



**FORM 27**  
[RULES 6.3 AND 10.52(1)]

COURT FILE NUMBER      B301-009380  
25-3009380

COURT      COURT OF KING'S BENCH OF ALBERTA, IN  
BANKRUPTCY AND INSOLVENCY

JUDICIAL CENTRE      CALGARY

APPLICANT      IN THE MATTER OF THE BANKRUPTCY AND  
INSOLVENCY ACT, RSC 1985, C b-3 AS AMENDED

AND IN THE MATTER OF THE BANKRUPTCY OF  
THE BANKRUPTCY OF 2585929 ALBERTA LTD.

COM  
Nov 19, 2025

DOCUMENT      **APPLICATION OF THE TRUSTEE**

ADDRESS FOR SERVICE AND  
CONTACT INFORMATION OF  
PARTY FILING THIS  
DOCUMENT

**BENNETT JONES LLP**  
Barristers and Solicitors  
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Client File No.: 07475.00049

**NOTICE TO RESPONDENTS:**

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:                      Wednesday, November 19, 2025  
Time:                     3:00-4:00 pm  
Where:                  Calgary Courts Centre  
Before Whom:      The Honourable Justice B. Johnston, on the Commercial List,  
via Webex

Go to the end of this document to see what else you can do and when you must do it.

**Remedy claimed or sought:**

1. KSV Restructuring Inc. (the "**Trustee**") in its capacity as the Trustee in Bankruptcy of 2585929 Alberta Ltd. ("**ResidualCo**") seeks the advice and direction of this Court and the following Orders:
  - (a) an Order substantially in the form attached hereto as **Schedule "1"**:
    - (i) declaring service of this Application good and sufficient, and abridging the time for notice of this Application to the time actually given, if necessary;
    - (ii) declaring the Trustee's interpretation of paragraphs 5(e) and 11(e) of the reverse vesting order in this action dated April 19, 2024 (the "**RVO**") outlined in its First Report dated November 10, 2025 (the "**First Report**") to be correct and directing the Trustee to administer ResidualCo's estate (the "**Estate**") in accordance with the Trustee's interpretation;
    - (iii) alternatively, amending paragraphs 5(e) and 11(e) as outlined in the First Report;
    - (iv) declaring the TCP Analysis and the TCP Plan to be valid and directing the Trustee to implement the TCP Plan as defined and proposed in the First Report;
    - (v) declaring the PUC Analysis and the PUC Plan to be valid and directing the Trustee to implement the PUC Plan as defined and proposed in the First Report;
    - (vi) approving the Trustee's proposed interim distributions of funds held and collected by the Trustee for the benefit of ResidualCo's stakeholders, and authorizing and directing the Trustee to make such distributions as proposed in the First Report;
    - (vii) approving the activities of the Trustee as reported in the First Report; and

- (viii) such further and other relief as counsel may advise and this Court deems just.

**Grounds for making this application:**

**Background**

***Procedural History***

2. On November 13, 2023, KSV Restructuring Inc. was appointed as proposal trustee (in such capacity, the "**Proposal Trustee**") in connection with seven (7) Notices of Intention to Make a Proposal ("**NOIs**") filed on November 13, 2023 by Athabasca Minerals Inc. ("**AMI Pub Co**"), 2132561 Alberta Ltd., 2140534 Alberta Ltd., AMI Aggregates Inc., AMI RockChain Inc., AMI Silica Inc., and TerraShift Engineering Ltd. (collectively, the "**Companies**" or "**AMI**") pursuant to Section 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") (the "**Proposal Proceedings**").
3. Through the Proposal Proceedings, the Companies, with the assistance of the Proposal Trustee, completed a Sales and Investment Solicitation Process (the "**SISP**"), which commenced on or about December 15, 2023 with a bid deadline of January 31, 2024. As part of the SISP, the first ranking secured creditor, JMAC Energy Services LLC ("**JMAC**"), participated in the SISP as the stalking horse bidder through a stalking horse bid of \$13,200,000 (the "**Stalking Horse Bid**").
4. Due to a bid submitted by Badger Mining Corporation ("**Badger**") that was deemed superior to the Stalking Horse Bid, on February 9, 2024, the Proposal Trustee held an auction under the SISP (the "**Auction**"). The Auction was highly successful and comprised 162 rounds of bidding in \$100,000.00 increments. JMAC and Badger submitted bids at the Auction that were based upon a reverse vesting order structure and provided an increase in overall consideration of at least \$17,000,000.00, or approximately 60% greater value that would otherwise be provided based upon the JMAC's Stalking Horse Bid. Ultimately, Badger's final bid of \$29,100,000 was the successful bid (the "**Successful Bid**").
5. On April 19, 2024, Justice J.T. Neilson granted an order approving the transaction (the "**Transaction**") for the sale of substantially all of AMI's business and property to Badger

pursuant to a subscription agreement between AMI and Badger dated February 9, 2024 (the "**Subscription Agreement**") and granting the proposed RVO.

6. On April 26, 2024, the Transaction closed and the terms of the RVO were implemented, including the transfer of \$21,953,189.12 to ResidualCo as consideration under the Subscription Agreement.
7. On May 14, 2024, ResidualCo was deemed to have filed an assignment in bankruptcy under the BIA and KSV Restructuring Inc. was appointed Trustee of ResidualCo.
8. The first meeting of ResidualCo's creditors was held remotely on June 4, 2024.
9. On June 13, 2024, the Trustee issued a Section 149 Notice to all known creditors, notifying them to prove their claim and providing a notice of dividend. Subsequently, on July 10, 2024, a second Section 149 Notice was issued to additional creditors that the Trustee was made aware of, providing a notice to prove their claim and notice of dividend by August 10, 2024 (the "**Claims Bar Date**").
10. Following the expiration of the Claims Bar Date, the Trustee received 26 claims from creditors. Upon the Trustee's review, 23 of these claims were determined to be valid ("**Proven Claims**") and 3 were disputed claims ("**Disputed Claims**"). The Trustee issued payments to the creditors in relation to the Proven Claims for a total of \$4,150,985 (the "**First Interim Distribution**").
11. On January 6, 2025, the Trustee wrote to ResidualCo 's creditors to indicate that as a result of the successful Auction and despite the full payout for the majority of creditors through the First Interim Distribution that significant additional funds remained in the ResidualCo's estate. The Trustee advised that it would issue further payment to equity shareholders of any remaining amounts after all creditor claims had been adjudicated and paid and after certain tax issues were addressed (as discussed below).

### ***Tax Considerations***

12. Following the First Interim Distribution and in consultation with its counsel, the Trustee determined that there were potential significant tax implications resulting from the surplus

of funds paid to ResidualCo following the successful Auction and closing of the Transaction. This was not initially anticipated as in almost all restructurings there is a deficit, not surplus, of funds after creditor claims are assessed. The Trustee worked diligently with its counsel and other advisors to determine what taxes may be payable by ResidualCo or its shareholders and to develop a plan of action to distribute the remaining funds to equity shareholders while retaining sufficient funds to pay outstanding tax obligations.

13. The Trustee therefore seeks the advice and direction of this Court to implement a plan of action to retain sufficient funds related to the taxes identified below and to make a further interim distribution to the equity shareholders (the "**Second Interim Distribution**").

#### **A. Vesting of Distributable Proceeds**

14. Following completion of the Transaction, the Trustee's tax counsel identified that ambiguity in the RVO could unintentionally lead to uncertain tax treatment, thereby complicating the resolution of the estate, leading to increased professional fees and potentially depriving ResidualCo shareholders from additional distributions in the bankruptcy (the "**Vesting Issue**").
15. A full explanation of the Vesting issue is included in the First Report.
16. The Trustee, in consultation with its legal counsel and advisors, has determined that the ambiguity can be resolved through a purposeful interpretation of the RVO (the "**ROV Interpretation**"). Absent this RVO Interpretation, it is unclear how the receipt of the funds should be characterized and will result in further delays to the final resolution of ResidualCo's estate to determine whether additional funds must be held back and potentially paid as taxes. Specifically, the Trustee seeks advice and direction from this Court confirming and directing that paragraphs 5(e) and 11(e) of the RVO should be read as though the emphasized language below was included in the RVO:
  - (a) **5(e)** – Each Equity Interest that is issued and outstanding immediately prior to the Closing Date, together with any agreement, contract, plan, indenture, deed, certificate, subscription rights, conversion rights, pre-emptive rights, options

(including stock options or share purchase or equivalent plans), or other documents or instruments governing or having been created or granted in connection with the share capital of AMI shall be deemed terminated and cancelled for no consideration *other than any consideration received as proceeds of disposition for the cancellation of such shares pursuant to Paragraph 11(e) of the Order*, in accordance with and pursuant to the Reverse Vesting Order; [**Emphasis added**]

- (b) **11(e)** – AMI shall satisfy the amounts owing under the ResidualCo Notes ... using the Purchase Price. ... If the aggregate principal amount of the ResidualCo Notes is less than the Purchase Price then any remaining Purchase Price shall vest in ResidualCo *as proceeds of disposition for the cancellation of the AMI Shares*, to be administered by the Proposal Trustee (as trustee of ResidualCo) for the benefit of ResidualCo's creditors (which creditors arise from the assumption of the Transferred Liabilities); [**Emphasis added**]

17. Alternatively, the Trustee seeks an order that the RVO be amended to specifically include this clarifying language.

#### **B. Taxable Canadian Property (TCP)**

18. The first identified tax issue relates to potential tax obligations owing in respect of AMI Pub Co shareholders that were not resident in Canada ("**Non-Resident Shareholders**") if the AMI Pub Co shares constituted "taxable Canadian property" ("**TCP**") for the purposes of the *Income Tax Act*, RSC 1985, c 1 (the "**ITA**") as dictated under section 116 of the ITA.
19. A full explanation of the TCP analysis is included in the First Report.
20. The Trustee, in consultation with its legal counsel and advisors, has determined that the AMI Pub Co shares that were cancelled pursuant to the Transaction and RVO did constitute TCP giving rise to an approximate 25% withholding obligation by each Non-Resident Shareholder of AMI Pub Co (who subsequently became shareholders of ResidualCo) (the "**TCP Analysis**").

21. To determine the number of Non-Resident Shareholders and the amount of money to be withheld from distribution, the Trustee has developed the TCP Plan as outlined in the First Report.
22. The Trustee seeks the advice and direction of this Court to confirm and declare that the TCP Analysis and TCP Plan is valid and proper and directing the Trustee to implement the TCP Plan as outlined in the First Report.

### **C. Paid-up Capital (PUC)**

23. The second identified tax issue relates to potential tax obligations owing in respect of AMI shareholders where there is a deemed dividend (the "**Deemed Dividend**") payable by Non-Resident Shareholders to the extent that the distributable proceeds arising from the Transaction exceeded the paid-up capital ("**PUC**") of AMI. If a Deemed Dividend exists, it would generally be equal to 25% of the amount, subject to reduction under an applicable treaty.
24. A full explanation of the PUC analysis is included in the First Report.
25. The Trustee, in consultation with its legal counsel and advisors, has determined that there is not currently a Deemed Dividend payable thereby giving rise to an approximate 25% withholding obligation by each Non-Resident Shareholder.
26. In order to determine the number of Non-Resident Shareholders and the amount of money to that may be required to be withheld from final distribution related to any Deemed Dividends, the Trustee has developed the PUC Plan as outlined in the First Report.
27. The Trustee seeks the advice and direction of this Court to confirm and declare that the PUC Plan is valid and proper and directing the Trustee to implement the PUC Plan as outlined in the First Report.

### ***Interim Distributions and Holdback***

28. The Trustee has collected funds owed to ResidualCo following closing of the Transaction and implementation of the RVO.

29. Through the First Interim Distribution, the Trustee has already distributed funds to 23 creditors as outlined in its January 6, 2025, Notice to Creditors and as further outlined in the First Report.
30. Should this Court confirm the RVO Interpretation, the Trustee intends, in accordance with the TCP Plan and the PUC Plan, to make the Second Interim Distribution to the remaining unsecured creditors of ResidualCo. This will result in all proven unsecured claims being paid 100% of the value of their unsecured claim. The Trustee further intends as part of the Second Interim Distribution to make an initial payment to equity holders after the unsecured creditors are paid in full (including payment of outstanding interest) as set out in its First Report and seeks approval of those proposed Interim Distributions.

***Approval of the Actions of the Trustee***

31. In the First Report, the Trustee has set out a description of the activities undertaken by the Trustee since the date of the First Report. The Trustee seeks this Court's approval of these activities.

**General**

32. Such further and other grounds as counsel may advise and this Honourable Court permits.

**Material or evidence to be relied on:**

33. The First Report of the Trustee, to be filed herewith.
34. Brief of Law of the Trustee, to be filed herewith.
35. The pleadings and Proposal Trustee's Reports previously filed in these proceedings.
36. The Affidavit of Service of Anna Marie Santos, to be sworn and filed.

**Applicable rules:**

37. *Alberta Rules of Court*, AR 124/2010.
38. *Bankruptcy and Insolvency General Rules*.

39. Such further and other rules as counsel may advise and this Honourable Court permits.

**Applicable Acts and regulations:**

40. *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended.

41. *Income Tax Act*, RSC 1985, c 1, as amended.

42. Such further and other acts and regulations as Counsel may advise and this Honourable Court permit.

**Any irregularity complained of or objection relied on:**

43. None.

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

44. By Webex videoconference, before the Honourable Justice B. Johnston as scheduled on the Commercial List.

**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 give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.

**SCHEDULE "1"**

CLERK'S STAMP

COURT FILE NUMBER	25-3009380
COURT	COURT OF KING'S BENCH OF ALBERTA, IN BANKRUPTCY AND INSOLVENCY
JUDICIAL CENTRE	CALGARY
APPLICANT	IN THE MATTER OF THE BANKRUPTCY AND INSOLVENCY ACT, RSC 1985, C b-3 AS AMENDED  AND IN THE MATTER OF THE BANKRUPTCY OF THE BANKRUPTCY OF 2585929 ALBERTA LTD.
DOCUMENT	<b>ORDER</b>
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	<b>BENNETT JONES LLP</b> Barristers and Solicitors 4500, 855 – 2 <sup>nd</sup> Street SW Calgary, Alberta T2P 4K7  Attention: Michael W. Selnes and Chyna Brown Telephone No.: 403-298-3311 / 3244 Email: <a href="mailto:selnesm@bennettjones.com">selnesm@bennettjones.com</a> <a href="mailto:brownc@bennettjones.com">brownc@bennettjones.com</a> Fax No.: 403-265-7219 Client File No.: 074735.00049
<b>DATE ON WHICH ORDER WAS PRONOUNCED:</b>	<b>Wednesday, November 19, 2025</b>
<b>LOCATION WHERE ORDER WAS PRONOUNCED:</b>	<b>Calgary Courts Centre</b>
<b>NAME OF JUSTICE WHO MADE THIS ORDER:</b>	<b>The Honourable Justice Johnston</b>

**UPON THE APPLICATION** for advice and direction and to approve certain interim distributions by KSV Restructuring Inc., in its capacity as the Court-appointed Trustee (the "**Trustee**") of 2585929 Alberta Ltd (the "**Debtor**"); **AND UPON HAVING READ** the Application of the Trustee filed Monday, November 10, 2025 (the "**Application**"), the First Report of the Trustee dated November 10, 2025 (the "**First Report**"), the brief of law filed November 10, 2025 and the Affidavit of Service of Anna Marie Santos sworn November [ \* ], 2025; **AND UPON HEARING** the submissions of counsel for the Trustee and of other interested parties;

**IT IS HEREBY ORDERED AND DECLARED THAT:**

**SERVICE AND NOTICE OF APPLICATION**

2. Service of notice of this application and supporting materials is hereby declared to be good and sufficient, no other person is required to have been served with notice of this application and time for service of this application is abridged to that actually given.

**The RVO Interpretation**

3. The Trustee's interpretation of paragraphs 5(e) and 11(e) of the reverse vesting order in this action pronounced by the Honourable Justice J.T. Neilson and filed on April 19, 2024 (the "**RVO**") is declared valid and the Trustee is directed to administer the Debtor's estate in accordance with this interpretation. Specifically, paragraphs 5(e) and 11(e) of the RVO should be read as though the emphasized language below was included in the RVO:
  - (a) **5(e)** – Each Equity Interest that is issued and outstanding immediately prior to the Closing Date, together with any agreement, contract, plan, indenture, deed, certificate, subscription rights, conversion rights, pre-emptive rights, options (including stock options or share purchase or equivalent plans), or other documents or instruments governing or having been created or granted in connection with the share capital of AMI shall be deemed terminated and cancelled for no consideration *other than any consideration received as proceeds of disposition for the cancellation of such shares pursuant to Paragraph 11(e) of the Order*, in accordance with and pursuant to the Reverse Vesting Order; [Emphasis added]

- (b) **11(e)** – AMI shall satisfy the amounts owing under the ResidualCo Notes ... using the Purchase Price. ... If the aggregate principal amount of the ResidualCo Notes is less than the Purchase Price then any remaining Purchase Price shall vest in ResidualCo *as proceeds of disposition for the cancellation of the AMI Shares*, to be administered by the Proposal Trustee (as trustee of ResidualCo) for the benefit of ResidualCo's creditors (which creditors arise from the assumption of the Transferred Liabilities); **[Emphasis added]**

#### **TCP Analysis and TCP Plan**

4. The TCP Analysis and TCP Plan, as defined and outlined in the First Report, is declared valid and the Trustee is authorized and directed to implement the TCP Plan as proposed in the First Report.

#### **The PUC Analysis and PUC Plan**

5. The PUC Analysis and PUC Plan, as defined and outlined in the First Report, is declared valid and the Trustee is authorized and directed to implement the PUC Plan as proposed in the First Report.

#### **INTERIM DISTRIBUTION**

6. The Trustee's proposed interim distributions of funds held and collected by the Trustee for the benefit of the estate of the Debtors as set out in the First Report is approved.
7. The Trustee is authorized and directed to make the interim distributions as proposed in the First Report.

#### **APPROVAL OF ACTIVITIES OF TRUSTEE**

8. The activities of the Trustee as reported in the First Report are approved.

#### **SERVICE OF ORDER**

9. This Order must be served only upon those interested parties attending or represented at the within application and service may be effected by facsimile, electronic mail, personal

delivery or courier. Service is deemed to be effected the next business day following the transmission or delivery of such documents.

10. The Trustee will post a copy of this order on its website at <https://www.ksvadvisory.com/experience/case/athabasca-minerals>.
11. Service of this Order on any party not attending this application is hereby dispensed with.

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Justice of the Court of King's Bench of Alberta

