

COURT FILE NO.: 2001-05482  
 COURT COURT OF QUEEN'S BENCH OF ALBERTA  
 JUDICIAL CENTRE CALGARY

IN THE MATTER OF THE *COMPANIES' CREDITORS  
 ARRANGEMENT ACT*, RSC 1985, c C-36, as amended

AND IN THE MATTER OF THE COMPROMISE OR  
 ARRANGEMENT OF JMB CRUSHING SYSTEMS INC. and  
 2161889 ALBERTA LTD.

APPLICANT JMB CRUSHING SYSTEMS INC.  
 DOCUMENT **ORDER – LIEN CLAIMS – ELLISDON INDUSTRIAL**  
 ADDRESS FOR **Gowling WLG (Canada) LLP**  
 SERVICE AND 1600, 421 – 7<sup>th</sup> Avenue SW  
 CONTACT  
 INFORMATION Calgary, AB T2P 4K9  
 OF PARTY Attn: **Tom Cumming/Caireen E. Hanert/Alex Matthews**  
 FILING THIS Phone: 403.298.1938/403.298.1992/403.298.1018  
 DOCUMENT Fax: 403.263.9193  
 File No.: A163514

**DATE ON WHICH ORDER WAS PRONOUNCED:** May 29, 2020  
**LOCATION AT WHICH ORDER WAS MADE:** Calgary Court House  
**NAME OF JUSTICE WHO MADE THIS ORDER:** Madam Justice K.M. Eidsvik

**UPON THE APPLICATION** of JMB Crushing Systems Inc. (“**JMB**”); **AND UPON HEARING** counsel for JMB; **AND UPON** reviewing the Affidavit of Jeff Buck sworn May 8, 2020 and the Affidavit of Jeff Buck sworn May 28, 2020; **AND UPON** hearing counsel for JMB and those parties present; **IT IS HEREBY ORDERED THAT:**

1. The time for service of notice of application for this Order is hereby abridged and deemed good and sufficient and this application is properly returnable today.

## Definitions

2. For the purpose of the within Order, the following terms shall have the following meanings:
- (a) “**BLA**” means the *Builders’ Lien Act*, RSA 2000, c B-7;
  - (b) “**Claims Bar Date**” means 5:00p.m. on April 30, 2020, or such other date as may be ordered by the Court;
  - (c) “**Contractor**” is EllisDon Industrial Inc.;
  - (d) “**Contract**” means the undated Supply Agreement between Contractor and JMB in respect of the Project on the Lands;
  - (e) “**CRA**” means Canada Revenue Agency;
  - (f) “**CRA Amount**” means \$39,654.17 to be paid to the CRA from the Funds less the Holdback Amount in accordance with this Order;
  - (g) “**Determination Notice**” means written notice of a Lien Determination;
  - (h) “**Disputed Amount**” means the amount disputed as owing by Contractor to JMB, which is \$50,000.00;
  - (i) “**Funds**” means \$2,446,175.44, which are those amounts invoiced by JMB to Contractor but not yet paid by Contractor for the period up to and including March 17, 2020 in relation to the Contract, less the Disputed Amount and Prepaid Amount;
  - (j) “**Holdback Amount**” means the amount to be held by the Monitor from the Funds, which is \$375,000.00;
  - (k) “**Interested Party**” means any party who gives notice in writing to the Monitor of its interest in a Lien Determination;
  - (l) “**JMB**” is JMB Crushing Systems Inc.;
  - (m) “**Lands**” means those lands legally described as:

**TITLE NUMBER 162 224 619**

MERIDIAN 4 RANGE 22 TOWNSHIP 56  
SECTION 11

ALL THAT PORTION OF THE NORTH EAST QUARTER  
WHICH LIES SOUTH OF A LINE DRAWN THROUGHOUT AND AT RIGHT  
ANGLES TO THE  
EAST BOUNDARY 407.4 METRES SOUTHERLY FROM THE NORTH EAST  
CORNER THEREOF;  
CONTAINING 32.0 HECTARES (79 ACRES) MORE OR LESS  
EXCEPTING THEREOUT ALL MINES AND MINERALS

**TITLE NUMBER 162 224 620**

MERIDIAN 4 RANGE 22 TOWNSHIP 56  
SECTION 11

ALL THAT PORTION OF THE NORTH EAST QUARTER  
WHICH LIES NORTH OF A LINE DRAWN THROUGHOUT AND AT RIGHT  
ANGLES TO THE  
EAST BOUNDARY 407.4 METRES SOUTHERLY FROM THE NORTH EAST  
CORNER THEREOF;  
CONTAINING 32.8 HECTARES (81 ACRES) MORE OR LESS.  
EXCEPTING THEREOUT:           HECTARES       (ACRES) MORE OR LESS  
A) PLAN 5345NY - ROAD       0.809           2.00  
B) PLAN 0426682 - ROAD       0.394           0.97  
EXCEPTING THEREOUT ALL MINES AND MINERALS

**TITLE NUMBER 162 224 621**

MERIDIAN 4 RANGE 22 TOWNSHIP 56  
SECTION 2

THE EAST HALF OF THE NORTH EAST QUARTER  
CONTAINING 32.4 HECTARES (80 ACRES) MORE OR LESS  
EXCEPTING THEREOUT ALL MINES AND MINERALS

**TITLE NUMBER 162 224 630**

MERIDIAN 4 RANGE 22 TOWNSHIP 56  
SECTION 2

THE WEST HALF OF THE NORTH EAST QUARTER  
CONTAINING 32.4 HECTARES (80 ACRES) MORE OR LESS  
EXCEPTING THEREOUT:  
0.809 OF A HECTARE (2 ACRES) MORE OR LESS AS SHOWN ON ROAD PLAN  
796S  
EXCEPTING THEREOUT ALL MINES AND MINERALS

**TITLE NUMBER 162 224 631**

MERIDIAN 4 RANGE 22 TOWNSHIP 56  
SECTION 12

QUARTER SOUTH WEST  
CONTAINING 64.7 HECTARES (160 ACRES) MORE OR LESS

EXCEPTING THEREOUT:

1.64 HECTARES (4.04 ACRES) MORE OR LESS, AS SHOWN ON  
ROAD PLAN 7154ET

EXCEPTING THEREOUT ALL MINES AND MINERALS

**TITLE NUMBER 162 224 632**

FIRST

MERIDIAN 4 RANGE 22 TOWNSHIP 56

SECTION 12

THE NORTH WEST QUARTER

CONTAINING 64.7 HECTARES (160 ACRE) MORE OR LESS

EXCEPTING THEREOUT:           HECTARES       (ACRES) MORE OR LESS

A) PLAN 5345NY - ROAD       0.813           2.01

B) PLAN 0426682 - ROAD      0.394           0.97

EXCEPTING THEREOUT ALL MINES AND MINERALS

SECOND

MERIDIAN 4 RANGE 22 TOWNSHIP 56

SECTION 12

THE NORTH EAST QUARTER

CONTAINING 64.7 HECTARES (160 ACRES) MORE OR LESS

EXCEPTING THEREOUT:           HECTARES       (ACRES) MORE OR LESS

A) PLAN 5345NY - ROAD       0.813           2.01

B) PLAN 9020063 - ROAD      2.01            4.97

C) PLAN 0426682 - ROAD      0.230           0.57

EXCEPTING THEREOUT ALL MINES AND MINERALS

**TITLE NUMBER 162 224 633**

MERIDIAN 4 RANGE 22 TOWNSHIP 56

SECTION 11

QUARTER NORTH WEST

CONTAINING 64.5 HECTARES (160 ACRES) MORE OR LESS

EXCEPTING THEREOUT:           HECTARES (ACRES) MORE OR LESS

A) PLAN 5345NY - ROAD       0.809           2.00

B) PLAN 0426682 - ROAD      0.394           0.97

EXCEPTING THEREOUT ALL MINES AND MINERALS

**TITLE NUMBER 162 224 635**

THE SOUTH EAST QUARTER OF SECTION ELEVEN (11)

TOWNSHIP FIFTY SIX (56)

RANGE TWENTY TWO (22)

WEST OF THE FOURTH MERIDIAN

CONTAINING 64.7 HECTARES (160 ACRES) MORE OR LESS

EXCEPTING THEREOUT: (A) 0.040 HECTARES (0.10 ACRE) MORE OR LESS

AS SHOWN ON ROAD PLAN 796S

(B) 0.938 HECTARES (2.32 ACRES) MORE OR LESS AS SHOWN ON

ROAD PLAN 3842

EXCEPTING THEREOUT ALL MINES AND MINERALS

AND THE RIGHT TO WORK THE SAME

- (n) “**Lien**” means a lien registered under the BLA against the Lands;
- (o) “**Lien Claim**” means a claim of any Lien Claimant to the extent of such Lien Claimant’s entitlement to receive payment from the major lien fund, as defined in the BLA, as it relates to the Work performed by the Lien Claimant or a subrogated claim for such Work;
- (p) “**Lien Claimant**” means a claimant who has registered a Lien for its Work against the Lands;
- (q) “**Lien Determination**” means a determination of the validity of a Lien, a Lien Claim and the quantum thereof, whether by the Monitor or this Court;
- (r) “**Monitor**” means FTI Consulting Canada Inc., in its capacity as the Court-appointed monitor of JMB and 2161889 Alberta Ltd., and not in its personal capacity or corporate capacity;
- (s) “**Owner**” means, collectively, 1598313 Alberta Ltd. and Canada Kuwait Petrochemical Limited Partnership by its general partner Canada Kuwait Petrochemical Corporation;
- (t) “**Prepaid Amount**” means \$2,364,875.34, which is that amount paid directly to certain subcontractors as set out in Schedule “A” hereto, and for which payments Contractor obtained releases of Owner, Contractor and JMB;
- (u) “**Product**” means the aggregate produced by JMB pursuant to the Contract;
- (v) “**Project**” means the Canada Kuwait PDH/PP project on the Lands as contemplated by the Contract;
- (w) “**Tranche A Funds**” means \$1,434,491.41 of the Funds;
- (x) “**Tranche B Funds**” means \$1,011,684.03 of the Funds; and

- (y) “**Work**” means work done or materials furnished with respect to the Lands in connection with the Contract.

### **Stay of Lien Claims**

3. No person shall be permitted to commence or serve any Lien Claims, or to preserve or perfect any Lien Claim under the BLA, for Work done in respect of the Contract or the Lands for the period up to and including March 17, 2020. Any such Lien or Lien Claim is hereby stayed, and any person seeking to serve or enforce any Lien or Lien Claim shall be required to seek the rights and remedies set out in this Order.

### **Claims Process**

4. Within three (3) Business Days of the within Order being granted by this Court, Contractor shall remit to the Monitor the Tranche A Funds.
5. Within twenty (20) Business Days of the within Order being granted by this Court, Owner shall remit to Contractor the Tranche B Funds, and within three (3) Business Days of receipt of the Tranche B Funds, Contractor shall remit to the Monitor the Tranche B Funds.
6. Once both the Tranche A Funds and the Tranche B Funds have been received by the Monitor, both Owner and Contractor shall be deemed to have been in the same position as if (a) no written notices of Lien had been received, and (b) no Lien Claims had been made, asserted, delivered, preserved or perfected, and Owner and Contractor shall have no further liability for the Funds.
7. With respect to the payment of Funds by Contractor to the Monitor in accordance with paragraphs 4 and 5 hereof, Owner shall not use the payment of the Funds by Contractor to the Monitor, or any of the claims of JMB’s creditors, including Lien Claimants, as a reason to withhold future payments to Contractor for the Project.
8. Upon receipt of the Tranche A Funds, the Monitor shall forthwith provide a certificate to the Registrar of Land Titles confirming receipt of the Funds by the Monitor and that the Funds are sufficient to pay the Lien Claims, the Registrar is hereby authorized and directed under section 191(3)(a) of the *Land Titles Act*, RSA 2000, c L-4 to discharge the

registration of the Liens registered on or before the date of this Order against title to the Lands, including but not limited to those set out in Schedule “B” hereto, whereupon the Lien Claimants shall have no further claim against Contractor or Owner in accordance with paragraph 6 hereof.

9. The Monitor shall hold the Holdback Amount in trust in an interest bearing account in accordance with the terms of this Order, which Holdback Amount shall be deemed to be the amount Contractor was required to hold back pursuant to section 18 of the BLA from payments it made or makes to JMB for those amounts invoiced up to and including March 17, 2020.
10. Any person who has not yet registered a Lien against the Lands is hereby barred from asserting a Lien Claim as being outside of the timeframe prescribed by the BLA and beyond the Claims Bar Date.
11. Pursuant to section 48(2) of the BLA, the Holdback Amount shall stand as security in place of the Lands to the extent of any security granted under the BLA for all Lien Claims registered by Lien.
12. Lien Claimants who have registered a Lien against the Lands shall only be required to take the steps set out in this Order to prove their Lien, and shall not be required to take any steps set out in the BLA, including, but not limited to, filing a statement of claim or a certificate of lis pendens.
13. The Lien Claimant, JMB, any Interested Party and Contractor, at the request in writing of the Monitor, shall provide to the Monitor information reasonably necessary for the Monitor to make a Lien Determination.
14. Upon receipt of the information relating to a Lien and Lien Claim contemplated by paragraph 13 hereof, the Monitor shall make its Lien Determination in respect thereof and provide a Determination Notice to the Lien Claimant, JMB and any other Interested Party.
15. If a Lien Claimant, JMB or any Interested Party does not accept a Lien Determination, each of the Lien Claimant, JMB and Interested Party is hereby granted leave to file and serve an

application with this Court within 15 days of being served with the Determination Notice by the Monitor at the email address of the Lien Claimant as shown on the Lien or Lien Claim, and on JMB and any Interested Party in the records of the Monitor.

16. Once the 15-day period provided for in paragraph 15 hereof has expired without an application being served and filed with this Court, the Lien Determination of the Monitor shall be final and the Lien Claimant, JMB, and any Interested Parties shall not have any recourse to remedies set out in the BLA with respect to such Liens or Lien Claims, or as and against any of the Funds, the Holdback Amount or the CRA Amount.
17. The Monitor shall make the following payments from the Funds pursuant to this Order:
  - (a) Once the certificate has been provided to the Registrar by the Monitor pursuant to paragraph 8 herein, the Monitor shall pay to JMB the total amount of the Tranche A Funds less the Holdback Amount;
  - (b) Following each Lien Determination becoming final, the Monitor shall pay to each Lien Claimant the amount of its Lien Claim as set out in the Lien Determination from the Holdback Amount;
  - (c) The Monitor shall pay the CRA Amount to the CRA by no later than June 30, 2020; and
  - (d) The Monitor, provided that it reserves a sufficient amount of the Holdback Amount to pay the Lien Claims, may pay any Funds in excess thereof, if any, to JMB as each Lien Determination becomes final, and upon all Lien Determinations becoming final in respect of all of the Liens, the Monitor shall pay the remaining Holdback Amount and any residual Funds to JMB.

### **Disputed Amount**

18. The Disputed Amount is not subject to the terms of this Order and may be dealt with by way of separate application to this Court if required. Payment of the Funds as contemplated by this Order is without prejudice to Contractor's right to assert set-off with respect to the Disputed Amount.



19. Each party shall be responsible for their own costs regarding the within application.

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J.C.C.Q.B.A.

## SCHEDULE "A"

### List of Prepaid Liens

<b>Subcontractor</b>	<b>Amount Owed</b>
1223209 Alberta Ltd. (TJ Sagoo Transport)	\$857,165.05
1360706 AB Ltd. o/a BSB Transport	\$220,720.00
G & K Transport Ltd.	\$51,954.15
G & S Gill Trucking Ltd.	\$326,120.54
J S Trucking Ltd.	\$474,595.78
Manvir Transport Ltd.	\$51,621.34
Rai Carrier Transport Ltd.	\$159,326.62
Shamrock Valley Enterprises Ltd.	\$223,371.86
<b>TOTAL</b>	<b>\$2,364,875.34</b>

**SCHEDULE "B"**

<b>Instrument Number</b>	<b>Affected Title Number</b>	<b>Lien Claimant</b>	<b>Registration Date</b>	<b>Amount of Lien</b>
202 093 308	162 224 619 162 224 632 162 224 620	1577248 Alberta Ltd.	April 29, 2020	\$58,609
202 093 341	162 224 619 162 224 632 162 224 620	Azad Trucking Ltd.	April 29, 2020	\$34,787
202 093 377	162 224 619 162 224 632 162 224 620	Azad Transport Ltd.	April 29, 2020	\$114,343
202 098 051	162 224 632	Matt Silver Trucking Ltd.	May 5, 2020	\$33,968