

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

\$50.00  
 Justice Eidsvik  
 COM  
 Dec 1, 2021



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  
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 Email: scollins@mccarthy.ca / pkyriakakis@mccarthy.ca /  
 nstewart@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: December 1, 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**"), in addition to the cost allocation and distribution authorization portions of the Monitor's Application, filed on August 17, 2021 (the "**Distribution**"),

**and Allocation Application**”), which were adjourned and are returnable concurrently with the within Application, applies for two (2) additional 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 Nineteenth Report of the Monitor, dated November 25, 2021 (the “**Nineteenth Monitor’s Report**”), is abridged, that the Application is property returnable on December 1, 2021, that service of the Application and the Nineteenth 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 Nineteenth Monitor’s Report, the Application, and any orders arising therefrom;

**Discharge of the Monitor and Termination of the CCAA Proceedings**

2. As substantially set out in Schedule “**B**” (the “**Discharge and Termination Order**”) hereto:
  - (a) Approving the: (i) Nineteenth Monitor’s Report, all appendices thereto, and the actions and activities of the Monitor as reported therein, (ii) the Monitor’s final statement of receipts and disbursements with respect to ResidualCo, and (iii) the activities and conduct of the Monitor in relation to these CCAA Proceedings, and declaring that the Monitor has satisfied all of its obligations thereunder;
  - (b) Terminating these CCAA Proceedings, upon the Monitor filing a certificate confirming that all remaining steps required to complete these CCAA Proceedings (collectively, as set out in Schedule “**A**” to the proposed form of Discharge and Termination Order) have been completed (the “**Monitor’s Termination Certificate**”), effective on the filing of the Monitor’s Termination Certificate;
  - (c) Discharging the Monitor, from its capacity as the court-appointed monitor of ResidualCo, as at and effective upon filing of the Monitor’s Termination Certificate (such time being referred to as, the “**CCAA Termination Time**”);
  - (d) Declaring that, based upon the evidence that is currently before this Honourable Court:

- (i) the actions and conduct of the Monitor are approved and the Monitor has satisfied all of its duties and obligations as monitor of ResidualCo and the Initial Applicants (as defined below);
  - (ii) the Monitor shall not be liable for any liabilities or obligations as a result of its appointment, the carrying out of the provisions of the Initial Order or any other Orders granted in these CCAA Proceedings, or any of the Monitor's duties thereunder or in connection with these CCAA Proceedings, save and except for any claim or liability arising out of gross negligence or willful misconduct on the part of the Monitor; and,
  - (iii) any and all claims against the Monitor arising from, relating to, or in connection with the performance of the Monitor's duties and obligations, as monitor of ResidualCo and the Initial Applicants, save and except for claims based on fraud, gross negligence, or willful misconduct, on the part of the Monitor, shall be forever barred and extinguished.
- (e) Declaring that no action or proceeding arising from, relating to, or in connection with the performance of the Monitor's duties and obligations, as monitor of ResidualCo and the Initial Applicants, may be commenced or continued without the prior leave of this Honourable Court, on notice to the Monitor, and on such terms as this Honourable Court may direct;
- (f) Approving the fees and disbursements of the Monitor and of McCarthy Tétrault LLP (the "**Monitor's Counsel**"), as counsel to the Monitor, incurred in these CCAA Proceedings, as set out in the Nineteenth Monitor's Report;
- (g) Declaring that notwithstanding the discharge of the Monitor, the Monitor remains empowered with residual jurisdiction to take such steps and actions as it deems necessary to address any ancillary or incidental matters, as required in connection with its capacity as Monitor following the termination of the CCAA Proceedings, and in completing or addressing any such ancillary or incidental matters, FTI Consulting Canada Inc. shall continue to have the benefit of the provisions of the CCAA and provisions of all Orders made in the CCAA Proceedings in relation to its capacity as Monitor; and,

- (h) Extending the Stay Period, as defined in paragraph 13 of the ARIO, up to and until the earlier of: (i) December 31, 2021; or (ii) the filing of the Monitor's Termination Certificate.
3. As substantially set out in Schedule "C" (the "**Assignment and Distribution Order**") hereto:
- (a) Effective upon the filing of the Monitor's Termination Certificate, assigning and transferring the entire right, title, and interest of all of ResidualCo's remaining receivable claims, to ATB Financial ("**ATB**"), including, but not limited to, the following:
    - (i) all receivable claims, chose in actions, and corresponding rights, titles, and interests of ResidualCo, against, concerning, or in respect of, Kalinko Enterprises Ltd. ("**Kalinko**");
    - (ii) all receivable claims, chose in actions, and corresponding rights, titles, and interests of ResidualCo, against, concerning, or in respect of the Special Areas Board (the "**SAB**"), under an agreement dated as of March 13, 2019 (the "**SAB Agreement**"), between the SAB and JMB Crushing Systems Inc. ("**JMB**"); and,
    - (iii) any and all uncollected receivables which remain due and owing by any Affected Creditors (as defined in the Distribution and Allocation Application) in connection with the Proposed Allocation (as defined in the Distribution and Allocation Application), if granted.(collectively, the "**ResidualCo Receivable Claims**");
  - (b) Authorizing and directing the Monitor to release the \$39,654.17 (the "**GST Holdback**") currently held in trust, in accordance with the Order – Lien Claims – EllisDon Industrial, granted on May 29, 2020; and,
  - (c) Authorizing and empowering the Monitor to make distributions to ATB and Canadian Western Bank ("**CWB**"), as set out in the Eighteenth Monitor's Report (the "**Proposed Distribution**").

### **Miscellaneous Matters**

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.
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 Monitor was appointed as monitor of JMB and 2161889 Alberta Ltd. (“**216 Alberta**”, 216 Alberta and JMB are collectively referred to as, the “**Initial Applicants**”), pursuant to the ARIO.
7. The ARIO, among other things: (i) granted an initial stay of proceedings up to and including May 11, 2020 (the “**Stay Period**”); (ii) appointed the Monitor as monitor of the Initial Applicants in these CCAA Proceedings; and, (iii) approved the sale and investment solicitation process attached as Schedule “A” to the ARIO (the “**SISP**”).
8. 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 Materials Group Ltd. (“**Mantle**”) along with the transactions contemplated therein (collectively, the “**Mantle Transactions**”), pursuant to the: (i) Amended Sale Approval and Vesting Order, granted on March 31, 2021; (ii) Amended RVO; (iii) Amended Assignment Order, granted on March 31, 2021; and (iv) Amended Plan Sanction Order, granted on March 31, 2021.
9. 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 within CCAA Proceedings.

10. On April 29, 2021, the Mantle Transactions closed. As a 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 had no management, directors, or current governance structure.
11. As a result of ResidualCo's lack of management and the fact that certain matters remained to be addressed in these CCAA Proceedings, the Monitor sought and obtained, on May 14, 2021, an Order (Enhanced Monitor's Powers) (the "**Enhanced Powers Order**") enhancing the Monitor's powers.
12. On August 17, 2021, the Monitor filed the Distribution and Allocation Application, seeking, among other things: (i) approval of the Proposed Allocation (as defined in the Distribution and Allocation Application); (ii) authorization of the Proposed Distribution (as defined in the Distribution and Allocation Application); (iii) an extension of the Stay Period up to and until December 3, 2021; (iv) approval of the Monitor's actions and conduct throughout these CCAA Proceedings; and, (v) sealing Confidential Appendix "A" to the Eighteenth Report of the Monitor, dated August 16, 2021.
13. The Distribution and Allocation Application was originally returnable on September 2, 2021. Pursuant to a request made by a creditor of ResidualCo, the cost allocation and distribution authorization portions of the Distribution and Allocation Application were adjourned and are currently returnable concurrently with the within Application.
14. The remaining relief sought under the Distribution and Allocation Application was granted pursuant to the Order (Action Approval, Stay Extension, and Sealing) on September 2, 2021 (the "**Action Approval Order**").
15. The background and details with respect to the Proposed Distribution and Proposed Allocation (as defined in the Distribution and Allocation Application), are set out in the Distribution and Allocation Application and the corresponding materials.

### **Release of GST Holdback**

16. The Order – Lien Claims – EllisDon Industrial, granted on May 29, 2020, contemplated that the Monitor would maintain the GST Holdback, on account of a potential GST claim by the CRA.
17. The CRA has agreed to the release of the GST Holdback and the distribution of such amounts to ResidualCo's secured creditors.

#### **Assignment of ResidualCo Receivable Claims**

18. The Residual Assets transferred to ResidualCo, pursuant to the Amended RVO, include certain account receivable claims and choses in action, which originally belonged to the Initial Applicants. Specifically, the ResidualCo Receivable Claims, include, in large part, the following:
  - (a) a claim against Kalinko, in connection with the Sand and Gravel Operating Agreement, entered into between Kalinko and JMB Crushing Systems ULC, an amalgamation predecessor of JMB, on or around June 12, 2012, as subsequently amended on June 12, 2017 (collectively, the "**Kalinko Agreement**"). An application brought by Kalinko in the within CCAA Proceedings, with respect to the Kalinko Agreement, was adjourned *sine die* on August 26, 2020 and has not been rescheduled. Prior to the issuance of the Amended RVO, JMB alleged that it held certain counterclaims, and a receivable claim, against Kalinko;
  - (b) a potential receivable claim against the SAB (the "**SAB Claim**"), which relates to services performed by JMB under the SAB Agreement. The quantum of the SAB Claim is not currently determinable, as a result of uncrystallized set-off and corresponding counterclaims associated with the disclaimer of the SAB Agreement; and,
  - (c) any uncollected amounts in connection with the Proposed Cost Allocation (as defined in the Distribution and Allocation Application), in the event such Proposed Cost Allocation is approved by this Honourable Court.
19. ATB is the senior secured creditor over the ResidualCo Receivable Claims and the only creditor with an economic interest in same.

20. The resolution of the aforementioned ResidualCo Receivable Claims may take a significant length of time and, if such ResidualCo Receivable Claims are pursued by the Monitor, will result in the ResidualCo estate incurring additional professional fees and disbursements.
21. It is anticipated that ATB may incur a shortfall in excess of \$10 million and as a result, ATB is the only creditor with an economic interest in any recoveries from the ResidualCo Receivable Claims.
22. As a result of the aforementioned, ATB has agreed to take an assignment of the ResidualCo Receivable Claims. Accordingly, the Monitor seeks to assign the ResidualCo Receivable Claims, to ATB, to permit ATB to pursue the resolution of such ResidualCo Receivable Claims.
23. Based on the aforementioned the assignment of the ResidualCo Receivable Claims, to ATB, is efficient, just, and appropriate in the circumstances.

#### **Approval of Fees and Activities**

24. The Action Approval Order, among other things: (i) approved the actions and activities of the Monitor, as reported in the reports of the Monitor filed in these CCAA Proceedings, up to September 2, 2021; and, (ii) ratified and approved all such activities and conduct of the Monitor prior to September 2, 2021.
25. Since the filing of the Eighteenth Report of the Monitor, dated August 16, 2021, the Monitor has taken the following actions:
  - (a) administered ResidualCo pursuant to the Enhanced Powers Order;
  - (b) administered payments in respect of estate costs;
  - (c) corresponded with affected creditors with respect to the Proposed Cost Allocation (as defined in the Distribution and Allocation Application) and related matters including addressing certain questions from ATB concerning the estate costs underlying the Cost Allocation Agreement (as defined in the Nineteenth Monitor's Report);



- (d) assisted stakeholders with analysing potential net recoveries from ResidualCo; and,
  - (e) prepared the Nineteenth Monitor's Report.
26. The Monitor seeks approval of the fees and disbursements of the Monitor and the Monitor's Counsel billed to date, as well as the unbilled fees and disbursements that have been or are anticipated be incurred in the performance of the remaining duties of the Monitor, as set out in the Nineteenth Monitor's Report.
27. It is the Monitor's view that its fees and disbursements and those of the Monitor's Counsel, as set out in the Nineteenth Monitor's Report, have been necessarily incurred and that the hours and rates charged are fair and reasonable in the circumstances, which include, among other things, the scope of activities carried out by such persons in the within CCAA Proceedings, the complexity of this case, the rates charged by comparable firms for similar services, the delegation of work to junior staff members, where appropriate, and the contentious and litigious nature of these CCAA Proceedings.

### **Termination of CCAA Proceedings**

28. Other than the ResidualCo Receivable Claims, all of ResidualCo's assets and properties have been realized upon or dealt with, other than: (i) ResidualCo's cash on hand; and, (ii) certain remaining Residual Assets (being the JMB Inactive Royalty Agreements and the interest of JMB in the JMB Inactive Royalty Lands granted thereunder; the Excluded Books and Records; the Excluded Inventory (each as defined in the Amended RVO)) (collectively, the "**Remaining ResidualCo Assets**").
29. Other than the ResidualCo Receivable Claims, the Remaining ResidualCo Assets are not capable of being realized upon, and the JMB Inactive Royalty Agreement received no offers under the SISF and the corresponding JMB Inactive Lands are currently being remediated by Mantle, as part of the Mantle Transactions.
30. Subject to this Honourable Court approving and the Monitor subsequently: (i) completing the Proposed Distributions, to ATB and Canadian Western Bank; (ii) finalizing the administration of the Proposed Allocation, if approved; and (iii) assigning the ResidualCo Receivable Claims (collectively, the "**Ancillary Matters**"), if approved, these CCAA Proceedings will essentially be complete.

31. As a result, it is appropriate and efficient for these CCAA Proceedings to be terminated upon the completion of the Ancillary Matters. Following the completion of the Ancillary Matters, all assets of ResidualCo will have been dealt with and any and all funds belonging or owing to ResidualCo will have been gathered or otherwise dealt with.
32. The Monitor has properly discharged and performed its duties and obligations in these CCAA Proceedings, in compliance and in accordance with the CCAA and all orders of this Court made in these CCAA Proceedings.

**Stay Extension**

33. The Stay Period, as granted by the ARIO, was extended on numerous occasions and will expire on December 3, 2021, unless otherwise extended.
34. ResidualCo has been acting and continues to act in good faith and with due diligence.
35. Extending the Stay Period will allow the Monitor to address the remaining Ancillary Matters. As a result, it is just and convenient and in the interests of ResidualCo and its stakeholders that the Stay Period be extended to the earlier of: (i) December 31, 2021; or, (ii) CCAA Termination Time.
36. 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:**

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

44. Confidential Appendices “B”, “C”, and “F” to the Seventh Report of the Monitor, dated September 30, 2020, unfiled;
45. The Eighth Report of the Monitor, dated October 16, 2020, filed;
46. The Ninth Report of the Monitor, dated November 11, 2020, filed;
47. The Tenth Report of the Monitor, dated November 20, 2020, filed;
48. The Eleventh Report of the Monitor, dated December 5, 2020, filed;
49. The Twelfth Report of the Monitor, dated January 11, 2021, filed;
50. The Thirteenth Report of the Monitor, dated February 23, 2021, filed;
51. The Fourteenth Report of the Monitor, dated March 4, 2021, filed;
52. The Fifteenth Report of the Monitor, dated March 26, 2021, filed;
53. The Sixteenth Report of the Monitor, dated March 30, 2021, filed;
54. The Seventeenth Report of the Monitor, dated May 11, 2021, filed;
55. The Eighteenth Report of the Monitor, dated August 16, 2021, filed;
56. Confidential Appendix “A” to the Eighteenth Report of the Monitor, dated August 16, 2021, unfiled;
57. The Nineteenth Report of the Monitor, dated November 25, 2021, filed; and,
58. Such further and other evidence or materials as counsel for the Monitor may advise and this Honourable Court may permit.

**Application Rules:**

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

**Applicable Acts and Regulations:**

61. The *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended.
62. 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:**

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

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

64. 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 (DISCHARGE OF MONITOR AND TERMINATION OF CCAA PROCEEDINGS)**

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 (DISCHARGE OF MONITOR AND TERMINATION  
OF CCAA PROCEEDINGS)**

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:**        **December 1, 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, as subsequently amended and restated on May 11, 2020 (collectively, the "**Initial Order**") with respect to JMB Crushing Systems Inc. and 2161889 Alberta Ltd. (collectively, the "**Initial Applicants**"), 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**"); **AND UPON** reading the Nineteenth Report of the Monitor, dated November 25, 2021 (the "**Nineteenth Monitor's Report**"), filed, 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 ●, 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 Nineteenth Monitor’s Report is abridged, if necessary, the Application is properly returnable today, service of the Application and the Nineteenth 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 Nineteenth Monitor’s Report.

**APPROVAL OF ACTIVITIES AND REPORTS**

2. The Monitor’s activities and actions, as set out in the Nineteenth Monitor’s Report and in all of the Monitor’s other reports, confidential reports, supplemental reports, and all supplements thereto, as filed in these CCAA Proceedings, are hereby ratified and approved.
3. The Monitor has satisfied all of its obligations up to and including the date of this Order. The Monitor has exercised its powers and performed its duties and functions in respect of ResidualCo and the Initial Applicants, including, but not limited to, those under the CCAA, the ARIO, and all other Orders issued in the within CCAA Proceedings, honestly, in good faith, and in a commercially reasonable manner.

**APPROVAL OF FEES AND DISBURSEMENTS**

4. The Monitor’s final statement of receipts and disbursements with respect to ResidualCo, as set out in paragraph 23 and Appendix “B” to the Nineteenth Monitor’s Report, be and are hereby approved.
5. The Monitor’s accounts for its fees and disbursements, including unbilled accrued fees and disbursements, as set out in paragraphs 28 and 33 and Appendix “C” to the

Nineteenth Monitor's Report, be and are hereby approved, without the necessity of a formal passing of such accounts.

6. The accounts of the Monitor's legal counsel, McCarthy Tétrault LLP, for its fees and disbursements, including unbilled accrued fees and disbursements, as set out in paragraphs 28 and 33 and Appendix "D" to the Nineteenth Monitor's Report, be and are hereby approved, without the necessity of a formal passing of accounts.

#### **DISCHARGE OF THE MONITOR AND TERMINATION OF CCAA PROCEEDINGS**

7. Upon the Monitor filing with the Clerk of the Court a certificate in the form attached hereto as Schedule "A" (the "**Monitor's Termination Certificate**") evidencing that all steps required to complete these CCAA proceedings (as set out in the Monitor's Termination Certificate), have been completed:
  - (a) the Monitor will have satisfied all of its duties and obligations pursuant to the CCAA and the Orders of the Court in respect of the CCAA Proceedings relating to ResidualCo;
  - (b) FTI Consulting Canada Inc. shall be discharged as Monitor of ResidualCo and these CCAA Proceedings, and shall have no further duties, obligations, or responsibilities, as Monitor, from and after such time, save and except as contemplated under paragraph 12 of this Order; and,
  - (c) these CCAA Proceedings will be deemed terminated, without further Order of this Court.
8. Based on the evidence that is currently before this Court and, where applicable, upon the Monitor filing the Monitor's Termination Certificate:
  - (a) the actions and conduct of the Monitor are hereby approved;
  - (b) the Monitor has satisfied all of its duties and obligations pursuant to the CCAA and all Orders of the Court in respect of these CCAA Proceedings;
  - (c) FTI Consulting Canada Inc. shall be discharged as Monitor of ResidualCo, and shall have no further duties, obligations, or responsibilities, as Monitor, from and after such time, save and except as set out in paragraph 12 hereof;



- (d) the Monitor shall not be liable for any liability or obligations as a result of its appointment, the carrying out of the provisions of the ARIO or any other Orders granted in these CCAA Proceedings, or any of the Monitor's duties thereunder or in connection with these CCAA Proceedings, save and except for any claim or liability arising out of gross negligence or willful misconduct on the part of the Monitor; and,
  - (e) any and all claims against the Monitor, arising from, relating to, or in connection with the performance of the Monitor's duties and obligations, as monitor of the Initial Applicants or ResidualCo or in connection with these CCAA Proceedings, are hereby stayed, extinguished, and forever barred, save and except for any claim or liability based on fraud, gross negligence, or willful misconduct, on the part of the Monitor.
9. No actions or other proceedings shall be commenced against the Monitor, which in any way arise from or relate to these CCAA Proceedings or its capacity as monitor of ResidualCo and the Initial Applicants, except with the prior leave of this Court, on at least seven days' prior written notice to the Monitor and upon such terms as this Court may direct.
  10. The Monitor shall file and serve a copy of the Monitor's Termination Certificate to the Service List maintained in the CCAA Proceedings prior to, or concurrently with, the filing of the Monitor's Termination Certificate.
  11. Notwithstanding any provision of this Order and the termination of these CCAA Proceedings, nothing herein shall affect, vary, derogate from, limit, or amend any of the protections in favour of the Monitor at law or pursuant to the CCAA, the ARIO, this Order, or any other Orders granted in these CCAA Proceedings.
  12. Notwithstanding the discharge of the Monitor and the termination of these CCAA Proceedings upon the Monitor filing the Monitor's Termination Certificate, this Court shall remain seized of any matter arising from these CCAA Proceedings, and FTI Consulting Canada Inc. shall have the authority from and after the date of this Order to apply to this Court to address matters ancillary or incidental to these CCAA Proceedings, notwithstanding the termination thereof. FTI Consulting Canada Inc., in its capacity as Monitor, is authorized to take such steps and actions as it deems necessary to address

ancillary or incidental matters, following the termination of the CCAA Proceedings, and in completing or addressing any such ancillary or incidental matters, FTI Consulting Canada Inc. shall continue to have the benefit of all of the provisions of the CCAA and of all Orders made in these CCAA Proceedings, in relation to its capacity as Monitor, including all approvals, protections, and stays of proceedings in favour of FTI Consulting Canada Inc., in its capacity as Monitor.

### **STAY EXTENSION**

13. The Stay Period, as ordered and defined in paragraph 13 of the ARIO, is hereby extended up to, until, and including, the earlier of: (i) the date on which the Monitor's Termination Certificate is filed; or, (ii) December 31, 2021.

### **MISCELLAENOUS MATTERS**

14. This Court hereby requests the aid and recognition of any Court, tribunal, regulatory or administrative body having jurisdiction in Canada, to give effect to this Order and to assist the Monitor in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such Orders and to provide such assistance to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Monitor and its agents in carrying out the terms of this Order.
15. 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.

16. 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 "A" TO THE ORDER (TERMINATION OF THE CCAA PROCEEDINGS)  
MONITOR'S TERMINATION CERTIFICATE**

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                                **MONITOR'S TERMINATION CERTIFICATE**

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

**RECITALS**

- A.     FTI Consulting Canada Inc. ("**FTI**") was appointed as 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, and the Order (Enhanced Monitor's Powers), dated May 14, 2021, all in the within proceedings (the "**CCAA Proceedings**").
- B.     Pursuant to an Order of this Court dated December 1, 2021 (the "**Discharge and Termination Order**"), among other things, FTI shall be discharged as Monitor and ResidualCo's CCAA Proceedings shall be terminated upon the filing of this Monitor's Certificate, in accordance with the terms of the Discharge and Termination Order.
- C.     Unless otherwise indicated herein, capitalized terms used in this Monitor's Certificate shall have the meanings given to them in the Discharge and Termination Order.

**THE MONITOR CERTIFIES** the following:

1. All authorized distributions have been completed and all remaining funds of ResidualCo have be distributed or otherwise dealt with.

**ACCORDINGLY**, the Monitor's Termination Certificate is filed as of the date set forth below.

DATED at Calgary, Alberta this \_\_\_\_\_ day of \_\_\_\_\_, 2021

**FTI CONSULTING CANADA INC.**, in its  
capacity as Monitor of ResidualCo, and not in  
its personal capacity

Per: \_\_\_\_\_  
Name:  
Title:

**SCHEDULE "C" TO THE APPLICATION  
ORDER (ASSIGNMENT AND DISTRIBUTION ORDER)**

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 (ASSIGNMENT AND DISTRIBUTION ORDER)**

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  
Fax: 403-260-3501  
Email: scollins@mccarthy.ca / pkyriakakis@mccarthy.ca /  
nstewart@mccarthy.ca

**DATE ON WHICH ORDER WAS PRONOUNCED:** December 1, 2021

**LOCATION OF HEARING:** Calgary, Alberta

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

**UPON** the applications (collectively, 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, as subsequently amended and restated on May 11, 2020 (collectively, the "**Initial Order**"), 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**"); **AND UPON** reading the Eighteenth Report of the Monitor, dated August 16, 2021 (the "**Eighteenth Monitor's Report**") and the Nineteenth Report of the Monitor, dated November 25, 2021 (the "**Nineteenth Monitor's Report**"), both filed; **AND UPON** reading the Affidavit of Service of Katie Doran, sworn on ●, 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 Nineteenth Monitor's Report is abridged, the Application is properly returnable today, service of the Application and the Nineteenth 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 Nineteenth Monitor's Report.

**ASSIGNMENT OF CLAIMS**

2. Effective immediately upon the filing of the Monitor's Termination Certificate, as such term is defined in the Order (Discharge of Monitor, Approval of Fees, and Termination of CCAA Proceedings), granted on December 1, 2021 in the within CCAA Proceedings (the "**Discharge and Termination Order**"), the entire right, title, and interest of ResidualCo in and to all remaining receivable claims and associated chose in actions shall be assigned and transferred to ATB Financial, including, but not limited to, the following:
  - (a) all receivable claims, chose in actions, and corresponding rights, titles, and interests of ResidualCo, against, concerning, or in respect of, Kalinko Enterprises Ltd.;
  - (b) all receivable claims, chose in actions, and corresponding rights, titles, and interests of ResidualCo, against, concerning, or in respect of the Special Areas Board (the "**SAB**"), pursuant to an agreement dated as of March 13, 2019, between the SAB and JMB Crushing Systems Inc.; and,
  - (c) any and all receivables and associated cost allocation claims which remain due and owing under the Order (Cost Allocation), granted on December 1, 2021 in the within CCAA Proceedings, which remain outstanding as at the time of the Monitor filing of the Monitor's Termination Certificate (as defined in the Discharge and Termination Order).

### **RELEASE OF HOLDBACK**

3. The Monitor is hereby authorized and directed to release the \$39,654.17 currently held in trust, in accordance with the Order – Lien Claims – EllisDon Industrial, granted on May 29, 2020, for use or distribution in the within proceedings.

### **DISTRIBUTION**

4. 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, 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.

### **MISCELLAENOUS MATTERS**

5. 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.



6. 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