “**MTL Settlement Agreement**”), and approving the payment of the amount of \$75,000 from funds currently held in MTL Alberta Ltd.’s (“**MTL**”) solicitors trust account (the “**MTL Distribution**”), as set out in the MTL Settlement Agreement;
- (c) approving and authorizing the proposed settlement agreement between the Receiver and Northland Forest Products Ltd. (the “**Northland Settlement Agreement**”), and approving the payment of the amount of \$100,000 from the remaining cash in the receivership estate (the “**Remaining Funds**”) to Northland (the “**Northland Distribution**”), as set out in the Northland Settlement Agreement;
- (d) authorizing the Receiver to make a distribution (the “**RBC Distribution**”) of the Remaining Funds to Royal Bank of Canada (“**RBC**”) following the payment of the Remaining Fees (as defined herein) plus any other amounts outstanding pursuant to the Receiver’s charge, the payment of \$240,000 to RBC pursuant to the Receiver’s borrowings charge (the “**Receiver’s Borrowings**”), the MTL Distribution, the Northland Distribution, and the priority claims as outlined in the Second Report;
- (e) approving and authorizing the transfer and assignment of NRI’s rights to and interest in monies paid into the Supreme Court of British Columbia (the “**NRI Security Funds**”), in proceeding No. PRR-S-S-10445, Prince Rupert Registry, by NRI to secure a lien claim filed by Clearview Demolition Ltd. (“**Clearview**”) against title to various parcels of land

within the City of Prince Rupert, British Columbia, under registration no. CA6045755, to RBC;

- (f) authorizing, but not obligating, the Receiver to file an assignment in bankruptcy for NRI under the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”);
- (g) authorizing Deloitte to act as the trustee in bankruptcy for NRI;
- (h) authorizing the Receiver to transfer \$30,000 to Deloitte, in its capacity as the proposed trustee in bankruptcy, to fund the administration of the proposed bankruptcy of NRI;
- (i) approving the Second Report, and the activities of the Receiver as described therein;
- (j) approving the Receiver’s statement of receipts and disbursements dated August 12, 2020 (the “**Final SRD**”);
- (k) approving the fees and disbursements of the Receiver as set out in the affidavit of Jordan Sleeth sworn August 11, 2020, the fees and disbursements of the Receiver’s counsel, Dentons Canada LLP (“**Dentons**”), as set out in the affidavit of Robert Kennedy sworn August 11, 2020 (collectively, the “**Fee Affidavits**”), together with the estimated fees and disbursements to be incurred by the Receiver and Dentons through completion of the remaining activities in connection with these receivership proceedings, as set out in the Second Report (the “**Remaining Fees**”);
- (l) discharging and releasing Deloitte as Receiver of the Companies, upon the Receiver filing with the Court the certificate in the form attached hereto as **Schedule “A”** (the “**Receiver’s Discharge Certificate**”); and

(m) such further and other grounds as counsel may advise and this Honourable Court may permit;

was heard this day at via videoconference before a Judge of the Commercial List.

ON READING the Motion Record of the Receiver dated August 11, 2020 and the Second Report, and on hearing the submissions of counsel for the Receiver, counsel for Northland Forest Products Ltd. and counsel for RBC, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Amanda Campbell sworn August 12, 2020, filed,

SERVICE

1. **THIS COURT ORDERS** that the timing and method of service of the Notice of Motion and Motion Record is hereby abridged and validated and this Motion is properly returnable today.

MTL SETTLEMENT AGREEMENT

2. **THIS COURT ORDERS** that the MTL Settlement Agreement is hereby authorized and approved, and the Receiver is hereby authorized and directed to all steps necessary to facilitate the delivery of the MTL Distribution, as outlined and in accordance with the terms of the MTL Settlement Agreement.

NORTHLAND SETTLEMENT AGREEMENT

3. **THIS COURT ORDERS** that the Northland Settlement Agreement is hereby authorized and approved, and the Receiver is hereby authorized and directed to make the Northland

Distribution, as outlined and in accordance with the terms of the Northland Settlement Agreement.

RBC DISTRIBUTION

4. **THIS COURT ORDERS** that the Receiver is authorized and directed to make the RBC Distribution to RBC in partial satisfaction of the amounts owing by the Companies to RBC, following:

- (a) the payment of the Remaining Fees, plus any other amounts outstanding pursuant to the Receiver's charge;
- (b) the Payment of the Receiver's Borrowings;
- (c) the payment of the MTL Distribution and Northland Distribution; and
- (d) the payment of the priority claims as set out in the Second Report.

ASSIGNMENT OF CLEARVIEW LITIGATION

5. **THIS COURT ORDERS** that, effective upon the filing of the Receiver's Discharge Certificate, NRI's interest in the NRI Security Funds shall be transferred and assigned to RBC, subject to any secured or other claims to the NRI Security Funds by RBC and Clearview, with their respective priorities.

6. **THIS COURT ORDERS** that conduct of the defence of NRI of the action commenced in the Supreme Court of British Columbia by Clearview to enforce its lien under action no. PRR-S-S-10589, Prince Rupert registry (the "**Clearview Lien Action**"), and conduct of NRI's proceedings in the security petition (collectively, the "**Clearview Litigation**"), be transferred to

and assumed by RBC including any obligations or entitlement that may arise in relation to any cost awards in the Clearview Litigation, and for that purpose RBC shall have all the same control, authority and power of NRI to take all such steps necessary to defend the Clearview Lien Action in the name of NRI, or in RBC's name, at RBC's option, subject to the laws of the Province of British Columbia, including without limitation the right to contest the amount of Clearview's claims, the right to dispute the validity of Clearview's claim of lien, the right to dispute Clearview's claims over or priority to the NRI Security Funds, and the right to assert any valid counterclaim, cross-claim, or set-off against Clearview's claims to which NRI is entitled, along with the right to take any steps within the Clearview Litigation to obtain payment of any portion of the NRI Security Funds to which RBC is entitled.

7. **THIS COURT ORDERS** that the Receiver shall take all reasonable and necessary steps in connection with completing the assignment contemplated in paragraphs 5 and 6 of this Order.

RECEIVER'S POWERS

8. **THIS COURT ORDERS** that the Receiver be and is hereby authorized, but not obligated, to file an assignment in bankruptcy under the BIA in respect of NRI.

9. **THIS COURT ORDERS** that Deloitte is authorized to act as trustee in bankruptcy of NRI, in respect of any bankruptcy proceedings.

10. **THIS COURT ORDERS** that the Receiver be and is hereby authorized to transfer \$30,000 to Deloitte, in its capacity as proposed trustee in bankruptcy, to fund the administration of the proposed bankruptcy of NRI.

RECEIVER'S ACTIVITIES

11. **THIS COURT ORDERS** that the Second Report and the activities of the Receiver as set out in the Second Report are hereby approved.

12. **THIS COURT ORDERS** that: (i) the fees and disbursements of the Receiver and Dentons, as set out in the Second Report and the Fee Affidavits are hereby approved, (ii) the Remaining Fees are hereby approved and no further approval of the fees and disbursements of the Receiver or Dentons is required in respect of the Remaining Fees, and (iii) the Receiver is hereby authorized to pay any unpaid fees and disbursements.

13. **THIS COURT ORDERS** that the Final SRD is hereby approved.

DISCHARGE

14. **THIS COURT ORDERS** that, after payment of the amounts herein approved, and upon the Receiver filing the Receiver's Discharge Certificate certifying that it has completed the remaining activities described in the Second Report, Deloitte shall be discharged as Receiver, provided however, that notwithstanding its discharge herein: (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership proceedings, and (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in these proceedings, including all approvals, protections and stays of proceedings in favour of Deloitte, in its capacity as Receiver.

15. **THIS COURT ORDERS** that upon filing the Receiver's Discharge Certificate, Deloitte shall be released and discharged from any and all liability that Deloitte now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of Deloitte while acting in

its capacity as Receiver herein, save and except for any gross negligence or wilful misconduct on the Receiver's part. Without limiting the generality of the foregoing, Deloitte shall be hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within receivership proceedings, save and except for any gross negligence or wilful misconduct on the Receiver's part.

NORTHLAND MOTION

16. **THIS COURT ORDERS** that the motion filed by Northland in these proceedings and returnable on August 27, 2020 is hereby dismissed, without costs.

A handwritten signature in dark ink, appearing to be "McIntosh", written over a horizontal line.

Schedule "A"
Form of Receiver's Discharge Certificate

Court File No.: CV-19-00623276-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

ROYAL BANK OF CANADA

Applicant

- and -

NATIONAL RECYLCING INC., SCRAPORT INC. and 2139483 ALBERTA LTD.

Respondents

IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 243(1) OF THE
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SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED

DISCHARGE CERTIFICATE

RECITALS

A. Pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated July 12, 2019, Deloitte Restructuring Inc. ("**Deloitte**") was appointed as receiver (in such capacity, the "**Receiver**"), of the assets, undertakings and properties of National Recycling Inc., Scraport Inc., and 2139483 Alberta Ltd. (collectively, the "**Companies**").

B. Pursuant to an Order of the Court dated August 27, 2020 (the "**Distribution and Discharge Order**"), Deloitte was discharged as Receiver of the Companies, effective upon the filing by the Receiver with the Court of a certificate confirming that all matters to be attended to in connection with the completion of the administration of the receivership proceeding herein have been completed to the satisfaction of the Receiver (the "**Remaining Activities**"), as set out

in the Receiver's Second Report dated August 11, 2020 (the "**Second Report**"), provided however that, notwithstanding its discharge: (a) Deloitte will remain Receiver for the performance of the Remaining Activities, and (b) Deloitte as Receiver will continue to have the benefit of the provisions of all Orders made in this proceeding including all approvals, protections and stays of proceedings in favour of Deloitte, in its capacity as the Receiver.

THE RECEIVER CERTIFIES the following:

1. The Receiver has paid all amounts required to be paid pursuant to the Distribution and Discharge Order; and
2. The Receiver is satisfied that all Remaining Activities have been completed to the satisfaction of the Receiver.

THIS CERTIFICATE was delivered by the Receiver on _____, 2020.

DELOITTE RESTRUCTURING INC., solely in its capacity as the court-appointed receiver of the Companies, and not in its personal capacity or in any other capacity

Per: _____

Name:

Title:

ROYAL BANK OF CANADA - and - **NATIONAL RECYCLING INC., SCRAPORT INC. and 2139483 ALBERTA LTD.**

Applicant

Respondents

<p>ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)</p> <p>PROCEEDING COMMENCED AT TORONTO</p> <p>DISTRIBUTION & DISCHARGE ORDER</p> <p>DENTONS CANADA LLP 77 King Street West, Suite 400 Toronto-Dominion Centre Toronto, ON M5K 0A1</p> <p>Robert J. Kennedy (LSO # 474070) Tel: (416) 367-6756 Fax: (416) 863-4592 robert.kennedy@dentons.com</p> <p>Mark A. Freake (LSO #63656H) Tel: (416) 863-4456 mark.freake@dentons.com</p> <p><i>Lawyers for Deloitte Restructuring Inc., in its capacity as Court-appointed Receiver of National Recycling Inc., Scraport Inc. and 2139483 Alberta Ltd.</i></p>	
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