

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 **THIRD REPORT OF FTI CONSULTING CANADA INC., IN ITS CAPACITY AS COURT APPOINTED RECEIVER AND MANAGER OF GEMINI CORPORATION AND GEMEC SERVICES LTD.**

February 28, 2019

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

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INTRODUCTION

1. On April 19, 2018 (the “**Date of Appointment**”), FTI Consulting Canada Inc. 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 \$1,000,000 was subject to further approval of the Court in the Receivership Proceedings.
3. 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>.
4. On September 17, 2018, this Honourable Court granted an Order which, among other things, authorized and approved the sale transaction (the “**Transaction**”) of the Debtors fabrication business (“**Fabrication Business**”) to 2129156 Alberta Ltd. (the “**Purchaser**”) pursuant to the terms of the purchase and sale agreement between the Receiver and the Purchaser, dated September 10, 2018.

5. On November 27, 2018, this Honourable Court granted an Order (the “**Interim Distribution Order**”) which, among other things, authorized and directed the Receiver to make an interim distribution in the amount of \$8,050,075 (the “**Interim Distribution**”) to ATB Financial (“**ATB**” or the “**Secured Creditor**”) and retain the holdback as set out in the Supplement to the Second Report of the Receiver dated November 22, 2018 (the “**Supplement to the Second Report**”).

6. The purpose of this report (“**Third Report**”) is to provide this Honourable Court with:
 - (a) a summary of the activities of the Receiver since the date of the Supplement to the Second Report, including its statement of receipts and disbursements from the Date of Appointment to February 26, 2019;
 - (b) a summary of the dispute between Gemini and Emkay Canada Fleet Services Corp. (“**Emkay**”), regarding the entitlement to \$218,113.33 in equity (the “**Equity Claim**”) in certain vehicles that were leased from Emkay by Gemini (the “**Vehicles**”);
 - (c) details of the secured and potential priority claims in the Receivership Proceedings and recommended distribution to such creditors;
 - (d) a summary of the estimated net proceeds available for distribution (the “**Second Interim Distribution**”) to ATB; and
 - (e) a summary of remaining tasks to complete the administration of the Receivership Proceedings.

7. The Receiver is requesting the following relief from this Honourable Court at the application it is bringing on March 14, 2019 (the “**Application**”):
 - (a) approval of the activities of the Receiver from the date of the Second Report of the Receiver dated November 19, 2018 (the “**Second Report**”) and the Supplement to the Second Report, including its receipts and disbursements;
 - (b) an Order requiring Emkay to pay the Equity Claim to Gemini; and
 - (c) authorization to make the Second Interim Distribution to ATB and to retain certain holdbacks respecting any potential priority creditor claims and additional administration costs to complete the Receivership Proceedings, as set out below.

TERMS OF REFERENCE

8. In preparing this Third 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**”).
9. Except as described in this Third 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 Third Report in a manner that would comply with the procedures described in the Canadian Institute of Chartered Accountants Handbook.

10. Future oriented financial information reported or relied on in preparing this Third Report is based on assumptions regarding future events. Actual results may vary from forecasts and such variations may be material.
11. The Receiver has prepared this Third Report in support of the Application. This Third Report should not be relied on for other purposes.
12. Information and advice described in this Third 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.
13. 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

14. Since the date of the Second Report and the Supplement to the Second Report the Receiver, among other things:
 - (a) worked with the Purchaser and remaining employees of Gemini to transition the Fabrication Business to the Purchaser pursuant to the terms of a transitional services agreement between the Receiver and the Purchaser (the “**TSA**”);
 - (b) facilitated the filing of claims on behalf of employees who were determined to have claims under the *Wager Earner Protection Program Act (Canada)* (the “**WEPPA**”);

- (c) completed final customer billings for projects completed during the Receivership Proceedings and continued to work to recover accounts receivable owed to the Company, including negotiations with Emkay for return of the Equity Claim;
- (d) made the Interim Distribution to ATB;
- (e) responded to requests for information from creditors, employees and other stakeholders; and
- (f) corresponded with and reviewed various claims from creditors asserting secured and priority claims including the Canada Revenue Agency (“**CRA**”), the Ministry of Finance for the Government of Saskatchewan (the “**Ministry**”) and various creditors which have filed liens (the “**Lien Claimants**”).

Leased Premises

- 15. As set out in the Second Report, the Company continued to occupy only a small portion of the Company’s formerly leased premise in Calgary, subject to the terms of a revised month to month agreement between the Receiver and the landlord.
- 16. The Receiver terminated the agreement and vacated the premise effective January 31, 2019.

Accounts Receivable

- 17. As described in the Second Report, the Debtors had several ongoing projects at the Date of Appointment, including projects with Canadian Natural Resources Limited (“**CNRL**”), Husky Energy Inc. (“**Husky**”) and one with Inter Pipeline Ltd. (“**IPL**”) (collectively, the “**Ongoing Projects**”).

18. During the Receivership Proceedings, the Receiver managed the Ongoing Projects which were substantially completed by the end of August 2018.
19. As of the date of the Third Report, the Receiver has collected all amounts owing in connection with the Ongoing Projects.
20. Approximately \$1.0 million in accounts receivable continues to be subject to a dispute between the Receiver, on behalf of the Debtors, and a former customer in connection with a project that was completed prior to the Date of Appointment. The Receiver and the former customer have had ongoing discussions during the Receivership Proceedings and are continuing towards a resolution to the matter.

Dispute between Gemini and Emkay

21. Gemini and Jim Peplinski Auto Leasing Ltd. (“**Peplinski**”) were parties to a Master Vehicles Lease Agreement dated February 9, 2009 (the “**Agreement**”). The Agreement was subsequently assigned by Peplinski to Emkay. The Agreement allowed Gemini to lease vehicles and other equipment from Emkay, in exchange for the payment of monthly rental fees. A copy of the Agreement is attached to this Third Report as **Appendix “A”**.
22. The pertinent sections of the Agreement are:
 - (a) section 3, which provides that the lease term of each vehicle continues until the vehicle is surrendered to Emkay and final settlement is made pursuant to sections 12 and 13 of the Agreement;
 - (b) section 12, which allows Gemini to return a leased vehicle to Emkay for sale or for Gemini to proceed directly with the sale; and

- (c) section 13, which states that the proceeds from the sale of the vehicle, less reasonable selling expenses and outstanding amounts owed to Emkay pursuant to Schedule B of the Agreement, are paid to Gemini.
23. Accordingly, for leased vehicles returned to Emkay in the normal course, the terms of the Agreement require that the equity generated (i.e. sales value less reasonable selling costs less remaining amounts owing under the lease) (the “**Equity**”) from the sale of such vehicles be paid to Gemini.
24. In the event that Gemini is in default of monthly rent payments or other amounts due under the Agreement, the pertinent sections of the Agreement are:
- (a) section 17, which allows Emkay to declare that Gemini is in default; and
 - (b) section 18, which, upon written notice of default and if the default is not remedied within 10 days, allows Emkay to take immediate possession of all leased vehicles specified in the notice of default, to sell those vehicles, and to retain all proceeds of the vehicle sales.

Default and Partial Repayment of Arrears

25. In December 2017, prior to the Receivership Proceedings, the Receiver understands that Gemini was behind on its monthly rent payments to Emkay.
26. Emkay has produced a notice of default dated December 14, 2017 addressed to Gemini to the attention of Mr. Michael Dueck, Controller (the “**Notice**”) advising that there were unpaid invoices in the amount of \$93,315.09. A copy of the Notice is attached to this Third Report as **Appendix “B”**. Mr. Dueck has advised the Receiver that he does not have a record of receiving the Notice.

27. However, in December 2017, the Receiver understands that Gemini and Emkay had discussed the status of the account and certain arrears owed by Gemini under the Agreement. Following these discussions, Gemini issued a cheque to Emkay on December 19, 2017 for \$48,384.76 (the “**Partial Repayment Cheque**”), which was cashed by Emkay. A copy of the Partial Repayment Cheque is attached to this Third Report as **Appendix “C”**. Based on the amount set out in the Notice, the Partial Repayment Cheque represented over half of the amount of the arrears owed by Gemini at that time.
28. After the Partial Repayment Cheque was cashed, no further action was taken by Emkay. No steps were taken to recover the Vehicles or to otherwise enforce the default provisions in the Agreement.

Negotiations between Gemini and Emkay

29. In April and May 2018, the Receiver understands that representatives from Gemini and Emkay exchanged several emails regarding the Vehicles. Copies of these emails are attached to this Third Report as **Appendix “D”**. The emails discuss, among other things, the Equity in the Vehicles, the process to sell the Vehicles, the locations of the Vehicles, and the correct person to issue a cheque for the Equity in the Vehicles to at Gemini. Again, there is no mention of Emkay relying on the default provisions in the Agreement.
30. The Receiver understands, from Mr. Dueck, that at no time during these exchanges did Emkay mention that it intended to rely on the Notice or to retain the Equity after the Vehicles were sold. In fact, on April 9, 2018, Emkay sent Gemini an email that attached a statement of Gemini’s account with Emkay, which showed a credit amount of \$47,623.73. A copy of this email and the statement are attached to this Third Report as **Appendix “E”**. The credit amount shown on the statement related to the Equity owed to Gemini for the Vehicles that had been returned and sold to that point.

Receivership Proceedings

31. The Receivership Order was filed on April 19, 2018. Upon its appointment as Receiver, the Receiver reached out to Emkay to determine whether the vehicle leases had Equity built up in them. During these discussions, Emkay made no mention of the Notice to the Receiver, did not demand the return of the Vehicles, and did not exhibit any other intention to act in accordance with the default provisions in the Agreement. Rather, Emkay's conduct and communications with the Receiver continued to imply a waiver or retraction of the Notice:
- (a) on April 24, 2018, Emkay provided Gemini with an equity analysis of the Vehicles still under lease to and in the possession of Gemini that estimated the equity of ten (10) vehicles to be \$144,127.37. The following day, after discussions between the Receiver, Gemini, and Emkay, Gemini and the Receiver agreed that the Vehicles would be returned to Emkay to allow Emkay to proceed with selling the Vehicles. Copies of this correspondence are attached to this Third Report as **Appendix "F"**. The Receiver only approved this course of action on the basis that the Equity in the Vehicles would be paid to Gemini;
 - (b) in April 2018, to assist Emkay, the Receiver coordinated the collection and delivery of the Vehicles from Gemini to Emkay;
 - (c) on May 2, 2018, after the Vehicles were returned, Emkay issued a cheque to Gemini for \$4,536.43, which appears to relate to Equity owed to Gemini in one of the Vehicles sold prior to the Receivership Proceedings. A copy of this cheque is attached to this Third Report as **Appendix "G"**; and
 - (d) on June 15, 2018 and July 15, 2018, Emkay issued two "close out" invoices to Gemini (the "**Close Out Invoices**"). Copies of the Close Out Invoices are attached to this Third Report as **Appendix "H"**. The Close Out Invoices

list the amount of Equity in eight (8) of the Vehicles that was owed to Gemini, the amount totalled \$170,489.60.

32. Based on the information that has been provided to the Receiver's to date the Equity Claim in the Vehicles totals \$218,113.33 as set out in the table below.

Emkay Equity Claim	
CAD \$	
Statement of account on April 9, 2018	47,624
Close out invoice dated June 15, 2018	161,597
Close out invoice dated July 15, 2018	8,893
Total - Equity Claim	218,113

Change of Position

33. The Receiver relied on these representations, and specifically the estimate of the Equity in the Vehicles, when deciding to return the Vehicles to Emkay. However, approximately two months after the Receivership Order was filed and the Vehicles were returned, Emkay first advised the Receiver that, pursuant to section 18 of the Agreement, the Equity would not be paid to Gemini. A copy of this correspondence between Emkay and the Receiver is attached to this Third Report as **Appendix "I"**.
34. Emkay repeated this position to the Receiver's Counsel on August 8, 2018 in response to a letter sent by Receiver's Counsel seeking the return of the Equity. A copy of the letter and Emkay's response are attached to this Third Report as **Appendix "J"** and **Appendix "K"**, respectively.
35. Emkay's new position is entirely inconsistent with its past conduct. Negotiations for the return of the Equity Claim have so far been unsuccessful. Copies of the letter sent by the Receiver's Counsel and Emkay's counsel to negotiate the return of the Equity Claim are attached to this Third Report as **Appendix "L"** and **Appendix "M"**, respectively.

36. Despite repeated requests by the Receiver that Emkay provide an accounting of the Equity, to date the Receiver has yet to receive this information from Emkay.
37. Based on the foregoing, the Receiver is filing an application for an Order directing Emkay to pay the Equity Claim to Gemini. The Receiver notes that the Equity Claim does not include additional fees incurred by the Receiver and the Receiver's Counsel dealing with Emkay's change of position on the matter.
38. Emkay has been served with a copy of the materials in connection with this application.

STATEMENT OF RECEIPTS AND DISBURSEMENTS

39. The Receiver's statement of receipts and disbursements from the Date of Appointment to February 26, 2019 is summarized below:

Statement of Receipts and Disbursements for the period of April 19, 2018 to February 26, 2019	
CAD \$	Cumulative
Receipts	
Accounts receivable	23,138,798
Transaction proceeds	2,760,000
GST / PST collected	1,800,337
Receiver's Borrowings	1,000,000
Other receipts	514,271
Auction proceeds	285,178
Total - Receipts	29,498,584
Disbursements	
Interim Distributions	8,050,075
Payroll and employee related obligations	7,528,837
Operating expenses	6,593,625
GST / PST paid	1,489,114
G&A	1,037,213
Repayment of Receiver's Borrowings	1,000,000
Receiver's fees and expenses	767,125
Receiver's Counsel's fees and disbursements	330,818
Other professional fees	130,000
Total - Disbursements	26,926,807
Net Cash on Hand	2,571,776

- (a) Accounts receivable, amounts collected by the Receiver, with the assistance of former employees of Gemini, in connection with the Ongoing Projects and amounts owing prior to the Date of Appointment;
- (a) Transaction proceeds, the net proceeds from the sale of the Fabrication Business;
- (b) GST / PST collected in connection with the accounts receivable;
- (c) Receiver's Borrowings including amounts borrowed in accordance with the terms of the Receivership Order;
- (d) Auction proceeds from the sale of the environmental assets and the field assets (each as described in the First Report);
- (e) 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;
- (f) Operating expenses relating to operating the Business since the Date of Appointment, including material purchases to support the Ongoing Projects;
- (g) G&A includes general and administrative costs of the of the receivership, including among other things, costs related to the office lease, insurance and utilities;
- (h) Repayment of Receiver's Borrowings in accordance with the terms of the Receivership Order;

- (i) Receiver's fees and expenses and Receiver's Counsel's fees and disbursements for professional services rendered to January 31, 2019; and
 - (j) Other professional fees include fees and expenses related to the marketing agent in connection with the sales process.
40. As at February 26, 2019 the Receiver held approximately \$2.6 million in cash on hand.

DETAILS OF SECURED AND POTENTIAL PRIORITY CLAIMS

41. The Receiver is aware of the following secured claims, charges and liens that are owed by the Company, either pursuant to statute, or which have been registered against the Property.

Secured Claim

42. As described in the Affidavit of Trina Holland sworn on April 17, 2018, as of April 12, 2018, the Secured Creditor in these Receivership Proceedings 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.
43. Subsequent to April 12, 2018, and prior to the Date of Appointment, certain amounts were repaid such that the indebtedness under the ATB Secured Loan on the Date of Appointment was approximately \$12.3 million.

44. As of February 21, 2019, the remaining indebtedness under the ATB Secured Loan was approximately \$4.2 million. The Receiver is recommending a Second Interim Distribution to ATB as set out below.

Wage Earner Protection Program

45. The Receiver has yet to receive the final statement of account in connection with Service Canada's subrogated claim. However, it estimates that the claim submitted by Service Canada ranking in priority to the Secured Creditor will be approximately \$31,837 ("**Expected Priority WEPP Claim**"). The Receiver recommends holding back funds to satisfy the full amount of the Expected Priority WEPP Claim.

Deemed Trust Claims

46. 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*.
47. 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).
48. 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.
49. The Receiver understands that prior to the Receiver's application ATB will be bringing an application to petition Gemini into bankruptcy (the "**Bankruptcy Order**"). If this Honourable Court grants the Bankruptcy Order, it would extinguish the Deemed Trust Claims rendering them unsecured.

50. In the event this Honourable Court grants the Bankruptcy Order, the Receiver is of the view that ATB has priority over the Deemed Trust Claims and recommends distributing the full amount, being \$583,006.09 (the “**Deemed Trust Amount**”) to ATB.

Builders’ Liens

51. The Receiver has been made aware of six (6) liens, two of which relate to the claim Hi-Way 9 Express Ltd. registered in both Alberta and Saskatchewan, that have been registered by the Lien Claimants in Alberta and Saskatchewan against lands owned by customers (the “**Customers**”) where modules constructed by the Company are currently affixed (the “**Liens**”).
52. The Receiver has been active in discussions with the Lien Claimants to determine if the Liens are valid and enforceable and, moreover, paid \$166,045.03 into Court or in trust with the Receiver’s Counsel (the “**Trust Funds**”) in connection with the claims of Onsite Blast Ltd. (“**Onsite**”) and Tomco Industrial Ltd. (“**Tomco**”) pending further analysis to determine the amount and the priority of such claims (vis-à-vis the security of ATB).
53. The Receiver has resolved the claims of Onsite and Tomco and paid amounts from the Trust Funds to settle those claims.
54. The Receiver and the Receiver’s Counsel are continuing to review the claims of Hi-Way 9 Express Ltd. and Red River Galvanizing to determine the amount and the priority of such claims (vis-à-vis the security of ATB) and is recommending a holdback of \$86,666.14 (the “**Lien Fund**”) and will report to this Honourable Court prior to making a distribution from the Lien Fund.

55. The claim of Metalex Metal Buildings Inc. was registered against the lands of a customer that has not made any payments to the Company since the Date of Appointment and therefore in the Receiver's view there is no claim against the Property.
56. A summary of the Liens, the status thereof and the Receiver's recommendation is provided below.

Registration		Date		
Number	Lien claimant	Amount	Registered	Status
122864801	Onsite Blast Ltd.	93,164.53	April 27, 2018	Resolved
1800760	Tomco Industrial Ltd.	72,880.50	May 22, 2018	Resolved
Total - Paid into Court / Trust		166,045.03		
182123585	Redriver Galvanizing	51,018.30	May 29, 2018	Receiver to determine validity and enforceability, holdback full amount
1800855	Hi-Way 9 Express Ltd.	35,647.84	June 11, 2018	Receiver to determine validity and enforceability, holdback full amount
Total - Holback		86,666.14		
1800646/47	Metalex Metal Buildings Inc.	119,141.87		Receiver's view there is no claim against the Property, no holdback

PROPOSED SECOND INTERIM DISTRIBUTION

57. The Receiver has received an opinion from the Receiver's Counsel opining 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. Accordingly, it is the Receiver's view that ATB is the fulcrum creditor in the Receivership Proceedings.
58. The Interim Distribution Order authorized and directed the Receiver to make the Interim Distribution to ATB.
59. As at February 21, 2019, the indebtedness under the ATB Secured Loan was approximately \$4.2 million.

60. As detailed above, as at February 26, 2019 the Receiver held approximately \$2.6 million in cash on hand. The table below presents a summary of the Receiver’s proposed uses of funds on hand including the Second Interim Distribution of up to \$1,418,201 to ATB and a holdback of \$1,153,575 to be retained by the Receiver on account of the following:

- (a) the remaining costs to complete the administration of these Receivership proceedings including the completion of certain post-closing matters associated with the TSA, payment of any remaining operating expenses, post-receivership GST remittances, professional fees to complete the administration of the Receivership Proceedings and potential dispute resolution regarding the \$1.0 million in accounts receivable which continues to be subject to a dispute between the Receiver, on behalf of the Debtors, and a former customer (the “**Administrative Holdback**”); and
- (b) to account for any claims which may have priority over the security of the Secured Creditor including the Deemed Trust Amount, the Lien Fund and the Expected Priority WEPP Claims,

(collectively, the “**Holdback**”).

Proposed Interim Distribution	
CAD \$	
Sources	
Cash on Hand	2,571,776
Holdback	
Deemed Trust Amount	583,006
Administrative Holdback	452,066
Lien Fund	86,666
Expected Priority WEPP Claim	31,837
Total - Holdback	1,153,575
Total - Proposed Interim Distribution	1,418,201

61. If this Honourable Court grants the Bankruptcy Order the Receiver is seeking authorization to make the Second Interim Distribution and an additional interim distribution to ATB in connection with the Deemed Trust Amount (the “**Additional Interim Distribution**”) which in aggregate is below the amount of the remaining indebtedness owed to ATB.

62. The Receiver anticipates that a final distribution to ATB will likely be made, upon the completion of the following, and subject to the approval of this Honourable Court:
 - (a) resolution of the Equity Claim;

 - (b) resolution of the various priority claims discussed above; and

 - (c) resolution of the dispute with the Company’s customer regarding the \$1.0 million in pre-receivership accounts receivable.

RECEIVER’S RECOMMENDATIONS

63. The Receiver respectfully requests that this Honourable Court grant the following relief:
 - (a) approving the Receiver’s activities to date, including its statement of receipts and disbursements;

 - (b) issuing an Order requiring Emkay to pay the Equity Claim to Gemini; and

 - (c) authorizing the Receiver to make the Second Interim Distribution and the Additional Interim Distribution if this Honourable Court grants the Bankruptcy Order.

All of which is respectfully submitted this 28th day February 2019.

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
Managing Director

Appendix “A”

MASTER VEHICLE LEASE AGREEMENT

This Master Vehicle Lease Agreement ("**Agreement**") is made as of the 9th day of February, 2009, and supersedes and replaces any and all previous lease agreements, between Jim Peplinski's Auto Leasing Ltd., operating as Jim Peplinski's Leasemaster, having its head office in the City of Calgary, Province of Alberta (hereinafter called the "**Owner**") and GEMINI CORPORATION having its head office in the City of Calgary, Province of Alberta (hereinafter called the "**Lessee**").

1. **LEASE OF VEHICLES.** Owner hereby leases to the Lessee and the Lessee leases from the Owner such passenger automobiles, trucks, truck tractors, truck trailers, truck chassis, trailers and other equipment (all hereinafter referred to as "**Leased Vehicles**") in kind and number as agreed upon from time to time and delivered to the Lessee by the Owner pursuant to the terms of this Agreement. Subject to section 23, all vehicles leased hereunder shall at all times remain the property of and shall be registered in the name of the Owner. Each Leased Vehicle shall be described on a separate vehicle lease schedule in the form of Schedule A attached hereto (hereinafter described as "**Schedule A**"). Any completed Schedule A shall form part of this Agreement and all such schedules shall be subject to the terms and conditions of this Agreement. By providing a completed vehicle requisition ("**Vehicle Requisition**") substantially in the form of Exhibit 1 to Schedule B attached hereto, Lessee authorizes Owner to order and deliver the vehicle described in the relevant Vehicle Requisition and acknowledges that the vehicle will become a Leased Vehicle subject to this Agreement. Both parties agree that no further documentation is required to effect the lease of such vehicle by the Owner to the Lessee. A completed Schedule A will be produced by Owner and provided to Lessee as soon as practical. Should Lessee not notify Owner in writing of any necessary changes within 10 business days of receipt of Schedule A, such Schedule A will form part of this Agreement.
2. **NUMBER LEASED.** The number of Leased Vehicles to be leased hereunder and their makes, models and extra equipment shall be as from time to time agreed upon between the Lessee and the Owner.
3. **LEASE TERM.** The lease term of each Leased Vehicle shall commence on the first day of the month after the month in which the Leased Vehicle is delivered and accepted by the Lessee or its representative, and shall continue until surrender and final settlement is made pursuant to Sections 12 and 13 of this Agreement (the "**Lease Term**"); provided, however, that the Lease Term of any Leased Vehicle shall not be less than one year or as otherwise indicated on the Schedule A for such Leased Vehicle (the "**Minimum Lease Term**") except with the written consent of the Owner or where final settlement is made in the event of the loss of a Leased Vehicle or its damage beyond repair. Upon the expiration of the Minimum Lease Term, the Lessee shall be deemed to have elected to renew this Agreement for such Leased Vehicle on a month to month basis (each month to month period is hereinafter referred to as a "**Renewal Period**") unless notice of a withdrawal from service or termination of a Renewal Period is provided to Owner. Upon termination of a month to month Renewal Period hereinabove provided for, Lessee shall surrender the Leased Vehicle for disposition and settlement as provided in Sections 12 and 13 hereof. Lessee's obligation to pay rental charges during the Minimum Lease Term shall not be abated for any reason, save and except for destruction or replacement of a Leased Vehicle.
4. **OPERATION OF LEASED VEHICLES.** The Lessee shall use and operate, and permit use and operation of the Leased Vehicles only in a careful manner for the purposes for which the Leased Vehicles are designed and recommended, with due attention to proper maintenance, repair, cleaning and storage, and in compliance with (a) all requirements of any governmental authority, including without limitation such requirements as pertain to the registration, leasing, insurance, use and operation of the Leased Vehicles, and the age and licensing of drivers, and (b) all conditions of the policies of insurance of the Leased Vehicles. The Lessee will not permit the Leased Vehicles to be used for illegal purposes or activities, nor for the transportation for hire of passengers and the Lessee covenants and agrees that the Leased Vehicles will be used within Canada, and only by licensed and qualified drivers of an age not incompatible with the requirements of law or applicable insurance coverage, who are authorized, employed or controlled by the Lessee. Occasional temporary usage in the continental United States is permitted without the consent of the Owner.
5. **SUBLEASE.** No Leased Vehicle may be subleased, nor may the Lessee assign all or any part of its interest in this Agreement or any Leased Vehicles to any other person or entity, without the prior written consent of the



Owner, which may be withheld in the sole discretion of the Owner without stated reason. In the event of a transfer by the Lessee of its interest as lessee of any Leased Vehicles with such consent, the Lessee shall pay to the Owner an administration fee of \$100 for each such Leased Vehicle.

6. INSTRUCTIONS. The Lessee covenants and agrees with the Owner that the Leased Vehicles leased hereunder will at all times be operated carefully and maintained and serviced in accordance with the instructions set out in the manufacturer's maintenance manual.

7. ADDITIONS AND MARKINGS. The Lessee may install additional equipment or accessories ("**Additions**") on the Leased Vehicles, provided that the installation of Additions will not be harmful or injurious to the Leased Vehicles, and that the Additions may be removed by the Lessee prior to the expiration of the Lease Term without damage or injury to the Leased Vehicles. In the event of damage or injury to the Leased Vehicles by the installation or removal of Additions, of which the Owner shall be the sole judge, the Lessee shall reimburse to the Owner upon demand the cost of repairing such damage or injury.

8. DELIVERY OF LEASED VEHICLES. The Owner shall be responsible for obtaining and causing to be delivered to the Lessee or representatives designated by the Lessee all Leased Vehicles at such place as may be mutually agreed upon. The Owner shall not be liable in any way whatsoever to the Lessee in the event of the inability of the Owner to obtain Leased Vehicles or delayed delivery of Leased Vehicles, provided Owner exercises reasonable diligence in this regard. Acceptance of delivery of a Leased Vehicle by the Lessee or its representative shall constitute the Lessee's acknowledgement that the Leased Vehicle is of the make and model and is equipped as selected by the Lessee. Owner makes no representation or warranty, expressed or implied, with respect to fitness for purpose, merchantability or condition of the Leased Vehicles; however, the Owner will assign or otherwise make available to the Lessee all of the Owner's rights, if any and if permitted, under the manufacturer's warranty on Leased Vehicles.

9. RENT. The monthly rental for each Leased Vehicle is set out in Schedule A hereto for such Leased Vehicle and is equal to the sum of the Monthly Depreciation and Monthly Finance and Administration Charges calculated in accordance with the Commercial Terms in Schedule B attached hereto and forming part of this Agreement. The Lessee shall also pay any pro-rated rent for the period from (and including) the date of delivery to (and including) the last day of the calendar month in which delivery occurs. If the Lease Term ends on a date which is not the last day of a calendar month, the Lessee shall not be entitled to any refund of the monthly rental paid for that month. It is the intent of this Agreement that the Owner shall receive the rentals hereunder as a net return on each Leased Vehicle.

10. PAYMENT OF RENT. The Lessee agrees to pay the Owner, on the first day of each month in advance, the rent for each Leased Vehicle during the Lease Term, which rent shall include additional rent, if any, without any abatement, set-off or counterclaim arising out of any circumstances whatsoever. Unless otherwise agreed by the parties, the Owner shall render to the Lessee monthly, a single invoice showing the rent and additional rent, if any, payable in respect of all Leased Vehicles, and the Lessee shall pay the amount by the due date of such invoice. All amounts shall be payable in Canadian funds at par at the office of the Owner in Calgary. The Owner may charge, and the Lessee shall pay, interest on overdue outstanding balances at the rate of 1% per month (12% per annum).

11. EXPENSES. The Lessee shall pay all costs, expenses, fees and charges incurred in connection with the titling, registration, licensing, possession, use and operation of Leased Vehicles during the Lease Terms thereof, including but not limited to gasoline, oil, grease, repairs, maintenance, tires, tubes, storage, parking, tolls, fines, penalties, registration, license fees and plates, and all taxes whatsoever by whomsoever payable on or relating to the Leased Vehicles and the purchase, sale, rental, possession, use or operation thereof, except any liability of the Owner for Federal or Provincial income taxes arising out of receipt of rents payable hereunder. The Lessee shall reimburse the Owner upon demand, as additional rent, the amounts or amount of any such costs, fines, penalties, expenses, fees, charges, and taxes paid by the Owner, on behalf of the Lessee.

12. SALE. At any time after the Minimum Lease Term of any Leased Vehicle, the Lessee may elect by written notice to the Owner, to terminate this Agreement with respect to such Leased Vehicle. Lessee shall surrender such Leased Vehicle at such place as may reasonably be designated by the Owner. As soon as practical after the surrender of such Leased Vehicle or wreckage, if damaged beyond repair, the Owner shall invite car dealers,

traders or automobile auctions to unconditionally offer in writing to purchase the Leased Vehicle. The amount of proceeds received from the sale or disposition of the Leased Vehicle either by the Owner to a car dealer, trader or at an automobile auction, or to a purchaser on a sale in the open market as described in the next paragraph, after deduction for all reasonable selling expenses and fees incurred in connection with such sale, shall be referred to as the "**Net Resale Proceeds**". Final settlement shall be made in accordance with Section 13 and Schedule B to this Agreement.

Alternatively, the Lessee may elect, upon written notice to the Owner at any time after the Minimum Lease Term of any Leased Vehicle, to proceed directly with the sale of such Leased Vehicle by a bona fide sale in the open market, provided that the purchaser is acceptable to the Owner. The Lessee shall be responsible for direct and prompt payment to the Owner by the purchaser of the Net Resale Proceeds authorized by the Lessee and all applicable taxes for such Leased Vehicle and Owner agrees to deliver executed bills of sale and remove any encumbrances on the Leased Vehicle promptly after the Net Resale Proceeds and all applicable taxes have been received from the purchaser. Final settlement shall be made in accordance with Section 13 and Schedule B to this Agreement.

Notwithstanding the foregoing, the Lease Term shall continue, and rent continue to be payable, and the Leased Vehicle shall remain subject to this Agreement until such time as final settlement has been made in accordance with Section 13.

13. **FINAL SETTLEMENT.** Upon receipt or determination by the Owner of the Net Resale Proceeds as provided in Section 12, the Owner shall refund to the Lessee, as a refund of rent, the amount, if any, by which the sum of the Net Resale Proceeds exceeds the Payout Value (as hereinafter defined). If the Net Resale Proceeds are less than the Payout Value of the Leased Vehicle, the Lessee shall forthwith pay such deficiency to the Owner as additional rent in accordance with Part C(1) of Schedule B to this Agreement. The **Payout Value** is defined as the Owner's Book Value (as defined in Schedule B) of the Leased Vehicle plus the Interest Adjustment (as hereinafter defined). The **Interest Adjustment** is the difference between the straight-line interest charged to the Lessee and the actual interest owing which should have been paid at the rate of interest implied in the Monthly Finance and Administration Charges for such Leased Vehicle.


14. **LOSSES OR DAMAGE OF LEASED VEHICLES.** All risks of loss or damage to Leased Vehicles from whatever cause during the Lease Term thereof are hereby assumed by the Lessee, notwithstanding any surrender pursuant to Section 12 or otherwise. In the event that any Leased Vehicle is lost or damaged beyond repair, the Lessee shall advise the Owner in writing and shall hold the wreckage, if any, available for disposal. The Owner shall then sell or dispose of the Leased Vehicle as soon as practicable in accordance with Section 12 except that no Minimum Lease Term shall apply. Final settlement in relation to any Leased Vehicle lost, damaged or damaged beyond repair shall be made as provided in Section 13.

15. **INSURANCE.** At all times during its Lease Term, the Lessee shall at its sole cost keep each Leased Vehicle and all who drive it insured against (a) liability for injury to, or death of, persons and damage to, or destruction of, property in the minimum amount of \$1,000,000 inclusive in respect to any one accident and (b) collision and comprehensive (\$1,000 deductible) and specified perils. Such insurance shall name the Owner as Lessor and include the SPF 5 or its equivalent and shall include an endorsement by the insurer to the effect that the Owner will be given at least 15 days prior written notice of any changes in the insurance coverage and of any cancellation, termination, expiration or lapsing thereof. The Lessee shall furnish the Owner with insurance certificates or other satisfactory written evidence of the insurance required hereunder (the "**Required Coverage**") acceptable to the Owner, but the Owner shall be under no duty to examine such certificates or evidence or to advise the Lessee in case such insurance is not in compliance with this Agreement. The Owner shall not be required to order any Leased Vehicle for the Lessee until a binder disclosing the Required Coverage has been delivered to the Owner.

16. INDEMNITY. Notwithstanding any provision of this Agreement or any insurance provided pursuant to Section 15, the Lessee shall indemnify and save harmless the Owner against any and all losses, claims, liabilities, fines, costs or expenses of whatever kind or nature including legal fees, pertaining to or relating in any respect to the Leased Vehicles, removal or the sale thereof or any breach of covenant or obligation of the Lessee under this Agreement, except that part of any claim, liability, cost or expense which is reimbursed to or paid on behalf of the Owner by the insurer under policies obtained in accordance with Section 15. This indemnity shall survive the termination of this Agreement.

17. DEFAULT. If (a) the Lessee shall make default in (i) the payment of any monthly rent or other amount(s) payable hereunder, or (ii) the due performance and observance of any of the Lessee's covenants and obligations hereunder (including without limitation any unreasonable or abusive use of any Leased Vehicle), or (b) the Lessee shall commit any act of bankruptcy or become bankrupt or insolvent or unable to discharge its obligations as they become due or make a voluntary assignment in favour of its creditors or take proceedings under any statute for the relief of debtors, or (c) a receiver shall be appointed over any part of the property of the Lessee, or (d) the Lessee shall be dissolved or wound up or its corporate existence shall otherwise terminate, or (e) any lien upon any Leased Vehicle is exercised by any third party, or (f) the insurance required under Section 15 shall be cancelled in whole or part and not immediately replaced, or (g) any Leased Vehicle is confiscated, forfeited or seized by any governmental authority, or (h) the Owner determines that the Lessee has given false or misleading information, or (i) the Lessee owes money to the Owner for parts, repairs or service to the Leased Vehicles and such sums are outstanding for a period of greater than 60 days from the date that the invoice is received by the Lessee for parts, repairs or services, or (j) the Owner, in its absolute discretion on commercially reasonable grounds, decides it is insecure under this Agreement or the Owner decides that any Leased Vehicle is exposed to damage or danger; then in any of such events the Owner, at its option, may declare the Lessee in default as to one or more or all of the Leased Vehicles and thereupon all rights of the Lessee hereunder or in respect to such Leased Vehicles shall forthwith terminate and such Leased Vehicles shall be forthwith surrendered to the Owner, with the registration permit(s) pertaining thereto, at a location designated by the Owner.

18. REMEDIES AFTER DEFAULT. Upon a declaration of default under Section 17, which default has not been remedied within a period of ten (10) days, after written notice from Owner to Lessee, the Owner shall have the right to take immediate possession of all Leased Vehicles specified in such declaration and the Lessee shall immediately deliver them to the Owner; the Owner at its sole discretion, in addition to any other remedy open to it, may at any time without notice take possession of any or all of such Leased Vehicles without process of law, and the Lessee hereby authorizes and empowers the Owner, its servants, agents, or other representatives to enter on any of the Lessee's lands or premises or any other place or places where any of such Leased Vehicles may be found, for the purposes of taking possession thereof, and the Lessee hereby irrevocably appoints the Owner, or any of its officers, as the Lessee's true and lawful attorney to execute such documents as may be necessary for the purpose of regaining possession of such Leased Vehicles or any of them and the Additions attached thereto. In addition, the Owner shall be entitled to recover and the Lessee shall pay on demand an amount equal to all expenses, including reasonable counsel fees, incurred by the Owner in recovering possession of such Leased Vehicles and all reasonable costs and charges including transportation and storage charges and the costs of repairing and restoring such Leased Vehicles to the condition required by Section 19. The Owner's exercise of its rights and remedies on default shall be subject to any mandatory provisions of applicable law and to the extent not inconsistent therewith the Owner may retain all rents and other payments and resale proceeds including any refunds and the sums, if any, otherwise payable to the Lessee hereunder and the Owner shall be entitled to recover from the Lessee as a genuine pre-estimate of liquidated damages and not as a penalty, all unpaid monthly rent for such Leased Vehicles and all additional rent and other amounts (if any) due and unpaid, together with all costs and expenses (including legal fees and disbursements on a solicitor and his own client, full indemnity basis) incurred by the Owner in the enforcement of its rights and remedies under this or any other provision of this Agreement (including any Schedule(s) hereto). The Owner may, but shall not be obligated to, sell such Leased Vehicles or any of them, by public or private sale(s) for cash or upon credit and at wholesale or retail. In the event of any such sale(s), the Owner shall, in addition to all other rights and remedies hereunder, be entitled to retain as a genuine pre-estimate of liquidated damages and not as a penalty, all proceeds of any and all such sales, and to recover from the Lessee all damages, additional rent or other expenses in respect of the Leased Vehicles sold, determined in respect of each Leased Vehicle as provided by law or in the Schedule therefore.



19. **CONDITION ON RETURN.** On the expiry of the Lease Term, or other termination of this Agreement with respect to any Leased Vehicle, or upon the happening of any event by reason of which the Lessee is required to return the Leased Vehicle to the Owner under the terms of this Agreement, the Lessee shall forthwith redeliver the Leased Vehicle to the Owner at such place as the Owner may direct, together with the motor vehicle permit for such Leased Vehicle. Each Leased Vehicle when it is so redelivered to the Owner, shall except for reasonable accident-free or ordinary use and operation, be in the same condition as it was when it was originally delivered to the Lessee. The Lessee shall pay to the Owner upon demand the estimated cost of any repairs, reconditioning or regular maintenance necessary to restore the Leased Vehicle to such condition; the decision of the Owner shall be final and binding in determining such estimated cost.
20. **ASSIGNMENT OF AGREEMENT.** The Owner may, from time to time, assign all or any part of its right, title or interest in this Agreement, without the prior consent of the Lessee, and all right, title and interest of the Owner in this Agreement shall enure to the benefit of the Owner's assignee and its successors. Notwithstanding any assignment of the Owner's right, title and interest in this Agreement, the Lessee shall make all payments for rent and other sums due hereunder to the Owner until otherwise notified in writing. This Agreement may not be assigned by the Lessee nor may any interest herein be transferred in any way by the Lessee to any other person or entity without Owner's prior written consent.
21. **NOTIFICATION OF CLAIMS.** If any claim is made or action commenced for damages for death, personal injury or property damage resulting from the ownership, maintenance, use or operation of any Leased Vehicles, the Lessee shall promptly notify Owner thereof and forward to Owner a copy of every demand, notice, summons and other process received in connection therewith. Owner shall notify the Lessee in writing as soon as practicable of any claim, demand or action which is or may be covered by the Lessee's indemnity as aforesaid, and shall cooperate with the Lessee in the investigation and defence thereof, and shall promptly forward to the Lessee a copy of every such claim, demand or notice, and all process and other suit papers, served upon or received by Owner or the persons so indemnified.
22. **LEASED VEHICLES NOT TO BE PLEDGED AS SECURITY.** Unless otherwise provided in this Agreement, the Lessee covenants that it will not encumber, convert, abandon, destroy, pledge, sell, conceal, assign, lend, place in jeopardy of confiscation, or in any other manner deal with any Leased Vehicles so as to defeat, prejudice or impair Owner's title thereto during the term of this Agreement for which any such Leased Vehicles are leased hereunder.
23. **REGISTRATION OF LEASED VEHICLES.** All Leased Vehicles hereunder shall be registered in Canada and in the name of Owner. However, if, for the purpose of giving effect to this Agreement any statute, regulation or ordinance of any constituted public authority requires that any Leased Vehicles hereunder be registered in the name of the Lessee, Owner shall permit the Lessee to license and register such Leased Vehicles in its name, provided, however, that as between the parties hereto, title shall remain in Owner in accordance with the terms of Section 1.
24. **NOTICES OF PERMANENT REMOVAL.** Lessee shall notify the Owner within 10 days of any removal of the Leased Vehicles for a period exceeding thirty (30) days from the province where the Leased Vehicles were initially delivered. Notwithstanding the foregoing, the Lessee is not permitted to transfer the Leased Vehicle outside of Canada without the prior written consent of the Owner, except that no consent shall be required for occasional temporary usage in the continental United States of America. Lessee shall notify the Owner within 10 days of any change in the Province in which the Chief Executive Office of Lessee is located.
25. **WAIVER.** If the Owner fails in any one or more instances to insist upon the performance of any of the terms of this Agreement, or to exercise any right conferred by this Agreement, or the Owner waives any breach of any term of this Agreement, the Owner's failure or waiver shall not be construed as thereafter waiving any term or right in this Agreement, and this Agreement shall continue and remain effective as if no failure or waiver had occurred.
26. **LEGISLATION.** To the extent that the terms and provisions of this Agreement are inconsistent with applicable law, the terms and provisions herein shall be amended to the extent necessary so as to conform thereto.

27. **AMENDMENTS MUST BE IN WRITING.** This Agreement shall not be amended or altered in any manner unless such amendment be endorsed hereon in writing and signed on behalf of Owner by an authorized officer thereof and on behalf of the Lessee by an authorized officer.
28. **HEADINGS.** The headings of paragraphs are for convenience only and do not define, limit or modify the contents thereof.
29. **NO OTHER AGREEMENT.** There are no oral agreements or understandings affecting this Agreement, and no conditions precedent for its taking effect, and no future agreement, understanding or waiver shall be binding upon the parties hereto unless reduced to writing and attached hereto. The Lessee acknowledges that there are no collateral agreements made between the parties hereto with respect to any Leased Vehicles and the Lessee specifically acknowledges that no salesperson employed by the Owner has authority to make any such agreement with the Lessee on behalf of the Owner.
30. **SEVERABILITY.** Any provision of this Agreement which may be or be rendered invalid, unenforceable or illegal, shall be ineffective to the extent of such invalidity, unenforceability or illegality only, without affecting the validity, enforceability or legality of the remaining provisions of this Agreement, it being the intent and purpose that this Agreement should survive and be valid to the maximum extent permitted by law.
31. **LIMITATIONS OF LIABILITY.** It is understood and agreed that the Owner shall not be liable or accountable to the Lessee for any loss or damage of any nature or kind sustained by the Lessee directly or indirectly resulting from mechanical failure of the Leased Vehicles, or from delay in delivery, or from loss or interruption of use thereof while such Leased Vehicles are being repaired and/or maintenance services are being performed thereon, and the Owner shall not be required to carry out any of the terms of this Agreement if prevented from so doing by any circumstances beyond its control, and shall not be liable for any loss or damage sustained by the Lessee and resulting therefrom.
32. **NOTICES.** Notices hereunder must be in writing or by facsimile and may be delivered as follows:
- To: Jim Peplinski's Auto Leasing Ltd.
212 Meridian Road NE
Calgary, AB T2A 2N6
Attention: Director, Finance & Administration
Facsimile (416) 207 3003
- and to the Lessee at:
- Gemini Corporation
400, 839 - 5th Avenue SW
Calgary, AB T2P 3C8
Attention: Executive Vice President & CFO
Facsimile: 403) 640 0401
33. **THIRD PARTY RIGHTS.** This Agreement and any Leased Vehicles will be subject to any rights and interest in and to said Leased Vehicles granted by the Owner under any respective contract or contracts that a financial institution may hold on same.
34. **ENUREMENT.** Subject to the prohibition against assignment hereinbefore set out, this Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns.

35. ADDITIONAL PROVISIONS. Any additional provisions, terms, covenants, representations or warranties in any schedule attached hereto shall form a part of this Agreement and shall, if provided for therein, supersede the terms of this Agreement.

36. LIST OF SCHEDULES. For greater certainty, the following is a list of Schedules which are hereby incorporated into and form part of this Agreement:

- 1. Schedule A Motor Vehicle Description
- 2. Schedule B Vehicle Requisition, Commercial Terms and Operating Lease Terms

37. AGREEMENT IN ITS ENTIRETY. This Agreement, and the schedules attached hereto and any additional documents referred to therein shall form the entire agreement between Owner and Lessee.

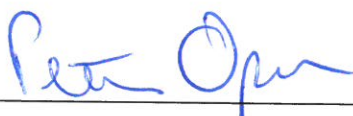
38. EXISTING AGREEMENT. Both parties agree that this Agreement shall replace any previous agreements between Owner and Lessee and that all vehicles subject to those agreements and all related Schedule A's shall be governed by this Agreement from the date this Agreement is signed, except that the financial terms in respect of each Leased Vehicle entered into prior to the date hereof will be as set out in its related Schedule A. For greater certainty, the terms of Schedule B - C. OPERATING LEASE TERMS shall apply to all Leased Vehicles.


39. GOVERNING LAW. This Agreement shall be governed according to the laws of the Province of Alberta and no action shall be brought against the Owner in respect of this Agreement or otherwise with respect to it except in the courts of that Province.

IN WITNESS WHEREOF the parties have hereunto executed this Agreement as of the day and year first above written.

OWNER:
JIM PEPLINSKI'S AUTO LEASING LTD.

LESSEE:
GEMINI CORPORATION

By: 
Position: DIRECTOR, FINANCE & ADMINISTRATION

By: 
Position: Executive VP + CFO

CORPORATE SEAL

CORPORATE SEAL



Schedule A

Motor Vehicle Description to Master Vehicle Lease Agreement



DRAFT

Corporate Services

Client #	
Unit #	

Lessee Name:	
Lessee Address:	

Billing Information

Bill To Name		Division #	
O/A		Division Name	
Address		Driver	
		Province of Operation	
		Client Reference #	

Vehicle Information

Year	Make	Model	Description	Exterior	Interior
VIN				Mounted Equipment or Chassis Unit #	

Lease Details

Minimum Term		LEASE SCHEDULE				
Delivery Date		Months	Depreciation %	Total Factor %	Monthly Payment	Residual
Lease Start Date						
Capital Cost						
Funding Method						
Base Rate Type						
Base Interest Rate						

This Schedule A shall form a part of and be subject to the provisions of the Lease dated February _____, 2009 and the preceding Vehicle Requisition. The monthly payment is based on the base rate in effect at time of delivery. Vehicle pricing and capitalization is based on the final manufacturer's invoice to the dealer. A Lease Termination fee of \$100.00 will be payable to Jim Peplinski's Leasemaster on all vehicle sale transactions.

SCHEDULE B

to
MASTER VEHICLE LEASE AGREEMENT
between
JIM PEPLINSKI'S AUTO LEASING LTD.
and
GEMINI CORPORATION
dated the 9th day of February, 2009

VEHICLE REQUISITION, COMMERCIAL TERMS AND OPERATING LEASE TERMS

The Owner and Lessee agree that the following shall apply to each Leased Vehicle hereunder:

A. VEHICLE REQUISITION

The Owner and the Lessee agree that each Leased Vehicle ordered either singularly or in multiples shall be ordered by way of a Vehicle Requisition substantially in the form attached as Exhibit 1 to this Schedule B.

B. COMMERCIAL TERMS

1. CAPITAL COST:

The Capital Cost of each Leased Vehicle shall be the sum of:

- a) The actual cost incurred by the Owner to acquire the Leased Vehicle;
- b) The costs of acquiring and installing any additional equipment requested by Lessee plus a fee of 10% of such costs;
- c) The cost of delivering the Leased Vehicle to Lessee plus a fee of 10% of such costs; and
- d) An acquisition fee of \$300.00 for factory orders and \$300.00 for out of stock deliveries;

2. MONTHLY DEPRECIATION AND OWNER'S BOOK VALUE:

The "**Monthly Depreciation**" portion of the rent for each Leased Vehicle will be calculated by multiplying the monthly depreciation percentage selected by Lessee on the Vehicle Requisition for such Leased Vehicle by its Capital Cost. The "**Owner's Book Value**" will be calculated from time to time by deducting the product of the Monthly Depreciation and the number of completed months of the Lease Term from the Capital Cost.

3. MONTHLY FINANCE AND ADMINISTRATION CHARGES:

The "**Monthly Finance and Administration Charges**" portion of the rent for each Leased Vehicle shall be calculated by using the yield quoted by the Bank of Canada on the Government of Canada 2-year benchmark bond (the "**Base Interest Rate**") at the close of business on the Friday preceding the date of delivery of each Leased Vehicle plus 3.50% per annum, such rate to apply for the duration of the Lease Term of such Leased Vehicle and to be applied against the Capital Cost, plus an administration fee of .10% of the Capital Cost as defined above.

4. LEASE TERMINATION FEE:

A lease termination fee of \$100.00 is payable by Lessee on termination of the lease of each Leased Vehicle hereunder. A Resale Reconciliation substantially in the form attached as Exhibit 2 to this Schedule B will be supplied by the Owner to the Lessee upon distribution of proceeds from the sale of a terminated Leased Vehicle.

5. REMARKETING SERVICES:

Should Lessee elect to utilize Owner's Fleet Remarketing Centre to remarket any Leased Vehicles, the following fees will apply:

- a) Remarketing Fee for Leased Vehicles – Canadian Auction - \$100.00
Owner Managed Third Party Sales- \$100.00
- b) Lessee will reimburse all expenses incurred by Owner to prepare the Leased Vehicle for remarketing plus a fee of 10% of all such expenses;
- c) The fees will be deducted from the proceeds of sale in respect of each Leased Vehicle.

C. OPERATING LEASE TERMS

The Lessee and Owner acknowledge that the Payout Value of each Leased Vehicle will be satisfied by both parties in the manner as set out below.

For the purpose of this Part C, the following definitions shall apply:

Contingent Rentals: Costs incurred or assessed by Owner to repair or recondition Leased Vehicles that are surrendered for disposition with excessive wear and tear.

Owner's Guaranteed Residual: That amount determined in Paragraph 2 below.

1. SALE OF LEASED VEHICLE:

- a) LESSEE may at any time, subject to its obligation to pay rental charges through the entire Minimum Lease Term as provided in the Agreement, upon written notice to Owner, surrender each Leased Vehicle at Lessee's expense, for disposition with or without replacement at such place as may be mutually agreed upon with Owner. All Leased Vehicles shall be returned in as good order and condition except for ordinary wear and tear, as when first received from Owner. Owner shall make arrangements to sell each Leased Vehicle within 45 days after the date of surrender. Alternatively, Lessee may elect, upon written notice to the Owner, to proceed directly with the sale of such Leased Vehicle by a bona fide sale in the open market, provided the purchaser is acceptable to the Owner.
- b) In the event that the Net Resale Proceeds are in excess of the Payout Value of the Leased Vehicle as of the applicable date, such excess shall be paid to Lessee, if not then in default of the Agreement, promptly after consummation of the sale. If Lessee is in material default of the Agreement with respect to any Leased Vehicle, such excess shall be applied in reduction of any payment in material default.
- c) In the event that the Net Resale Proceeds are less than the Payout Value of the Leased Vehicle, but equal to or more than the Owner's Guaranteed Residual, then Lessee shall reimburse Owner for the difference between the Net Resale Proceeds and the Payout Value.
- d) In the event that the Net Resale Proceeds are less than the Owner's Guaranteed Residual, Owner shall be responsible for the difference between the Owner's Guaranteed Residual and the Net Resale Proceeds; and Lessee shall reimburse Owner for the difference between the Payout Value and the Owner's Guaranteed Residual.

- e)
- (i) Contingent Rentals are deemed to be additional rental charges and shall be paid by Lessee in accordance with provisions of the Agreement.
 - (ii) The amount of Contingent Rentals shall be as determined in the sole discretion of the Owner and shall not under any circumstances be greater than the amount which Lessee is required to reimburse Owner as calculated in accordance with Paragraphs C(1)(c) or C(1)(d) above, as applicable.
 - (iii) Notwithstanding any of the foregoing, the total amount of Contingent Rentals billed to the Lessee shall be the lesser of the Contingent Rentals as determined by the Owner or the amount borne by the Owner in Paragraph C(1)(d) above.

2. PERCENTAGES:

- a) The Owner's Guaranteed Residual to be used in Paragraph C(1)(c) and C(1)(d) hereof in the event the Leased Vehicle is sold at the end of the Minimum Lease Term is 18% of the Capital Cost of such Leased Vehicle.
- b) The Owner's Guaranteed Residual to be used in Paragraph C(1)(c) and C(1)(d) hereof in the event the Leased Vehicle is sold at the end of any Renewal Period is 18% of the Payout Value of such Leased Vehicle as of the end of the month preceding surrender for disposition.

Exhibit 1

Vehicle Requisition

VEHICLE REQUISITION



Corporate Services

DRAFT

Client #	
Unit #	

"Lessee"			
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Billing Information

Bill To Name		Division #	
O/A		Division Name	
Address		Driver	
		Prov of Operation	
		Client Reference #	

Vehicle Information

Addition to Fleet or Replaces Unit Number

Year	Make	Model	Description		Exterior	Interior

Attach detailed copy of Vehicle Selector or Vehicle Specification for ordering purposes

Mounted Equipment or Chassis Unit #	
-------------------------------------	--

Delivery Information

Preferred Dealer		Licensing, Delivery and/or Other Special Instructions:
Dealer Location		
Factory or Stock		
Date Required		

Insurance Information

Insurance Company		Policy Number	
Insurance Agent		Expiry Date	

Lease Details

Minimum Term	LEASE SCHEDULE				
	Months	Depreciation %	Total Factor %	Monthly Payment	Residual
Estimated Cap Cost					
Funding Method					
Base Rate Type					
Base Interest Rate					

Authorization

Signature _____
 Name & Title (as authorized by "Lessee") _____
 Date _____

The "Lessee" hereby authorizes Jim Peplinski's Leasemaster to order the vehicle described herein, which upon delivery, will be subject to the terms and conditions of the Master Lease Agreement dated _____. The monthly payment will be based on the base rate in effect at time of delivery. Vehicle pricing and capitalization will be based on the final manufacturer's invoice to the dealer.



RESALE RECONCILIATION

Client Name:

Client #

Division Name:

Division #

Unit #
Actual Distance Travelled(km's):

VIN#

Date Available:
Date Sold:

Replaced by Unit #

Vehicle Description

Months in Service:
Original Cap Cost:

Driver Name:
Client Reference:

Method of Sale:

Gross Selling Price

Fees

Net Selling Price

Last Month Billed:
Lease Payout:

Billed Depreciation Rate

Depreciation Adjustment:

Effective Depreciation Rate (Gross)
Effective Depreciation Rate (Net)

Average Monthly KM's
Net Depreciation Cents/KM

All Applicable Taxes Excluded

Please contact your Account Manager with any questions

Appendix “B”



NOTICE OF DEFAULT

December 14, 2017

Mr. Michael Dueck
Gemini Corporation
180, 839-5th Avenue S.W.
Calgary, AB T2P3C-8

Dear Mr. Dueck:

This notice is to advise you that your account is in default in accordance with the terms of your lease agreement.

The unpaid invoices in the amount of \$93,315.09 broken down as follows: (and copies of all unpaid or partially paid invoices are attached)

Rental Invoices:	\$42,587.59
FMS Invoices:	\$50,727.70

Please address this issue immediately to avoid further action, which ultimately may include repossession of the vehicles. Payment of all invoices is required to be received by December 21, 2017..

This cannot be handled by regular mail to our lock box. It must be handled by overnight courier (next day delivery) to the address below or by wire transfer to the account information provided.

Courier address for payments:

JP Morgan Chase NA Toronto Branch
Attn: Lockbox 15005, Station A
200 Bay Street, Suite 1800
Toronto, ON M5J 2J2

Electronic Payments:

Instructions to transfer funds to Emkay Canada Fleet Services Corp.

Pay to (intermediary bank): (Swift field 56 A)	SWIFT BIC: ROYCCAT2 Royal Bank of Canada Toronto 180 Wellington St. Toronto, ON M5J 2H5
Beneficiary Bank: (Swift field 57 A)	SWIFT BIC: CHASCATTCTS JPMorgan Chase Bank, N.A., Toronto Branch Account No: 07172-100-012-4
Beneficiary: (Swift field 59)	Emkay Canada Acct# 4673635102

If you have any questions, you may contact me at (630) 775-6471 or by email to bwojtal@emkay.com.

Sincerely,

Barbara Wojtal
Sr. A/R Collections Manager

Appendix “C”

ATB Online Business

Cheque Images

Account: Gemini Corporation - 760-00804311600 | Cheque Number: 000171 | Date Posted: 29/12/2017 | Amount: \$48,384.76

[Zoom In](#)

[Zoom Out](#)

[Print](#)

60889-002
 12/22/2017
 010090000100039

4955200007502 12/22/2017

GEMINI CORPORATION 400 5TH AVE., S.W. CALGARY, AB T2P 1B9	ATB FINANCIAL 3005 PRINCE ALB. ST. CALGARY, AB T2P 1B9	1 2 1 8 2 0 1 7 M D D Y Y Y Y	7000171
*****Forty Eight Thousand Three Hundred Eighty Four and 76/100 Dollars			*****48,384.76
PAY Ernkay Canada Leasing Corp 100 ATLANTIC AVE. SUITE 300 TORONTO, ON M8K 1X4			
TO THE ORDER OF			GEMINI CORPORATION
FOR _____			
FOR _____			
000171		*07609-219*	804311600
000171		*07609-219*	804311600
000171		*07609-219*	804311600
000171		*07609-219*	804311600

20171228 08909-219 99030174410
007590626708

4955200007502 12/22/2017

889 20171222 54078 2017 58 5978
4955200007502
1322917 225074C
9228038 0093 2177714

OF MYRA SCOTIA
PROC CTR 47696-002
ERKAY CANADA LEASING C
CREDIT LINE
LEASING CORP

2360-001 848
CDC Calgary AB
22-Dec-2017
7921736187

72819-002 12/22/2017
4955200007502
23069-002 12/22/2017
7921736187

Printer ID# 1021
IO d'imprimeur 1021

IP Recipient: See note on deposit record using signature device or
signature.
 QR Recipient: QR code recipient information, including
recipient's account or reference number, is a
mandatory field.
 Recipient Name: Name of recipient to appear on front of
cheque. Name of recipient is mandatory.
 Recipient Address: Street address to appear on front of
cheque. Street address is mandatory.
 Recipient City: City to appear on front of cheque.
 Recipient State: State to appear on front of cheque.
 Recipient Country: Country to appear on front of cheque.
 Recipient Postal Code: Postal code to appear on front of cheque.
 Recipient Telephone: Telephone number to appear on front of cheque.
 Recipient Email: Email address to appear on front of cheque.
 Recipient Website: Website address to appear on front of cheque.
 Recipient Notes: Additional information to appear on front of cheque.

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Appendix “D”

[REDACTED]

From: Michael Dueck
Sent: May 11, 2018 11:44 AM
To: CSS Canada
Subject: RE: RE: RE: FW: Equity Emkay Tracking#:02253369

Hey Sue,

Do you mean before a cheque is released?

Michael Dueck | Gemini | Direct: 403.259-0303 | Cell 587-785-9736

From: CSS Canada <css@emkay.com>
Sent: May 11, 2018 11:43 AM
To: Michael Dueck <mdueck@geminiCorp.ca>
Subject: FW: RE: RE: FW: Equity Emkay Tracking#:02253369

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Michael,
Further to my email this morning, we request that the outstanding invoice from Good Guys gets resolved prior to Emkay issuing any credits on account. Please advise once this has been done (an attached copy of the paid invoice would be good for us to have), and we will proceed with issuing any credits on your account, at that time.
Many thanks,
Sue

sue SCHEIDL
client services specialist
css@emkay.com
phone ::: 1-888-595-5951
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----- Original Message -----
From: Michael Dueck
Received: 5/10/2018 7:25 AM
To: CSS Canada
Subject: RE: FW: Equity Emkay Tracking#:02253369
Good morning, Sue 😊

If you can have it mailed to my attention at the address in my signature that would be greatly appreciated. I will continue to figure out how we are going to get the vehicles from goodguys. I will keep you posted.

Michael Dueck | Controller | **Gemini** |

Direct: 403.259.0303 | Cell: 587.785.9736 | Main: 403.255.2006 | Fax 403.640.0401 |

mdueck@geminiCorp.ca | 400, 839 – 5th Ave S.W. Calgary, Alberta, T2P 3C8 | www.geminiCorp.ca



Please consider the environment before printing this email. Thank you.

From: CSS Canada <css@emkay.com>
Sent: May 10, 2018 6:05 AM
To: Michael Dueck <mdueck@geminiCorp.ca>
Subject: RE: FW: Equity Emkay Tracking#:02253369

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good morning Michael,
Certainly - I will forward your request for a cheque to be cut and sent out to you. Could you please confirm what address you would like it sent to?

Many thanks,
Sue

sue SCHEIDL

client services specialist

css@emkay.com

phone ::: 1-888-595-5951

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----- Original Message -----

From: Michael Dueck
Received: 5/9/2018 2:46 PM
To: CSS Canada
Subject: RE: FW: Equity Emkay Tracking#:02253369

Hey Sue,

We are working with Goodguys to get the trucks released, we will be sure to keep you posted as soon as they are.

In the meantime, I was going to ask a favour. Our account is currently in a credit position. As we are selling the vehicles and there are more proceeds coming out way, could we get the current funds released? We need that cash to help fund the closeout of our projects.

Let me know your thoughts.

Michael Dueck | **Gemini** | Direct: 403.259-0303 | Cell 587-785-9736

From: CSS Canada <css@emkay.com>

Sent: May 9, 2018 7:08 AM

To: Ingrid Carbonneau <icarbonneau@gemincorp.ca>

Cc: Michael Dueck <mdueck@gemincorp.ca>; Michael Dueck <mdueck@gemincorp.ca>; Michael Dueck <mdueck@gemincorp.ca>

Subject: RE: FW: Equity Emkay Tracking#:02253369

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good morning Ingrid and Michael,

Just wanting to follow up on the two vehicles at Good Guys. If you could please advise?

Units: 2073 and 2074 (Emkay units: 680879, 680880) that are at Good Guys - address of: 8705 112 Street, Fort Sask, AB. As per Don there is an outstanding invoice of \$10,946.92 that needs to be paid before he will release these vehicles.

Many thanks,

Sue

SUE SCHEIDL

client services specialist

css@emkay.com

phone ::: 1-888-595-5951

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----- Original Message -----

From: Ingrid Carbonneau

Received: 5/4/2018 11:20 AM

To: CSS Canada

Cc: GEMINI CORPORATION - CANADA; Michael Dueck; Michael Dueck

Subject: RE: FW: Equity Emkay Tracking#:02253369

Thanks. I am waiting for Michael to return on Monday to discuss Good Guys.

From: CSS Canada [<mailto:css@emkay.com>]

Sent: Friday, May 4, 2018 11:17 AM

To: Ingrid Carbonneau <icarbonneau@gemincorp.ca>

Cc: Michael Dueck <mdueck@gemincorp.ca>

Subject: RE: FW: Equity Emkay Tracking#:02253369

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hello Ingrid,

The auction reserves 7 to 10 business days to pickup. These were only consigned to auction on May 1 - 3 days ago. You should hear from them soon.

Please advise on the two remaining vehicles that are at Good Guys with an outstanding invoice. We need to come to some sort of resolution on this before they start charging you storage fees as well - most places do charge this.

Please let me know.

Thanks,

Sue

SUE SCHEIDL

client services specialist

css@emkay.com

phone ::: 1-888-595-5951

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----- Original Message -----

From: Ingrid Carbonneau

Received: 5/4/2018 11:08 AM

To: CSS Canada; GEMINI CORPORATION - CANADA; Michael Dueck; Michael Dueck

Subject: RE: FW: Equity Emkay Tracking#:02253369

Hi Sue – any idea when we may get a call regarding pick up of these vehicles?

Thanks

Ingrid

From: CSS Canada [<mailto:css@emkay.com>]

Sent: Tuesday, May 1, 2018 11:00 AM

To: Michael Dueck <mdueck@geminiCorp.ca>

Cc: Ingrid Carbonneau <icarbonneau@geminiCorp.ca>

Subject: RE: FW: Equity Emkay Tracking#:02253369

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Michael and Ingrid,

Here is a recap of what has occurred:

#1. Pickup of unit 2077, 681331 in Calgary, Ingrid as contact. Address of: Suite 400, 839 5th Ave SW, Calgary, AB T2P3C8

#2. Pickup of units: 2078, 2084, 2090 and 2092 (Emkay units: 681332, 682238, 683216, 683517) in Fort Sask, AB - Craig Nielson as contact. Address of: 11232 87 Ave Fort Sask,

#3. Pickup of unit 2094, 691346 in Ponoka. Justin as contact. Address of: 6709 44th Ave, Ponoka, AB T4J1J8

I have made arrangements for the pickup of these 6 vehicles.

There were 10 units in total on the spreadsheet, two units, Justin is keeping (2080, 2064, Emkay units 681334, 13446J). This leaves two units remaining - units: 2073 and 2074 (Emkay units: 680879, 680880) that are at Good Guys - address of: 8705 112 Street, Fort Sask, AB. As per Don there is an outstanding invoice of \$10,946.92 that needs to be paid before he will release these vehicles.

Please advise on this concern.

Many thanks,

Sue

sue SCHEIDL

client services specialist

css@emkay.com

phone ::: 1-888-595-5951

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----- Original Message -----

From: Ingrid Carbonneau

Received: 4/30/2018 1:24 PM

To: CSS Canada

Subject: RE: FW: Equity Emkay Tracking#:02253369

My information is below.

Thanks

Ingrid Carbonneau | Manager, Administration | **Gemini** |

Direct: 403.259.0313 | Cell: 403.519.5624 | Main: 403.255.2006 ext. 1234 | Fax 403.640.0401 |

icarbonneau@geminiCorp.ca | 400, 839 – 5th Ave S.W. Calgary, Alberta, T2P 3C8 | www.geminiCorp.ca



Please consider the environment before printing this email. Thank you.

From: CSS Canada [<mailto:css@emkay.com>]
Sent: Monday, April 30, 2018 12:46 PM
To: Ingrid Carbonneau <icarbonneau@geminiCorp.ca>
Subject: RE: FW: Equity Emkay Tracking#:02253369

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Ingrid,

Thank you for the below. For the two units that are at Good Guys, and have an outstanding balance, it was Don at the shop that I spoke with and he is the one that advised me of this.

Please confirm the address for pickup of unit 2077, along with your phone number please.

Many thanks,

Sue

sue SCHEIDL

client services specialist

css@emkay.com

phone :: 1-888-595-5951

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----- Original Message -----

From: Ingrid Carbonneau

Received: 4/30/2018 11:46 AM

To: CSS Canada; GEMINI CORPORATION - CANADA; Michael Dueck; Michael Dueck

Subject: RE: FW: Equity Emkay Tracking#:02253369

Hi Sue – sorry for not getting back to you sooner. Was surprised to hear that there are trucks in for repair. Did Craig advise you of that? Will have to figure that out here.

Unit 2077 is here in our parking garage and I am the contact for pick up.

Take care

Ingrid

----- Original Message -----

From: Michael Dueck

Received: 4/26/2018 4:05 PM

To: CSS Canada

Cc: Ingrid Carbonneau
Subject: RE: FW: Equity Emkay Tracking#:02253369

Hey Sue,

Craig and Justin's numbers are on the excel file. Between the two of them, they have all the vehicles.

Michael Dueck | Gemini | Direct: 403.259-0303 | Cell 587-785-9736

From: CSS Canada <css@emkay.com>
Sent: April 26, 2018 4:02 PM
To: CSS Canada <css@emkay.com>; Michael Dueck <mdueck@geminiCorp.ca>
Cc: Ingrid Carbonneau <icarbonneau@geminiCorp.ca>
Subject: RE: FW: Equity Emkay Tracking#:02253369

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Michael and Ingrid,
All I am requiring is the physical address of where the vehicles are, and whom the contact person will be (with phone numbers).
Many thanks,
Sue

sue SCHEIDL
client services specialist
css@emkay.com
phone :: 1-888-595-5951
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----- Original Message -----

From: Michael Dueck
Received: 4/26/2018 3:53 PM
To: CSS Canada
Cc: Ingrid Carbonneau
Subject: RE: FW: Equity Emkay Tracking#:02253369

Hey Ingrid,

While I am away next week, can you work with Sue to sell off the vehicles listed on the attached?

I have talked to Craig and Justin on the attached and put notes on the file.

Michael Dueck | Gemini | Direct: 403.259-0303 | Cell 587-785-9736

From: CSS Canada <css@emkay.com>
Sent: April 26, 2018 10:04 AM
To: Michael Dueck <mdueck@geminiCorp.ca>
Subject: RE: FW: Equity Emkay Tracking#:02253369

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good morning Michael,
Just wanting to follow up on the below so that I may process this for you. If you could let me know?
Many thanks,
Sue

sue SCHEIDL
client services specialist
css@emkay.com
phone ::: 1-888-595-5951
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----- Original Message -----

From: CSS Canada
Received: 4/25/2018 3:12 PM
To: Michael Dueck
Subject: FW: Equity Emkay Tracking#:02253369

Hi Michael,
If you could please let us know of the physical address of the below vehicles and whom the contact will be (with phone number)? Are all the vehicles drivable and safe?
If you could let me know?
Many thanks,
Sue

sue SCHEIDL
client services specialist
css@emkay.com
phone ::: 1-888-595-5951
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From: Michael Dueck [<mailto:mdueck@geminiCorp.ca>]
Sent: Wednesday, April 25, 2018 12:30 PM
To: Jim Saunders
Cc: Olver, Dustin
Subject: FW: Equity

Hey Jim,

Per our discussion, can you please begin the process of selling off the following units that are currently under lease with EMKAY:

Vehicle	Gemini Unit Number	VIN	Year	Make	Model
680879	2073	3D6WU7CL6BG593742	2011	DODGE	RAM 5500 CREW
680880	2074	3D6WU7CL7BG597511	2011	DODGE	5500 REG CAB

681331	2077	3GTP2WE71DG323475	2013	GMC	SIERRA 1500CREW
681332	2078	1GC1KXCG1DF206026	2013	CHEVROLET	2500HD CREW CAB
681334	2080	1GC1KXCG7DF205429	2013	CHEVROLET	2500HD CREW CAB
682238	2084	3C7WRNBL9EG119546	2014	DODGE	5500 REG CHASS
683216	2090	3GCUKREC9EG349664	2014	CHEVROLET	1500 CREW 4WD
683517	2092	1C6RR7PM0FS572592	2015	DODGE	RAM K1500 CREW
13446J	2064	1GTHK43KX9F130458	2009	GMC	2500HD CREW CAB
691346	2094	JTEBU5JR5G5309043	2016	TOYOTA	4RUNNER SR5

DUSTIN: Can you please approve this request?

Michael Dueck | Gemini | Direct: 403.259-0303 | Cell 587-785-9736

From: Jim Saunders <JSaunders@emkay.com>
Sent: April 24, 2018 11:03 AM
To: Michael Dueck <mdueck@geminiCorp.ca>
Subject: Equity

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Michael,

Here is a copy of the equity analysis on the vehicles still under lease from Emkay.(10 units)

As discussed I will try to put together the list of the owned/former GE units that are managed by Emkay (13 units)

jim SAUNDERS
 director, strategic account management
jsaunders@emkay.com

phone (403) 441-4642
cell (403) 909-5198

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http://www.myfleetsolutions.com/corporate_brochure

<mailto:jsaunders@emkay.com?subject=Unsubscribe>

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[REDACTED]

[REDACTED]

[REDACTED]

From: CSS Canada <css@emkay.com>
Sent: June 4, 2018 8:53 AM
To: Michael Dueck
Cc: Jim Saunders
Subject: RE: Re: RE: RE: Gemini Units at Good Guys in Fort Sask, AB Emkay Tracking#:02253919

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Michael,

Once you have received the Close Out Invoice that has these sales noted, at that time, you may request a cheque to be sent to you. These invoices are produce in the middle of the month. Just let us know and we will request a cheque be sent to you with any outstanding credit. Please note, your account must be in good standing with us and all invoices paid up to date.

Many thanks,

Sue

sue SCHEIDL

client services specialist

<<mailto:css@emkay.com>> css@emkay.com

phone ::: 1-888-595-5951

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----- Original Message -----

From: Michael Dueck

Received: 6/2/2018 5:21 PM

To: CSS Canada

Cc: Jim Saunders

Subject: Re: RE: RE: Gemini Units at Good Guys in Fort Sask, AB Emkay Tracking#:02253919

Hey Sue,

I hope you are having a great weekend!

Just wanted to follow up, now that everything has been resolved with Good Guys, when can we expect our credit cheque?

I have been keeping an eye on the mail, but haven't seen anything come in yet.

Appreciate your help!

Michael Dueck

----- Original message -----

From: CSS Canada <css@emkay.com>

Date: 2018-05-24 2:13 PM (GMT-07:00)

To: Michael Dueck <mdueck@geminicorp.ca>

Cc: Jim Saunders <JSaunders@emkay.com>

Subject: RE: RE: RE: Gemini Units at Good Guys in Fort Sask, AB Emkay Tracking#:02253919

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Michael,

Perfect, thank you for letting us know. No, you do not owe anything on them as they are both fully depreciated. Just the administrative fee plus GST remains. Your options, come time that you no longer require them, are they go to auction just like the others, or they are sold to a third party for Fair Market Value, to be determined by Emkay.

Many thanks,

Sue

sue SCHEIDL

client services specialist

<<mailto:css@emkay.com>> css@emkay.com

phone ::: 1-888-595-5951

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----- Original Message -----

From: Michael Dueck

Received: 5/24/2018 1:07 PM

To: CSS Canada

Cc: Jim Saunders

Subject: RE: RE: RE: Gemini Units at Good Guys in Fort Sask, AB Emkay Tracking#:02253919

Hey Sue!

Great to hear from you. Yes, so I spoke with Ponoka and they still need those vehicles.

We don't owe anything on them, do we?

Michael Dueck | Gemini | Direct: 403.259-0303 | Cell 587-785-9736

From: CSS Canada <css@emkay.com>

Sent: May 24, 2018 11:41 AM

To: Michael Dueck <mdueck@geminiCorp.ca>

Cc: Jim Saunders <JSaunders@emkay.com>

Subject: FW: RE: RE: Gemini Units at Good Guys in Fort Sask, AB Emkay Tracking#:02253919

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Michael,

Just wanting to follow up on the last two units that are with Justin in Ponoka. These are units: 2080 and 2064, Emkay units 681334 and 13446J. Could you please advise?

Many thanks,

Sue

sue SCHEIDL

client services specialist

<<mailto:css@emkay.com>> css@emkay.com

phone ::: 1-888-595-5951

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Appendix “E”

From: Michael Dueck
Sent: April 12, 2018 3:51 PM
To: Matthew Chaisson
Subject: FW: for Rose

Michael Dueck | Gemini | Direct: 403.259-0303 | **Cell** 587-785-9736

From: Jim Saunders <JSaunders@emkay.com>
Sent: April 9, 2018 2:25 PM
To: Michael Dueck <mdueck@geminiCorp.ca>
Subject: for Rose

Michael,

I am sending this to you as I have been receiving spam from Rose's email and do not want to write to her again.

I am not entirely sure what she is wanting from me, but here again is the statement of account and a screen shot of the account current credit.

Emkay, Canada A/R

File Other

Invoice Inquiry For (ge701) Gemini Corporation

Invoices: 33

Customer	Loc	Date	Reference	Batch	Period	Amount	Balance
GE701	300	06/30/20		I02929	1804	\$35,129.18	\$0.00
GE701	300	08/15/20	REDIT	P15094	1806	(\$34,253.17)	
GE701	300	02/20/20	CREDITS	P15996	1812	(\$876.01)	
GE701	300	11/30/20		I03081	1809	\$21,711.76	\$0.00
GE701	300	02/20/20	CREDITS	P15996	1812	(\$21,711.76)	
GE701	300	02/23/20	REDIT	P16003	1812	(\$21,711.76)	
GE701	300	03/02/20	CREDIT	P16053	1901	(\$-21,711.76)	
GE701	300	01/01/2018	IV	B58049	1811	\$20,034.48	\$0.00
GE701	300	02/20/2018	PY	B58049	1812	(\$20,034.48)	
GE701	300	12/31/2017	IV	B60519	1810	\$19,485.24	\$0.00
GE701	300	03/02/2018	PY	B60519	1901	(\$19,485.24)	

Customer Aging

Aged Customer Balance

Current:	(\$47,623.73)
1 to 30	\$0.00
31 to 60	\$0.00
61 to 90	\$0.00
Over 90	\$0.00
Total:	(\$47,623.73)

Ready

jim SAUNDERS
 director, strategic account management
 isaunders@emkay.com

phone (403) 441-4642
cell (403) 909-5198

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http://www.myfleetsolutions.com/corporate_brochure



<mailto:isaunders@emkay.com?subject=Unsubscribe>

GE701

Date	Invoice	Amount	
1/15/2018	B58049	20,034.48	did not pay
12/31/2017	B60519	19,485.24	did not pay
1/15/2018	B62592	14,397.62	did not pay
1/31/2018	B65328	4,370.35	did not pay
2/15/2018	B67581	11,788.55	did not pay
2/28/2018	B70189	883.59	did not pay
3/15/2018	B74310	11,821.41	did not pay
3/31/2018	B77018	555.07	did not pay
1/15/2018	B62508	-20,345.04	
2/15/2018	B67497	-24,222.82	
3/15/2018	B74226	-87,268.19	
6/30/2017	B34069	876.01	short paid
		-47,623.73	

Appendix “F”

[Redacted]

[Redacted]

[Redacted]

From: Jim Saunders <JSaunders@emkay.com>
Sent: Wednesday, April 25, 2018 2:11 PM
To: Michael Dueck <mdueck@geminicorp.ca>
Cc: Olver, Dustin <Dustin.Olver@fticonsulting.com>
Subject: RE: Equity

Michael,

We can begin this process for you, I will have our customer service department reach out to you directly for the location of the vehicles and contact information.

Dustin, thank you for your confirmation.

Jim SAUNDERS

director, strategic account management
jsaunders@emkay.com

phone (403) 441-4642
cell (403) 909-5198

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http://www.myfleetsolutions.com/corporate_brochure



<mailto:jsaunders@emkay.com?subject=Unsubscribe>

From: Michael Dueck [mailto:mdueck@geminicorp.ca]
Sent: Wednesday, April 25, 2018 12:30 PM
To: Jim Saunders
Cc: Olver, Dustin
Subject: FW: Equity

Hey Jim,

Per our discussion, can you please begin the process of selling off the following units that are currently under lease with EMKAY:

Vehicle	Gemini Unit Number	VIN	Year	Make	Model
680879	2073	3D6WU7CL6BG593742	2011	DODGE	RAM 5500 CREW
680880	2074	3D6WU7CL7BG597511	2011	DODGE	5500 REG CAB
681331	2077	3GTP2WE71DG323475	2013	GMC	SIERRA 1500CREW

681332	2078	1GC1KXCG1DF206026	2013	CHEVROLET	2500HD CREW CAB
681334	2080	1GC1KXCG7DF205429	2013	CHEVROLET	2500HD CREW CAB
682238	2084	3C7WRNBL9EG119546	2014	DODGE	5500 REG CHASS
683216	2090	3GCUKREC9EG349664	2014	CHEVROLET	1500 CREW 4WD
683517	2092	1C6RR7PM0FS572592	2015	DODGE	RAM K1500 CREW
13446J	2064	1GTHK43KX9F130458	2009	GMC	2500HD CREW CAB
691346	2094	JTEBU5JR5G5309043	2016	TOYOTA	4RUNNER SR5

DUSTIN: Can you please approve this request?

Michael Dueck | Gemini | Direct: 403.259-0303 | Cell 587-785-9736

From: Jim Saunders <JSaunders@emkay.com>
Sent: April 24, 2018 11:03 AM
To: Michael Dueck <mdueck@geminiincorp.ca>
Subject: Equity

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Michael,

Here is a copy of the equity analysis on the vehicles still under lease from Emkay. (10 units)

As discussed I will try to put together the list of the owned/former GE units that are managed by Emkay (13 units)

Jim SAUNDERS
 director, strategic account management
jsaunders@emkay.com

phone (403) 441-4642
cell (403) 909-5198

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http://www.myfleetsolutions.com/corporate_brochure



<mailto:isaunders@emkay.com?subject=Unsubscribe>

[Redacted]

[Redacted]

[Redacted]

From: Olver, Dustin
Sent: Wednesday, April 25, 2018 1:57 PM
To: Michael Dueck <mdueck@geminicorp.ca>; Jim Saunders <JSaunders@emkay.com>
Subject: RE: Equity

Jim,

FTI Consulting Canada Inc. as Receiver approves the below. A copy of the Court order appointing FTI is attached for your records.

Thanks,

Dustin Olver
Corporate Finance & Restructuring

FTI Consulting
+1.403.454.6032 D
+1.403.519.3485 C
Dustin.olver@fticonsulting.com

1610, 520 – 5th Ave S.W.
Calgary, AB T2P 3R7 Canada
www.fticonsulting.com

From: Michael Dueck [<mailto:mdueck@geminicorp.ca>]
Sent: Wednesday, April 25, 2018 12:30 PM
To: Jim Saunders <JSaunders@emkay.com>
Cc: Olver, Dustin <Dustin.Olver@fticonsulting.com>
Subject: FW: Equity

Hey Jim,

Per our discussion, can you please begin the process of selling off the following units that are currently under lease with EMKAY:

Vehicle	Gemini Unit Number	VIN	Year	Make	Model
680879	2073	3D6WU7CL6BG593742	2011	DODGE	RAM 5500 CREW
680880	2074	3D6WU7CL7BG597511	2011	DODGE	5500 REG CAB
681331	2077	3GTP2WE71DG323475	2013	GMC	SIERRA 1500CREW
681332	2078	1GC1KXCG1DF206026	2013	CHEVROLET	2500HD CREW CAB
681334	2080	1GC1KXCG7DF205429	2013	CHEVROLET	2500HD CREW CAB
682238	2084	3C7WRNBL9EG119546	2014	DODGE	5500 REG CHASS
683216	2090	3GCUKREC9EG349664	2014	CHEVROLET	1500 CREW 4WD
683517	2092	1C6RR7PM0F5572592	2015	DODGE	RAM K1500 CREW

13446J	2064	1GTHK43KX9F130458	2009	GMC	2500HD CREW CAB
691346	2094	JTEBU5JR5G5309043	2016	TOYOTA	4RUNNER SR5

DUSTIN: Can you please approve this request?

Michael Dueck | Gemini | Direct: 403.259-0303 | Cell 587-785-9736

From: Jim Saunders <jsaunders@emkay.com>

Sent: April 24, 2018 11:03 AM

To: Michael Dueck <mdueck@geminicorp.ca>

Subject: Equity

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Michael,

Here is a copy of the equity analysis on the vehicles still under lease from Emkay.(10 units)

As discussed I will try to put together the list of the owned/former GE units that are managed by Emkay (13 units)

Jim SAUNDERS

director, strategic account management

jsaunders@emkay.com

phone (403) 441-4642

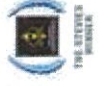
cell (403) 909-5198

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Advancement Awards

<mailto:isaunders@emkay.com?subject=Unsubscribe>

Vehicle	Gemini Unit Number	VIN	Year	Make	Model	Odom	OdomDt	FMV Quote	Estimated Net Proceeds	Residual Value	Interest/Contribution Owed	Estimated Equity	
680879	2073	3D6WU7CL6BG593742	2011	DODGE	RAM 5500 CREW	79007	31/10/2017	\$ 21,500.00	\$ 21,000.00	\$ 692.84	\$ -	\$ 20,307.16	
680880	2074	3D6WU7CL7BG597511	2011	DODGE	5500 REG CAB	56007	31/10/2017	\$ 17,600.00	\$ 17,100.00	\$ 692.84	\$ -	\$ 16,407.16	
681331	2077	3GTP2WE71DG323475	2013	GMC	SIERRA 1500CREW	224399	31/10/2017	\$ 17,000.00	\$ 16,500.00	\$ 3,209.31	\$ -	\$ 13,290.69	
681332	2078	1GC1KXCG1DF206026	2013	CHEVROLET	2500HD CREW CAB	64324	31/10/2017	\$ 27,600.00	\$ 27,100.00	\$ -	\$ -	\$ 27,100.00	
681334	2080	1GC1KXCG7DF205429	2013	CHEVROLET	2500HD CREW CAB	106678	31/10/2017	\$ 24,100.00	\$ 23,600.00	\$ -	\$ -	\$ 23,600.00	
682238	2084	3C7WRNBL9EG119546	2014	DODGE	5500 REG CHASS	211685	31/10/2017	\$ 14,500.00	\$ 14,000.00	\$ 14,006.10	\$ -	\$ (6.10)	
683216	2090	3GCUKREC9EG349664	2014	CHEVROLET	1500 CREW 4WD	50784	31/10/2017	\$ 25,700.00	\$ 25,200.00	\$ 10,532.67	\$ -	\$ 14,667.33	
683517	2092	1C6RR7PM0F5572592	2015	DODGE	RAM K1500 CREW	107261	31/10/2017	\$ 26,900.00	\$ 26,400.00	\$ 18,128.19	\$ 188.80	\$ 8,083.01	
13446J	2064	1GTHK43KX9F130458	2009	GMC	2500HD CREW CAB	184082	06/11/2017	\$ 14,700.00	\$ 14,200.00	\$ -		\$ 14,200.00	
691346	2094	JTEBU5JR5G5309043	2016	TOYOTA	4RUNNER SR5	70199	31/10/2017	\$ 36,250.00	\$ 35,750.00	\$ 26,178.58	\$ 3,093.30	\$ 6,478.12	
					Totals			\$ 225,850.00	\$ 220,850.00	\$ 73,440.53	\$ 3,282.10	\$ 144,127.37	
683213	2087	1GC1KVEG7FF507954	2015	CHEVROLET	SILVERADO 2500	40546	31/10/2017		\$ 21,409.20		\$ -		Sold 04/17/18
683214	2088	1GC1KVEG3FF508728	2015	CHEVROLET	SILVERADO 2500	84465	31/10/2017		\$ 15,924.90		\$ -		Sold 04/17/18
683215	2089	1GC1KVEG9FF507521	2015	CHEVROLET	SILVERADO 2500	110672	31/10/2017		\$ 13,679.95		\$ -		Sold 04/17/18
								Total Gain on Sale	\$ 51,014.05				

Appendix “G”

Emkay Canada Fleet Services Corp.

109 Atlantic Ave., Suite 300
Toronto, Ontario, Canada M6K 1X4

**FLEET MANAGEMENT AND
VEHICLE LEASING**

VENDOR NAME		VENDOR NUMBER	CHECK DATE	CHECK NUMBER
Gemini Corporation		972170	05/02/18	300517
DESCRIPTION	VOUCHER	INVOICE NUMBER	INVOICE AMOUNT	NET AMOUNT
1. G21024 DISPOSAL PRICE	05/02/18	28XHJV	E-601/G21024	\$4,536.43
			RECEIVED MAY 14 2018 GEMINI	\$4,536.43
			4320.41	216.02
			No more geno H FAC 72820	
			CHECK TOTALS	\$4,536.43

BEFORE DEPOSITING DETACH THIS PORTION FOR YOUR RECORDS

Emkay Canada Fleet Services Corp.

109 Atlantic Ave, Suite 300
Toronto, Ontario, Canada M6K 1X4

JPMorgan Chase, N.A., Toronto Branch
200 Bay Street, South Tower Suite 1800
Toronto, ON M5J 2J2

CHECK NUMBER

300517

CHECK DATE

2 0 1 8 0 5 0 2

Pay Exactly

FOUR THOUSAND FIVE HUNDRED THIRTY-SIX AND 43/100

****4,536.43

Not Valid After 180 Days

To The Order Of:

Gemini Corporation
180, 839 - 5th Avenue S.W.
Calgary AB T2P3C8

Emkay Canada Fleet Services Corp.

Jan Ryan
[Signature]

Appendix “H”



55 Standish Court, Suite 440
Mississauga, ON L5R 4B2
Phone (855) 225-5575

Closeout Invoice

Remit to:
Emkay Canada Leasing Corp.
P.O. Box 15005, Station A
Toronto, Ontario M5W 1C1

Account	Invoice #	Invoice Date
GE701	B90166	06/15/2018

TO: Gemini Corporation
ATTN: Accounts Payable
180, 839 - 5th Avenue S.W.
Calgary, AB T2P 3C8

CONTRACT REQUIRES PAYMENT IN ADVANCE ON 1ST DAY OF MONTH. PAYMENT RECEIVED AFTER 07/15/2018 ARE SUBJECT TO CONTRACT LATE CHARGES.

Unit # Yr	Client # Make Model	Driver's Name Serial Number	In Service Out Service	Mileage Regn.	Cap Cost Accum Depr.	Residual Val. Sold Amount	Gain/Loss on Sale	- Credit or + Charge	UNIT TOTAL
691346 2016	2094 TOYOT 4RUNN	MCINTOSH, JUSTIN JTEBU5JR5G5309043	03/03/16 06/02/18	86,226 AB	48,033.92 22,695.93	25,337.99 32,524.00	-7,186.01	-7,186.01	
VEHICLE SALE ANALYSIS FOR: 691346 SORT #: 6300 GENERAL APPEARANCE: ROUGH DEPRECIATION STATISTICS ENDING ODOMETER : 86,226 CENTS PER KILOMETER : 18.0 MONTHS IN SERVICE : 27 DOLLARS PER MONTH : \$ 574.44 KILOMETERS PER MONTH : 3,194 MONTHLY % OF COST : 1.20%						SELL FEE 150.00 AUCTION EXPENSE SURCHARGE 93.00 GST TAX TOTAL -347.15 UNIT TOTAL LESS GST ---> -6,943.01 Cntr: 003 Sort: 6300	-7,290.16		
682238 2014	2084 DODGE 5500	FS SHOP, POOL 3C7WRNBL9EG119546	12/16/13 06/02/18	240,123 AB	63,663.50 50,612.35	13,051.15 25,614.72	-12,563.57	-12,563.57	
VEHICLE SALE ANALYSIS FOR: 682238 SORT #: 6300 Fabrication GENERAL APPEARANCE: ROUGH DEPRECIATION STATISTICS ENDING ODOMETER : 240,123 CENTS PER KILOMETER : 15.9 MONTHS IN SERVICE : 53 DOLLARS PER MONTH : \$ 717.90 KILOMETERS PER MONTH : 4,531 MONTHLY % OF COST : 1.13%						SELL FEE 150.00 AUCTION EXPENSE SURCHARGE 80.04 GST TAX TOTAL -616.68 UNIT TOTAL LESS GST ---> -12,333.53 Cntr: 003 Sort: 6300 Fabrication	-12,950.21		
680880 2011	2074 DODGE 5500	FS HIAB, POOL 3D6WU7CL7BG597511	10/23/12 06/15/18	60,852 AB	69,300.50 69,300.50	39,285.00	-39,285.00	-39,285.00	
VEHICLE SALE ANALYSIS FOR: 680880 SORT #: 8100 Routine Mainten GENERAL APPEARANCE: AVERAGE DEPRECIATION STATISTICS ENDING ODOMETER : 60,852 CENTS PER KILOMETER : 49.3 MONTHS IN SERVICE : 67 DOLLARS PER MONTH : \$ 447.99 KILOMETERS PER MONTH : 908 MONTHLY % OF COST : .65%						SELL FEE 150.00 AUCTION EXPENSE SURCHARGE 91.50 GST TAX TOTAL -1,952.17 UNIT TOTAL LESS GST ---> -39,043.50 Cntr: 003 Sort: 8100 Routine Mainten	-40,995.67		
681332 2013	2078 CHEVY 2500H	KEYERA, POOL 1GC1KXCG1DF206026	04/24/13 06/02/18	67,791 AB	40,149.49 40,149.49	27,614.72	-27,614.72	-27,614.72	
VEHICLE SALE ANALYSIS FOR: 681332 SORT #: 8100 ROUTINE MAINTEN GENERAL APPEARANCE: ROUGH DEPRECIATION STATISTICS ENDING ODOMETER : 67,791 CENTS PER KILOMETER : 18.5 MONTHS IN SERVICE : 61 DOLLARS PER MONTH : \$ 205.49 KILOMETERS PER MONTH : 1,111 MONTHLY % OF COST : .51%						SELL FEE 150.00 AUCTION EXPENSE SURCHARGE 80.04 GST TAX TOTAL -1,369.24 UNIT TOTAL LESS GST ---> -27,384.68 Cntr: 004 Sort: 8100 ROUTINE MAINTEN	-28,753.92		
683216 2014	2090 CHEVY 1500	WHITE, QUENTON 3GCUKREC9EG349664	11/03/14 06/02/18	69,174 AB	39,745.35 29,908.22	9,837.13 26,114.72	-16,277.59	-16,277.59	
VEHICLE SALE ANALYSIS FOR: 683216 SORT #: 8100 ROUTINE MAINTEN GENERAL APPEARANCE: AVERAGE DEPRECIATION STATISTICS ENDING ODOMETER : 69,174 CENTS PER KILOMETER : 19.7 MONTHS IN SERVICE : 43 DOLLARS PER MONTH : \$ 316.99 KILOMETERS PER MONTH : 1,609 MONTHLY % OF COST : .80%						SELL FEE 150.00 AUCTION EXPENSE SURCHARGE 80.04 GST TAX TOTAL -802.38 UNIT TOTAL LESS GST ---> -16,047.55 Cntr: 004 Sort: 8100 ROUTINE MAINTEN	-16,849.93		

GST 896120953RT QST 1018444557TQ0001

All amounts in Canadian dollars.



Closeout Invoice

TO: Gemini Corporation
ATTN: Accounts Payable

Account	Invoice #	Invoice Date
GE701	B90166	06/15/2018

Unit #	Client #	Driver's Name	In Service	Mileage	Cap Cost	Residual Val.	Gain/Loss	- Credit or	UNIT
Yr	Make	Model	Out Service	Regn.	Accum Depr.	Sold Amount	on Sale	+ Charge	TOTAL
680879	2073	FS HIAB, POOL	10/23/12	80,152	69,300.50		-38,285.00	-38,285.00	
2011	DODGE	5500	06/15/18	AB	69,300.50	38,285.00			
VEHICLE SALE ANALYSIS FOR: 680879						SORT #: 8100 Routine Mainten		SELL FEE	150.00
GENERAL APPEARANCE: ROUGH						DEPRECIATION STATISTICS		AUCTION EXPENSE SURCHARGE	91.50
ENDING ODOMETER : 80,152						CENTS PER KILOMETER : 38.7		GST TAX TOTAL	-1,902.17
MONTHS IN SERVICE : 67						DOLLARS PER MONTH : \$ 462.92			
KILOMETERS PER MONTH : 1,196						MONTHLY % OF COST : .67%		UNIT TOTAL LESS GST --->	-38,043.50
									-39,945.67
									Cntr: 004 Sort: 8100 Routine Mainten
=====									
683517	2092	MARTIN, TERRY	01/27/15	121,528	57,096.60	17,129.00	-14,323.50	-14,323.50	
2015	DODGE	K1500	06/02/18	AB	39,967.60	31,452.50			
VEHICLE SALE ANALYSIS FOR: 683517						SORT #: 8100 Routine Mainten		SELL FEE	150.00
GENERAL APPEARANCE: ROUGH						DEPRECIATION STATISTICS		AUCTION EXPENSE SURCHARGE	67.50
ENDING ODOMETER : 121,528						CENTS PER KILOMETER : 21.1		GST TAX TOTAL	-705.30
MONTHS IN SERVICE : 40						DOLLARS PER MONTH : \$ 641.10			
KILOMETERS PER MONTH : 3,038						MONTHLY % OF COST : 1.12%		UNIT TOTAL LESS GST --->	-14,106.00
									-14,811.30
									Cntr: 004 Sort: 8100 Routine Mainten
=====									
									YOUR ACCOUNT CREDITED THIS AMOUNT IN CANADIAN DOLLARS --->
									-161596.86

GST 896120953RT QST 1018444557TQ0001

All amounts in Canadian dollars.



55 Standish Court, Suite 440
Mississauga, ON L5R 4B2
Phone (855) 225-5575

Closeout Invoice

Remit to:
Emkay Canada Leasing Corp.
P.O. Box 15005, Station A
Toronto, Ontario M5W 1C1

Account	Invoice #	Invoice Date
GE701	B94155	07/15/2018

TO: Gemini Corporation
ATTN: Accounts Payable
180, 839 - 5th Avenue S.W.
Calgary, AB T2P 3C8

CONTRACT REQUIRES PAYMENT IN ADVANCE ON 1ST DAY OF MONTH. PAYMENT RECEIVED AFTER 08/15/2018 ARE SUBJECT TO CONTRACT LATE CHARGES.

Unit # Yr	Client # Make Model	Driver's Name Serial Number	In Service Out Service	Mileage Regn.	Cap Cost Accum Depr.	Residual Val. Sold Amount	Gain/Loss on Sale	- Credit or + Charge	UNIT TOTAL
681331	2077	HANNA, JOHN	04/08/13	245,508	37,754.83	2,642.99	-8,703.79	-8,703.79	
2013	GMC K1500	3GTP2WE71DG323475	06/02/18	AB	35,111.84	11,346.78			
VEHICLE SALE ANALYSIS FOR: 681331 SORT #: 6300 FABRICATION GENERAL APPEARANCE: ROUGH DEPRECIATION STATISTICS ENDING ODOMETER : 245,508 CENTS PER KILOMETER : 10.8 MONTHS IN SERVICE : 62 DOLLARS PER MONTH : \$ 425.94 KILOMETERS PER MONTH : 3,960 MONTHLY % OF COST : 1.13%						SELL FEE 150.00 AUCTION EXPENSE SURCHARGE 82.60 INTEREST ADJUSTMENT 1.91 GST TAX TOTAL -423.46			
						UNIT TOTAL LESS GST	-8,468.98		-8,892.74
===== YOUR ACCOUNT CREDITED THIS AMOUNT IN CANADIAN DOLLARS -->									-8892.74

GST 896120953RT QST 1018444557TQ0001

All amounts in Canadian dollars.

Appendix “I”

[REDACTED]

From: Wilson, Brett <Brett.Wilson@fticonsulting.com>
Sent: July-05-18 10:23 AM
To: Greg Grant
Cc: Jim Saunders; Norm Lyle
Subject: RE: Gemini Corporation
Attachments: SKMBT_C224e18062011000.pdf

Grant,

Unfortunately, If we cannot attempt to resolve this matter consensually we will have to go a different direction. Jim indicated below that the agreement was terminated under section 17(b) which is incorrect as these are not bankruptcy proceedings. Regardless, as I mentioned previously the Receivership Order prevents parties from terminating agreements even if it contains a clause regarding the appointment of a receiver. Additionally, section 32 provides that notices must be in writing or by facsimile and delivered to the EVP & CFO at the address in the agreement and I'm not aware that any such notice was provided.

I can assure you that if the Receiver was aware that the estate was not going to be paid for the vehicles that were sent to auction we would not have proceeded in that manner.

Again, if you are open to discussing further please feel free to give me a call in the office.

Regards,

Brett Wilson

+1 403.454.6033 T | +1 403.470.4054 M

brett.wilson@fticonsulting.com

From: Greg Grant [mailto:GGrant@emkay.com]
Sent: Thursday, July 05, 2018 10:05 AM
To: Wilson, Brett <Brett.Wilson@fticonsulting.com>
Cc: Jim Saunders <JSaunders@emkay.com>; Norm Lyle <NLyle@emkay.com>
Subject: RE: Gemini Corporation

We are simply following all processes of our agreement as it relates to the bankruptcy, as Jim has indicated in previous emails below.

Additionally, email was sent to Michael Dueck on Dec 15, 2017 requesting specific terms for future payments, which Gemini did not provide, therefore services were terminated.

GREG

greg GRANT

VP client service & operations EMKAY Canada

ggrant@emkay.com

phone ☎ 905.712.5733

cell ☎ 416.662.6536

fax ☎ 647-426-3955

New office address is:

55 Standish Court
Suite 440
Mississauga, ON L5R 4B2

http://www.myfleetsolutions.com/corporate_brochure

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[To "Unsubscribe" please click here](#)



From: Wilson, Brett [<mailto:Brett.Wilson@fticonsulting.com>]
Sent: Thursday, July 05, 2018 11:20 AM
To: Greg Grant
Cc: Jim Saunders; Norm Lyle
Subject: RE: Gemini Corporation

Grant,

There seems to be a disconnect between your message below and the ongoing discussions Gemini has had with Emkay post-receivership. Please find the attached correspondence between Gemini and Emkay. Additionally, Gemini has advised that they are not aware of any notification regarding the termination of the services program in 2017. If there are no amounts owing to Emkay (which is my understanding) then I'm not sure how you can withhold the payment.

I'm happy to discuss further at your convenience so we can resolve this matter.

Regards,

Brett Wilson
+1 403.454.6033 T | +1 403.470.4054 M
brett.wilson@fticonsulting.com

From: Greg Grant [<mailto:GGrant@emkay.com>]
Sent: Wednesday, June 20, 2018 12:19 PM
To: Wilson, Brett <Brett.Wilson@fticonsulting.com>
Cc: Jim Saunders <JSaunders@emkay.com>; Norm Lyle <NLyle@emkay.com>
Subject: RE: Gemini Corporation

Brett,

We did not alter or discontinue service under this Receivership Order. Gemini was in default of payment previously and could not meet our payments requirements therefore we terminated the services program at the end of 2017.

Greg

greg GRANT

VP client service & operations EMKAY Canada

ggrant@emkay.com

phone ☎ 905.712.5733

cell ☎ 416.662.6536

fax ☎ 647-426-3955

New office address is:

**55 Standish Court
Suite 440
Mississauga, ON L5R 4B2**

http://www.myfleetsolutions.com/corporate_brochure

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From: Wilson, Brett [<mailto:Brett.Wilson@fticonsulting.com>]

Sent: Wednesday, June 20, 2018 11:53 AM

To: Jim Saunders

Cc: CSS Canada; Michael Dueck

Subject: RE: Gemini Corporation

Jim,

Unfortunately, the Receivership Order strictly prohibits any party with a written or oral agreement from altering or discontinuing service (see paragraph 11).

If you still have questions we can have a further discussion.

Regards,

Brett Wilson

+1 403.454.6033 T | +1 403.470.4054 M

brett.wilson@fticonsulting.com

From: Jim Saunders [<mailto:JSaunders@emkay.com>]

Sent: Wednesday, June 20, 2018 11:46 AM

To: Wilson, Brett <Brett.Wilson@fticonsulting.com>

Cc: CSS Canada <css@emkay.com>; Michael Dueck <mdueck@geminiCorp.ca>

Subject: RE: Gemini Corporation

Section 17 (b).

jim SAUNDERS

director, strategic account management

jsaunders@emkay.com

phone (403) 441-4642

cell (403) 909-5198

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<mailto:jsaunders@emkay.com?subject=Unsubscribe>

From: Wilson, Brett [<mailto:Brett.Wilson@fticonsulting.com>]

Sent: Wednesday, June 20, 2018 11:37 AM

To: Jim Saunders

Cc: CSS Canada; Michael Dueck

Subject: Re: Gemini Corporation

Based on what default?

Regards,

Brett Wilson

+1 403.454.6033 T | +1 403.470.4054 M

brett.wilson@fticonsulting.com

On Jun 20, 2018, at 10:28 AM, Jim Saunders <JSaunders@emkay.com> wrote:

Brett,

Please find attached the agreement in place between Emkay and Gemini, as per section 18 (Remedies after Default) I am being advised that Emkay will not be issuing funds to Gemini.

In 2011 Emkay purchased a portion of Jim Peplinski Leasing and this contract was contained in

that purchase.

jim SAUNDERS
director, strategic account management
jsaunders@emkay.com<<mailto:jsaunders@emkay.com>>

phone (403) 441-4642
cell (403) 909-5198

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[70 years of service logo banner small]
<mailto:jsaunders@emkay.com?subject=Unsubscribe>

From: Wilson, Brett [<mailto:Brett.Wilson@fticonsulting.com>]
Sent: Friday, June 15, 2018 8:31 AM
To: CSS Canada
Cc: Jim Saunders; Michael Dueck
Subject: Gemini Corporation

Sue,

FTI Consulting Canada Inc. is the court-appointed receiver for Gemini Corporation. Can you please provide an update on when we can expect the payment discussed in the attached correspondence as my understanding is that nothing is currently owing to Emkay. Also, if you could provide a statement of what is currently owing to Gemini it would be appreciated.

Thanks.

Regards,

Brett Wilson
Director, Corporate Finance & Restructuring

FTI Consulting
+1 403.454.6033 T | +1 403.470.4054 M
brett.wilson@fticonsulting.com<<mailto:brett.wilson@fticonsulting.com>>

Suite 1610 | 520 Fifth Avenue S.W.
Calgary, AB T2P 3R7
www.fticonsulting.com<<http://www.fticonsulting.com/>>

[<cid:image005.png@01D40880.DF04D920>]<<https://www.facebook.com/FTIConsultingInc>> [<cid:image006.png@01D40880.DF04D920>]<<http://www.linkedin.com/company/fti-consulting>>

[cid:image007.png@01D40880.DF04D920] <<https://twitter.com/FTIConsulting>>

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Appendix “J”

FASKEN

Fasken Martineau DuMoulin LLP
Barristers and Solicitors
Patent and Trade-mark Agents

350 7th Avenue SW, Suite 3400
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Canada

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+1 877 336 5350
F +1 403 261 5351
fasken.com

August 8 2018
File No.: 301498.3/19994

Travis Lysak
Direct +1 403 261 5501
tlysak@fasken.com

Via Email ggrant@emkay.com

Emkay Canada Leasing Corp.
109 Atlantic Avenue, Suite 300
Toronto, ON M6K 1X4

Attention: Greg Grant

Dear Sir:

Re: FTI Consulting Canada Inc., the Court appointed Receiver of Gemini Corporation (the “**Receiver**”) v Emkay Canada Leasing Corp. (“**Emkay**”)

We are solicitors for the Receiver.

As you are aware, pursuant to a Receivership Order granted by the Honourable Madame Justice B.E.C. Romaine on April 19, 2018 (the “**Receivership Order**”), FTI Consulting Canada Inc. was appointed receiver of Gemini Corporation (“**Gemini**”).

We refer to a Master Vehicle Lease Agreement between Gemini and Jim Peplinski Auto Leasing Ltd. (“**Peplinski**”) dated February 9, 2009 (the “**MLVA**”). The MLVA was subsequently assigned by Peplinski to Emkay.

The MLVA provides, in Paragraphs 12 and 13, that any “**Net Sale Proceeds**” that exceed the “**Payout Value**” for the Surrendered Vehicles is to be paid to Gemini.

Gemini has surrendered to Emkay the following vehicles (the “**Surrendered Vehicles**”), which were then sold at auction by Emkay for what we believe to be the below noted Net Sale Proceeds as per the attached Close-Out Invoices. The Receiver understands the Payout Value in respect of each Surrendered Vehicle is as noted below.

YEAR, MAKE, MODEL, AND VIN OF SURRENDERED VEHICLE	NET SALE PROCEEDS	PAYOUT VALUE	OWING TO GEMINI
2013 CHEVROLET 2500HD CREW CAB	\$27,614.72	\$0.00	\$27,614.72

FASKEN

VIN: 1GC1KXCG1DF206026			
2013 CHEVROLET 1500 CREW CAB VIN: 3GTP2WE71DG323475	\$11,346.78	\$2,642.99	\$8,703.79
2014 DODGE 5500 REG CHASS VIN: 3C7WRNBL9EG119546	\$25,614.72	\$13,051.15	\$12,563.57
2014 CHEVROLET 1500 CREW 4WD VIN: 3GCUKREC9EG349664	\$26,114.72	\$9,837.13	\$16,277.59
2015 DODGE RAM K1500 CREW VIN: 1C6RR7PM0FS572592	\$31,452.50	\$17,129.00	\$14,323.50
2016 TOYOTA 4RUNNER SR5 VIN: JTEBU5JR5G5309043	\$32,524.00	\$25,337.99	\$7,186.01
2011 DODGE RAM 5500 CREW VIN: 3D6WU7CL6BG593742	\$38,285.00	\$0.00	\$38,285.00
2011 DODGE 5500 REG CAB VIN: 3D6WU7CL7BG597511	\$39,285.00	\$0.00	\$39,285.00
2012 FORD EXPLORER XLT VIN: 1FMHK8D81CGA22124	\$12,631.43	\$0.00	\$12,631.43
TOTAL			\$176,870.61

FASKEN

Based on the foregoing, we ask that you pay to the Receiver by August 17, 2018, the sum of \$176,870.61, which it is entitled to under the MLVA.

Payment can be made directly to:

FTI Consulting
Suite 1610, 520 Fifth Avenue S.W.
Calgary, AB T2P 3R7
Attention: Brett Wilson

or to Fasken Martineau DuMoulin LLP, at the above noted address, to the attention of the undersigned.

If you have any questions or concerns, please contact the undersigned.

We look forward to hearing back from you.

Yours truly,

FASKEN MARTINEAU DuMOULIN LLP


Travis Lysak

TL/mt

cc Client



55 Standish Court, Suite 440
 Mississauga, ON L5R 4B2
 Phone (855) 225-5575

Closeout Invoice

Remit to:
Emkay Canada Leasing Corp.
P.O. Box 15005, Station A
Toronto, Ontario M5W 1C1

Account	Invoice #	Invoice Date
GE701	B94155	07/15/2018

TO: Gemini Corporation
 ATTN: Accounts Payable
 180, 839 - 5th Avenue S.W.
 Calgary, AB T2P 3C8

CONTRACT REQUIRES PAYMENT IN ADVANCE ON 1ST DAY OF MONTH. PAYMENT RECEIVED AFTER 08/15/2018 ARE SUBJECT TO CONTRACT LATE CHARGES.

Unit # Yr	Client # Make Model	Driver's Name Serial Number	In Service Out Service	Mileage Regn.	Cap Cost Accum Depr.	Residual Val. Sold Amount	Gain/Loss on Sale	- Credit or + Charge	UNIT TOTAL
681331	2077	HANNA, JOHN	04/08/13	245,508	37,754.83	2,642.99	-8,703.79	-8,703.79	
2013	GMC K1500	3GTP2WE71DG323475	06/02/18	AB	35,111.84	11,346.78			
VEHICLE SALE ANALYSIS FOR: 681331 SORT #: 6300 FABRICATION GENERAL APPEARANCE: ROUGH DEPRECIATION STATISTICS ENDING ODOMETER : 245,508 CENTS PER KILOMETER : 10.8 MONTHS IN SERVICE : 62 DOLLARS PER MONTH : \$ 425.94 KILOMETERS PER MONTH : 3,960 MONTHLY % OF COST : 1.13%						SELL FEE	150.00		
						AUCTION EXPENSE SURCHARGE	82.60		
						INTEREST ADJUSTMENT	1.91		
						GST TAX TOTAL	-423.46		
						UNIT TOTAL LESS GST	8,468.98		-8,892.74
						===== YOUR ACCOUNT CREDITED THIS AMOUNT IN CANADIAN DOLLARS -->			-8892.74

GST 896120953RT QST 1018444557TQ0001

All amounts in Canadian dollars.



55 Standish Court, Suite 440
Mississauga, ON L5R 4B2
Phone (855) 225-5575

Closeout Invoice

Remit to:
Emkay Canada Leasing Corp.
P.O. Box 15005, Station A
Toronto, Ontario M5W 1C1

Account	Invoice #	Invoice Date
GE701	B90166	06/15/2018

TO: Gemini Corporation
ATTN: Accounts Payable
180, 839 - 5th Avenue S.W.
Calgary, AB T2P 3C8

CONTRACT REQUIRES PAYMENT IN ADVANCE ON 1ST DAY OF MONTH. PAYMENT RECEIVED AFTER 07/15/2018 ARE SUBJECT TO CONTRACT LATE CHARGES.

Unit #	Client #	Driver's Name	In Service	Mileage	Cap Cost	Residual Val.	Gain/Loss	- Credit or	UNIT
Yr	Make	Model	Out Service	Regn.	Accum Depr.	Sold Amount	on Sale	+ Charge	TOTAL
691346	2094	MCINTOSH, JUSTIN	03/03/16	86,226	48,033.92	25,337.99	-7,186.01	-7,186.01	
2016	TOYOT	4RUNN	06/02/18	AB	22,695.93	32,524.00			
VEHICLE SALE ANALYSIS FOR: 691346 SORT #: 6300						SELL FEE		150.00	
GENERAL APPEARANCE: ROUGH			DEPRECIATION STATISTICS			AUCTION EXPENSE SURCHARGE		93.00	
ENDING ODOMETER : 86,226			CENTS PER KILOMETER : 18.0			GST TAX TOTAL		-347.15	
MONTHS IN SERVICE : 27			DOLLARS PER MONTH : \$ 574.44			UNIT TOTAL LESS GST --->		-6,943.01	-7,290.16
KILOMETERS PER MONTH : 3,194			MONTHLY % OF COST : 1.20%			Cntr: 003 Sort: 6300			
682238	2084	FS SHOP, POOL	12/16/13	240,123	63,663.50	13,051.15	-12,563.57	-12,563.57	
2014	DODGE	5500	06/02/18	AB	50,612.35	25,614.72			
VEHICLE SALE ANALYSIS FOR: 682238 SORT #: 6300 Fabrication						SELL FEE		150.00	
GENERAL APPEARANCE: ROUGH			DEPRECIATION STATISTICS			AUCTION EXPENSE SURCHARGE		80.04	
ENDING ODOMETER : 240,123			CENTS PER KILOMETER : 15.9			GST TAX TOTAL		-616.68	
MONTHS IN SERVICE : 53			DOLLARS PER MONTH : \$ 717.90			UNIT TOTAL LESS GST --->		-12,333.53	-12,950.21
KILOMETERS PER MONTH : 4,531			MONTHLY % OF COST : 1.13%			Cntr: 003 Sort: 6300 Fabrication			
680880	2074	FS HIAB, POOL	10/23/12	60,852	69,300.50		-39,285.00	-39,285.00	
2011	DODGE	5500	06/15/18	AB	69,300.50	39,285.00			
VEHICLE SALE ANALYSIS FOR: 680880 SORT #: 8100 Routine Mainten						SELL FEE		150.00	
GENERAL APPEARANCE: AVERAGE			DEPRECIATION STATISTICS			AUCTION EXPENSE SURCHARGE		91.50	
ENDING ODOMETER : 60,852			CENTS PER KILOMETER : 49.3			GST TAX TOTAL		-1,952.17	
MONTHS IN SERVICE : 67			DOLLARS PER MONTH : \$ 447.99			UNIT TOTAL LESS GST --->		-39,043.50	-40,995.67
KILOMETERS PER MONTH : 908			MONTHLY % OF COST : .65%			Cntr: 003 Sort: 8100 Routine Mainten			
681332	2078	KEYERA, POOL	04/24/13	67,791	40,149.49		-27,614.72	-27,614.72	
2013	CHEVY	2500H	06/02/18	AB	40,149.49	27,614.72			
VEHICLE SALE ANALYSIS FOR: 681332 SORT #: 8100 ROUTINE MAINTEN						SELL FEE		150.00	
GENERAL APPEARANCE: ROUGH			DEPRECIATION STATISTICS			AUCTION EXPENSE SURCHARGE		80.04	
ENDING ODOMETER : 67,791			CENTS PER KILOMETER : 18.5			GST TAX TOTAL		-1,369.24	
MONTHS IN SERVICE : 61			DOLLARS PER MONTH : \$ 205.49			UNIT TOTAL LESS GST --->		-27,384.68	-28,753.92
KILOMETERS PER MONTH : 1,111			MONTHLY % OF COST : .51%			Cntr: 004 Sort: 8100 ROUTINE MAINTEN			
683216	2090	WHITE, QUENTON	11/03/14	69,174	39,745.35	9,837.13	-16,277.59	-16,277.59	
2014	CHEVY	1500	06/02/18	AB	29,908.22	26,114.72			
VEHICLE SALE ANALYSIS FOR: 683216 SORT #: 8100 ROUTINE MAINTEN						SELL FEE		150.00	
GENERAL APPEARANCE: AVERAGE			DEPRECIATION STATISTICS			AUCTION EXPENSE SURCHARGE		80.04	
ENDING ODOMETER : 69,174			CENTS PER KILOMETER : 19.7			GST TAX TOTAL		-802.38	
MONTHS IN SERVICE : 43			DOLLARS PER MONTH : \$ 316.99			UNIT TOTAL LESS GST --->		-16,047.55	-16,849.93
KILOMETERS PER MONTH : 1,609			MONTHLY % OF COST : .80%			Cntr: 004 Sort: 8100 ROUTINE MAINTEN			

GST 896120953RT QST 1018444557TQ0001

All amounts in Canadian dollars.



Closeout Invoice

TO: Gemini Corporation
ATTN: Accounts Payable

Account	Invoice #	Invoice Date
GE701	B90166	06/15/2018

Unit #	Client #	Driver's Name	In Service	Mileage	Cap Cost	Residual Val.	Gain/Loss	- Credit or	UNIT
Yr	Make	Model	Out Service	Regn.	Accum Depr.	Sold Amount	on Sale	+ Charge	TOTAL
680879	2073	FS HIAB, POOL	10/23/12	80,152	69,300.50		-38,285.00	-38,285.00	
2011	DODGE	5500	06/15/18	AB	69,300.50	38,285.00			
VEHICLE SALE ANALYSIS FOR: 680879						SORT #: 8100 Routine Mainten		SELL FEE	150.00
GENERAL APPEARANCE: ROUGH						DEPRECIATION STATISTICS		AUCTION EXPENSE SURCHARGE	91.50
ENDING ODOMETER : 80,152						CENTS PER KILOMETER : 38.7		GST TAX TOTAL	-1,902.17
MONTHS IN SERVICE : 67						DOLLARS PER MONTH : \$ 462.92			
KILOMETERS PER MONTH : 1,196						MONTHLY % OF COST : .67%		UNIT TOTAL LESS GST --->	-38,043.50
									-39,945.67
									Cntr: 004 Sort: 8100 Routine Mainten
=====									
683517	2092	MARTIN, TERRY	01/27/15	121,528	57,096.60	17,129.00	-14,323.50	-14,323.50	
2015	DODGE	K1500	06/02/18	AB	39,967.60	31,452.50			
VEHICLE SALE ANALYSIS FOR: 683517						SORT #: 8100 Routine Mainten		SELL FEE	150.00
GENERAL APPEARANCE: ROUGH						DEPRECIATION STATISTICS		AUCTION EXPENSE SURCHARGE	67.50
ENDING ODOMETER : 121,528						CENTS PER KILOMETER : 21.1		GST TAX TOTAL	-705.30
MONTHS IN SERVICE : 40						DOLLARS PER MONTH : \$ 641.10			
KILOMETERS PER MONTH : 3,038						MONTHLY % OF COST : 1.12%		UNIT TOTAL LESS GST --->	-14,106.00
									-14,811.30
									Cntr: 004 Sort: 8100 Routine Mainten
=====									
									YOUR ACCOUNT CREDITED THIS AMOUNT IN CANADIAN DOLLARS --->
									-161596.86

GST 896120953RT QST 1018444557TQ0001

All amounts in Canadian dollars.

Appendix “K”

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

From: Greg DePace <GDepace@emkay.com>
Date: Aug 8, 2018 2:21 PM
Subject: Gemini Corporation vehicles
To: Travis Lysak <tlysak@fasken.com>
Cc:

Mr. Lysak,

I was forwarded your letter by Greg Grant regarding the subject vehicles.

I believe you failed to review the entirety of the agreement, which specifically details all of the **Default** provisions of the LEASE AGREEMENT, in SECTIONS 17 and 18. Gemini was in Default and failed to cure that Default in the time period provided. We provided written notice of the Default. The written notice was sent on December 17, 2017 to Michael Dueck. A copy of the notice is attached.

Once in Default, the "Gains on Sale" that you're Demanding, are no longer owed to Gemini. Please pay particular attention to the last sentence of Section 18 in the Lease Agreement. "Owner shall be entitled to retain all proceeds of any and all such sales...."

Also, as described in that Section 18, EMKAY is entitled to invoice for other fees...which we have not yet done. We can invoice for things such as; Repossession Fees, vehicle transit fees, additional rent until sale, liquidated Damage fees, and Legal Fees. We are entitled to claim all of those as a part of the Default.

Regardless, these amounts should invoice, plus the unpaid invoices that Gemini never paid of \$93,300 meet or exceed the amounts you are currently claiming. You are truly owed nothing.

Once you review the Section 18 of the Agreement, you'll realize you have no legal ground on which to stand. You may continue to send letters, but it will go nowhere. Any further letters will involve my attorney, Alison Manzer of Cassels Brock. The Lease Agreement is crystal clear, Gemini defaulted on their Payments and we followed the terms of the Agreement.

Best regards,
Greg DePace

gregory DePace

president

gdepace@emkay.com

phone: 630.775.6427

cell: 630.337.8017

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Appendix “L”

FASKEN

Fasken Martineau DuMoulin LLP
Barristers and Solicitors
Patent and Trade-mark Agents

350 7th Avenue SW, Suite 3400
Calgary, Alberta T2P 3N9
Canada

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+1 877 336 5350
F +1 403 261 5351

fasken.com

November 13, 2018
File No.: 301498.00003/19412

Hannah Roskey
Direct +1 403 261 6163
hroskey@fasken.com

By Email: smassie@casselsbrock.com

Cassels Brock & Blackwell LLP
Suite 2100, Scotia Plaza
40 King Street West
Toronto, ON M5H 3C2

Attention: Sam Massie

Dear Mr. Massie:

Re: Dispute between Gemini Corporation (“Gemini”), by and through its court-appointed receiver, FTI Consulting Canada Inc. (the “Receiver”), and Emkay Canada Fleet Services Corp., formerly Jim Peplinski’s Auto Leasing Ltd. (“Emkay”)

Further to your email to Travis Lysak dated August 20, 2018, and the subsequent conversations between Deryck Helkaa and Dustin Olver of the Receiver and Larry Ellis with Cassels Brock & Blackwell LLP, the Receiver and Emkay continue to disagree with respect to the entitlement to proceeds (the “**Sale Proceeds**”) collected from the sale of certain vehicles leased from Emkay by Gemini (the “**Vehicles**”).

Enclosed as **Attachment A** are Close Out Invoices Nos. B90166 and B94155, which were provided to the Receiver by Emkay (the “**Close Out Invoices**”). The Close Out Invoices set out the Vehicles, the net Sale Proceeds for the Vehicles, and the corresponding equity in each Vehicle.

We understand that Emkay’s position on this matter is that, pursuant to section 17 and 18 of the Master Vehicle Lease Agreement dated February 9, 2009 between Gemini and Jim Peplinski’s Auto Leasing Ltd., now Emkay (the “**Agreement**”), Emkay is permitted to retain the Sale Proceeds.

The Receiver disagrees that section 17 and 18 of the Agreement provide a complete answer to the Receiver’s claim. In particular, the Receiver notes:

- (a) the notice of default dated December 14, 2017 that was addressed to Gemini (the “**Notice**”) was never received by Gemini. The Notice indicates that it was sent by email to Michael Dueck, Controller, but Mr. Dueck has advised the Receiver that



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he does not recall receiving or have any record of receiving the Notice (whether by email or otherwise);

- (b) even if the Notice was delivered to Gemini, proper notice of default was not provided. The Agreement requires that the leased vehicles be specified in the notice of default, that the notice of default be sent to the Executive Vice President and Chief Financial Officer in writing or by facsimile, and that Gemini be afforded 10 days to remedy the default. These requirements were not met in the Notice. The Notice does not list the Vehicles, only allowed 7 days to remedy the default, and was not sent to the Executive Vice President and Chief Financial Officer;
- (c) Mr. Dueck has further advised the Receiver that, in December of 2017, the parties discussed the amounts owed by Gemini to Emkay and possible solutions to allow Gemini to retain the Vehicles. As a result of these discussions, Gemini issued Cheque No. 000171 to Emkay on December 19, 2017 in the amount of \$48,384.76, which was cashed by Emkay. A copy of this cheque is enclosed as **Attachment B**;
- (d) after Cheque No. 000171 was issued by Gemini and cashed by Emkay, no further action was taken with respect to the alleged default and no steps were taken by Emkay to recover the Vehicles. In fact, the conduct of Gemini and Emkay suggests that Emkay waived or retracted the Notice, or that it had not been given at all. For example:
 - (i) in April and May 2018, representatives for Gemini and Emkay exchanged several emails regarding the equity in the Vehicles, the process to sell off the Vehicles, the locations of the Vehicles, and the correct person to issue a cheque for the Sale Proceeds to at Gemini. Copies of these emails are enclosed with this letter as **Attachment C**;
 - (ii) at no time during these exchanges was it mentioned that Emkay intended to retain the Sale Proceeds. In fact, on April 9, 2018, Emkay sent Gemini an email attaching a statement of Gemini's account with Emkay, which showed a credit in the amount of \$47,623.73 relating to proceeds from the Vehicles sold. A copy of this email chain is enclosed as **Attachment D**; and
 - (iii) further, at no time after the date of the Notice did Emkay take steps to seize any of the Vehicles.
- (e) on April 19, 2018, the Consent Receivership Order was filed. However, Emkay did not mention the Notice to the Receiver, nor did Emkay demand that the Receiver return the Vehicles to Emkay in accordance with the default provisions of the Agreement. In fact, Emkay's conduct continued to imply a waiver or retraction of the Notice, or that it had not been given at all:



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- (i) on April 24, 2018, Emkay provided Gemini with an equity analysis of the 10 Vehicles still under lease. On April 25, 2018, following discussions between the Receiver, Gemini, and Emkay, Gemini and the Receiver requested that Emkay begin the process of selling off the Vehicles. The Receiver approved this request on the basis that the equity in the Vehicles would be paid to Gemini. A copy of this email chain is enclosed as **Attachment E**. Based on these conversations and this correspondence, the Receiver also coordinated the collection and delivery of the Vehicles to Emkay;
- (ii) on May 2, 2018, Emkay issued Cheque No. 300517 in the amount of \$4,536.43 to Gemini for “G21024 Disposal Price”. A copy of this cheque is attached as **Attachment F**. It appears to be related to equity owed to Gemini from the Sale Proceeds of one of the Vehicles;
- (iii) on June 15, 2018, Emkay issued Close Out Invoice No. B90166 to Gemini. A copy of this invoice is included in **Attachment A**, and lists a credit amount of \$161,596.86 for 7 of the Vehicles;
- (iv) after all of the foregoing, it was only on June 20, 2018, two months after the beginning of the Receivership, that Emkay first advised the Receiver that, pursuant to section 18 of the Agreement, the Sale Proceeds would not be paid to Gemini. This email correspondence is attached as **Attachment G**;
- (v) even after this, Emkay still issued Close Out Invoice No. B94155 dated July 15, 2018 to Gemini, which lists a credit amount of \$8,892.74 for an additional Vehicle. A copy of this invoice is included in **Attachment A**; and
- (vi) on August 8, 2018, Emkay advised Travis Lysak that Gemini was in default of the Agreement and that, pursuant to section 17 and 18, nothing is owed to Gemini. This email correspondence is enclosed as **Attachment H**.

In addition to the deficiencies in the Notice, if it was given at all, Emkay repeatedly represented to the Receiver that, if the Vehicles were returned to Emkay, the Vehicles would be sold and the Sale Proceeds would be paid to Gemini, less any residual value owing to Emkay as set out in the Close Out Invoices. Since December of 2017, both before and after the Receivership commenced, the parties have conducted themselves on that basis. Further, the Receiver relied on the Close Out Invoices and other documents provided by Emkay showing the equity in the Vehicles when making the decision to return the Vehicles to Emkay.

Again, based on the foregoing, the Receiver does not agree that section 17 and 18 of the Agreement provide an answer to the Receiver’s claim.



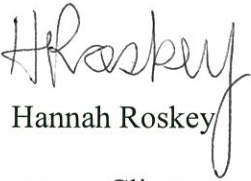
FASKEN

Further, regardless of any other factor, Emkay has benefitted from the Receiver collecting and returning the Vehicles. This assistance was provided on the basis that the Sale Proceeds would be returned to Gemini.

The Receiver will be bringing a court application to seek recovery of the Sale Proceeds. We anticipate filing such application within the next two weeks. If, in the interim, Emkay would like to discuss the settlement of this matter, please contact me directly.

Yours truly,

FASKEN MARTINEAU DuMOULIN LLP


Hannah Roskey

cc: Client



Appendix “M”



November 27, 2018

BY E-MAIL

lellis@casselsbrock.com

tel: 416.869.5406

Fasken Martineau DuMoulin LLP
350 7th Avenue SW, Suite 3400
Calgary, Alberta T2P 3N9

Attention: Hannah Roskey

Ms. Roskey:

Re: Dispute between Gemini Corporation ("Gemini") and Emkay Canada Fleet Services Corp. ("Emkay")

Thank you for your letter dated November 13, 2018 (the "**Receiver's Correspondence**"). We understand that your firm acts for FTI Consulting Canada Inc. (the "**Receiver**") in its capacity as receiver of Gemini's assets and undertaking.

We act for Emkay.

This letter is to respond to the points noted in the Receiver's Correspondence and to provide you with additional information for consideration in connection with the "Sale Proceeds".

Response to Your Letter

We respond to the points made in the Receiver's Correspondence in the same order they were provided for therein.

(a) On December 14, 2018, Emkay issued a notice of default to Gemini. Attached to this letter as **Schedule "A"** is a copy of the default notice (the "**Default Notice**"). Your client takes the position that the Default Notice was never received by Gemini and therefore of no legal effect. This isn't true. Attached to this letter as **Schedule "B"** is a delivery service invoice, dated December 16, 2017, wherein UPS confirms that they delivered a letter addressed to Michael Dueck to Gemini's registered address. Emkay completed a follow up inquiry with UPS on November 19, 2018 for additional particulars. Attached to this letter as **Schedule "C"** is a copy of the delivery notification provided to us by Emkay that sets out that on December 15, 2017, at 10:31 in the morning, a parcel was delivered to a person at the customer's location. Per the notices provision of the Master Vehicle Lease Agreement, dated February 9, 2019 (the "**Agreement**") the notice was to be sent in "writing", which it was, and "may" be sent to the address noted therein, which it was. All of this is confirmed by the UPS delivery notification.

(b) In this section you note the following:



- a. "The Agreement requires that the leased vehicles be specified in the notice of default". This isn't accurate. The Agreement states that "the Owner shall have the right to take immediate possession of all Leased Vehicles specified in such declaration...". Nowhere does it state that a notice, to be valid, must state the vehicles relating to the default. In any event, the Default Notice states, among other things, "The unpaid invoices in the amount of \$93,315.09 broken down as follows: (and copies of all unpaid or partially paid invoices are attached)". The invoices attached to the Default Notice clearly identify the vehicles related to the Default Notice, which simply means that Emkay did, pursuant to the Agreement, have the right, upon the expiry of the ten day cure period, to immediately repossess the leased vehicles, but in any event had full access to all remedies noted in paragraph 18 of the Agreement.
- b. "that the notice of default be sent to the Executive Vice President and Chief Financial Officer in writing or by facsimile". This isn't accurate. The Agreement states that the Default Notice "may be delivered...". The fact that the Default Notice was sent to Gemini's controller isn't fatal. In fact, Emkay is currently reviewing the file to locate correspondence wherein Mr. Dueck directs that all correspondence should be directed towards him.
- c. "that Gemini be afforded 10 days to remedy the default". This isn't accurate. While it is true that pursuant to the Agreement Gemini is afforded ten days from receipt of written notice to cure a default, it is entirely misleading to suggest that a default notice must state the cure period. The Agreement defines the cure period. The cure period is ten days from the date of receipt of written notice. Gemini received the Default Notice on December 15. Gemini didn't cure the default. In fact, the default continues to date.

The fundamental conclusion is that the Default Notice was delivered to the required address, care of Gemini's controller and in complete compliance with the terms of the Agreement. Arguments to the contrary are simply attempts to rely upon form over substance, despite the fact that form was entirely satisfied.

- (c) In this section you contradict your arguments from points a) and b) and state that Mr. Dueck was aware of the default with respect to payment and took steps to prevent Emkay from repossessing the vehicles in default. Its concerning that your client is aware of the fact that Gemini knew it was in default and yet you still set out your arguments in paragraphs a) and b). I would remind you that your client is a court officer charged with looking out for all interests, including the interests of all creditors. Its concerning that the Court's officer is creating legal arguments that it knows are untrue, to the prejudice of the very creditors it is charged with protecting.

Also in this section you note that a payment was made by Gemini to Emkay by way of cheque in the amount of \$48,384.76. Emkay is investigating this payment and will revert in the next week to identify whether it was a payment on account of the previously noted



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default amount, or in connection with another amount due by Gemini to Emkay. In any event the payment was insufficient to cure the default and has no impact on Emkay's ultimate legal rights.

(d) In this section it appears that your conclusion is that Emkay waived or retracted the Default Notice by its actions or omissions. Section 25 of the Agreement is a full answer to any argument the Receiver has in this regard. Section 25 states, among other things, that "If the Owner fails in any one or more instances to insist upon the performance of any of the terms of this Agreement, or to exercise any right conferred by this Agreement, or the owner waives any breach of any term of this Agreement, the Owner's failure or waiver shall not be construed as thereafter waiving any term or right in this Agreement, and this Agreement shall continue and remain effective as if no failure or waiver had occurred." Emkay's position on this is that this paragraph governs above any and all argument that the Receiver has in connection with usage or estoppel through conduct. If the Receiver intends to suggest that Emkay waived its rights it will have to establish that Emkay signed a release to this effect. Otherwise, we expect that the Court's officer will accept the plain meaning of this paragraph and cease arguments regarding waiver. Additionally, we note that your interpretations of acceptance in the correspondence you highlight fail to consider the clear wording of certain emails, including but not limited to:

- a. In Sue's email to Michael Dueck dated May 11, 2018, Sue states "Hi Michael, Further to my email this morning, we request that the outstanding invoice from Good Guys gets resolved prior to Emkay issuing any credits on account. Please advise once this has been done"; and
- b. In Sue's email to Michael Dueck dated June 4, 2018, Sue states "Please note, your account must be in good standing with us and all invoices paid up to date".

These emails make it clear that Sue wouldn't consider payment of any amount to Gemini until Emkay's account was paid in full, which is converse to the picture you paint. Additionally, Sue Scheidl was an entry level employee, working under the title of "client services specialist". She was in effect the front line, first level customer sales representative. In this regard Sue had no right to alter the terms of the Agreement. Please see paragraph 29 of the Agreement which specifically provides for this. In any event, Michael Dueck, knew or ought to have known that Sue wasn't authorized to amend/compromise/alter or otherwise impact the Agreement and more specifically Emkay's rights under the Agreement.

In summary, the Default Notice was properly provided for in both substance and form. Gemini didn't cure the default and still hasn't cured the default. Gemini is contractually prevented from arguing waiver and Gemini was well beyond the scope of the Agreement in trying to cause Sue Scheidl to make commitments that she had no authority to make. The result is that Gemini did commit a default, was properly notified, the breach wasn't cured and Emkay has full recourse to any and all remedies pursuant to the Agreement, including the following:

“The Owner may, but shall not be obligated to, sell such Leased Vehicles or any of them, by public or private sale(s) for cash or upon credit and at wholesale or retail. In the event of any such sale(s), the Owner shall, in addition to all other rights and remedies hereunder, be entitled to retain as a genuine pre-estimate of liquidated damages and not as a penalty, all proceeds of any and all such sales, and to recover from the lessee all damages, additional rent or other expenses in respect of the Leased Vehicles sold, determined in respect of each Leased Vehicle as provided by law or in the Schedule therefore.”

In other words, the proceeds from the sale of the vehicles is for the benefit of Emkay.

As you know, the Receiver takes the Agreement as it finds it and has no authority to amend the terms of the Agreement. The terms clearly state that should a default occur, notice be provided and no cure take place, that Emkay has the authority to sell the vehicles and retain the proceeds. The arguments noted in the Receiver’s Correspondence rely upon form and technicalities, fail to quote the terms of the Agreement and omit key facts.

In addition to the argument that Emkay is entitled per the clear terms of the Agreement, we also intend to argue the following:

1. Pursuant to Section 16 of the Agreement, Emkay is entitled to a full indemnity from Gemini, which Indemnity covers any and all claims for any amounts arising under the Agreement, including but not limited to unpaid amounts, losses, claims, liabilities, fines, costs or expenses of whatever kind or nature including legal fees, pertaining to or relating in any respect to the Leased Vehicles. As noted in each of my prior calls with the Receiver, Gemini currently owes Emkay \$85,496.17 in unpaid invoices, \$14,439.29 in late charges, sales fees of \$2,316.01 in connection with the auctioning of the vehicles, accrued interest on the balance which tracks at 12% per annum and legal fees, which to date are approximately \$20,000. Emkay has the clear right to set off these amounts against “Sale Proceeds”, which leaves less than \$40,000 of “Net Sale Proceeds”. Additionally, Emkay would be entitled to continued protection under the indemnity for any future expenses it has to spend in Court to fight the Receiver’s claim, which would quickly erode any Net Sale Proceeds balance and make a court hearing moot as there would be nothing left to fight over.
2. In a recent decision of the Court of Queen’s Bench of Alberta, in the Connacher Oil and Gas Limited CCAA matter, the Court held that Emkay’s leasing arrangements constitute true leases as opposed to financing leases. Attached to this letter as Schedule “D” is a copy of the reasons of this case. The result of Emkay having a true lease is that it is the owner of the vehicles, not subject to Personal Property Security Act (Alberta) (the “PPSA”). As the owner of the leased vehicles and pursuant to the terms of the Agreement, Gemini forfeited any rights to any residual proceeds when it breached the Agreement and failed to cure.
3. Even if the Receiver wants to argue that the net proceeds are subject to the PPSA, Emkay is the first ranking secured creditor. Emkay’s registrations relate to the vehicles,



or the proceeds of the vehicles and Emkay's registrations are made first in time vis a vis ATB. The result is that Emkay would be the first to recover any proceeds, up to the amount they are owed, ahead of any other creditor. This secured right continues if the Receiver forces litigation and increases Emkay's costs, as Emkay will simply look to recover same per the aforementioned indemnity.

4. Please note that we also intend to argue that the funds recovered from the sale of the vehicles was fully earned at the point in time that the sale proceeds were collected. All future amounts due and owing, by the Receiver (as custodian of the Agreement) and under the indemnity would be new debts/obligations, payable as a first lien against the estate. In this regard the legal fees incurred by Emkay in responding to the Receiver's demands for payment, including this correspondence and any future hearing, would be obligations directly due and owing per the Agreement and by the Receiver. If we pursue litigation we will be requesting that the Receiver increase its holdback by \$100,000 in the coming distribution motion to ensure proper protection is provided for.

We trust that the new information provided for in this letter together with the analysis of the Agreement and the additional legal arguments noted are sufficient for the Receiver to conclude its review of a recovery as against Emkay.

If the Receiver has any questions in connection with the information/analysis provided for herein we are happy to discuss.

Sincerely,

Cassels Brock & Blackwell LLP

A handwritten signature in blue ink, appearing to read "LE", is written over a light blue circular stamp.

Larry Ellis
Partner

LE/le

SCHEDULE "A"

Attached.



NOTICE OF DEFAULT

December 14, 2017

Mr. Michael Dueck
Gemini Corporation
180, 839-5th Avenue S.W.
Calgary, AB T2P3C-8

Dear Mr. Dueck:

This notice is to advise you that your account is in default in accordance with the terms of your lease agreement.

The unpaid invoices in the amount of \$93,315.09 broken down as follows: (and copies of all unpaid or partially paid invoices are attached)

Rental Invoices:	\$42,587.59
FMS Invoices:	\$50,727.70

Please address this issue immediately to avoid further action, which ultimately may include repossession of the vehicles. Payment of all invoices is required to be received by December 21, 2017..

This cannot be handled by regular mail to our lock box. It must be handled by overnight courier (next day delivery) to the address below or by wire transfer to the account information provided.

Courier address for payments:

JP Morgan Chase NA Toronto Branch
Attn: Lockbox 15005, Station A
200 Bay Street, Suite 1800
Toronto, ON M5J 2J2

Electronic Payments:

Instructions to transfer funds to Emkay Canada Fleet Services Corp.

Pay to (intermediary bank): (Swift field 56 A)	SWIFT BIC: ROYCCAT2 Royal Bank of Canada Toronto 180 Wellington St. Toronto, ON M5J 2H5
--	--

Beneficiary Bank: (Swift field 57 A)	SWIFT BIC: CHASCATTCTS JPMorgan Chase Bank, N.A., Toronto Branch Account No: 07172-100-012-4
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Beneficiary: (Swift field 59)	Emkay Canada Acct# 4673635102
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If you have any questions, you may contact me at (630) 775-6471 or by email to bwojtal@emkay.com.

Sincerely,

Barbara Wojtal
Sr. A/R Collections Manager

SCHEDULE "B"

Attached.



Delivery Service Invoice

Invoice Date **December 16, 2017**

Invoice Number **000003147A507**

Shipper Number **03147A**

Outbound

UPS CampusShip (continued)

Pickup Date	Tracking Number	Service	Postal Code	Zone	Weight	Published Charge	Incentive Credit	Billed Charge
12/14	1Z03147A1790351882	Expedited Letter	J4Y3C1	303	Letter	21.60	-6.91	14.69
		Fuel Surcharge				2.21	-0.71	1.50
		Total				23.81	-7.62	16.19
	1st ref: SERVICE PLUS UserID: eastreception		2nd ref: LA1847					
	Sender : Receptionist - Toron Emkay Toronto 109 Atlantic Avenue Toronto ON M6K1X4 CA			Receiver: ERIC CLOUTIER L.A. HEBERT LTEE 9700 PLACE JADE BROSSARD QC J4Y3C1 CA				
	1Z03147A1790758854	Expedited Letter	H7C2S9	303	Letter	21.60	-6.91	14.69
		Fuel Surcharge				2.21	-0.71	1.50
		Total				23.81	-7.62	16.19
	1st ref: SERVICE PLUS UserID: eastreception		2nd ref: EQ1014					
	Sender : Receptionist - Toron Emkay Toronto 109 Atlantic Avenue Toronto ON M6K1X4 CA			Receiver: CHANTAL BERNARD EQUIPEMENT COMAIRCO LTEE 5535 Rue Ernest-Cormier LAVAL QC H7C2S9 CA				
	1Z03147A1791313279	Expedited Letter	T2P3C8	306	Letter	22.05	-7.06	14.99
		Fuel Surcharge				2.26	-0.72	1.54
		Total				24.31	-7.78	16.53
	UserID: eastreception		2nd ref: 11869j					
	Sender : Receptionist - Toron Emkay Toronto 109 Atlantic Avenue Toronto ON M6K1X4 CA			Receiver: Michael Dueck GEMINI CORPORATION 180, 839 - 5th AVENUE S.W. CALGARY AB T2P3C8 CA				
	1Z03147A1791422320	Expedited Letter	T1Y7J7	306	Letter	22.05	-7.06	14.99
		Fuel Surcharge				2.26	-0.72	1.54
		Total				24.31	-7.78	16.53
	1st ref: SERVICE PLUS UserID: eastreception		2nd ref: exp					
	Sender : Receptionist - Toron Emkay Toronto 109 Atlantic Avenue Toronto ON M6K1X4 CA			Receiver: LINDA GIBB NUFARM AGRICULTURE INC. 350 - 2618 HOPEWELL PLACE NE CALGARY AB T1Y7J7 CA				
	1Z03147A1793021376	Expedited Letter	N6N1N7	302	Letter	21.45	-6.86	14.59
		Fuel Surcharge				2.20	-0.70	1.50
		Total				23.65	-7.56	16.09
	1st ref: SERVICE PLUS UserID: eastreception		2nd ref: W31258					
	Sender : Receptionist - Toron Emkay Toronto 109 Atlantic Avenue Toronto ON M6K1X4 CA			Receiver: Ike Connolly WINDSOR FACTORY SUPPLY LTD. 645 WILTON GROVE ROAD LONDON ON N6N1N7 CA				

SCHEDULE "C"

Attached.



ATTN : JESSICA JEWELL
PHONE : (416)207-3001

DELIVERY NOTIFICATION

INQUIRY FROM: INDERA SINGH
EMKAY INC
805 WEST THORNDALE AVE
ITASCA IL 60143

SHIPMENT TO: GEMINI
839 5 AVE SW STE 4
CALGARY AB T2P

Shipper Number.....03147A

Tracking Identification Number...1Z03147A1791313279

According to our records, 1 parcel was delivered on 12/15/17 at 10:31 A.M., and left with a **PERSON AT YOUR CUSTOMER'S LOCATION.**

SCHEDULE "D"

Attached

A. CASES AND ISSUES OF NOTE

(1) IMPLICATIONS OF LEASE CHARACTERIZATION IN CCAA PROCEEDINGS

Two recent lease characterization cases in *Companies' Creditors Arrangement Act* (Canada) ("CCAA") proceedings:

- Connacher Oil and Gas Ltd. v. Emkay Canada Leasing Corp., 2017 ABQB 769 ("Connacher")
- Atlantica Diversified Transportation Systems Inc. (Re), 2018 NSSC 77 ("Atlantica")

Connacher Case

FACTS:

Emkay ("Lessor") purchased 23 vehicles to lease to Connacher ("Lessee").

On May 17, 2016, Dario J granted an Initial Order under the CCAA, which provided for a stay of proceedings up to and including June 16, 2016 (subsequently extended until January 31, 2018).

In CCAA proceedings, Lessee claimed that the lease was a financing lease and did not fall within s. 11.01(a) of the CCAA.

- Lease characterization is important, because Section 11.01(a) of the CCAA provides as follows:

"No order made under section 11 or 11.02 has the effect of prohibiting a person from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided after the order is made."

Because Lessee viewed this lease as a financing lease, Lessee had not paid any rent to Lessor since the Initial Order.

Lessor filed an application seeking an order requiring Lessee to pay the post-CCAA filing rent.

Note: Because Lessee could obtain replacement vehicles at a lower cost, two vehicles were returned to Lessor in December 2016 and the rest of the vehicles were picked up by Lessor in August 2017.

ISSUE:

Is the lease a true lease or a financing lease for the purposes of s. 11.01(a) of the CCAA?

HOLDING:

While some aspects of the lease suggest a financing arrangement, the lease was a true lease when the agreement and the transaction were viewed as a whole.

REASONING:

In a true lease, the debtor corporation is paying for the use of the lessor's property, and s. 11.01(a) of the CCAA allows the lessor to be compensated for the debtor's use during the pendency of the CCAA proceedings.

"[A] true lease, in essence, is a bailment contract such that ownership of the leased goods remain[s] with the bailor/lessor and the bailee/lessee pays for 'use' of those goods".

Under a financing lease, the debtor is not using the lessor's property, but is earning equity in the property with each payment, i.e. the payments are debt obligations (Re Nortel Networks Corp).

The CCAA protects parties who provide goods and services to the debtor, but not "creditors" to whom the debtor has "debt obligations".

Court referred to all of the recent leading cases on lease characterization, including (i) *Smith Brothers Contracting Ltd., Re* (1998) (BCSC) ("Smith Brothers case"), the Cow Harbour decisions from the Alberta courts and *Re 840504 Alberta Ltd*, (2011) (ABQB) (the "Skyreach case").

Court noted that the principles that the Alberta courts applied in the Cow Harbour cases and in the Skyreach case apply with equal force in the current case.

The relevant principles from those earlier cases are as follows:

- For a court to determine whether it is dealing with a true lease or a financing lease, it must look to the substance of the arrangement between the parties, rather than the form of the arrangement.
- The court must examine a number of factors, some of which are contained in the document itself, some of which relate to the manner in which the parties effected their arrangement, and some of which deal with the nature of the parties themselves.
- No one factor is determinative, although some might be more indicative of the nature of the lease. The objective of a court's analysis is to determine the parties' intent at the time they entered into their arrangement, and the document itself may help in that determination.
- Courts must show particular deference to the wording of the document where the parties are sophisticated commercial parties.

- A court must interpret an agreement as at the date it was made, as the exercise is intended to discern the intention of the parties at the time the contract was formed.
- When conducting this analysis, a Court cannot overemphasize the importance of Smith Brothers case in its analysis.

The court evaluated the circumstances based on a 16 prong checklist from the Smith Brothers case.

For most items on the checklist from the Smith Brothers case, the court noted that such items were generally indicative of a true lease, a red herring or neutral.

The one factor that required more discussion related to who bore the risk of loss in a non-default scenario (i.e., voluntary early termination by Lessee or at scheduled termination of the lease term).

- The lease requires that Lessee must pay the deficiency plus a 1.5% disposal fee of the gross proceeds as additional rent to Lessor.
- This was similar in the Skyreach case, which was determined to be a financing lease.
- The difference in this case is that the deficiency is subject to a threshold percentage of 20%; that is, the present value of all payments cannot exceed 80% of the vehicle's fair market value.

Courts have held that “where the lessee is liable under an open-end lease for any deficiency in the sale of the leased property following its return at the end of the scheduled lease term, the current line of authority is to treat such a lease as a security lease, because the lessor is “guaranteed” to receive a minimum return on the transaction”.

Court distinguishes this case from those open-end leases cases, because those cases were referring to the lessee being liable for the total amount of the deficiency, meaning that the entire risk of loss is imposed on the lessee.

Atlantica Diversified Transportation Systems Inc. (Re), 2018 NSSC 77

FACTS:

ADTS (“Lessee”) was a large trucking company that leased trucks and trailers from Canadian Western Bank (“CWB”).

By August 2017, Lessee was not paying its lease payments.

In November 2017, Lessee made an application for a CCAA plan of compromise/arrangement.

In February of 2018, the stay of proceedings were lifted.