

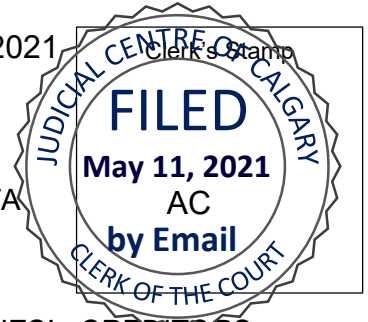
ENTERED

COM May 14 2021

J. Edisvik

\$50

500460



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 – 7th Avenue SW
Calgary, AB T2P 4K9
Attention: Sean Collins / Pantelis Kyriakakis
Tel: 403-260-3531 / 3536
Fax: 403-260-3501
Email: scollins@mccarthy.ca / pkyriakakis@mccarthy.ca

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: May 14, 2021
Time: 11:00 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 "**Initial Order**") and the Amended Reverse Vesting Order, granted on March 31, 2021, all in the within proceedings (the "**CCAA Proceedings**") applies for two orders, substantially in the forms attached as Schedule "**B**" and "**C**" hereto:

Service

1. Declaring that the time for service of this application (the “**Application**”) and the Seventeenth Report of the Monitor, dated May 11, 2021 (the “**Seventeenth Monitor’s Report**”), is abridged, that the Application is property returnable on May 14, 2021, that service of the Application and the Seventeenth 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 Seventeenth Monitor’s Report, the Application, or any orders arising therefrom.

Monitor’s Additional Powers

2. Granting additional powers to the Monitor and authorizing the Monitor to take all such further steps and actions as the Monitor determines are necessary or desirable to enable the Monitor to guide ResidualCo through the remainder of these CCAA Proceedings.

Extending the Stay Period

3. Extending the Stay Period, as ordered and defined in paragraph 13 of the Initial Order, up to and including September 3, 2021.

Miscellaneous Matters

4. Declaring that service of any orders arising from this Application 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, shall constitute good and sufficient service of such orders and that no other persons are entitled to be served with a copy of such orders.
5. 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.

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

Background

6. The Initial Order, concerning JMB Crushing Systems Inc. ("**JMB**") and 2161889 Alberta Ltd. ("**216 Alberta**", 216 Alberta and JMB are collectively referred to as, the "**Initial Applicants**"), among other things:
 - (a) declared that the Initial Applicants are companies to which the CCAA applies;
 - (b) granted a stay of proceedings up to and including May 11, 2020 (the "**Stay Period**"), which stay period was subsequently extended to July 31, 2020;
 - (c) approved the sale and investment solicitation process attached as Schedule "A" to the Initial Order (the "**SISP**");
 - (d) appointed the Monitor as monitor of the Initial Applicants under these CCAA Proceedings;
 - (e) appointed Sequeira Partners (the "**Sale Advisor**") as sale advisor for the SISP; and,
 - (f) authorized the Monitor, the Sale Advisor, and the Initial Applicants to conduct the SISP and carry out their obligations thereunder.
7. In accordance with the terms of the SISP, the Monitor and the Sale Advisor marketed the business and assets of the Initial Applicants.
8. Mantle Materials Group, Ltd. ("**Mantle**"), a RLF subsidiary, 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' assets, properties, and operations.
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 various transactions (collectively, the "**Mantle Transaction**") contemplated therein and pursuant to the following Orders: (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 “**Mantle Orders**”).

10. On April 29, 2021, the Mantle Transaction closed and the Monitor filed the various Monitor’s certificates, as contemplated under the Mantle Orders.
11. Pursuant to the Amended RVO, all remaining assets (collectively, the “**Residual Assets**”) and remaining liabilities (collectively, the “**Residual Liabilities**”) not subject to or assumed in connection with the Mantle Transaction were transferred to ResidualCo, which was simultaneously added as a debtor company to the within CCAA Proceedings.
12. Following and as result of the Mantle Transaction closing:
 - (a) the Initial Applicants emerged from these CCAA Proceedings;
 - (b) ResidualCo is the sole remaining debtor company in the within CCAA Proceedings and holds all Residual Assets and Residual Liabilities; and,
 - (c) ResidualCo has no management, directors, or current governance structure.
13. Despite the closing of the Mantle Transaction and the emergence of the Initial Applicants as operating entities, there remain a number of Residual Assets, Residual Liabilities, and various claims, lien disputes, cost allocations, distributions, and other matters (collectively, the “**Remaining Matters**”) which have to be addressed prior to the conclusion of the within CCAA Proceedings.
14. As ResidualCo lacks any directors or management, the Monitor requires additional powers and authority to attend to the Remaining Matters, in order to conclude these CCAA Proceedings.
15. The Stay Period granted by the Initial Order, was extended on numerous occasions and ultimately expired on April 23, 2021.
16. 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 September 3, 2021.

17. ResidualCo and the Initial Applicants, while subject to the within CCAA Proceedings, have acted and are acting in good faith and with due diligence.
18. 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:

19. The Fourteenth Report of the Monitor, dated March 4, 2021, filed;
20. The Fifteenth Report of the Monitor, dated March 26, 2021, filed;
21. The Sixteenth Report of the Monitor, dated March 30, 2021, filed;
22. The Seventeenth Report of the Monitor, filed; and,
23. Such further and other evidence or materials as counsel for the Monitor may advise and this Honourable Court may permit.

Application Rules:

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

Applicable Acts and Regulations:

26. The *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended.
27. 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:

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

How the Application is proposed to be heard or considered:

29. 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 (ENHANCED MONITOR'S POWERS)**

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 (ENHANCED MONITOR'S POWERS)**

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

DATE ON WHICH ORDER WAS PRONOUNCED: **May 14, 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 "**Initial Order**") 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 Seventeenth Report of the Monitor, dated May 11, 2021 (the "**Seventeenth Monitor's Report**"), filed; **AND UPON** reading the Affidavit of Service of Katie Doran (the "**Service Affidavit**"), to be 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 Seventeenth Monitor's Report is abridged, the Application is properly returnable today, service of the Application and the Seventeenth 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 Seventeenth 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 Initial Order or the Amended RVO, as required.

ENHANCED MONITOR'S POWERS

3. All powers of ResidualCo under paragraphs 4 to 7 and 10 of the Initial Order may be exercised by the Monitor (in each case for and on behalf of ResidualCo and without any personal liability therefor).
4. In addition to the powers and obligations set out in the Initial Order, CCAA, and paragraph 3 of this Order, the Monitor is hereby authorized and empowered, but in no way obligated to (and in each case for and on behalf of ResidualCo and without any personal liability therefor):
 - (a) take all steps necessary to market the Excluded ResidualCo Assets and enter into and complete any and all sales or related transactions;
 - (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 Excluded ResidualCo Assets;
 - (c) pay creditors or other claimants in accordance with any order made in these CCAA Proceedings;
 - (d) exercise any shareholder rights of ResidualCo;

- (e) negotiate and extend, as applicable and if necessary, executive employment agreements;
- (f) communicate and share information with any Persons relating to the Property;
- (g) attend to the determination, settlement, or other resolution of the claim of RBEE Aggregate Consulting Ltd. against JMB pursuant to its application appealing the determination by the Monitor denying its lien claim and its claim to funds held by the Monitor;
- (h) attend to the determination, settlement, or other resolution of any applications by Kalinko Enterprises Ltd. for, *inter alia*, a declaration that it has title to aggregate located at various aggregate pits and by 848875 Alberta Ltd. (operating as Al's Contracting) for a possessory lien in certain aggregate;
- (i) attend to the collection, settlement, determination, or other resolution of all amounts owing under an agreement dated as of March 13, 2019 between the Special Areas Board, an agent of the Crown in right of Alberta, and JMB;
- (j) attend to the review and reporting of all accounting by each PMSI Party in respect of its sale or disposition of PMSI Property, and the remittance by any PMSI Party to the Monitor of any proceeds of such PMSI Property, in excess of the amounts owing to such PMSI Party secured thereby;
- (k) attend to any actions, applications, or other proceedings against a PMSI Party that are necessary or desirable in order to enforce the obligation of a PMSI Party to pay any excess to the Monitor and to contribute to the costs of these CCAA Proceedings;
- (l) attend to, complete, seek approval of, and implement, a cost allocation with respect to the Initial Applicants, ResidualCo, and these CCAA Proceedings;
- (m) initiate, prosecute, and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the ResidualCo or the Excluded ResidualCo Assets, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or

applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- (n) to receive and collect all monies and accounts now owed or hereafter owing to ResidualCo and to exercise all remedies of ResidualCo in collecting such monies, including, without limitation, to enforce any security held by ResidualCo;
 - (o) to settle, extend or compromise any indebtedness owing to or by ResidualCo;
 - (p) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Excluded ResidualCo Assets or in the name or on behalf of ResidualCo, for any purpose pursuant to this Order; and,
 - (q) take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations, or as may otherwise be necessary or desirable to conclude the within CCAA Proceedings.
5. The Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order or any of the powers and authority entrusted to the Monitor herein, save and except for any gross negligence or wilful misconduct on the Monitor's part. Nothing in this Order shall derogate from the protections afforded to the Monitor by the CCAA, any applicable legislation, or any orders granted in the within CCAA Proceedings.

MISCELLAENOUS MATTERS

6. 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.

7. 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.

Justice of the Court of Queen's Bench of Alberta

**SCHEDULE "C" TO THE APPLICATION
ORDER (STAY EXTENSION)**

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 (STAY EXTENSION)**

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

DATE ON WHICH ORDER WAS PRONOUNCED: May 14, 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 "**Initial Order**") 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 Seventeenth Report of the Monitor, dated May 11, 2021 (the "**Seventeenth Monitor's Report**"), filed; **AND UPON** reading the Affidavit of Service of Katie Doran (the "**Service Affidavit**"), to be 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 Seventeenth Monitor's Report is abridged, the Application is properly returnable today, service of the Application and the Seventeenth 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 Seventeenth 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 Initial Order or the Amended RVO, as required.

STAY EXTENSION

3. The Stay Period as ordered and defined in paragraph 13 of the Initial Order is hereby extended until and including September 3, 2021.

MISCELLAENOUS MATTERS

4. 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/jmb/> and service on any other person is hereby dispensed with.

5. 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.

Justice of the Court of Queen's Bench of Alberta