

COURT FILE NUMBER **1801-05326**
COURT Court of Queen's Bench of Alberta
JUDICIAL CENTRE Calgary
PLAINTIFF **ATB FINANCIAL**
DEFENDANTS **GEMINI CORPORATION AND GEMEC SERVICES LTD.**
DOCUMENT **APPLICATION RE: INTERIM DISTRIBUTION ORDER**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT **Fasken Martineau DuMoulin LLP**
Barristers and Solicitors
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Attention: Travis Lysak / Mihai Tomos
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File No.: 301498.00003

NOTICE TO RESPONDENT(S):

This application is made against you. You are the respondent.

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: November 27, 2018

Time: 3:30 p.m.

Where: Calgary Court Centre, 601 - 5 Street S.W., Calgary, Alberta, T2P 5P7

Before Whom: The Honourable Madam Justice B.E.C. Romaine

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 Interim Distribution Order, substantially in the form attached as **Schedule “A”**, ordering, *inter alia*:
 - (a) the approval of the Receiver’s activities as set forth in the Second Report of the Receiver dated November 19, 2018 (the **“Second Report”**);
 - (b) the approval of the Receiver's receipts & disbursements for the period April 19, 2018 to November 19, 2018, as described in the Second Report; and
 - (c) the approval of a distribution to ATB Financial (**“ATB”**) and the retaining of the Holdbacks, as described in the Second Report.

Grounds for making this application:

The grounds for making this application are set out more fully in the Second Report, but can be summarized as follows:

(A) Background

2. Any capitalized term not defined in the Application shall take the meaning ascribed to it in the Second Report.
3. Effective April 19, 2018, pursuant to an order of the Honourable Madame Justice B.E.C. Romaine granted in these proceedings (the **“Receivership Order”**), FTI Consulting Canada Inc. was appointed receiver (the **“Receiver”**), without security, of all of the current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situated including all proceeds thereof (the **“Property”**) of Gemini Corporation and Gemec Services Ltd. (collectively, the **“Debtor”**) in the within action (the **“Receivership Proceedings”**).
4. The Receivership Order empowers and authorizes, but does not obligate, the Receiver to, among other things, manage, operate and carry on the business of the Debtor and to take

possession and control of the Property of the Debtor and any and all proceeds, receipts and disbursements arising out of or from the Property, and to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business.

(B) Receiver's Activities

5. The Receiver's actions and activities up to the date of this Application, including the receipts and disbursements for the period April 19, 2018 to November 16, 2018, as described in the Second Report, are lawful, proper, and consistent with its powers under the Receivership Order.

(C) Distribution and Holdbacks

6. The Receiver is advised by its counsel that ATB's security as against Gemini Corporation is valid and enforceable and ranks in priority to all other unsecured creditors. The Receiver recommends to distribute to ATB the amount of \$6,982,310, while keeping Holdbacks in respect of potential future obligations of the estate in the amount of \$1,008,968.

Material or evidence to be relied on:

7. The Second Report of the Receiver dated November 19, 2018.
8. Affidavit of Service.
9. The other pleadings and materials filed in this Action and such further and other material as counsel may advise and this Honourable Court may permit.

Applicable rules:

10. Rules 1.3, 1.4, 6.3, and 13.5(2) of the *Rules of Court*.
11. Such further and other rules as counsel may advise and this Honourable Court may permit.

Applicable Acts and Regulations:

12. *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3.
13. *Judicature Act*, R.S.A. c. J-2.
14. Such further and other Acts and Regulations as counsel for the Receiver may advise or this Honourable Court may permit.

Any irregularity complained of or objection relied on:

15. Not applicable.

How the application is proposed to be heard or considered:

16. Before the presiding Honourable Justice B.E.C. Romaine in Commercial Chambers.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicants 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"
INTERIM DISTRIBUTION ORDER

COURT FILE NUMBER **1801-05326**

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

**IN THE MATTER OF THE RECEIVERSHIP OF
GEMINI CORPORATION AND GEMEC SERVICES
LTD.**

PLAINTIFF ATB FINANCIAL

DEFENDANTS GEMINI CORPORATION AND GEMEC SERVICES LTD.

DOCUMENT **INTERIM DISTRIBUTION ORDER**

ADDRESS FOR **Fasken Martineau DuMoulin LLP**
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File No.: 301498.00003

DATE ON WHICH ORDER WAS PRONOUNCED: November 27, 2018

LOCATION WHERE ORDER WAS PRONOUNCED: Calgary, Alberta

JUDGE WHO MADE THIS ORDER: The Honourable Madam Justice B.E.C. Romaine

UPON the application of FTI Consulting Canada Inc. (the "**Receiver**"), in its capacity as the court-appointed receiver of all of the assets, properties and undertakings of Gemini Corporation ("**Gemini**") and Gemec Services Ltd.; **AND UPON** having read the Application, the second report of the Receiver dated November 19, 2018 (the "**Second Report**"), the Affidavit of Service and other materials filed in the within proceedings; **AND UPON** hearing the submissions of counsel for the Receiver and any other interested parties appearing at the hearing of the within application, **IT IS HEREBY ORDERED THAT:**

RECEIVER'S ACTIVITIES

1. The actions, conduct and activities of the Receiver, as described in the Second Report, are hereby authorized and approved.

INTERIM DISTRIBUTION

2. The Receiver is hereby authorized and directed to make an Interim Distribution to ATB Financial in the amount of \$6,982,310 and to retain the Holdbacks in the amount of \$1,008,968, as described in the Second Report.

RECEIPTS AND DISBURSEMENTS

3. The Receiver's receipts and disbursements for the period April 19, 2018 to November 19, 2018, as described in the Second Report, are hereby authorized and approved.

GENERAL

4. All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Second Report.

5. Service of notice of this application and supporting materials is hereby declared to be good and sufficient, and no other person is required to have been served with notice of this application, and time for service of this application is abridged to that actually given.

SERVICE OF THIS ORDER

6. This Order shall be sufficiently served by serving the same on the service list, in the same manner as the Application was served and by posting a copy of the same on the Receiver's website at: <http://cfcanada.fticonsulting.com/Gemini>.

7. Service of this Order on any other interested person in any other manner than set out above is hereby dispensed with.

Justice of the Court of Queen's Bench of Alberta