

COURT FILE NUMBER 1801-05326
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
APPLICANT ATB FINANCIAL
RESPONDENTS GEMINI CORPORATION AND GEMEC SERVICES LTD.
DOCUMENT **FOURTH REPORT OF FTI CONSULTING CANADA INC., IN ITS CAPACITY AS COURT APPOINTED RECEIVER AND MANAGER OF GEMINI CORPORATION AND GEMEC SERVICES LTD.**

November 16, 2020

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

RECEIVER

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INTRODUCTION

1. On April 19, 2018 (the “**Date of Appointment**”), FTI Consulting Canada Inc. (“**FTI**”) was appointed as receiver and manager (the “**Receiver**”) of all the assets, undertakings and properties (the “**Property**” or “**Business**”) of Gemini Corporation (“**Gemini**”) and Gemec Services Ltd. (“**Gemec**” and collectively with Gemini, the “**Debtors**” or the “**Company**”) pursuant to an Order of the Honourable Justice Romaine (the “**Receivership Order**”) pronounced in the Court of Queen’s Bench of Alberta Court File Number 1801-05326 (the “**Receivership Proceedings**”).
2. The Receivership Order authorized the Receiver, among other things, to manage, operate and carry on the Business of the Company, to market any or all of the Property including advertising and soliciting offers to purchase the Property, and to make such arrangements or agreements as deemed necessary by the Receiver. Any sale of the Property in excess of a value of \$100,000 (or \$1,000,000 in aggregate) was subject to further approval of the Court in the Receivership Proceedings.
3. On March 14, 2019, this Honourable Court granted an Order (the “**Bankruptcy Order**”) that adjudged Gemini bankrupt and appointed FTI as Trustee.
4. The Receiver’s reports and other publicly available information filed in connection with the Receivership Proceedings are posted on the Receiver’s website at <http://cfcanada.fticonsulting.com/Gemini>.
5. The purpose of this report (“**Fourth Report**”) is to provide this Honourable Court with:
 - (a) a summary of the activities of the Receiver since its third report dated March 4, 2019 (the “**Third Report**”), including its statement of receipts and disbursements from the Date of Appointment to November 13, 2020;

- (b) an update on the status of the remaining tasks to complete the administration of the Receivership Proceedings as described in the Third Report; and
 - (c) a summary of the Receiver's fees and expenses (the "**Receiver's Fees**") and the Receiver's Counsel's (as defined below) fees and disbursements (the "**Receiver's Counsel's Fees**").
6. The Receiver is requesting the following relief from this Honourable Court at the application it is bringing on November 25, 2020 (the "**Application**"):
- (a) approval of the activities of the Receiver, including its statement of receipts and disbursements, as reported in this Fourth Report;
 - (b) approval of the Receiver's Fees and the Receiver's Counsel's Fees;
 - (c) authorization to make a final distribution of all remaining funds realized by the Receiver in these Receivership Proceedings to ATB Financial ("**ATB**") (the "**Final Distribution**");
 - (d) authorization for the Receiver to destroy the Company's corporate books and records if unclaimed by any of the current or former directors of the Company within thirty (30) days of the Receiver providing such notice; and
 - (e) discharging the Receiver and terminating these Receivership Proceedings upon the filing of a Receiver's Certificate.

TERMS OF REFERENCE

7. In preparing this Fourth Report, the Receiver has relied upon audited and unaudited financial information, other information available to the Receiver and, where appropriate, the Company's books and records and discussions with various parties (collectively, the "**Information**").

8. Except as described in this Fourth Report:
 - (a) the Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Canadian Institute of Chartered Accountants Handbook; and
 - (b) the Receiver has not examined or reviewed financial forecasts and projections referred to in this Fourth Report in a manner that would comply with the procedures described in the Canadian Institute of Chartered Accountants Handbook.
9. Future oriented financial information reported or relied on in preparing this Fourth Report is based on assumptions regarding future events. Actual results may vary from forecasts and such variations may be material.
10. The Receiver has prepared this Fourth Report in support of the Application. This Fourth Report should not be relied on for other purposes.
11. Information and advice described in this Fourth Report that has been provided to the Receiver by its legal counsel, Fasken Martineau DuMoulin LLP (the “**Receiver’s Counsel**”), was provided to assist the Receiver in considering its course of action, is not intended as legal or other advice to, and may not be relied upon by, any other person.
12. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars. Capitalized terms not otherwise defined are as defined in the Receivership Order.

ACTIVITIES OF THE RECEIVER

13. Since the date of the Third Report the Receiver, among other things:
 - (a) Assisted the Receiver's Counsel in the preparation of materials and attended the application at the Court of Appeal of Alberta ("CA") in respect of the dispute between Gemini and Emkay Canada Fleet Services Corp. ("**Emkay**");
 - (b) Reviewed and adjudicated the remaining liens outlined in the Receiver's Third Report that were registered by Hi-Way 9 Express Ltd. ("**Hi-Way 9**") and Red River Galvanising ("**Red River**");
 - (c) Engaged in settlement discussions and ultimately entering into a settlement agreement among Gemini, by and through the Receiver, and a former Gemini customer with respect to work completed prior to the date of appointment; and
 - (d) responded to requests for information from creditors and other stakeholders.

Dispute between Gemini and Emkay

14. The details of the dispute between Gemini and Emkay (the "**Emkay Dispute**") are more fully described in the Third Report and Supplement to the Third Report.
15. On April 15, 2019, this Honourable Court granted an Order (the "**Emkay Order**") which, among other things, directed Emkay to pay the Receiver the sum of \$196,078.53, plus interest, GST and costs.
16. The Emkay Order was appealed by Emkay to the Court of Appeal. The Appeal was heard on December 5, 2019.

17. On June 22, 2020, the Alberta Court of Appeal released its decision (the “**CA Decision**”) which dismissed Emkay’s appeal and upheld the Emkay Order requiring Emkay to pay the Receiver \$196,078.53 plus interest and costs and set aside the requirement to pay GST.
18. Emkay has issued payment to the Receiver’s Counsel in the amount of \$196,078.53 plus interest. However, the parties have not agreed to final costs associated with the Emkay Dispute and the parties have an application scheduled before this Honourable Court for November 20, 2020 to resolve any costs awards (“**Costs Application**”).
19. The Receiver expects to have a decision on the Costs Application prior to its November 25, 2020 Application seeking discharge and will advise the Court verbally on the results the Costs Application and its impact on the Receiver’s recoveries in this matter.

Settlement Agreement

20. The Receiver had ongoing discussions and negotiations with a former Gemini customer to attempt to consensually resolve a dispute relating to the final amount owing under a contract which was completed by prior to the Date of Appointment.
21. The Receiver entered into a settlement agreement in which the parties agreed to a full and final resolution in respect of unpaid amounts owing for work performed. The Receiver was able to collect \$200,000 plus GST of the disputed amount and avoid costly litigation with respect to the matter.

STATEMENT OF RECEIPTS AND DISBURSEMENTS

22. The Receiver's statement of receipts and disbursements from the Date of Appointment to November 13, 2020 is summarized below:

| Statement of Receipts and Disbursements for the period of April 19, 2018 to November 13, 2020 | |
|--|-------------------|
| CAD \$ | Cumulative |
| Receipts | |
| Accounts receivable | 23,524,957 |
| Transaction proceeds | 2,760,000 |
| GST / PST collected | 1,824,734 |
| Receiver's Borrowings | 1,000,000 |
| Other receipts | 760,683 |
| Auction proceeds | 285,178 |
| Total - Receipts | 30,155,551 |
| Disbursements | |
| Interim Distributions | 10,051,282 |
| Payroll and employee related obligations | 7,556,825 |
| Operating expenses | 6,600,697 |
| GST / PST paid | 1,525,281 |
| G&A | 1,137,184 |
| Repayment of Receiver's Borrowings | 1,000,000 |
| Receiver's fees and expenses | 874,279 |
| Receiver's Counsel's fees and disbursements | 591,869 |
| Other professional fees | 130,000 |
| WEPP Super-priority Distribution | 21,308 |
| Transfer to Bankruptcy Account | 15,000 |
| Total - Disbursements | 29,503,725 |
| Net Cash on Hand | 651,826 |

- (a) Accounts receivable, amounts collected by the Receiver, with the assistance of former employees of Gemini, in connection with contracts completed during the receivership proceedings and amounts owing prior to the Date of Appointment;
- (a) Transaction proceeds, the net proceeds from the sale of the Company's fabrication business;

- (b) GST / PST collected in connection with the accounts receivable;
- (c) Receiver's Borrowings include amounts borrowed in accordance with the terms of the Receivership Order (and subsequently repaid);
- (d) Other receipts including GST refunds, return of amounts paid into trust with the Receiver's Counsel, interest collected and other miscellaneous receipts;
- (e) Auction proceeds from the sale of the environmental assets and the field assets (each as described in the First Report);
- (f) Interim Distributions paid to ATB in accordance with previous Orders of this Honourable Court;
- (g) Payroll and employee related obligations including employee and contractor wages, payroll remittances, benefits and payroll service charges. On the Date of Appointment there were approximately 317 employees and contractors;
- (h) Operating expenses relating to operating the Business including material purchases to support the Ongoing Projects;
- (i) G&A includes including among other things, costs related to the office lease, insurance and utilities;
- (j) Repayment of Receiver's Borrowings in accordance with the terms of the Receivership Order;
- (k) Receiver's fees and expenses and Receiver's Counsel's fees and disbursements for professional services rendered to October 31, 2020; and

- (l) Other professional fees include fees and expenses related to the marketing agent in connection with the sales process.
23. As at November 13, 2020 the Receiver held approximately \$651,825 in cash on hand.

DETAILS OF SECURED AND POTENTIAL PRIORITY CLAIMS

24. The Receiver is aware of the following secured claims, charges and liens respecting the assets of the Company, either pursuant to statute, or which have been registered against the Property.

ATB Secured Claim

25. As described in the Affidavit of Trina Holland sworn on April 17, 2018, as of April 12, 2018, ATB, the first place secured creditor of Gemini, was owed approximately \$12.8 million plus all accruing interest and incurred legal fees and other costs pursuant to the terms of a loan facility (the “**ATB Secured Loan**”) dated May 25, 2017 and amended December 19, 2017. The ATB Secured Loan is secured by a General Security Agreement dated May 25, 2017 and a Securities Pledge Agreement dated May 25, 2017 (the “**ATB Security**”). The ATB Security has been registered at the Alberta Personal Property Registry.
26. As reported in the Second Report, the Receiver has received an opinion from its counsel that the ATB Security is, subject to the usual assumptions, validly authorized, executed, issued and registered. Given the realization of the Property is substantially complete, the Receiver does not anticipate the recoveries will be sufficient to repay the ATB Secured Loan in full.

27. As of November 9, 2020, after having made two interim distributions to ATB in these proceedings, the remaining indebtedness under the ATB Secured Loan (inclusive of principal and interest) was approximately \$1.2 million. The Receiver is recommending a Final Distribution to ATB as set out below and notes this will not repay the indebtedness owed to ATB in full.

Wage Earner Protection Program

28. On February 26, 2020, the Receiver satisfied Service Canada's subrogated super priority claim under the Wage Earner Protection Program ranking in priority to ATB by issuing payment of \$21,307.58.

Deemed Trust Claims

29. On September 10, 2018, the CRA asserted a deemed trust claim against Gemini in the amount of \$250,184.72 (the "**GST Deemed Trust Claim**") under subsection 222(3) of the *Excise Tax Act*.
30. On January 22, 2019, the Ministry provided a statement of account which set out that Gemini had unremitted PST related to the pre-receivership period in the amount of \$338,222.48 (including penalties and interest).
31. The Receiver anticipates that the Ministry will be asserting a deemed trust claim in the amount of \$333,086.05 (the "**PST Deemed Trust Claim**" and collectively with the GST Deemed Trust Claim, the "**Deemed Trust Claims**"), however, the Ministry has yet to file a claim with the Receiver.
32. Upon the issuance of the Bankruptcy Order, the Deemed Trust Claims were rendered unsecured and therefore ranking behind the amounts owing under the ATB Secured Loan.

Builders' Liens

33. The Receiver was made aware of six (6) lien registrations in Alberta and Saskatchewan (the “**Liens**”) against lands owned by Gemini customers where modules constructed by the Gemini were affixed.
34. A summary of the Liens is presented in the table below.

| Lien Claimant | Registration Number | Registration Date | Lien Claim | Lien Fund | Status |
|------------------------------|---------------------|-------------------|----------------------|---------------------|--------------------------------|
| Onsite Blast Ltd. | 122864801 | April 27, 2018 | 93,164.53 | - | Resolved |
| Tomco Industrial Ltd. | 1800760 | May 22, 2018 | 72,880.50 | - | Resolved |
| Redriver Galvanizing | 182123585 | May 29, 2018 | 51,018.30 | 51,018.30 | Unsecured claim against Gemini |
| Hi-Way 9 Express Ltd. | 1800855 | June 11, 2018 | 35,647.84 | 35,647.84 | Resolved |
| | 1800646 | | | | |
| Metalex Metal Buildings Inc. | 1800647 | | 119,141.87 | - | Resolved |
| Total | | | \$ 371,853.04 | \$ 86,666.14 | |

35. The Receiver previously established a lien fund in the amount of \$86,666.14 (the “**Lien Fund**”) relating to the registrations of Hi-Way 9 and Red River where the Receiver and the Receiver’s Counsel continued to review the claims to determine the amount and the priority of such claims (vis-à-vis the security of ATB).
36. Since the date of the Third Report the Receiver settled the lien claim of Hi-Way 9 consensually pursuant to an agreement where the Receiver would pay Hi-Way 9 \$5,000 in full satisfaction of the lien.
37. The Red River lien is registered on lands owned by Canadian Natural Resources Ltd. (“**CNRL**”). The Receiver included CNRL and Red River on the service list since becoming aware of the lien and has received no correspondence in connection with the lien to date. The Receiver reviewed the lien and notes that given it is registered against lands owned by CNRL it has no claim over the Property of Gemini. It appears to the Receiver that, at best, Red River has an unsecured claim against Gemini and such creditors will not be paid the amounts owed to it, if any, given that ATB will not be repaid in full.

38. Since all the Liens have been adjudicated and/or settled, the Receiver recommends that the Lien Fund be distributed to ATB.

PROFESSIONAL FEES

39. Invoices for professional services rendered and costs for the Receiver from the Date of Appointment to October 31, 2020 total \$874,279, exclusive of GST.
40. Invoices for professional services rendered and disbursements for the Receiver's Counsel from the Date of Appointment to October 31, 2020 total \$591,884 exclusive of GST.
41. Invoices for the Receiver's Fees and the Receiver's Counsel's Fees can be made available upon request of this Honourable Court.
42. The Receiver is recommending a hold back for the Receiver's Fees and the Receiver's Counsel's Fees of approximately \$50,000 for additional time attending to the final administrative matters of the Receivership Proceedings, including the costs of this Application and to address any remaining costs and expenses encountered by the Gemini estate prior to the completion of the Receivership Proceedings.
43. The administration of these receivership proceedings included:
- (a) completing ongoing projects of various operating divisions located in Northern Alberta and Northern B.C. and then liquidating the assets at each location;

- (b) operating the Fabrication Business located in Ponoka, Alberta for approximately 6 months to complete ongoing projects while undertaking a sales process to sell the Fabrication Business as a going concern. These efforts were successful as the Receiver sold the Fabrication Business as a going concern resulting in higher recoveries than the estimated forced liquidation value the assets; and
 - (c) settling various disputes with customers and creditors who neglected or refused to pay monies owing to Gemini, including appearing before both the Alberta Court of Queen's Bench and Court of Appeal in the Emkay matter.
44. Given the above, the Receiver is of the opinion that the Receiver's Fees and the Receiver's Counsel's Fees are reasonable and appropriate in the circumstances.

PROPOSED FINAL DISTRIBUTION

45. As at November 9, 2020, the indebtedness under the ATB Secured Loan was approximately \$1.2 million.
46. As detailed above, as at November 13, 2020, the Receiver held approximately \$693,502 in cash on hand. The table below presents a summary of the Receiver's proposed uses of cash on hand including the Final Distribution of up to \$586,000 to ATB and a holdback of \$65,826 to be retained by the Receiver on account of the remaining costs to complete the administration of these Receivership proceedings including final post-receivership GST remittances, professional fees to complete the administration of the Receivership Proceedings (collectively, the "**Holdback**").

| Proposed Final Distribution | |
|--|----------------|
| CAD \$ | |
| Sources | |
| Cash on Hand | 651,826 |
| Uses | |
| Receiver's Fees & Disbursements | 15,000 |
| Legal Fees & Costs | 35,000 |
| GST payable | 12,826 |
| Storage costs and destruction of records | 3,000 |
| Total - Uses | 65,826 |
| Total - Proposed Final Distribution | 586,000 |

47. Any residual funds after the completion of the final administrative matters will be distributed to ATB, subject to the approval of this Honourable Court.

CORPORATE BOOKS AND RECORDS

48. The Company's corporate books and records are currently located at an offsite storage facility. The Receiver is seeking the approval of this Honourable Court to destroy the remaining corporate books and records, except those required by statute, unless they are claimed by any of the current or former directors of the Company within thirty (30) days of the Receiver providing written notification of the same.
49. The Receiver will use the addresses listed on an Alberta Corporate Registry search as the addresses for which to notify the current or former directors.

TERMINATION OF THE RECEIVERSHIP PROCEEDINGS

50. As described in this Fourth Report, the Receivership Proceedings are substantially complete, with exception of certain matters which are administrative in nature. In order to avoid the additional costs associated with subsequent Court appearances, and with the support of ATB, the Receiver is seeking an Order terminating the Receivership Proceedings and discharging the Receiver of its duties and obligations under the Receivership Order upon filing a Receiver's Certificate (the "**Receiver's Certificate**") with this Honourable Court certifying that all remaining administrative matters have been concluded.

RECEIVER'S RECOMMENDATIONS

51. The Receiver respectfully requests that this Honourable Court grant the following relief:


- (a) approval of the activities of the Receiver, including its statement of receipts and disbursements as reported in this Fourth Report;
- (b) approval of the Receiver's Fees and the Receiver's Counsel's Fees;
- (c) authorization for the Receiver to make the Final Distribution of up to \$586,000 to ATB, maintain the Holdback and distribute any residual funds from the Holdback to ATB upon completion of all remaining administrative matters;
- (d) authorization for the Receiver to destroy the Company's corporate books and records if not claimed by any of the current or former directors of the Company within thirty (30) days of the Receiver providing written notification of the same; and

- (e) the discharge of the Receiver and termination the Receivership Proceedings upon the completion of the Receiver's remaining administrative tasks relating to the receivership and filing of the Receiver's Certificate.

52. The Receiver notes that ATB supports its application for the foregoing relief.

All of which is respectfully submitted this 16th day of November 2020.

FTI Consulting Canada Inc.,
in its capacity as receiver of Gemini
Corporation and Gemec Services Ltd.



Deryck Helkaa, CPA, CA, LIT
Senior Managing Director



Dustin Olver, CPA, CA
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