



COURT FILE NUMBER 2001-05482

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JS  
Nov. 27 2020  
Justice Eidsvik

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

**November 11, 2020**

ADDRESS FOR SERVICE AND  
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# NINTH REPORT OF THE MONITOR

## Table of Contents

INTRODUCTION .....	3
TERMS OF REFERENCE .....	5
STATUS OF THE MANTLE TRANSACTION.....	6
CASH FLOW VARIANCE ANALYSIS .....	7
SIXTH CASH FLOW STATEMENT .....	8
MD CONTRACT LIEN AND TRUST CLAIMS .....	10
STAY EXTENSION.....	12
CONCLUSIONS AND RECOMMENDATIONS .....	13

**Appendix A** – Sixth Cash Flow Statement for the 32 Weeks Ending December 11, 2020

## 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 provides for, among other things:
  - a. a stay of proceedings (the “**Stay of Proceedings**”) in favour of the Applicants until July 31, 2020; and
  - b. the appointment of FTI Consulting Canada Inc. as Monitor in the CCAA Proceedings (the “**Monitor**”).
3. On May 20, 2020, this Honourable Court granted an order (the “**MD Lien Order**”) which set aside the Consent Order, granted on May 11, 2020 and replaced the process set out therein to address the validity of any builders’ lien claims associated with any work done or materials furnished with respect to the agreement between the Municipal District of Bonnyville No. 87 (the “**MD**”) and JMB, dated November 1, 2013, as subsequently amended (the “**MD Contract**”).
4. On October 16, 2020, this Honourable Court granted the following orders:
  - a. an order extending the Stay of Proceedings until and including November 13, 2020;
  - b. an order approving a transaction (the “**Mantle Transaction**”) for the sale to Mantle Materials Group, Ltd. (“**Mantle**”) of certain assets and vesting the assets

free and clear of any security interests or other claims other than certain permitted encumbrances (the “**Mantle SAVO**”);

- c. an order vesting all of JMB’s remaining assets and liabilities that are excluded from the Mantle Transaction in 216 (the “**RVO**”);
  - d. an assignment order assigning certain of the Applicants’ agreements to Mantle (the “**Assignment Order**”); and
  - e. an order sanctioning a joint plan of arrangement under the Business Corporations Act, SBC 2002, c 57, as amended (British Columbia) and the CCAA (the “**Sanction Order**”).
5. On November 5 and 6, 2020, five lien claimants in respect of the MD Contract (the “**Lien Claimants**”) with claims totalling approximately \$2.0 million filed applications to be heard on November 27, 2020 for orders declaring that the amounts in respect of their lien claims plus interest and costs are funds held by JMB in trust for the claimants and awarding costs in favour of the claimants (the “**Trust Claim Orders**”). One of the lien claimants, Mr. Shankowski and 945441 Alberta Ltd. (collectively “**Shankowski**”), has applied for various additional relief which is summarized paragraph 28 below.
6. On November 11, 2020, the Applicants filed a Notice of Application for an order extending the Stay of Proceedings until and including December 11, 2020, or such further date as this Honourable Court may deem appropriate (the “**Extension Order**”).
7. The purpose of this report to provide this Honourable Court and the Applicants’ stakeholders with information and the Monitor’s comments with respect to:
- a. the status of the Mantle Transaction;

- b. the Applicants' actual cash receipts and disbursements for the 26-week period ended October 30, 2020 as compared to the Fifth Cash Flow Statement filed with the seventh report of the Monitor;
- c. an updated cash flow statement (the "**Sixth Cash Flow Statement**") prepared by the Applicants for the 32 weeks ending December 11, 2020 including the key assumptions on which the Sixth Cash Flow Statement is based;
- d. the applications filed by the various Lien Claimants;
- e. the Applicants' application for the Extension Order; and
- f. the Monitor's conclusions and recommendations.

## **TERMS OF REFERENCE**

- 8. 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**").
- 9. 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.
- 10. 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.

11. 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.

12. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.

## **STATUS OF THE MANTLE TRANSACTION**

13. Under the asset purchase agreement between JMB and Mantle, the Mantle Transaction was to have closed on the fifth business day immediately following the date that the Mantle SAVO, RVO and Sanction Order were issued or on such other business day as the parties may agree in writing.

14. As at November 11, 2020, the Mantle Transaction has not closed. The remaining material conditions to closing which have not yet been satisfied include:

- a. payment by Mantle to JMB of the purchase price; and
- b. the parties having obtained such material approvals or consents and such permits as are required to permit the change of ownership of the acquired assets from all appropriate governmental authorities and counterparties.

15. The Mantle SAVO remains subject to the approval by Alberta Environment and Parks ("AEP") of the transfer of the surface mineral leases and certain other Crown disposition included in the Mantle Transaction, as set out and contemplated in the Mantle SAVO.

16. In order to bridge to the anticipated closing of the Mantle Transaction and to address funding of the ongoing operating costs, the Applicants and Mantle are working, in consultation with the Monitor, to establish an interim lease arrangement (the "**Interim Lease**") between the parties that would see Mantle operate the business and fund the ongoing operating costs until the pending completion of the Mantle Transaction.

## CASH FLOW VARIANCE ANALYSIS

17. The Monitor has undertaken weekly reviews of JMB's actual cash flows in comparison to those contained in the Fifth 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 October 30, 2020, are summarized below:

(\$000's)	Actual	Weeks 1 - 26 Forecast	Variance
<b>Operating Receipts</b>			
Collection of Pre-Filing AR - Ellis Don	\$ 2,032	\$ 2,199	\$ (167)
Collection of Pre-Filing AR - MD of Bonnyville	1,478	3,328	(1,850)
Collection of Post Filing AR - MD of Bonnyville	1,566	1,566	-
SISP Proceeds	577	582	(5)
Other Receipts	827	827	-
<b>Total Operating Receipts</b>	<b>6,479</b>	<b>8,501</b>	<b>(2,022)</b>
<b>Operating Disbursements</b>			
Payroll And Source Deductions	(1,388)	(1,358)	(30)
Royalties	(408)	(408)	-
Fuel	(207)	(207)	-
Repair & Maintenance	(52)	(49)	-
Office Administration	(38)	(33)	(5)
Insurance & Benefits	(202)	(203)	-
Jobsite Lodging	(21)	(21)	-
Equipment Loan & Lease Payments	(137)	(136)	-
Occupancy	(235)	(206)	(29)
Other	(55)	(64)	9
<b>Total Operating Disbursements</b>	<b>(2,743)</b>	<b>(2,686)</b>	<b>(54)</b>
<b>Non-Operating Receipts &amp; Disbursements</b>			
Interim Financing (Repayment)	(211)	(211)	-
Professional Fees	(1,836)	(1,958)	122
<b>Total Disbursements</b>	<b>(4,790)</b>	<b>(4,855)</b>	<b>68</b>
<b>Net Cash Flow</b>	<b>1,689</b>	<b>3,646</b>	<b>(1,954)</b>
Opening Cash Balance	-	-	-
<b>Ending Cash</b>	<b>\$ 1,689</b>	<b>\$ 3,646</b>	<b>\$ (1,954)</b>

18. Overall, the Applicants realized an unfavourable net cash flow variance of approximately \$2.0 million. The key components of the variance are as follows:

- a. the collection of pre-filing accounts receivable is approximately \$2.0 million lower than forecast as contested lien determinations pursuant to the MD Lien Order and Trust Claims have not yet been resolved; and
- b. professional fees are approximately \$122,000 lower than forecast as a result of timing differences.

## **SIXTH CASH FLOW STATEMENT**

19. The Applicants have prepared the Sixth Cash Flow Statement which includes forecast results for the 32 weeks ending December 11, 2020 (the “**Forecast Period**”). A copy of the Sixth Cash Flow Statement is attached as Appendix “**A**”.
20. A summary of the Sixth Cash Flow Statement is set out in the table below:



<i>(\$000's)</i>	Weeks 1-26 Actual	Weeks 27-32 Forecast	Total Pro-Forma
<b>Operating Receipts</b>			
Collection of Pre-Filing AR - Ellis Don	\$ 2,032	\$ 167	\$ 2,199
Collection of Pre-Filing AR - MD of Bonnyville	1,478	1,850	3,328
Collection of Post Filing AR - MD of Bonnyville	1,566	-	1,566
Post-filing Gravel Sales	-	49	49
SISP Proceeds	577	-	577
Other Receipts	827	47	875
<b>Total Operating Receipts</b>	<b>6,479</b>	<b>2,114</b>	<b>8,593</b>
<b>Operating Disbursements</b>			
Payroll And Source Deductions	(1,388)	(85)	(1,473)
Royalties	(408)	-	(408)
Fuel	(207)	(1)	(208)
Repair & Maintenance	(52)	-	(52)
Office Administration	(38)	(8)	(46)
Insurance & Benefits	(202)	(124)	(325)
Jobsite Lodging	(21)	-	(21)
Equipment Loan & Lease Payments	(137)	(1)	(138)
Occupancy	(235)	(46)	(282)
Other	(55)	(12)	(67)
<b>Total Operating Disbursements</b>	<b>(2,743)</b>	<b>(277)</b>	<b>(3,020)</b>
<b>Non-Operating Receipts &amp; Disbursements</b>			
Interim Financing (Repayment)	(211)	-	(211)
Professional Fees	(1,836)	(676)	(2,512)
<b>Total Disbursements</b>	<b>(4,790)</b>	<b>(953)</b>	<b>(5,743)</b>
<b>Net Cash Flow</b>	1,689	1,161	2,850
Opening Cash Balance	-	1,689	-
<b>Ending Cash</b>	<b>\$ 1,689</b>	<b>\$ 2,850</b>	<b>\$ 2,850</b>
<i>Ending Cash Excluding MD of Bonnyville Trust Funds</i>	<i>\$ 1,689</i>	<i>\$ 1,000</i>	<i>\$ 1,000</i>

21. The Sixth Cash Flow Statement is based on the following assumptions:

- a. receipts are assumed to include approximately \$1.9 million to JMB in holdbacks relating to the MD Contract and \$167,000 relating to the EllisDon contract following resolution of the disputed lien determinations and Trust Claims;
- b. operating disbursements relate primarily to ordinary course payments to fund payroll for the limited amount of staff remaining, basic office needs, insurance, benefits and occupancy costs. The Applicants' general liability insurance is

scheduled to expire on November 30, 2020 and Management is working to find replacement coverage; and

- c. professional fees are forecast to be approximately \$676,000 during the Forecast Period and include accrued and current 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.

22. Overall, the Applicants are forecasting to achieve a net cash flow of approximately \$1.2 million during the Forecast Period and have a remaining cash balance of approximately \$2.9 million as at December 11, 2020. If the holdbacks with respect to the MD Contract are not available to the Applicants, it is estimated that JMB will have an ending cash balance of approximately \$1.0 million.

#### **MD CONTRACT LIEN AND TRUST CLAIMS**

23. As described in the Eighth Report of the Monitor dated October 16, 2020, six lien claims were received as a result of the MD Lien Order totalling \$1.8 million. All of these were determined by the Monitor to be invalid due to, among other things, the nature and timing of the MD Contract and the work performed thereunder.

24. Two of the Lien Claimants contested the lien determination in respect of their lien claim including:

- a. RBEE with respect to its lien claim for approximately \$1.3 million; and
- b. Shankowski with respect to its lien claim for approximately \$425,000.

25. On October 20, 2020, an application scheduled for October 21, 2020 to determine the lien claims was adjourned to allow the Lien Claimants with additional time to prepare an application to have the holdback amounts under the Builders' Lien Protocol declared trust funds (the "**Trust Claims**").

26. On November 5 and 6, 2020, five Lien Claimants filed applications for the Trust Claim Orders.

27. The application materials reference Paragraph 26 of the MD Contract which is provided below:

*From the amounts paid to JMB by the MD, JMB is deemed to hold that part of them in trust which are required or needed to pay for any salaries, wages, compensation, overtime pay, statutory holiday pay, vacation pay, entitlements, employee and employer Canada Pension Plan contributions, employee and employer Employment Insurance contributions, Workers' Compensation premiums and assessments, income taxes, withholdings, GST and all costs directly or indirectly related to the Product and Services. JMB shall pay the foregoing from such trust funds.*

28. Shankowski has also applied for additional relief including, among other things:

- a. permission to add JMB, Gowling WLG (Canada) LLP, Tom Cumming, Caireen E. Hanert, Alison J. Gray, the Monitor, McCarthy Tetrault LLP, Sean F. Collins, Pantelis Kyriakakis, Nicole Fitz-Simon and Nathan Stewart as respondents on his application;
- b. an order requiring indemnification by JMB, Counsel for JMB, the Monitor and Counsel for the Monitor in favour of the Applicants and the other actual or potential beneficiaries of the trust constituted by paragraph 26 of the Contract to the extent of any monies unrecoverable from the "Funds" as defined in the MD Lien Order;
- c. an order setting aside the Mantle SAVO and the RVO;

- d. an order declaring JMB a trustee with respect to the post-filing amounts collected under the MD Contract totalling approximately \$3.3 million in favour of all suppliers in relation to the MD Contract;
  - e. an order directing payment to Shankowski of approximately \$588,000 (an increase of \$163,000 from the amount of Shankowski's lien claim); and
  - f. various other related relief.
29. The Monitor, in conjunction with its legal counsel, is evaluating the Trust Claims and plans to provide a further report in respect of the Trust Claim Orders in advance of the Court hearing scheduled for November 27, 2020.
30. The Monitor and its legal counsel will also respond to the application for additional relief being sought by Shankowski.
31. The Monitor continues to hold \$1.85 million in trust pursuant to the MD Lien Order and notes that those trust funds are sufficient to satisfy any Trust Claims that may be determined to be valid and enforceable based on reported MD Contract project accounts payable totaling \$1.8 million. The Sixth Cash Flow Statement forecasts that the Applicants are forecasted to have a cash balance of \$1.0 million without accounting for the holdback funds, which is currently anticipated to be sufficient to address the additional \$163,000 claimed by Shankowski, should he have a valid and enforceable trust claim for such an amount.

## **STAY EXTENSION**

32. The Monitor has considered JMB's application to extend the Stay of Proceedings and has the following comments:
- a. the proposed extension will provide the Applicants and the Monitor with time to complete the transactions contemplated by the Mantle SAVO, resolve the Trust Claims and address other remaining restructuring matters;

- b. the Sixth Cash Flow Statement forecasts that the Applicants have available liquidity during the period of the proposed extension;
- c. the Monitor has been advised that certain stakeholders, including the senior secured lenders, are supportive of the proposed extension, subject to JMB and Mantle reaching a satisfactory Interim Lease to addresses ongoing operating costs;
- d. the Applicants are acting in good faith and with due diligence;
- e. the Applicants have sufficient liquidity to fund near term operating costs; and
- f. JMB's prospects of effecting a viable restructuring will be enhanced by an extension of the Stay of Proceedings until December 11, 2020.

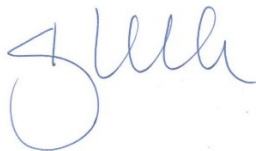
### **CONCLUSIONS AND RECOMMENDATIONS**

33. 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 November, 2020.

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



Deryck Helkaa  
Senior Managing Director



Tom Powell  
Senior Managing Director

# **Appendix A**

## **Sixth Cash Flow Statement for the 32 Weeks Ending December 11, 2020**

## Sixth Cash Flow Statement (Notes 1)

	<i>Actual</i>	<i>Forecast</i>	<i>Forecast</i>	<i>Forecast</i>	<i>Forecast</i>	<i>Forecast</i>	<i>Forecast</i>	<i>Forecast</i>	<i>Forecast</i>	
Week #	Weeks 1 - 26	Week 27	Week 28	Week 29	Week 30	Week 31	Week 32	Weeks 27 - 32	Weeks 1 - 32	
Week Ending		6-Nov-20	13-Nov-20	20-Nov-20	27-Nov-20	4-Dec-20	11-Dec-20	Total	Total	Notes
Opening Cash	\$ -	\$ 1,689,078	\$ 1,648,886	\$ 1,665,664	\$ 1,279,996	\$ 1,167,896	\$ 2,860,986	\$ 1,689,078	\$ -	
<b>Cash Receipts</b>										
Collection of Canadian Emergency Wage Subsidy	680,468	-	17,600	-	-	17,600	-	35,200	715,668	
Collection of Pre-Filing AR - EllisDon (net of lien payouts)	2,031,521	-	-	-	-	167,000	-	167,000	2,198,521	<b>2</b>
Collection of Pre-Filing AR - MD of Bonnyville	1,477,612	-	-	-	-	1,850,000	-	1,850,000	3,327,612	<b>3</b>
Collection of Post-Filing AR - MD of Bonnyville	1,565,745	-	-	-	-	-	-	-	1,565,745	<b>4</b>
Post-Filing Gravel Sales	-	-	-	49,095	-	-	-	49,095	49,095	
SISP Proceeds	576,990	-	-	-	-	-	-	-	576,990	<b>5</b>
Other Receipts	146,664	160	12,115	-	-	-	-	12,275	158,939	
<b>Total Receipts</b>	<b>6,479,000</b>	<b>160</b>	<b>29,715</b>	<b>49,095</b>	<b>-</b>	<b>2,034,600</b>	<b>-</b>	<b>2,113,570</b>	<b>8,592,570</b>	
<b>Operating Disbursements</b>										
Payroll And Source Deductions	(1,387,929)	(21,324)	(7,087)	(21,000)	(7,500)	(21,000)	(7,500)	(85,411)	(1,473,340)	<b>6,7</b>
Royalties	(407,629)	-	-	-	-	-	-	-	(407,629)	
Fuel	(207,285)	-	-	-	-	(500)	-	(500)	(207,785)	<b>6</b>
Repair & Maintenance	(51,916)	-	-	-	-	-	-	-	(51,916)	
Office Administration	(38,254)	(1,937)	(500)	(500)	(2,600)	(2,000)	(500)	(8,037)	(46,291)	<b>6</b>
Insurance & Benefits	(201,710)	-	(5,000)	(21,000)	(97,500)	-	-	(123,500)	(325,210)	<b>8</b>
Jobsite Lodging	(20,605)	-	-	-	-	-	-	-	(20,605)	<b>6</b>
Equipment Loan & Lease Payments	(137,367)	-	-	(938)	-	-	-	(938)	(138,305)	<b>9</b>
Occupancy	(235,109)	(315)	(350)	(9,950)	(1,500)	(34,010)	(350)	(46,475)	(281,584)	<b>10</b>
Other	(55,125)	-	-	(3,000)	(3,000)	(3,000)	(3,000)	(12,000)	(67,125)	<b>11</b>
<b>Total Disbursements</b>	<b>(2,742,928)</b>	<b>(23,576)</b>	<b>(12,937)</b>	<b>(56,388)</b>	<b>(112,100)</b>	<b>(60,510)</b>	<b>(11,350)</b>	<b>(276,861)</b>	<b>(3,019,790)</b>	
<b>Non-Operating Receipts &amp; Disbursements</b>										
DIP Financing (Repayment)	(211,188)	-	-	-	-	-	-	-	(211,188)	
Professional Fees	(1,835,806)	(16,776)	-	(378,375)	-	(281,000)	-	(676,151)	(2,511,957)	<b>12</b>
<b>Total Disbursements</b>	<b>(2,046,994)</b>	<b>(16,776)</b>	<b>-</b>	<b>(378,375)</b>	<b>-</b>	<b>(281,000)</b>	<b>-</b>	<b>(676,151)</b>	<b>(2,723,145)</b>	
<b>Net Cash Flow</b>	<b>1,689,078</b>	<b>(40,193)</b>	<b>16,778</b>	<b>(385,668)</b>	<b>(112,100)</b>	<b>1,693,090</b>	<b>(11,350)</b>	<b>1,160,557</b>	<b>2,849,636</b>	
Ending Cash Balance	\$ 1,689,078	\$ 1,648,886	\$ 1,665,664	\$ 1,279,996	\$ 1,167,896	\$ 2,860,986	\$ 2,849,636	\$ 2,849,636	\$ 2,849,636	

## Notes

- 1 The Sixth Cash Flow Statement has been prepared to set out the post filing liquidity requirements of JMB Crushing Systems Inc. during the six weeks ending December 11, 2020 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 are based upon the Lien Determination Notices issued by the Monitor on August 20, 2020.
- 3 Cash receipts and timing of payment of pre-filing amounts due from MD of Bonnyville and held by the Monitor are dependent on the outcome of a Court hearing scheduled for November 27, 2020 in respect of two appeals to the Monitor's Lien Determination Notices.
- 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 November 30, 2020, 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.