

COURT FILE NUMBER 2001-05482

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

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

AND IN THE MATTER OF A PLAN OF  
ARRANGEMENT OF JMB CRUSHING SYSTEMS INC.  
AND 2161889 ALBERTA LTD.

DOCUMENT TWELFTH REPORT OF FTI CONSULTING CANADA  
INC., IN ITS CAPACITY AS MONITOR OF JMB  
CRUSHING SYSTEMS INC. AND 2161889 ALBERTA  
LTD.

**January 11, 2021**

ADDRESS FOR SERVICE AND  
CONTACT INFORMATION OF  
PARTY FILING THIS  
DOCUMENT

**MONITOR**

FTI Consulting Canada Inc.  
1610, 520, 5<sup>th</sup> Ave. SW  
Calgary, AB T2P 3R7  
Deryck Helkaa / Tom Powell  
Telephone: (403) 454-6031 / (604) 484-9525  
Fax: (403) 232-6116  
E-mail: deryck.helkaa@fticonsulting.com  
tom.powell@fticonsulting.com

**COUNSEL**

McCarthy Tétrault LLP  
Suite 4000, 421 7<sup>th</sup> Avenue S.W.  
Calgary, AB T2P 4K9  
Sean Collins / Pantelis Kyriakakis  
Telephone: (403) 260-3531 / (403) 260-3536  
Fax: (403) 260-3501  
E-mail: scollins@mccarthy.ca  
pkyriakakis@mccarthy.ca

# TWELFTH REPORT OF THE MONITOR

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## INTRODUCTION

1. On May 1, 2020 (the “**Filing Date**”), JMB Crushing Systems Inc. (“**JMB**”) and 2161889 Alberta Ltd. (“**216**” and together with JMB, the “**Applicants**”) commenced proceedings (the “**CCAA Proceedings**”) under the Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) pursuant to an order granted by this Honourable Court which was subsequently amended and restated on May 11, 2020 (the “**ARIO**”).
2. The ARIO appointed FTI Consulting Canada Inc. as Monitor in the CCAA Proceedings (the “**Monitor**”) and established a stay of proceedings (the “**Stay of Proceedings**”) in favour of the Applicants until July 31, 2020. On December 7, 2020, this Honourable Court most recently granted an order extending the Stay of Proceedings to January 15, 2021.
3. On October 16, 2020, this Honourable Court granted the following orders:
  - a. an order approving a transaction (the “**Mantle Transaction**”) for the sale to Mantle Materials Group, Ltd. (“**Mantle**”) of certain assets and vesting such assets free and clear of any security interests or other claims other than certain permitted encumbrances (the “**Mantle SAVO**”);
  - b. an order vesting all of JMB’s remaining assets and liabilities that are excluded from the Mantle Transaction in 216;
  - c. an assignment order assigning certain of the Applicants’ agreements to Mantle;  
and
  - d. an order sanctioning a joint plan of arrangement under the Business Corporations Act, SBC 2002, c 57, as amended and the CCAA.

4. On January 11, 2021, the Applicants filed a Notice of Application for an order extending the Stay of Proceedings until and including February 26, 2021 (the “**Extension Order**”).
5. The purpose of this report is to provide this Honourable Court and the Applicants’ stakeholders with information with respect to:
  - a. the status of the Mantle Transaction;
  - b. the removal of certain aggregate by Shamrock Valley Enterprises Ltd. (“**Shamrock**”) from a pit subject to a royalty agreement (the “**Royalty Agreement**”) dated October 29, 2018 between JMB and Jerry Shankowski and 945441 Alberta Ltd. (collectively, “**Shankowski**”);
  - c. the Applicants’ actual cash receipts and disbursements for the 35-week period ended January 1, 2021 as compared to the Seventh Cash Flow Statement filed with the Eleventh Report of the Monitor;
  - d. an updated cash flow statement (the “**Eighth Cash Flow Statement**”) prepared by the Applicants for the 43 weeks ending February 26, 2021 including the key assumptions on which the Eighth Cash Flow Statement is based;
  - e. an update on the potential contingent claim of Canada Revenue Agency (the “**CRA**”) in respect of certain withholdings associated with a voluntary disclosure made by JMB’s predecessor, JMB Crushing Systems ULC (“**JMB ULC**”);
  - f. the Applicants’ application for the Stay Extension Order; and
  - g. the Monitor’s conclusions and recommendations.

## **TERMS OF REFERENCE**

6. In preparing this report, the Monitor has relied upon certain information (the “**Information**”) including information provided by JMB concerning the various assets

subject to the various transactions and JMB's unaudited financial information, books and records and discussions with senior management and the Chief Restructuring Advisor (collectively, "**Management**").

7. Except as described in this report, the Monitor 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 Chartered Professional Accountants of Canada Handbook.
8. The Monitor has not examined or reviewed financial forecasts and projections referred to in this report in a manner that would comply with the procedures described in the Chartered Professional Accountants of Canada Handbook.
9. Future oriented financial information reported to be relied on in preparing this report is based on Management's assumptions regarding future events. Actual results may vary from forecast and such variations may be material.
10. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.

## **STATUS OF THE MANTLE TRANSACTION**

11. As at January 11, 2021, the Mantle Transaction has not closed. The Mantle SAVO remains subject to, among other things, the parties having obtained the approval by Alberta Environment and Parks ("**AEP**") of the transfer of the surface mineral leases and certain other Crown dispositions included in the Mantle Transaction.
12. Mantle and the Applicants are working to resolve the remaining issues with the AEP and are having ongoing discussions with the relevant parties involved at the AEP.
13. The Applicants, Fiera, ATB, and Mantle continue to work in consultation with the Monitor to establish an arrangement that would see: (i) Mantle operate the business and

fund the ongoing operating costs; and (ii) address all non-operating disbursements and other ongoing costs and expenses associated with these CCAA Proceedings, pending completion of the Mantle Transaction (the “**Funding Agreement**”).

14. The parties’ ability and willingness to close the Mantle Transaction may be impacted by, among other things, the outcome of the discussions with the AEP and the Funding Agreement.

#### **AGGREGATE REMOVAL FROM THE SHANKOWSKI PIT**

15. JMB has advised the Monitor that on January 7, 2021 it became aware that Shamrock had removed several truck loads each holding approximately 27 tonnes of aggregate from a Shankowski pit that is subject to the Royalty Agreement and forms part of the Mantle Transaction.
16. JMB contacted Shamrock to request that it cease and desist from removing the aggregate and was informed that Shamrock was removing the aggregate pursuant to an arrangement that it had made with Shankowski in payment of amounts owed to Shamrock by Shankowski.
17. On January 7, 2021, JMB’s legal counsel sent letters to the respective counsel of Shankowski and Shamrock confirming its view that the removal of aggregate from the Shankowski Pit is in contravention of the ARIO and demanding that Shankowski:
  - a. cease and desist from disposing of aggregate owned by JMB;
  - b. disclose to JMB and the Monitor and fully account for any taking or appropriation, or sales of other dispositions, of JMB’s aggregate by Shankowski of its agents, including to Shamrock;

- c. disclose to JMB and the Monitor when Shankowski sold or otherwise disposed of JMB's aggregate, to whom such aggregate has been sold or transferred to, and the quantum of such aggregate that was sold or transferred; and
  - d. disclose to JMB and the Monitor the current location of all such aggregate.
18. Counsel for Shamrock sent a letter to counsel for the Applicants on January 8, 2021 explaining that the amount removed was minimal with an estimated value of \$675 and that Shamrock agrees to not remove any further material from the Shankowski pit.

### **CASH FLOW VARIANCE ANALYSIS**

19. The Monitor has undertaken weekly reviews of JMB's actual cash flows in comparison to those contained in the Seventh Cash Flow Statement. JMB's actual cash receipts and disbursements as compared to the Cash Flow Statement for the period of May 1, 2020 to January 1, 2021, are summarized below:

(\$000's)	Weeks 1 - 35		
	Actual	Forecast	Variance
<b>Operating Receipts</b>			
Collection of Pre-Filing AR - Ellis Don	\$ 2,032	\$ 2,032	\$ -
Collection of Pre-Filing AR - MD of Bonnyville	1,478	1,478	-
Collection of Post Filing AR - MD of Bonnyville	1,566	1,566	-
Post-filing Gravel Sales	49	49	-
SISP Proceeds	577	577	-
Other Receipts	916	917	(1)
<b>Total Operating Receipts</b>	<b>6,617</b>	<b>6,618</b>	<b>(1)</b>
<b>Operating Disbursements</b>			
Payroll And Source Deductions	(1,533)	(1,523)	(9)
Royalties	(408)	(408)	-
Fuel	(208)	(208)	-
Repair & Maintenance	(52)	(52)	-
Office Administration	(48)	(50)	1
Insurance & Benefits	(241)	(243)	2
Jobsite Lodging	(21)	(21)	-
Equipment Loan & Lease Payments	(139)	(139)	-
Occupancy	(310)	(312)	2
Other	(66)	(65)	(1)
<b>Total Operating Disbursements</b>	<b>(3,027)</b>	<b>(3,020)</b>	<b>(5)</b>
<b>Non-Operating Receipts &amp; Disbursements</b>			
Interim Financing (Repayment)	(211)	(211)	-
Professional Fees	(2,108)	(2,626)	518
<b>Total Disbursements</b>	<b>(5,346)</b>	<b>(5,857)</b>	<b>512</b>
<b>Net Cash Flow</b>	<b>1,271</b>	<b>761</b>	<b>511</b>
Opening Cash Balance	-	-	-
<b>Ending Cash</b>	<b>\$ 1,271</b>	<b>\$ 761</b>	<b>\$ 511</b>

20. Overall, the Applicants realized a favourable net cash flow variance of approximately \$511,000 relating primarily to a timing difference in the payment of professional fees in the amount of \$518,000.

## EIGHTH CASH FLOW STATEMENT

21. The Applicants have prepared the Eighth Cash Flow Statement which includes forecast results for the eight weeks ending February 26, 2021 (the “**Forecast Period**”). A copy of the Eighth Cash Flow Statement is attached as Appendix “A”.

22. A summary of the Eighth Cash Flow Statement is set out in the table below:

<i>(\$000's)</i>	Weeks 1-35 Actual	Weeks 36-43 Forecast	Total Pro-Forma
<b>Operating Receipts</b>			
Collection of Pre-Filing AR - Ellis Don	\$ 2,032	\$ -	\$ 2,032
Collection of Pre-Filing AR - MD of Bonnyville	1,478	-	1,478
Collection of Post Filing AR - MD of Bonnyville	1,566	-	1,566
Post-filing Gravel Sales	49	46	95
SISP Proceeds	577	-	577
Other Receipts	916	118	1,034
<b>Total Operating Receipts</b>	<b>6,617</b>	<b>164</b>	<b>6,781</b>
<b>Operating Disbursements</b>			
Payroll And Source Deductions	(1,533)	(121)	(1,654)
Royalties	(408)	-	(408)
Fuel	(208)	(2)	(210)
Repair & Maintenance	(52)	-	(52)
Office Administration	(48)	(12)	(60)
Insurance & Benefits	(241)	(128)	(369)
Jobsite Lodging	(21)	-	(21)
Equipment Loan & Lease Payments	(139)	(2)	(141)
Occupancy	(310)	(39)	(350)
Other	(66)	(9)	(75)
<b>Total Operating Disbursements</b>	<b>(3,026)</b>	<b>(312)</b>	<b>(3,339)</b>
<b>Non-Operating Receipts &amp; Disbursements</b>			
Interim Financing (Repayment)	(211)	-	(211)
Professional Fees	(2,108)	(1,021)	(3,129)
<b>Total Disbursements</b>	<b>(5,346)</b>	<b>(1,333)</b>	<b>(6,679)</b>
<b>Net Cash Flow</b>	<b>1,272</b>	<b>(1,170)</b>	<b>102</b>
Opening Cash Balance	-	1,272	-
<b>Ending Cash</b>	<b>\$ 1,272</b>	<b>\$ 102</b>	<b>\$ 102</b>
<i>Ending Cash Including Funds Held in Trust by Monitor</i>	<i>\$ 1,272</i>	<i>\$ 2,159</i>	<i>\$ 2,159</i>

23. The Eighth Cash Flow Statement is based on the following assumptions:

- a. other receipts include \$118,000 relating to anticipated subsidies to be received from the federal government. The Applicants have not assumed any recoveries from the holdbacks of approximately \$2.1 million pending resolution of the disputed lien determinations (the “**Lien Claims**”) and the potential contingent claim of the Canada Revenue Agency with respect to certain Unresolved Tax Liabilities (the “**CRA Claim**”). The Eighth Cash Flow Statement does not include any recoveries that may be available to JMB as a result of the Funding Agreement;
- b. forecast insurance and benefit costs primarily relate to the purchase of an extended claims reporting period in respect of the current director and officer insurance policy. The Applicants have been unable to secure fleet insurance for its remaining equipment beyond November 30, 2020 and the Applicants’ general liability insurance is scheduled to expire on January 31, 2021. Management is working to source replacement coverage;
- c. the remaining operating disbursements relate primarily to ordinary course payments to fund payroll for the limited amount of staff remaining, basic office needs and occupancy costs; and
- d. forecast professional fees are expected to be approximately \$1 million during the Forecast Period and include resolution of the accrued fees referenced in paragraph 20 and forecast fees for the Applicants’ legal counsel, the Monitor, the Monitor’s legal counsel, certain contract executives of JMB, the Sales Agent’s monthly work fee and certain other legal costs. A summary of the actual professional fee disbursements incurred to date and estimated costs to completion are set out in the table below:

(\$000's)			
Role	Weeks 1-35 Actual	Weeks 35-43 Forecast	Weeks 1-43 Total
Legal Counsel to Applicants	\$ 652	\$ 380	\$ 1,032
Monitor	539	145	684
Legal Counsel to Monitor	338	327	666
Chief Restructuring Advisor	265	58	323
Sales Agent	234	66	301
Other	79	45	124
<b>Total</b>	<b>\$ 2,108</b>	<b>\$ 1,021</b>	<b>\$ 3,129</b>

24. Overall, the Applicants are forecasting to incur negative net cash flow of approximately \$1.2 million during the Forecast Period and have a remaining cash balance of approximately \$102,000 as at February 26, 2021. If the Holdbacks are released to the Applicants, it is estimated that JMB will have an ending cash balance of approximately \$2.2 million.

#### **CRA CONTIGENT CLAIM**

25. As discussed in the Tenth Report, certain unresolved potential tax liabilities (the “**Unresolved Tax Liabilities**”) may exist as a result of the actions of JMB ULC which came to light in the due diligence phase of Resource Land Fund V, LP’s acquisition of the JMB ULC shares.

26. The CRA has advised the Applicants and the Monitor that it plans to assert a contingent priority claim in connection with the Unresolved Tax Liabilities and may seek an order that amounts be held in trust to deal with these potential claims. To date, the Monitor has not received a formal claim from CRA, nor has the CRA confirmed the quantum of the potential claim. However, the Applicants, in consultation with the Monitor, are in the process of reviewing the merits and validity of the potential trust claims based on the information available at this time.

#### **STAY EXTENSION**

27. The Monitor has considered JMB’s application to extend the Stay of Proceedings and has the following comments:

- a. the Applicants require an extension to finalize the Funding Agreement, resolve outstanding matters with AEP and seek to complete the sale transactions contemplated by the Mantle SAVO;
- b. an extension will allow the Applicants to resolve the remaining portion of the Lien Claims and potential CRA Claim;
- c. the Eighth Cash Flow Statement forecasts that the Applicants have available liquidity during the period of the proposed extension;
- d. the Monitor has been advised that certain stakeholders, including the senior secured lenders, are supportive of the proposed extension;
- e. the Applicants are acting in good faith and with due diligence; and
- f. JMB's prospects of effecting a viable restructuring will be enhanced by an extension of the Stay of Proceedings until February 26, 2021.

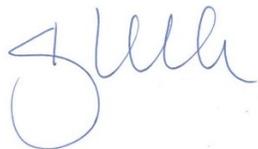
## **CONCLUSIONS AND RECOMMENDATIONS**

28. Based on the foregoing, the Monitor respectfully recommends that this Honourable Court grant the Extension Order.

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All of which is respectfully submitted this 11<sup>th</sup> day of January, 2021.

FTI Consulting Canada Inc.  
in its capacity as Monitor of the Applicants

A handwritten signature in blue ink, appearing to read 'D Helkaa', with a large circular flourish at the beginning.

Deryck Helkaa  
Senior Managing Director

A handwritten signature in black ink, appearing to read 'Tom Powell', with a large flourish at the beginning.

Tom Powell  
Senior Managing Director

# **Appendix A**

Eighth Cash Flow Statement  
for the 43 Weeks Ending February 26, 2021

## Eighth Cash Flow Statement (Notes 1)

	Actual	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast		
Week #	Weeks 1 - 35	Week 36	Week 37	Week 38	Week 39	Week 40	Week 41	Week 42	Week 43	Weeks 36 - 43	Weeks 1 - 43		
Week Ending		8-Jan-21	15-Jan-21	22-Jan-21	29-Jan-21	5-Feb-21	12-Feb-21	19-Feb-21	26-Feb-21	Total	Total	Notes	
Opening Cash	\$ -	\$ 1,271,521	\$ 1,210,198	\$ 551,886	\$ 508,843	\$ 433,018	\$ 411,243	\$ 216,043	\$ 187,905	\$ 1,271,521	\$ -		
<b>Cash Receipts</b>													
Collection of Canadian Emergency Wage Subsidy	715,692	-	17,612	-	-	17,600	-	-	17,600	52,812	768,504		
Collection of Canadian Emergency Rent Subsidy	41,383	21,226	-	-	-	21,900	-	-	21,900	65,026	106,409		
Collection of Pre-Filing AR - EllisDon (net of lien payouts)	2,031,521	-	-	-	-	-	-	-	-	-	2,031,521	<b>2</b>	
Collection of Pre-Filing AR - MD of Bonnyville	1,477,612	-	-	-	-	-	-	-	-	-	1,477,612	<b>3</b>	
Collection of Post-Filing AR - MD of Bonnyville	1,565,745	-	-	-	-	-	-	-	-	-	1,565,745	<b>4</b>	
Post-Filing Gravel Sales	49,094	46,070	-	-	-	-	-	-	-	46,070	95,164		
SISP Proceeds	576,990	-	-	-	-	-	-	-	-	-	576,990	<b>5</b>	
Other Receipts	159,094	-	-	-	-	-	-	-	-	-	159,094		
<b>Total Receipts</b>	<b>6,617,131</b>	<b>67,296</b>	<b>17,612</b>	<b>-</b>	<b>-</b>	<b>39,500</b>	<b>-</b>	<b>-</b>	<b>39,500</b>	<b>163,908</b>	<b>6,781,039</b>		
<b>Operating Disbursements</b>													
Payroll And Source Deductions	(1,532,589)	(7,087)	(24,673)	(11,404)	(18,700)	(11,000)	(18,700)	(11,000)	(18,700)	(121,265)	(1,653,853)	<b>6,7</b>	
Royalties	(407,629)	-	-	-	-	-	-	-	-	-	(407,629)		
Fuel	(208,273)	-	(500)	-	(500)	-	-	(500)	-	(1,500)	(209,773)	<b>6</b>	
Repair & Maintenance	(52,187)	-	-	-	-	-	-	-	-	-	(52,187)		
Office Administration	(48,083)	(2,000)	(1,000)	(500)	(3,000)	(2,000)	(500)	(500)	(2,300)	(11,800)	(59,883)	<b>6</b>	
Insurance & Benefits	(241,461)	-	(15,000)	-	-	-	(15,000)	-	(97,500)	(127,500)	(368,961)	<b>8</b>	
Jobsite Lodging	(20,766)	-	-	-	-	-	-	-	-	-	(20,766)	<b>6</b>	
Equipment Loan & Lease Payments	(139,243)	-	-	(938)	-	-	-	(938)	-	(1,876)	(141,119)	<b>9</b>	
Occupancy	(310,240)	(500)	(1,000)	(500)	(31,000)	(500)	(1,000)	(500)	(4,300)	(39,300)	(349,540)	<b>10</b>	
Other	(65,880)	-	(3,900)	-	(2,625)	-	-	-	(2,625)	(9,150)	(75,030)	<b>11</b>	
<b>Total Disbursements</b>	<b>(3,026,350)</b>	<b>(9,587)</b>	<b>(46,073)</b>	<b>(13,342)</b>	<b>(55,825)</b>	<b>(13,500)</b>	<b>(35,200)</b>	<b>(13,438)</b>	<b>(125,425)</b>	<b>(312,391)</b>	<b>(3,338,741)</b>		
<b>Non-Operating Receipts &amp; Disbursements</b>													
DIP Financing (Repayment)	(211,188)	-	-	-	-	-	-	-	-	-	(211,188)		
Professional Fees	(2,108,072)	(119,032)	(629,851)	(29,700)	(20,000)	(47,775)	(160,000)	(14,700)	-	(1,021,058)	(3,129,130)	<b>12</b>	
<b>Total Disbursements</b>	<b>(2,319,260)</b>	<b>(119,032)</b>	<b>(629,851)</b>	<b>(29,700)</b>	<b>(20,000)</b>	<b>(47,775)</b>	<b>(160,000)</b>	<b>(14,700)</b>	<b>-</b>	<b>(1,021,058)</b>	<b>(3,340,318)</b>		
<b>Net Cash Flow</b>	<b>1,271,521</b>	<b>(61,323)</b>	<b>(658,312)</b>	<b>(43,042)</b>	<b>(75,825)</b>	<b>(21,775)</b>	<b>(195,200)</b>	<b>(28,138)</b>	<b>(85,925)</b>	<b>(1,169,541)</b>	<b>101,980</b>		
Ending Cash Balance	\$ 1,271,521	\$ 1,210,198	\$ 551,886	\$ 508,843	\$ 433,018	\$ 411,243	\$ 216,043	\$ 187,905	\$ 101,980	\$ 101,980	\$ 101,980		

## Notes

- 1 The Eighth Cash Flow Statement has been prepared to set out the post filing liquidity requirements of JMB Crushing Systems Inc. during the eight weeks ending February 26, 2021 under the Companies' Creditors Arrangement Act proceeding (the "CCAA Proceedings") which commenced effective May 1, 2020.
- 2 Cash receipts and timing of payment of pre-filing amounts due from Ellis Don and held by the Monitor in the amount of \$207,000 are based upon the Lien Determination Notices issued by the Monitor on August 20, 2020 and the determination of the contingent claim of Canada Revenue Agency.
- 3 Cash receipts and timing of payment of pre-filing amounts due from MD of Bonnyville and held by the Monitor in the amount of \$1,850,000 are dependent on the outcome of further Court hearings to be scheduled, in respect of two appeals to the Monitor's Lien Determination Notices, and the determination of the contingent claim of Canada Revenue Agency.
- 4 Post-filing amounts due from MD of Bonnyville relate to the collection of invoiced amounts for work completed with the timing of receipt of payment based on recent payment terms.
- 5 SISP Proceeds represents sale proceeds received from McDonald Aggregates and Sandhill Equipment Corp. from the sale of select equipment and additional proceeds due from the sale of further equipment to McDonald Aggregates.
- 6 Active business operations ceased on June 26, 2020 with the completion of the MD of Bonnyville project and the majority of the company's employees were terminated. Forecast operating expenses are based on necessary costs to maintain operations to complete the SISP.
- 7 Payroll and source deductions represent forecast payments to remaining employees for wages and vacation pay.
- 8 Insurance & Benefits represent renewal payments for the company's general insurance policy which has been extended to January 31, 2021, forecast renewals, workers' compensation benefit premium payments and the forecast purchase of an extended claims reporting period in respect of the Director and Officer insurance policy.
- 9 Equipment Loan and Lease payments represent scheduled payments for automotive equipment currently being utilized.
- 10 Occupancy represents scheduled monthly payments for the company's Edmonton and Bonnyville premises.
- 11 Other disbursements include miscellaneous payments and contingent costs.
- 12 Professional fees relate to the Company's legal counsel, the Monitor, the Monitor's legal counsel, sale consultant, operational consultant and Chief Restructuring Advisor.