

COURT FILE NUMBER 1801-05326  
COURT COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE CALGARY

Clerk's Stamp

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

PLAINTIFF ATB FINANCIAL  
DEFENDANTS GEMINI CORPORATION and  
GEMEC SERVICES LTD.  
DOCUMENT **APPLICATION**

ADDRESS FOR SERVICE  
AND CONTACT  
INFORMATION OF  
PARTY FILING THIS  
DOCUMENT

**Fasken Martineau DuMoulin LLP**  
First Canadian Centre  
3400, 350 – 7<sup>th</sup> Avenue S.W.  
Calgary, AB T2P 3N9

**Attention: Travis Lysak / Hannah Roskey**  
Phone: (403) 261-5350  
Facsimile: (403) 261-5351  
Email: tlysak@fasken.com / hroskey@fasken.com  
File No.: 301498.00003

**NOTICE TO RESPONDENT:**

This application is made against you. You are a 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: March 14, 2019  
Time: 2:00 p.m.  
Where: Calgary Courts Centre, 601 – 5<sup>th</sup> Street S.W., Calgary, Alberta  
Before Whom: The Honourable Justice K.D. Yamauchi

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 as Schedule “A”:
  - (a) approving the activities of FTI Consulting Canada Inc. in its capacity of Court-appointed receiver (the “**Receiver**”) of Gemini Corporation (“**Gemini**”) and Gemec Services Ltd., as set forth in the Third Report of the Receiver dated February 28, 2019 (the “**Third Report**”);
  - (b) approving the Receiver’s statement of receipts and disbursements to February 26, 2019, as described in the Third Report;
  - (c) approving a distribution to ATB Financial (“**ATB**”), as described in the Third Report;
  - (d) directing Emkay Canada Fleet Services Corp. (“**Emkay**”) to pay to Gemini the equity in certain vehicles leased from Emkay by Gemini (the “**Equity Claim**”), as further described in the Third Report;
  - (e) declaring service of this Application and the supporting materials to be good and sufficient; and
  - (f) such further and other relief as this Honourable Court may allow.

**Grounds for making this Application:**

Background

2. Any capitalized term not defined in the Application shall take the meaning ascribed to it in the Third Report.
3. Effective April 19, 2018 (the “**Date of Appointment**”), pursuant to an Order of the Honourable Justice Romaine granted in these proceedings (the “**Receivership Order**”), FTI Consulting Canada Inc. was appointed 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 and Gemec Services Ltd. (collectively, the “**Debtor**”) in the within Action.

4. The Receivership Order empowers and authorizes, but does not oblige, 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.

#### Receiver’s Activities

5. The Receiver’s actions and activities up to the date of this Application, including the receipts and disbursements from the Date of Appointment to February 26, 2019, as described in the Third Report, are lawful, proper, and consistent with its powers under the Receivership Order.

#### Distribution

6. The Receiver is advised by its counsel that ATB’s security as against Gemini is valid and enforceable and ranks in priority to all other unsecured creditors. The Receiver recommends to distribute to ATB the amount of \$1,418,201.

#### Equity in Leased Vehicles

7. In February 2009, Gemini and Jim Peplinski’s Auto Leasing Ltd., now Emkay, entered into a Master Vehicle Lease Agreement (the “**Agreement**”), which allowed Gemini to lease vehicles (the “**Vehicles**”) from Emkay in exchange for monthly rental fees.
8. In December 2017, Gemini was behind in its rental payments to Emkay. The parties discussed the status of the account and, following these discussions, Gemini issued a cheque to Emkay that represented over half of the arrears owed by Gemini at that time. The cheque was cashed by Emkay and no further action was taken.
9. After the Receivership Order was filed, the Receiver agreed to return the Vehicles to Emkay on the condition that the Vehicles would be sold and the equity in the Vehicles

would be paid to Gemini. Emkay provided documentation to the Receiver outlining the amount of equity owed to Gemini, and communicated with Gemini and the Receiver on the basis that the equity would be paid to Gemini.

10. Despite these representations, Emkay has taken the position that all proceeds from the sale of the Vehicles, including the equity, should be retained by Emkay pursuant to the default provisions in the Agreement.
11. To date, Emkay has refused to pay the Equity Claim to Gemini.

**Material or evidence to be relied on:**

12. The Third Report of the Receiver, dated February 28, 2019;
13. The pleadings and other materials filed herein; and
14. Such further and other material as counsel may advise and this Honourable Court may permit.

**Applicable Rules:**

15. Rules 1.3, 1.4, 6.3, and 13.5(2) of the *Alberta Rules of Court*; and
16. Such further and other Rules as counsel may advise and this Honourable Court may permit.

**Applicable Acts and regulations:**

17. *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3;
18. *Judicature Act*, R.S.A. 2000, c. J-2; and
19. 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:**

20. Not applicable.

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

21. Before the Honourable Justice K.D. Yamauchi in Chambers.

**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 give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.

**Schedule "A"**

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**DATE ON WHICH ORDER WAS PRONOUNCED:** March 14, 2019

**LOCATION WHERE ORDER WAS PRONOUNCED:** Calgary, Alberta

**JUDGE WHO MADE THIS ORDER:** The Honourable Justice Yamauchi

**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 Third Report of the Receiver dated February 28, 2019 (the "**Third Report**"), the Affidavit of Service, the Brief of Argument of the Receiver, and other materials filed in the within proceedings; **AND**

**UPON** hearing the submissions of counsel for the Receiver and 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 Third Report are hereby authorized and approved.

**RECEIPTS AND DISBURSEMENTS**

2. The Receiver's receipts and disbursements to February 26, 2019, as described in the Third Report, are hereby authorized and approved.

**SECOND INTERIM DISTRIBUTION**

2. The Receiver is hereby authorized and directed to make the Second Interim Distribution to ATB Financial in the amount of \$1,418,201, as described in the Third Report.

**PAYMENT OF EQUITY IN LEASED VEHICLES**

3. Emkay Canada Fleet Services Corp. is directed to forthwith pay the Receiver the amount of \$218,113.

**GENERAL**

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

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The Honourable Justice K.D. Yamauchi