

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*, 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: **AFFIDAVIT OF JARED DURAND**

PARTY FILING THIS DOCUMENT: ELLISDON INDUSTRIAL INC.

ADDRESS FOR SERVICE AND CONTACT  
INFORMATION OF PERSON FILING THIS  
DOCUMENT: **Field LLP**  
Barristers and Solicitors  
#2500-10175 101 Street NW  
Edmonton, AB T5J 0H3

**Attention: Ryan P. Krushelnitzky**  
Ph: (780) 423-3003 Fax: (780) 428-9329  
File No. 65329-6

**AFFIDAVIT OF JARED DURAND**

Sworn May 13, 2020

I, **Jared Durand**, of the City of St. Albert, in the Province of Alberta, MAKE OATH AND SAY THAT:

1. I am the Director – Project Management of the Applicant, EllisDon Industrial Inc. (“EDI”), and have firsthand knowledge of the matters sworn to in this Affidavit except where stated to be based on information and belief. Where so stated, I believe those matters to be true.

2. EDI has a contract with the Canada Kuwait Petrochemical Limited Partnership by its general partner the Canada Kuwait Petrochemical Corporation (“CKPC”) (the “Prime Contract”), for the performance of work relating to the construction of early site works for an integrated

propane dehydrogenation and polypropylene facility (a petrochemical plant) located in Sturgeon County, Alberta (the "Project"). EDI is the prime contractor for the Project.

3. I have reviewed the Affidavit of Jeff Buck sworn May 8, 2020 (the "Buck Affidavit") in these proceedings and believe that some of the certificates of title attached to the Buck Affidavit and marked as Exhibit "A" therein accurately describe some of the lands upon which the Project is being constructed (the "Lands"). The Lands at issue for the purposes of this Affidavit are 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 162 224 632**

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
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A) PLAN 5345NY – ROAD	0.813	2.01
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B) PLAN 0426682 – ROAD	0.394	0.97
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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
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A) PLAN 5345NY – ROAD	0.813	2.01
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B) PLAN 9020063 – ROAD	2.01	4.97
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C) PLAN 0426682 – ROAD	0.230	0.57
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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 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 32.8 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

4. Pursuant to the Prime Contract, EDI is required to take steps to remove and discharge any builders' liens registered against title to the Lands. CKPC is entitled to withhold payment of amounts due and owing to EDI under the Prime Contract if liens are registered against the Lands and are not removed.

5. EDI engaged JMB Crushing Systems Inc. ("JMB") as a supplier to provide certain gravel and other aggregate materials for the Project. JMB, in turn, hired sub-subcontractors to supply materials for use on the Project. From my review of the certificates of title to the Lands set out in the Buck Affidavit, I believe that four of JMB's subcontractors have filed builders' liens against the Lands (collectively, the "Liens"):

<u>Instrument Number</u>	<u>Affected Title Number</u>	<u>Lien Claimant</u>	<u>Registration Date</u>	<u>Amount of Lien</u>
202 093 308 ("157 Lien")	162 224 619 162 224 632 162 224 620	1577248 Alberta Ltd.	April 29, 2020	\$58,609
202 093 341 ("Azad Trucking Lien")	162 224 619 162 224 632 162 224 620	Azad Trucking Ltd.	April 29, 2020	\$34,787

202 093 377 ("Azad Transport Lien")	162 224 619 162 224 632 162 224 620	Azad Transport Ltd.	April 29, 2020	\$114,343
202 098 051 ("MST Lien")	162 224 632	Matt Silver Trucking Ltd.	May 5, 2020	\$33,968

6. Given the urgent Prime Contract obligation for EDI to remove the Liens from the title to the Lands, EDI is prepared to pay 100% of the face value of the Liens, plus security calculated below using the Masters' Section 48 *Builders' Lien Act* Costs Formula (i.e. 20% of the first \$25,000 liened, then 10% of remaining amounts liened) into Court. EDI intends to pay the money into Court using the process set out in s.48 of the *Builders' Lien Act*. That money will be paid into Court to serve as security so that the Liens can be immediately discharged from title to the Lands at issue. EDI is prepared to pay those funds into Court so that the respective lien claimants, JMB, JMB's Monitor, and any other interested party can take as much time as they need to assess validity, quantum, priorities and entitlement to the funds paid into Court, while leaving the title to the Lands free and clear of the Liens.

7. The amounts that EDI proposes to pay into Court are as follows:

<u>Lien</u>	<u>Lien Amount</u>	<u>Security Amount</u>	<u>Total to be Paid into Court</u>
157 Lien	\$58,609	\$8,360.90	<b>\$66,969.90</b>
Azad Trucking Lien	\$34,787	\$5,978.70	<b>\$40,765.70</b>
Azad Transport Lien	\$114,343	\$13,934.30	<b>\$128,277.30</b>
MST Lien	\$33,968	\$5,896.80	<b>\$39,864.80</b>

8. EDI seeks to pay these amounts into Court so that the Liens may be immediately removed from title without prejudicing any rights that JMB, or the lien claimants, or any other interested party may have in respect of payment for the provision of labour and materials giving rise to the Liens. Once the funds are paid into Court, the full amount of the various Liens

will be held by the Court, subject to the various rights and claims of JMB, the lien claimants, or any interested party.

9. I am informed by Ryan Krushelnitzky, of Field LLP, legal counsel for EDI, and believe that on May 11, 2020 at 10:05 p.m. he was copied on an e-mail from Jill Medhurst, Counsel with the Department of Justice Canada, to counsel for JMB. An image of this e-mail is attached as **Exhibit "A"** to this Affidavit. In this e-mail, Ms. Medhurst advised that the CRA needs to complete a payroll trust examination for 2019 and 2020 of JMB, and that no payments could be made by JMB to the lien claimants until the trust examinations occur. She further advised that she was unable to say when this could take place, given that CRA is not in their offices due to the pandemic, but that electronic review might also be possible. This information shows that were any payment to be first made to the Monitor, as JMB proposes, before Liens are discharged, that the lien discharges could not occur in a timely manner, or at all.

10. There is a great degree of urgency relating to having the above Liens discharged from title for the Lands. In particular:

- a. If the Liens are not discharged from title for the Lands, there is a serious risk that CKPC may, in accordance with the Prime Contract, withhold payment of the next progress payment draw owing to EDI in the amount of \$984,419.13;
- b. If the Liens are not discharged from title for the Lands, there is a serious risk that CKPC may, in accordance with the Prime Contract, refuse to certify EDI's next anticipated progress claim, which has not yet been submitted, but will likely be in an amount of \$365,696.77.

11. I make this Affidavit in support of an application to post security into Court and remove the Liens from title to the Lands pursuant to section 48 of the *Builders' Lien Act*.

SWORN BEFORE ME at the City of Edmonton, )  
in the Province of Alberta, this 13th day of )  
May, 2020. )

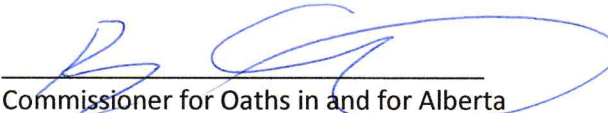


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A Commissioner for Oaths in and for Alberta )

**Ryan P. Krushelnitzky**  
**Barrister and Solicitor**

  
\_\_\_\_\_  
**JARED DURAND**

This is **Exhibit "A"** referred to in the  
Affidavit of **Jared Durand** sworn before me  
This 13 day of May, 2020

  
A Commissioner for Oaths in and for Alberta  
**Ryan P. Krushelnitzky**  
**Barrister and Solicitor**

Archived: Tuesday, May 12, 2020 1:39:05 PM

From: Medhurst, Jill

Sent: Monday, May 11, 2020 10:05:33 PM

To: Hanert, Caileen; Mana Mancia@albertacourts.ca; scollins@mccarthy.ca; deryck.helkaa@ficonsulng.com; tom.powell@ficonsulng.com; mike.clark@ficonsulng.com; kmahar@millerthomson.com; tom.gusa@dentons.com; Scott Matheson; eforys@mltakins.com; terence@kmlawyers.net; jkent@mrf.com; Ryan Krushelnitzky; absecparties@avssystems.ca; nmerrett@stahlpeterbilt.com; westreception@ednkw.com; Byron.hvkukch@rlholdings.com; Tasha.Chernivchan@cat.com; td.efcanadacustomerservice@td.com; darren.aken@bmo.com; riacovozi@komatsu.com; Brett.R.Ledingham@wellsfargo.com; en.ming.huang@vfico.com; dustin.bosch@cefi.ca; L.Fairbrother@strongco.com; gkenny@smsequip.com; Benjamin.L.Cook@efeets.com; Harvey@chastons.com; cang@parlee.com; hfydenkund@parlee.com; jhockin@parlee.com; Lindsey Miller; CommercialCoordinator.QBCalgary@albertacourts.ca; Brenna.Amery; pryzuk@millerthomson.com  
Cc: Cumming, Tom; Matthews, Alex; Elms, Alyssa  
Subject: RE: Application before Justice Eidsvik: May 11, 2020 at 10:50am: JMB Crushing Systems Inc.; Court File No. 2001-05482 - additional materials  
Sensitivity: Normal

Hi Tom and Caileen,

CRA has to complete a payroll trust examination for 2019 and 2020 do to T4 shortages. If CRA has source deduction deemed trust claims, these claims will take priority over the claims of any valid builder's lien claim (see sections 224(1.2), 227(4) and (4.1) ITA. We will have to complete a trust exam and I am not sure when this can be completed given the pandemic that we are presently facing. CRA is not in their offices at the present time and I am not sure when we can get this trust examination completed. If the information can be sent electronically, I can try to get a trust examiner to review the records. Who would be the contact person that could provide electronic copies of the payroll records for both companies?

We will have to amend the order to reflect CRA's priority over the builder's liens claims. No payments can be made the lien claimants until the trust examinations have been completed. Please call me in the morning before the hearing so that we can discuss this matter.

Thanks

Jill

Jill L. Medhurst

Counsel  
Department of Justice Canada / Government of Canada  
Tel: 403-299-3985 / Fax: 403-299-3507