

COURT FILE NUMBER 2001-05482  
 COURT COURT OF QUEEN'S BENCH OF ALBERTA  
 JUDICIAL CENTRE CALGARY

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF 2324159 ALBERTA INC.

DOCUMENT **APPLICATION**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT  
 McCarthy Tétrault LLP  
 4000, 421 – 7<sup>th</sup> Avenue SW  
 Calgary, AB T2P 4K9  
 Attention: Sean Collins / Pantelis Kyriakakis / Nathan Stewart  
 Tel: 403-260-3531 / 3536 / 3534  
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### **NOTICE TO RESPONDENT(S)**

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

You have the right to state your side of this matter before the master/judge.

To do so, you must be in Court when the application is heard, as shown below:

Date: September 2, 2021  
 Time: 10:00 a.m.  
 Where: Calgary Courts Centre via WebEx. Videoconference details are enclosed as Schedule "A" to this Application.  
 Before Whom: The Honourable Justice K.M. Eidsvik

Go to the end of this document to see what else you can do and when you must do it.

**Remedy claimed or sought:** FTI Consulting Canada Inc., in its capacity as the court-appointed monitor (the "**Monitor**") of 2324159 Alberta Inc. ("**ResidualCo**") pursuant to the Initial Order granted under the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**") on May 1, 2020, as subsequently amended and restated on May 11, 2020 (collectively, the "**ARIO**"), the Amended Reverse Vesting Order, granted on March 31, 2021 (the "**Amended RVO**"), and the Order (Enhanced Monitor's Powers), dated May 14, 2021, (the "**EMP Order**"), all in the within proceedings (the "**CCAA Proceedings**") applies for two (2) orders, substantially in the forms attached as Schedule "**B**" and "**C**" hereto:

1. Declaring that the time for service of this application (the “**Application**”) and the Eighteenth Report of the Monitor, dated August 16, 2021 (the “**Eighteenth Monitor’s Report**”), is abridged, that the Application is property returnable on September 2, 2021, that service of the Application and the Eighteenth Monitor’s Report, on the service list maintained by the Monitor in these CCAA Proceedings (the “**Service List**”), is good and sufficient, and that no persons other than those on the Service List are entitled to service of the Eighteenth Monitor’s Report, the Application, or any orders arising therefrom.
  
2. As substantially set out in Schedule “**B**” (the “**Action Approval, Stay Extension, and Distribution Order**”) hereto:
  - (a) approving the activities and conduct of the Monitor;
  
  - (b) extending the Stay Period, as defined in paragraph 13 of the ARIO, up to and until December 3, 2021;
  
  - (c) authorizing and empowering the Monitor to make distributions to ATB Financial (“**ATB**”) and Canadian Western Bank (“**CWB**”), as set out in the Eighteenth Monitor’s Report (collectively, the “**Proposed Distributions**”) subject to any holdbacks, as determined by the Monitor to be necessary in connection with funding the conclusion of these CCAA Proceedings;
  
  - (d) sealing Confidential Appendix “**A**” to the Eighteenth Monitor’s Report (the “**Confidential Appendix**”), on the Court file, until the conclusion of the CCAA Proceedings; and,
  
  - (e) such further and other relief as counsel for the Monitor may advise and this Honourable Court considers to be just and appropriate in the circumstances.
  
3. As substantially set out in Schedule “**C**” (the “**Cost Allocation Order**”) hereto:
  - (a) approving the cost allocation methodology proposed by the Monitor, as set out in paragraphs 22 - 26 and Appendix “**B**” of the Eighteenth Monitor’s Report (the “**Proposed Cost Allocation**”); and
  
  - (b) directing each of the persons listed in the Proposed Cost Allocation (collectively, the “**Affected Creditors**”) to pay their respective obligations, in respect of the

Proposed Cost Allocation, to the Monitor, and authorizing the Monitor to deduct any amounts owing by any Affected Creditors under and pursuant to the Proposed Cost Allocation from any distributions, proceeds, or funds which such Affected Creditors are entitled to and are held by or on behalf of ResidualCo; and,

- (c) Such further and other relief as counsel for the Monitor may advise and this Honourable Court considers to be just and appropriate in the circumstances.
4. Declaring that service of any orders arising from this Application may be effected by email, facsimile, registered mail, courier, regular mail, or personal delivery, or pursuant to the CaseLines Service Order, granted on May 29, 2020 (the “**CaseLines Service Order**”), in the within CCAA Proceedings, to any persons on the Service List, and that such service shall constitute good and sufficient service of all such orders and that no other persons are entitled to be served with a copy of such orders.

**Grounds for making this Application:** The grounds for the Application are as follows:

**Background**

5. The Monitor was appointed as the monitor of JMB Crushing Systems Inc. (“**JMB**”) and 2161889 Alberta Ltd. (“**216 Alberta**”, 216 Alberta and JMB are collectively referred to as, the “**Initial Applicants**”), pursuant to the ARIO.
6. The ARIO, among other things: (i) granted a stay of proceedings up to and including July 31, 2020 (the “**Stay Period**”); (ii) approved the sale and investment solicitation process attached as Schedule “A” to the ARIO (the “**SISP**”); (iii) appointed the Monitor as monitor of the Initial Applicants under these CCAA Proceedings; (iv) appointed Sequeira Partners (the “**Sale Advisor**”) as sale advisor under the SISP; and, (v) authorized the Monitor, the Sale Advisor, and the Initial Applicants to conduct the SISP and carry out their obligations thereunder.
7. The Monitor and the Sale Advisor marketed the business and assets of the Initial Applicants pursuant to and in accordance with the terms of the SISP.
8. Mantle Materials Group, Ltd. (“**Mantle**”) put forward the selected Phase 2 bid. The Mantle Phase 2 bid was subsequently negotiated and expanded until it ultimately evolved into a series of transactions which contemplated the acquisition of a large portion of the Initial

Applicants' core assets, properties, and operations (collectively, the "**Mantle Transactions**").

9. On March 31, 2021, this Honourable Court approved the Amended and Restated Asset Purchase Agreement, dated March 3, 2021, between the Initial Applicants and Mantle along with the Mantle Transactions, pursuant to the: (i) Amended Sale Approval and Vesting Order, granted on March 31, 2021; (ii) Amended Reverse Vesting Order, granted on March 31, 2021 (the "**Amended RVO**"); (iii) Amended Assignment Order, granted on March 31, 2021; and, (iv) Amended Plan Sanction Order, granted on March 31, 2021 (collectively, the "**Amended Mantle Orders**").
10. Pursuant to the Amended RVO, all remaining assets (collectively, the "**Residual Assets**") and remaining liabilities (collectively, the "**Residual Liabilities**") of the Initial Applicants not subject to or assumed in connection with the Mantle Transactions were transferred to ResidualCo; which was simultaneously added as a debtor company to the CCAA Proceedings.
11. On April 29, 2021, the Mantle Transactions closed. As result of the Mantle Transactions closing: (i) the Initial Applicants emerged from these CCAA Proceedings; (ii) ResidualCo is the sole remaining debtor company in these CCAA Proceedings and holds all Residual Assets and Residual Liabilities; and, (iii) ResidualCo has no management, directors, or current governance structure.
12. Despite the closing of the Mantle Transactions and the emergence of the Initial Applicants, as operating entities, a number of issues and matters remain; including, among others, the allocation of costs and authorization of distributions (collectively, the "**Remaining Matters**").

### **Monitor's Enhanced Powers**

13. As a result of ResidualCo's lack of management and the need to address the Remaining Matters, the Monitor sought and obtained the EMP Order. Pursuant to the EMP Order, the Monitor was, *inter alia*, authorized and empowered to:
  - (a) exercise all powers of ResidualCo under paragraphs 4 to 7 and 10 of the ARIO (in each case for and on behalf of ResidualCo and without any personal liability therefor);

- (b) take possession and control of all of ResidualCo's bank accounts, accounts receivable, and any and all proceeds arising from or in connection with the Residual Assets;
- (c) pay creditors or other claimants in accordance with any order made in these CCAA Proceedings;
- (d) attend to, complete, seek approval of, and implement, a cost allocation with respect to the Initial Applicants, ResidualCo, and these CCAA Proceedings; and,
- (e) take any steps reasonably incidental to the exercise of such powers or the performance of any statutory obligations, or as may otherwise be necessary or desirable to conclude the within CCAA Proceedings.

#### **The Monitor's Activities Since the EMP Order**

14. Since the EMP Order was granted, the Monitor's activities have included, *inter alia*:
- (a) attending to post-closing matters with respect to the Mantle Transactions;
  - (b) taking possession of the Initial Applicants' bank accounts;
  - (c) administering payments in respect of certain Estate Costs (as defined below);
  - (d) resolving the contested builders' lien claim of RBEE Aggregate Consulting Ltd. ("**RBEE**");
  - (e) preparing the Proposed Cost Allocation in consultation with major secured creditors and engaging with the Affected Creditors regarding the Proposed Cost Allocation;
  - (f) evaluating potential sources of additional recoveries to ResidualCo's estate;
  - (g) corresponding with secured creditors and other stakeholders; and,
  - (h) preparing the Eighteenth Monitor's Report.

**ResidualCo Funds and Proposed Distribution**

15. As of July 30, 2021, the Monitor holds approximately \$1.827 million in cash on hand and \$382,000 in trust funds which are releasable to the estate (collectively, the “**ResidualCo Funds**”). In addition to the ResidualCo Funds, the Monitor holds the GST Amount (as defined in the Order - Lien Claims - EllisDon, granted on May 29, 2020), which is not currently releasable and does not form part of the ResidualCo Funds.
16. While proceeds were collected from the sale of certain of the Initial Applicant’s equipment not subject to the Mantle Transactions, such funds have been allocated in accordance with the Monitor’s Proposed Cost Allocation, including the proposed cost allocation to Fiera Private Debt Fund VI LP, by its general partner Fiera Private Debt Fund GP Inc. (“**Fund VI**”) and Fiera Private Debt Fund V LP, by its general partner Fiera Private Debt Fund GP Inc., acting in its capacity as collateral agent for and on behalf of and for the benefit of Fund VI (collectively, “**Fiera**”). As a result, subject to the approval of the Proposed Cost Allocation, the remaining ResidualCo Funds available for distribution comprise funds and proceeds derived from the determination and collection of various receivables owed to the Initial Applicants, as well as the proceeds of certain Equipment against which CWB holds a priority security interest.
17. Subject to and upon the Monitor establishing appropriate holdbacks (the “**Holdback Amounts**”), as determined by the Monitor to be necessary to ensure the adequate liquidity and funding of these CCAA Proceedings, the remaining ResidualCo Funds are available for distribution, in accordance with priority entitlements. Specifically, the Monitor proposes the following distributions:
  - (a) to CWB, an amount equal to \$291,000 (the “**CWB Distribution**”), in respect of the proceeds derived from the sale of certain CWB Equipment, minus the Proposed Cost Allocation to CWB of \$15,000, if approved; and,
  - (b) to ATB, all remaining funds on hand subject to the Holdback Amount and the GST Amount, up to the amount of the indebtedness, liabilities, and obligations owed by ResidualCo to ATB.

## Cost Allocation

18. As of May 28, 2021, the Initial Applicants incurred costs and expenses in connection with these CCAA Proceedings in the approximate amount of \$7,540,000 (the “**Estate Costs**”).
19. The Monitor’s Proposed Cost Allocation takes into account and allocates Estate Costs based on the relative potential and actual, direct and indirect, benefits received by each Affected Creditor.
20. Pursuant to the Proposed Cost Allocation, Mantle, ATB, and Fiera have collectively been allocated approximately ninety-seven percent (97%) of the overall Estate Costs. Specifically, the Affected Creditors are comprised of the PMSI Creditors, ATB, Fiera, and Mantle, which have been ascribed the following proposed allocations:
  - (a) ATB - 62% of Estate Costs (\$4,655,000);
  - (b) Fiera - 30% of Estate Costs (\$2,246,000);
  - (c) Mantle - 5% of Estate Costs (\$404,000); and,
  - (d) PMSI Creditors (collectively) - an aggregate amount of 3% of Estate Costs (\$235,000).
21. The Proposed Cost Allocation distinguishes between: (i) specific costs, which have been allocated to the applicable Affected Creditor that took the benefit of such costs; and, (ii) general costs, which are not directly attributable to any specific Affected Creditor.
22. With respect to the general costs, the Monitor’s Proposed Cost Allocation is based on and accounts for the following:
  - (a) the cessation of active business operations on June 26, 2020, after which the majority of the Initial Applicants’ employees were terminated and costs were reduced to maintain operations through SISP completion. As a result, operating costs, employee costs, and head office disbursements and insurance costs have been split between pre-June 26 (“**pre-wind-up**”) and post-June 26 (“**post-wind-up**”) costs;

- (b) ATB has been allocated the majority of pre-wind-up general costs, as the Initial Applicants' operations at such time primarily benefited the collection of outstanding receivables, against which ATB holds a first-ranking security interest over;
  - (c) the post-wind-up general costs have been allocated based on the actual and potential, direct and indirect, benefits received by each of ATB, Fiera, Mantle, and the PMSI Creditors, after the cessation of the Initial Applicants' operations;
  - (d) all allocations amongst the PMSI Creditors have been allocated on a *pro rata* basis based on each PMSI Creditor's collateral values, as set out in the May 5, 2020 appraisal prepared by GB Appraisal Canada, ULC, which ascribed a value to all of the PMSI Creditors' collateral on a similar basis and a similar point in time; and,
  - (e) the majority of non-specific, general restructuring professional fees have been allocated to ATB (69%) as a result of the efforts to collect on receivables. Fiera (27%), and to a lesser extent the PMSI Creditors (4%), have also been allocated certain general restructuring fees relating to the sale process, equipment sales, and other related matters.
23. With respect to costs incurred after May 28, 2021, which are not included in the Estate Costs described above, the Proposed Cost Allocation contemplates the following allocations, on a go-forward basis:
- (a) ATB, Fiera, and Mantle shall each be allocated one third (1/3) of costs incurred with respect to: (i) the termination of the CCAA Proceedings, (ii) the Application concerning the Proposed Cost Allocation, and (iii) in connection with attending to the accounting of the PMSI Creditors for any proceeds realized by them;
  - (b) ATB and Fiera shall each bear the costs incurred in connection with seeking the authorization and approval of any distributions, based upon the proportionate benefit received by such Affected Creditors;
  - (c) Mantle shall be responsible for all costs incurred in connection with amendments to the Amended RVO with respect to gravel inventory; and,



- (d) ATB shall be responsible for all costs incurred in connection with: (i) the lien determination application by RBEE Aggregate Consulting Ltd., and (ii) any remaining receivable claims of ResidualCo.
24. On or around June 21, 2021, the Monitor circulated the draft Proposed Cost Allocation to the PMSI Creditors for comment. As a result of comments and feedback received from a PMSI Creditor, the Monitor amended and revised the Proposed Cost Allocation to address certain specific concerns. No further objections or feedback have been received.
25. The Affected Creditors, including the PMSI Creditors, received actual and potential benefits during the course of these CCAA Proceedings. Specifically, with respect to the PMSI Creditors:
- (a) the Initial Applicants and the Monitor expended time, effort, and expense in order to locate, secure, insure, repair, and transport substantially all of the Initial Applicants' Property (as defined in the ARIO); and,
  - (b) all equipment subject to the Proposed Cost Allocation was included and marketed as part of the SISF, although certain equipment was ultimately not disposed of during or as a result of the SISF.
26. The Proposed Cost Allocation, which takes into account the comments and concerns provided to the Monitor thus far, provides a fair, reasonable, and equitable allocation of the costs incurred in these CCAA Proceedings among all of the Initial Applicants' and ResidualCo's secured creditors.

### **Stay Extension**

27. The Stay Period, as contemplated by the ARIO, has been extended on numerous occasions and will expire on September 3, 2021.
28. ResidualCo and the Monitor require additional time to attend to and address the Remaining Matters and therefore seek a further extension of the Stay Period up to and including December 3, 2021.
29. An extension will allow additional time for ResidualCo to: (i) recover costs from the PMSI Creditors in connection with the Proposed Cost Allocation; (ii) administer the Proposed

Distributions to ATB and CWB; (iii) evaluate any potential additional sources of recoveries; and, (iv) address any other outstanding Remaining Matters.

30. ResidualCo has been acting and continues to act in good faith and with due diligence and is forecasted to have sufficient liquidity to fund costs during the proposed extension to December 3, 2021.
31. It is just and convenient and in the interests of ResidualCo and its stakeholders that the Stay Period be extended up to and until December 3, 2021.

### **Sealing**

32. The Confidential Appendix contains certain information relating to the appraisal of the Initial Applicants' Equipment. The public disclosure and dissemination of the information in the Confidential Appendix would cause serious and irreparable harm to the estate of ResidualCo and its stakeholders, including PMSI Creditors who have not completed their respective realization processes. The limited sealing provision that the Monitor seeks on the Application, in respect of the Confidential Appendix, is a fair and reasonable method of addressing the serious and irreparable harm that would result, if the Confidential Appendix was publically disseminated.
33. Such further and other considerations, as counsel for the Monitor may advise and this Honourable Court considers just and appropriate in the circumstances.

### **Affidavit or other evidence and materials to be used in support of this Application:**

34. The First Report of the Monitor, dated May 8, 2020, filed;
35. The Second Report of the Monitor, dated July 6, 2020, filed;
36. The Third Report of the Monitor, dated July 24, 2020, filed;
37. The Fourth Report of the Monitor, dated August 25, 2020, filed;
38. The Fifth Report of the Monitor, dated September 10, 2020, filed;
39. The Sixth Report of the Monitor, dated September 23, 2020, filed;
40. The Seventh Report of the Monitor, dated September 30, 2020, filed;

41. Confidential Appendices “B”, “C”, and “F” to the Seventh Report of the Monitor, dated September 30, 2020, unfiled;
42. The Eighth Report of the Monitor, dated October 16, 2020, filed;
43. The Ninth Report of the Monitor, dated November 11, 2020, filed;
44. The Tenth Report of the Monitor, dated November 20, 2020, filed;
45. The Eleventh Report of the Monitor, dated December 5, 2020, filed;
46. The Twelfth Report of the Monitor, dated January 11, 2021, filed;
47. The Thirteenth Report of the Monitor, dated February 23, 2021, filed;
48. The Fourteenth Report of the Monitor, dated March 4, 2021, filed;
49. The Fifteenth Report of the Monitor, dated March 26, 2021, filed;
50. The Sixteenth Report of the Monitor, dated March 30, 2021, filed;
51. The Seventeenth Report of the Monitor, dated May 11, 2021, filed;
52. The Eighteenth Monitor’s Report, filed; and,
53. Such further and other evidence or materials as counsel for the Monitor may advise and this Honourable Court may permit.

**Application Rules:**

54. Rule 6.3, 6.9, 6.28, and 11.27 of the *Alberta Rules of Court*, Alta. Reg. 124/2010.
55. Such further and other rules as counsel for the Monitor may advise and this Honourable Court may permit.

**Applicable Acts and Regulations:**

56. The *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36, as amended.
57. Such further and other acts and regulations as counsel for the Monitor may advise and this Honourable Court may permit.

**Any irregularity complained of or objected relied on:**

58. There are no irregularities complained of or objections relied on.

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

59. The Monitor proposes that this Application be heard via WebEx with one, some, or all of the parties present.

AFFIDAVIT EVIDENCE IS REQUIRED IF YOU WISH TO OBJECT

**WARNING**

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.

## SCHEDULE "A" TO THE APPLICATION WEBEX INFORMATION

**Virtual Courtroom 60** has been assigned for the above noted matter:

Virtual Courtroom Link:

<https://albertacourts.webex.com/meet/virtual.courtroom60>

Instructions for Connecting to the Meeting

1. Click on the link above or open up Chrome or Firefox and cut and paste it into your browser address bar.
2. If you do not have the Cisco Webex application already installed on your device, the site will have a button to install it. Follow installation instructions. Enter your full name and email address when prompted
3. Click on the **Open Cisco Webex Meeting**.
4. You will see a preview screen. Click on **Join Meeting**.

Key considerations for those attending:

1. Please connect to the courtroom **15 minutes prior** to the start of the hearing.
2. Please ensure that your microphone is muted and remains muted for the duration of the proceeding, unless you are speaking. Ensure that you state your name each time you speak.
3. If bandwidth becomes an issue, some participants may be asked to turn off their video and participate by audio only.
4. **Note: Recording or rebroadcasting of the video is prohibited.**
5. **Note: It is highly recommended you use headphones with a microphone or a headset when using Webex. This prevents feedback.**

If you are a non-lawyer attending this hearing remotely, you must complete the undertaking located here: <https://www.albertacourts.ca/qb/resources/announcements/undertaking-and-agreement-for-non-lawyers>

For more information relating to Webex protocols and procedures, please visit:

<https://www.albertacourts.ca/qb/court-operations-schedules/webex-remote-hearings-protocol>

You can also join the meeting via the "Cisco Webex Meetings" App on your smartphone/tablet or other smart device. You can download this via the App marketplace and join via the link provided above.

**SCHEDULE "B" TO THE APPLICATION  
ORDER (ACTION APPROVAL, STAY EXTENSION,  
AND DISTRIBUTION)**

Clerk's Stamp

COURT FILE NUMBER        2001-05482  
COURT                        COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE         CALGARY

IN THE MATTER OF THE *COMPANIES' CREDITORS  
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF THE COMPROMISE OR  
ARRANGEMENT OF 2324159 ALBERTA INC.

DOCUMENT                 **ORDER (ACTION APPROVAL, STAY EXTENSION, AND  
DISTRIBUTION)**

ADDRESS FOR SERVICE     McCarthy Tétrault LLP  
AND CONTACT               4000, 421 – 7<sup>th</sup> Avenue SW  
INFORMATION OF PARTY    Calgary, AB T2P 4K9  
FILING THIS DOCUMENT     Attention: Sean Collins / Pantelis Kyriakakis / Nathan Stewart  
Tel: 403-260-3531 / 3536 / 3534  
Fax: 403-260-3501  
Email: scollins@mccarthy.ca / pkyriakakis@mccarthy.ca /  
nstewart@mccarthy.ca

**DATE ON WHICH ORDER WAS PRONOUNCED:**        **September 2, 2021**

**LOCATION OF HEARING:**                                 **Calgary, Alberta**

**NAME OF JUDGE WHO MADE THIS ORDER:**         **Justice K.M. Eidsvik**

**UPON** the application (the "**Application**") of FTI Consulting Canada Inc. (the "**Monitor**"), in its capacity as the court-appointed monitor of 2324159 Alberta Inc. ("**ResidualCo**") pursuant to the initial order granted under the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**") on May 1, 2020, as subsequently amended and restated on May 11, 2020 (collectively, the "**ARIO**") and the Amended Reverse Vesting Order granted on March 31, 2021 (the "**Amended RVO**"), all in the within proceedings (the "**CCAA Proceedings**"); **AND UPON** reading the Eighteenth Report of the Monitor, dated August 16, 2021 (the "**Eighteenth Monitor's Report**"), filed; **AND UPON** reading Confidential Appendix "A" to the Eighteenth Monitor's Report (the "**Confidential Appendix**"), unfiled, and all other reports and confidential appendices submitted by the Monitor in these CCAA Proceedings; **AND UPON** reading the Affidavit of Service of Katie

Doran, sworn on August 1, 2021 (the “**Service Affidavit**”), filed; **AND UPON** hearing counsel for the Monitor and for any other parties who may be present;

**IT IS HEREBY ORDERED AND DECLARED THAT:**

**SERVICE**

1. The time for service of the Application and the Eighteenth Monitor’s Report is abridged, the Application is properly returnable today, service of the Application and the Eighteenth Monitor’s Report on the service list (the “**Service List**”) attached as an exhibit to the Service Affidavit, in the manner described in the Service Affidavit, is good and sufficient, and no other persons other than those listed on the Service List are entitled to service of the Application or the Eighteenth Monitor’s Report.

**MONITOR’S ACTIVITIES**

2. All actions and activities of the Monitor, as reported in the reports of the Monitor filed in these CCAA Proceedings and all appendices thereto, be and are hereby approved, and all such activities and conduct of the Monitor prior to the date hereof in relation to these CCAA Proceedings are hereby ratified and approved.

**DISTRIBUTION**

3. Subject to and upon the Monitor establishing appropriate holdbacks (the “**Holdback Amount**”), as determined by the Monitor, in connection with and to fund the remainder of these CCAA Proceedings, the Monitor be and is hereby authorized and empowered, immediately and from time to time hereafter, as the Monitor determines appropriate, to make the following distributions from the monies it holds on behalf of ResidualCo:
  - (a) \$291,000 to Canadian Western Bank; and,
  - (b) any and all remaining and residual funds available for distribution, subject to the Holdback Amount established by the Monitor, to ATB Financial, on an ongoing basis and until all indebtedness, liabilities, and obligations owed by ResidualCo to ATB Financial are indefeasibly paid in full.

## **SEALING**

4. Part 6, Division 4 of the *Alberta Rules of Court* does not apply to the Application and the Clerk of the Court is hereby directed to seal the Confidential Appendix, on the Court file, until the termination of the CCAA Proceedings. The Confidential Appendix shall be sealed and filed in an envelope containing the following endorsement thereon:

**THIS ENVELOPE CONTAINS CONFIDENTIAL MATERIALS FILED IN COURT FILE NO. 2001-05482. THE CONFIDENTIAL MATERIALS ARE SEALED PURSUANT TO THE ORDER (ACTION APPROVAL, STAY EXTENSION AND DISTRIBUTION) GRANTED BY THE HONOURABLE MADAM JUSTICE K.M. EIDSVIK ON SEPTEMBER 2, 2021.**

5. Any person may apply, on reasonable notice to the Monitor, ResidualCo, and any other persons likely to be affected, to vary or amend the terms of paragraph 4 of this Order.
6. The Confidential Appendix shall also be uploaded to the online CaseLines filesite established by the Monitor, in connection with the within proceedings, in a case file that may only be accessed by the presiding Justices of the Court of Queen's Bench and any parties who are subsequently authorized to access materials under and pursuant to the sealing provisions of this Order.

## **MISCELLANEOUS MATTERS**

7. Service of this Order shall be deemed good and sufficient by:
- (a) Serving same on:
- (i) the persons listed on the Service List created in these CCAA Proceedings;
  - (ii) any other person served with notice of the Application for this Order;
  - (iii) any other parties attending or represented at the Application for this Order;
- and,
- (b) posting a copy of this Order on the Monitor's website at <http://cfcanada.fticonsulting.com/jmb/>
- and service on any other person is hereby dispensed with.



8. Service of this Order shall be deemed good and sufficient by serving the same in accordance with the procedures in the CaseLines Service Order granted on May 29, 2020.

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Justice of the Court of Queen's Bench of Alberta

**SCHEDULE "C" TO THE APPLICATION  
ORDER (COST ALLOCATION)**

Clerk's Stamp

COURT FILE NUMBER 2001-05482  
COURT COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE CALGARY

IN THE MATTER OF THE *COMPANIES' CREDITORS  
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF THE COMPROMISE OR  
ARRANGEMENT OF 2324159 ALBERTA INC.

**DOCUMENT ORDER (COST ALLOCATION)**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT  
McCarthy Tétrault LLP  
4000, 421 – 7<sup>th</sup> Avenue SW  
Calgary, AB T2P 4K9  
Attention: Sean Collins / Pantelis Kyriakakis / Nathan Stewart  
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nstewart@mccarthy.ca

**DATE ON WHICH ORDER WAS PRONOUNCED:** September 2, 2021

**LOCATION OF HEARING:** Calgary, Alberta

**NAME OF JUDGE WHO MADE THIS ORDER:** Justice K.M. Eidsvik

**UPON** the application (the "**Application**") of FTI Consulting Canada Inc., in its capacity as the court-appointed monitor (the "**Monitor**") of 2324159 Alberta Inc. ("**ResidualCo**") pursuant to the initial order granted under the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**") on May 1, 2020 (the "**Filing Date**"), as subsequently amended and restated on May 11, 2020 (collectively, the "**ARIO**") and the Amended Reverse Vesting Order granted on March 31, 2021 (the "**Amended RVO**"), all in the within proceedings (the "**CCAA Proceedings**"); **AND UPON** reading the Eighteenth Report of the Monitor, dated August 16, 2021 (the "**Eighteenth Monitor's Report**"), filed; **AND UPON** reading Confidential Appendix "A" to the Eighteenth Monitor's Report (the "**Confidential Appendix**"), unfiled, and all other reports and confidential appendices submitted by the Monitor in these CCAA Proceedings; **AND UPON** reading the Affidavit of Service of Katie Doran, sworn on August 1, 2021 (the "**Service Affidavit**"), filed; **AND UPON** hearing counsel for the Monitor and for any other parties who may be present;

**IT IS HEREBY ORDERED AND DECLARED THAT:**

**SERVICE**

1. The time for service of the Application and the Eighteenth Monitor's Report is abridged, the Application is properly returnable today, service of the Application and the Eighteenth Monitor's Report on the service list (the "**Service List**") attached as an exhibit to the Service Affidavit, in the manner described in the Service Affidavit, is good and sufficient, and no other persons other than those listed on the Service List are entitled to service of the Application or the Eighteenth Monitor's Report.

**DEFINED TERMS**

2. Capitalized terms used in this Order and not otherwise defined shall have the meanings given to them in the Eighteenth Monitor's Report.

**COST ALLOCATION**

3. The cost allocation methodology, as set out in paragraphs 22 – 26 and Appendix "B" of the Eighteenth Monitor's Report (the "**Cost Allocation**"), allocating all of the post-Filing Date costs incurred by the Initial Applicants and ResidualCo, in these CCAA Proceedings, as between all of the Initial Applicants' and ResidualCo's secured creditors, as set out therein (collectively, the "**Affected Creditors**"), be and is hereby approved.
4. The Affected Creditors are hereby allocated the following costs and amounts in connection with the period up to and until May 28, 2021:
  - (a) ATB - \$4,655,000;
  - (b) Fiera - \$2,246,000;
  - (c) Mantle - \$404,000;
  - (d) PMSI Creditors, as follows:
    - (i) BMO Transportation Finance - \$116,000;
    - (ii) Caterpillar Financial Services Ltd. - \$27,000;

- (iii) Ford Credit Canada Company, Ford Credit Canada Leasing, Division of Canadian Road Leasing Company, and Ford Credit Canada Limited - \$7,000;
  - (iv) Komatsu International (Canada) Inc. - \$34,000;
  - (v) Canadian Western Bank Leasing Inc. - \$15,000;
  - (vi) TD Equipment Finance Canada, A Division of the Toronto-Dominion Bank, and The Toronto-Dominion Bank - \$25,000; and,
  - (vii) VFS Canada Inc. - \$10,000.
5. With respect to all costs incurred after May 28, 2021, the Monitor is hereby authorized and empowered to utilize all remaining cash and funds held on behalf of ResidualCo to fund such ongoing costs of ResidualCo and these CCAA Proceedings, but shall allocate all such costs, disbursements, and expenses, incurred after May 28, 2021, in accordance with the methodology set out in paragraph 24 of the Eighteenth Monitor's Report.
6. The Monitor is hereby authorized, empowered, and directed to implement the Cost Allocation and to take all such further steps as the Monitor determines are necessary or advisable to implement the Cost Allocation and to collect all amounts due under the Cost Allocation, as contemplated in paragraphs 4 and 5 of this Order, including, but in no way limited to, reducing or setting off any outstanding amounts owed by an Affected Creditor from any potential distributions to be made to same.

### **MISCELLAENOUS MATTERS**

7. Service of this Order shall be deemed good and sufficient by:
- (a) Serving same on:
    - (i) the persons listed on the Service List created in these proceedings;
    - (ii) any other person served with notice of the Application for this Order;
    - (iii) any other parties attending or represented at the Application for this Order;
- and,

(b) posting a copy of this Order on the Monitor's website at <http://cfcanada.fticonsulting.com/imb/>

and service on any other person is hereby dispensed with.

8. Service of this Order shall be deemed good and sufficient by serving the same in accordance with the procedures in the CaseLines Service Order granted on May 29, 2020.

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Justice of the Court of Queen's Bench of Alberta