

ENTERED



COM
April 15, 2021
Justice Romaine

COURT FILE NUMBER BK01 095189

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

MATTER IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL UNDER THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED, OF TRADESMEN ENTERPRISES LIMITED PARTNERSHIP

AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL UNDER THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED, OF TRADESMEN ENTERPRISES INC.

APPLICANTS TRADESMEN ENTERPRISES LIMITED PARTNERSHIP AND TRADESMEN ENTERPRISES INC.

DOCUMENT **FOURTH REPORT OF KSV RESTRUCTURING INC. IN ITS CAPACITY AS PROPOSAL TRUSTEE UNDER THE NOTICES OF INTENTION TO MAKE A PROPOSAL**

APRIL 6, 2021

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

PROPOSAL TRUSTEE
KSV RESTRUCTURING INC.
150 King Street West
Suite 2308
Toronto, ON M5H 1J9

Attention: Bobby Kofman/David Sieradzki
Telephone No.: 416-932-6228/647-282-6228
Email:
bkofman@ksvadvisory.com/dsieradzki@ksvadvisory.com

COUNSEL TO THE PROPOSAL TRUSTEE
BENNETT JONES LLP
3400 One First Canadian Place
PO Box 130
Toronto, ON M5X 1A4

Attention: Sean Zweig/Joshua Foster
Telephone No.: 416-777-6254/416-777-7906
Email: zweigs@bennettjones.com/fosterj@bennettjones.com



**Fourth Report to Court of
KSV Restructuring Inc. as
Proposal Trustee of
Tradesmen Enterprises Limited Partnership
and Tradesmen Enterprises Inc.**

April 6, 2021

Contents

Page

1.0	Introduction.....	1
1.1	Purposes of this Report.....	2
1.2	Restrictions	2
2.0	Background	3
3.0	Receivership Application.....	4
4.0	Court Ordered Charges	5
5.0	Conclusion and Recommendation	7

Appendices

Appendix

Tab

Proposal Trustee's First Report to Court dated February 1, 2021 (without appendices).....	A
Proposal Trustee's Second Report to Court dated February 24, 2021 (without appendices)	B

COURT FILE NUMBER: BK01 095189

COURT OF QUEEN'S BENCH OF ALBERTA

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
TRADESMEN ENTERPRISES LIMITED PARTNERSHIP,
OF THE CITY OF CALGARY,
IN THE PROVINCE OF ALBERTA

AND

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
TRADESMEN ENTERPRISES INC.,
OF THE CITY OF CALGARY,
IN THE PROVINCE OF ALBERTA

FOURTH REPORT OF KSV RESTRUCTURING INC.
AS PROPOSAL TRUSTEE OF
TRADESMEN ENTERPRISES LIMITED PARTNERSHIP AND
TRADESMEN ENTERPRISES INC.

APRIL 6, 2021

1.0 Introduction

1. This report (the "Report") is filed by KSV Restructuring Inc. ("KSV") in its capacity as proposal trustee (the "Proposal Trustee") in connection with Notices of Intention to Make a Proposal filed by Tradesmen Enterprises Limited Partnership ("TELP") and Tradesmen Enterprises Inc. ("TEI", and together with TELP, the "Companies") on February 1, 2021 pursuant to subsection 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") (the "NOI Proceedings").
2. Pursuant to an order of the Court of Queen's Bench of Alberta (the "Court") made on February 3, 2021 (the "February 3rd Order"), the NOI Proceedings of TEI and TELP were procedurally consolidated.
3. Pursuant to an order of the Court made on March 2, 2021, the deadline for the Companies to file a proposal under the BIA was extended from March 3, 2021 to April 16, 2021.
4. The principal purposes of the NOI Proceedings were for the Companies to:
 - a) obtain a stay of proceedings so that the Companies were afforded breathing space to advance litigation against Teck Coal Limited ("Teck"), Fluor Canada Ltd. ("Fluor"), Canadian Pacific Limited, the Province of British Columbia and FortisBC Energy (the "Litigation"); and
 - b) access funding under an interim financing credit facility dated February 1, 2021 (the "Interim Financing Agreement") between the Companies and Bank of Montreal ("BMO"), which was approved pursuant to the February 3rd Order, as amended and restated pursuant to a Court order dated March 2, 2021 (the "March 2nd Order").

5. Based on the status of the Litigation, it is now apparent that the Litigation will not be resolved prior to August 1, 2021 (the “Outside Date”), being the six-month anniversary of the commencement of the NOI Proceedings and the date by which the Companies are required to file a proposal pursuant to subsection 50.4(9) of the BIA. Accordingly, the Companies do not intend to seek a further extension of the stay of proceedings in the NOI Proceedings.
6. The Companies have advised BMO, the Companies’ operating and interim lender and largest creditor, of their intention not to seek an extension of the stay of proceedings or to file a proposal. Accordingly, on April 6, 2021, BMO served a receivership application returnable April 15, 2021, which, among other things, seeks an order (the “Receivership Order”) appointing KSV as receiver and manager of the Companies (in such capacity, the “Receiver”). KSV has consented to act as the Receiver. The Proposal Trustee understands that the Companies have consented to BMO’s receivership application.
7. As a result of the Companies’ decision not to seek an extension of the stay of proceedings or to file a proposal, the NOI Proceedings will automatically terminate on April 16, 2021, and each of the Companies will be deemed to have made assignments in bankruptcy pursuant to subsection 50.4(8) of the BIA upon or immediately after that time.

1.1 Purposes of this Report

1. The purposes of this Report are to:
 - a) provide background information about the Companies and the NOI Proceedings;
 - b) summarize the purpose of the receivership proceedings;
 - c) discuss Court-ordered charges in the NOI Proceedings and their treatment in the proposed Receivership Order; and
 - d) recommend that this Honourable Court grant the Receivership Order.

1.2 Restrictions

1. In preparing this Report, the Proposal Trustee has relied upon unaudited financial information prepared by the Companies, the Companies’ books and records and discussions with the Companies’ management, legal counsel and majority owner, Fulcrum Capital Partners Inc. (“Fulcrum”). The Proposal Trustee has not audited, reviewed or otherwise verified the accuracy or completeness of the information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the *Chartered Professional Accountants of Canada Handbook*.
2. The Proposal Trustee expresses no opinion or other level of assurance with respect to the financial information presented in this Report or relied upon by the Proposal Trustee in preparing this Report. Any party wishing to place reliance on the Companies’ financial information should perform its own due diligence and any reliance placed by any party on the information presented herein shall not be considered sufficient for any purpose whatsoever.

2.0 Background

1. Prior to the commencement of the NOI Proceedings, TELP carried on a mechanical contracting business specializing in facility and pipeline construction, piping and structure fabrication, module assembly and maintenance projects. TELP operated from two leased premises in Alberta: its head office located in Calgary and a fabrication facility located in Grande Prairie. TELP's workforce is not unionized and it does not maintain any registered pension plans. TEI is an inactive holding company with no business activity or operations.
2. Pursuant to an agreement dated May 28, 2019 (the "Teck Contract"), Teck retained TELP to act as the general contractor to construct the Fording River Operations Active Water Treatment Facility (South Project) located near Elkford, British Columbia (the "Project").
3. The Project is substantially over budget – the Teck Contract originally had a budget of \$32 million and is now projected to have a total cost of approximately \$140 million. The Proposal Trustee has been advised that due to the increased scope of the Project, TELP issued approximately 900 change order requests and 1,700 requests for information to Teck. By letter dated January 11, 2021, Teck terminated the Teck Contract. TELP's position is that the grounds relied upon by Teck to terminate the contract are improper. At the time Teck terminated the contract, the Project was the only material project being performed by TELP.
4. Since the termination of the Teck Contract, TELP has, *inter alia*:
 - a) registered builders' liens in the amount of approximately \$52.8 million against lands associated with the Project, including separate parcels of real property owned by Canadian Pacific Limited and the Province of British Columbia, and a statutory right of way registered in favour of FortisBC Energy Inc.;
 - b) commenced the Litigation against Teck, Fluor, Canadian Pacific Limited, the Province of British Columbia and FortisBC Energy Inc. on or around February 24, 2021 by filing a Notice of Civil Claim in the Supreme Court of British Columbia; and
 - c) agreed with Teck to arbitrate the Litigation.
5. The termination of the Teck Contract caused the Companies to commence the NOI Proceedings. TELP reduced its employee headcount from approximately 614 in early January to seven as at the date of this Report. During the NOI Proceedings, TELP entered into contracts with its employees concerning their future terms of employment with TELP (the "Employment Agreements").
6. TELP's remaining employees are critical to the Litigation given their familiarity with the Teck Contract and/or their involvement with the Project. If appointed, the Receiver intends to retain each of these employees on the terms of their Employment Agreements, subject to each employee confirming that the Receiver is not a successor-employer of TELP and that the Receiver shall have no personal liability for any of TELP's employment-related obligations.

7. Each of the Employment Agreements provides the respective employee with an entitlement to participate in a key employee retention plan (the “KERP”). The KERP and a charge granted over the Companies’ property, assets and undertakings (collectively, the “Property”), to secure the payments contemplated by the KERP (the “KERP Charge”), were approved pursuant to the March 2nd Order. The proposed Receivership Order recognizes the KERP Charge and preserves the priority of the same under the March 2nd Order.
8. BMO has continued to provide funding to the Companies during the NOI Proceedings pursuant to the Interim Financing Agreement. BMO’s pre-filing debt was approximately \$25 million, plus interest and costs which continue to accrue. Fulcrum provided BMO with a partial guarantee of the Companies’ indebtedness to BMO, and Fulcrum has funded that guarantee. As at the date of this Report, BMO has advanced approximately \$2.4 million of the \$2.8 million available under the Interim Financing Agreement.¹ Pursuant to the February 3rd Order, as amended and restated by the March 2nd Order, advances made under the Interim Financing Agreement up to the principal amount of \$2.8 million are secured by a super-priority charge on the Property (the “Interim Financing Charge”).
9. The Proposal Trustee’s counsel, Bennett Jones LLP (“Bennett Jones”), has provided it with an opinion on BMO’s security in respect of BMO’s pre-filing debt. The opinion confirms the validity and enforceability of BMO’s security, subject to standard qualifications and assumptions.
10. The Companies’ other significant creditors are sub-contractors and Fulcrum. According to the Companies’ books and records, sub-contractors may be owed approximately \$18 million.² Fulcrum was owed approximately \$1.8 million at the commencement of the NOI Proceedings and since that time has funded its guarantee of the BMO debt. The Proposal Trustee understands that Teck also claims to be a creditor of TELP, which TELP disputes. A summary of the Companies’ financial position at the commencement of the NOI Proceedings is provided in the Proposal Trustee’s First Report to Court dated February 2, 2021 (the “First Report”) and, accordingly, is not repeated in this Report. A copy of the First Report is provided in Appendix “A”, without appendices.
11. Court materials filed in these proceedings are available on the Proposal Trustee’s website at <https://www.ksvadvisory.com/insolvency-cases/case/tradesmen-enterprises>.

3.0 Receivership Application

1. BMO is bringing the receivership application at this time as the Litigation, which is the Companies’ principal asset, will not be resolved by the Outside Date. The Proposal Trustee believes it is just and convenient, and recommends that the Receivership Order be granted for the following reasons:
 - a) the Companies will not be in a position to make a proposal to their creditors on or prior to the Outside Date and, accordingly, there is no further purpose to the NOI Proceedings;

¹ Pursuant to the March 2nd Order, the amount available under the Interim Financing Agreement was increased from \$1.9 million to \$2.8 million.

² These amounts are subject to ongoing review and confirmation.

- b) as noted above, the Companies will be deemed to have made an assignment in bankruptcy on or immediately after April 16, 2021 because they do not intend to file a proposal nor seek a further extension of the stay of proceedings by that date;
- c) the receivership proceedings will provide a framework to continue the Litigation, without which there will be no recovery for creditors other than for BMO in respect of TELP's fixed assets;
- d) the proposed Receivership Order recognizes and gives full effect to an order issued by the Court on March 16, 2021, which approved a liquidation agreement between TELP and Ritchie Bros. Auctioneers (Canada) Ltd. ("RB"). In accordance with the terms of the agreement, RB is in the process of liquidating TELP's fixed assets. The sale proceeds are to be paid to the Receiver under the Receivership Order;
- e) BMO has advised the Proposal Trustee and the Companies that it intends to fund the receivership proceedings for the purpose of advancing the Litigation pursuant to a Court-approved receiver's borrowings charge (the "Receiver's Borrowings Charge"). However, as of the date of this Fourth Report, the Proposal Trustee understands that BMO is continuing to obtain internal approvals in respect of such funding. The Receiver intends to serve a supplemental report in advance of the return of this motion advising of the status of funding for the receivership;
- f) the Receivership Order recognizes the KERP Charge; and
- g) the Companies have advised the Proposal Trustee that they consent to the receivership application, and the Proposal Trustee understands that the Companies have executed a Consent Receivership Order as of April 5, 2021.

4.0 Court Ordered Charges³

1. The proposed Receivership Order creates two new priority charges and gives effect to the Court-ordered priority charges created in the NOI Proceedings, as discussed below:

- a) **Receiver's Charge**

This charge is in favour of the Receiver and its insolvency counsel, Bennett Jones, for their respective fees and disbursements incurred in the receivership proceedings. The Receiver's Charge is also intended to cover the fees and disbursements of Lawson Lundell LLP ("Lawson"). Lawson is presently TELP's litigation counsel. Given its knowledge of the Litigation, and its extensive involvement in the Litigation to-date, it would be uneconomic and will cause substantial delay if a new firm is retained for the Litigation.

³ Capitalized terms in this section of the Report have the meanings ascribed to them in the March 2nd Order, or in the proposed Receivership Order, as applicable.

b) **Administration Charge (\$300,000)**

Pursuant to the March 2nd Order, the Administration Charge secures the unpaid fees and disbursements of Lawson, the Proposal Trustee and Bennett Jones.

c) **Receiver's Borrowings Charge (\$2.5 million)**

BMO intends to fund the receivership proceedings, subject to final internal approval as noted above, provided its advances are secured by the Receiver's Borrowings Charge. The Receiver, if appointed, will issue a Receiver's Certificate to BMO in respect of each advance.

However, to minimize the number of Court attendances for the sole purpose of increasing the amount of the Receiver's Borrowings Charge, the proposed Receivership Order contemplates an initial Receiver's Borrowings Charge of \$2.5 million and authorizes the Receiver to increase the charge in increments of \$500,000 by serving a report on the Service List, which describes the need for the increased borrowings. To the extent any party files a Notice of Objection, the increase would be subject to a further Court order. If no Notice of Objection is received within 10 days of serving such report, the Receiver's Borrowings Charge would be increased without the need for a further order of the Court.

In KSV's view, this funding mechanism is efficient, cost-effective and provides sufficient notice to stakeholders of any further advances by BMO under the Receiver's Borrowing Charge. Additionally, this mechanism is likely to eliminate the cost of further motions in the receivership proceedings that would otherwise be required solely for the purpose of increasing the Receiver's Borrowings Charge. Minimizing professional costs is in the best interests of all stakeholders in the receivership proceedings given the priority afforded to the Receiver's Charge.

d) **Interim Financing Charge (\$2.8 million)**

Pursuant to the February 3rd Order, as amended and restated by the March 2nd Order, the Interim Financing Charge secures the maximum amount available under the Interim Financing Agreement, being \$2.8 million. As discussed above, as at the date of this Report, approximately \$2.4 million has been advanced under the Interim Financing Agreement.

e) **KERP Charge (\$202,500)**

The KERP was approved pursuant to the March 2nd Order. The KERP is for the benefit of nine of the Companies' employees (collectively, the "KERP Employees").

The KERP is comprised of quarterly "stay bonuses" and a final bonus to be paid at the conclusion of the Litigation. The maximum amount payable to all KERP Employees at any given time is \$202,500, which is comprised of one quarterly bonus payment (\$39,500) plus the final payment (\$163,000).

The KERP was discussed in the Proposal Trustee's Second Report to Court dated February 24, 2021, a copy of which is attached as Appendix "B", without appendices.

The involvement of the KERP Employees is integral to the Litigation and, accordingly, preserving the KERP Charge is critical to ensure their ongoing cooperation and assistance.

2. KSV, as proposed Receiver, believes that the preservation and creation of the foregoing Court-ordered charges, as applicable, is fair and just in the circumstances, and will facilitate a seamless transition from the NOI Proceedings to the receivership proceedings. KSV, as proposed Receiver, also considers the prioritization of such Court-ordered charges, as set out in the proposed Receivership Order, to be commercially reasonable in these circumstances.

5.0 Conclusion and Recommendation

1. Based on the foregoing, the Proposal Trustee respectfully recommends that this Honourable Court make an order in the form sought by BMO in its application returnable April 15, 2021.

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.
SOLELY IN ITS CAPACITY AS TRUSTEE UNDER THE
NOTICE OF INTENTION TO MAKE A PROPOSAL OF
TRADESMEN ENTERPRISES LIMITED PARTNERSHIP AND
TRADESMEN ENTERPRISES INC.
AND NOT IN ITS PERSONAL CAPACITY**

Appendix “A”

ENTERED



20923

COURT FILE NUMBER

B201 2708739

COURT

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE

CALGARY

COM
Feb 3 2021
Justice Jones

MATTER

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL UNDER THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED, OF TRADESMEN ENTERPRISES LIMITED PARTNERSHIP

AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL UNDER THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED, OF TRADESMEN ENTERPRISES INC.

APPLICANTS

TRADESMEN ENTERPRISES LIMITED PARTNERSHIP
AND TRADESMEN ENTERPRISES INC.

DOCUMENT

**FIRST REPORT OF KSV RESTRUCTURING INC.
IN ITS CAPACITY AS PROPOSAL TRUSTEE UNDER THE
NOTICES OF INTENTION TO MAKE A PROPOSAL**

FEBRUARY 2, 2021

ADDRESS FOR SERVICE
AND CONTACT
INFORMATION OF PARTY
FILING THIS DOCUMENT

PROPOSAL TRUSTEE
KSV RESTRUCTURING INC.
150 King Street West
Suite 2308
Toronto, ON M5H 1J9

Attention: Bobby Kofman/David Sieradzki
Telephone No.: 416-932-6228/647-282-6228
Email:
bkofman@ksvadvisory.com/dsieradzki@ksvadvisory.com

COUNSEL TO PROPOSAL TRUSTEE
BENNETT JONES LLP
3400 One First Canadian Place
PO Box 130
Toronto, ON M5X 1A4

Attention: Sean Zweig/Joshua Foster
Telephone No.: 416-777-6254/416-777-7906
Email: zweigs@bennettjones.com/fosterj@bennettjones.com



**First Report to Court of
KSV Restructuring Inc. as
Proposal Trustee of
Tradesmen Enterprises Limited Partnership
and Tradesmen Enterprises Inc.**

February 2, 2021

Contents		Page
1.0	Introduction.....	1
1.1	Purposes of this Report.....	2
1.2	Restrictions	2
1.3	KSV's Prior Mandate.....	3
2.0	Background	3
3.0	Financial Position.....	4
3.1	Assets	4
3.2	Liabilities	5
4.0	Court-Ordered Charges	6
4.1	Interim Financing Charge	6
4.2	Administration Charge.....	8
4.3	Recommendation	8
5.0	Administrative Consolidation.....	10
6.0	Conclusion and Recommendation	10

Appendices

Appendix	Tab
Certificates of NOI Filings.....	A
DIP Loan Tracker dated January 4, 2021	B



ESTATE FILE NOS.: 25-095189 AND 25-2708739

COURT OF QUEEN'S BENCH OF ALBERTA

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
TRADESMEN ENTERPRISES LIMITED PARTNERSHIP,
OF THE CITY OF CALGARY,
IN THE PROVINCE OF ALBERTA

AND

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
TRADESMEN ENTERPRISES INC.,
OF THE CITY OF CALGARY,
IN THE PROVINCE OF ALBERTA

FIRST REPORT OF KSV RESTRUCTURING INC.
AS PROPOSAL TRUSTEE OF
TRADESMEN ENTERPRISES LIMITED PARTNERSHIP AND TRADESMEN ENTERPRISES
INC.

FEBRUARY 2, 2021

1.0 Introduction

1. This report (the "Report") is filed by KSV Restructuring Inc. ("KSV") in its capacity as proposal trustee (the "Proposal Trustee") in connection with Notices of Intention to Make a Proposal ("NOI") filed by Tradesmen Enterprises Limited Partnership ("TELP") and Tradesmen Enterprises Inc. ("TEI") (together, the "Company") on February 1, 2021 pursuant to subsection 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA"). Copies of the certificates of filing issued by the Office of the Superintendent of Bankruptcy are provided in Appendix "A".
2. The affidavit of Dean Kato, the President and CEO of the Company, sworn on February 1, 2021 (the "Affidavit") provides, *inter alia*, the Company's history and the background to these proceedings and, accordingly, that information is not repeated in this Report. The Affidavit is included with the Company's application materials.
3. The principal purposes of these proceedings are for the Company to:
 - a) obtain a stay of proceedings so that the Company is afforded the necessary breathing space to expediently advance its construction lien litigation against Teck Coal Limited ("Teck") and other parties, as detailed in the Affidavit;
 - b) seek approval of a senior ranking court-ordered charge to secure interim financing required for the Company to pursue its litigation and to fund its operations; and
 - c) have the opportunity to formulate and make a proposal to its creditors.

1.1 Purposes of this Report

1. The purposes of this Report are to:
 - a) provide background information about the Company;
 - b) discuss the purpose of these proceedings;
 - c) discuss the Company's need for interim financing, which is to be provided through a facility dated February 1, 2021 between the Company and Bank of Montreal ("BMO") (the "Interim Financing Facility") in the maximum principal amount of \$1.9 million, as well as a charge (the "Interim Financing Charge") over the Company's property, assets and undertakings (collectively, the "Property") in favour of BMO for its advances to the Company under the Interim Financing Facility;
 - d) discuss the rationale for a charge in the amount of \$300,000 on the Property (the "Administration Charge") as protection for the fees and disbursements of the Proposal Trustee, the Proposal Trustee's counsel, Bennett Jones LLP ("Bennett Jones"), and the Company's counsel, Lawson Lundell LLP ("Lawson");
 - e) provide the basis for the Proposal Trustee's support of the Company's application for the Interim Financing Charge and the Administration Charge, including the reasons the Proposal Trustee believes it is appropriate for the charges to have priority over all of the Company's existing creditors and other stakeholders;
 - f) discuss the rationale for the proposed administrative consolidation of the NOI proceedings of TELP and TEI; and
 - g) recommend that this Honourable Court make an order approving the Interim Financing Facility, the Interim Financing Charge, the Administration Charge (and their proposed priorities) and the administrative consolidation of TELP's and TEI's estates.

1.2 Restrictions

1. In preparing this Report, the Proposal Trustee has relied upon unaudited financial information prepared by the Company, the Company's books and records and discussions with the Company's management, legal counsel and majority owner, Fulcrum Capital Partners Inc. ("Fulcrum"). The Proposal Trustee has not audited, reviewed or otherwise verified the accuracy or completeness of the information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the *Chartered Professional Accountants of Canada Handbook*.
2. The Proposal Trustee expresses no opinion or other level of assurance with respect to the financial information presented in this Report or relied upon by the Proposal Trustee in preparing this Report. Any party wishing to place reliance on the Company's financial information should perform its own diligence and any reliance placed by any party on the information presented herein shall not be considered sufficient for any purpose whatsoever.

1.3 KSV's Prior Mandate

1. On January 13, 2021, KSV¹ was engaged by TELP to assist it to, *inter alia*, consider its restructuring options. KSV's engagement letter contemplates that, in the event it is appointed as a court officer in any insolvency proceeding involving the Company, its engagement would terminate immediately prior to such appointment and thereafter KSV's duties and obligations would be governed by statute and by any court order appointing it.
2. In carrying out its advisory mandate, KSV obtained background information concerning the Company's business, financial position and liquidity challenges.

2.0 Background

1. All of the Company's operations are performed by TELP. TEI is the General Partner of TELP and does not conduct any active business operations.
2. The Company is a mechanical contractor specializing in facility and pipeline construction, piping and structure fabrication, module assembly and maintenance projects. The Company operates from two leased premises in Alberta: its head office is located in Calgary and its fabrication operations are performed from a facility in Grande Prairie. The Company's workforce is not unionized and the Company does not maintain any registered pension plans.
3. Pursuant to an agreement dated May 28, 2019 (the "Teck Contract"), Teck retained the Company to act as the general contractor to construct the Fording River Operations Active Water Treatment Facility (South Project) located near Elkford, British Columbia (the "Project").
4. Since being awarded the Teck Contract, the Project has become the Company's central focus and in recent months represented the only material contract being performed by the Company. The Project is substantially over-budget – the Teck Contract originally had a budget of \$32 million and is now projected to have a total cost of approximately \$140 million. The Proposal Trustee has been advised that Teck presently has an approved budget of approximately \$101 million for the Project. The Company has issued approximately 900 change order requests to Teck in respect of the Project, all resulting from changes to the Project that were requested by Teck.
5. By letter dated January 11, 2021, Teck terminated the Teck Contract. Since the contract termination, the Company has, *inter alia*:
 - a) sent a letter to Teck disputing its contract termination;
 - b) filed a claim of builders lien in the amount of approximately \$48.6 million (the "Lien");

¹ KSV's affiliate, KSV Advisory Inc., was engaged for this advisory mandate. KSV is a wholly-owned subsidiary of KSV Advisory Inc.

- c) registered the Lien against lands associated with the Project including real property owned by each of Canadian Pacific Limited and the Province of British Columbia, and a statutory right of way registered in favour of FortisBC Energy Inc. (the “3rd Party Lands”). Each of these parties will be notified by the Company that they will be named in, and be parties to, the Company’s litigation with Teck in respect of the Liens; and
 - d) sent a letter to Fluor Canada Ltd. (“Fluor”), the engineering consultant on the Project, advising that the Company intends to commence an action against it.
6. The Proposal Trustee understands that the Company is presently processing invoices and updating its books and records in respect of its accounting for the Project. The Company expects that the amounts owing from Teck will increase materially and that it will lien the same 3rd Party Lands for such amounts.
7. The Company’s business and operations have been severely affected by the termination of the Teck Contract. The Company has reduced its number of employees from approximately 614 in early January to 32 as at the date of this Report. The Company expects to further reduce the number of its employees in the coming weeks. The Company’s principal focus is now pursuing its litigation.
8. BMO is the Company’s operating lender and largest creditor. BMO is presently owed approximately \$25 million, plus interest and costs, which continue to accrue. The Company is in default of its credit facility with BMO. TEI is the guarantor under BMO’s credit facility with TELP. On January 14, 2021, BMO issued a demand and notice of intention to enforce security under section 244 of the BIA. Since that time, the Company has been working with BMO to consider restructuring options and how to most effectively advance its litigation. In the context of those discussions, BMO has agreed to provide financing to the Company under the Interim Financing Facility, conditional upon, among other things, receipt of the Interim Financing Charge.
9. Additional information about the Company is included in the Affidavit. Court materials filed in these proceedings will be made available on the Proposal Trustee’s website at <https://www.ksvadvisory.com/insolvency-cases/case/tradesmen-enterprises>.

3.0 Financial Position

3.1 Assets

1. The Company’s principal asset is the amount owing from Teck in respect of work performed on the Project. The Proposal Trustee understands that the Company has not been paid by Teck since December 11, 2020.
2. In addition to the Company’s lien litigation, the Company’s next most significant assets are its capital assets, which are comprised of fabrication and other equipment, tooling and rolling stock. An appraisal of these assets is in process as at the date of this Report.

3.2 Liabilities

1. Based on the Company's books and records, creditor obligations totalled approximately \$45.7 million as at January 22, 2021. A summary of the Company's liabilities is provided in the table below.

Liability	Note	(Unaudited) Amount (\$000's)
Canada Revenue Agency ("CRA")	a	505
BMO debt	b	24,355
Shareholder loan	c	1,814
Sub-contractor obligations	d	16,886
Other	e	2,148
Total		45,708

Notes:

- a) The Proposal Trustee understands that the Company withheld, but did not remit, source deductions on a payroll processed in December 2020. This obligation appears to be a deemed trust claim in favour of CRA and is to be paid in the near term. This amount is to be funded from the Interim Financing Facility.
- b) The BMO debt is a revolving loan facility secured against all of the Property. The Company's borrowings under this facility exceed the authorized limit of the facility, being \$23 million.
- c) The shareholder loan was advanced on a secured basis by Fulcrum and presently totals approximately \$1.8 million, including interest. Fulcrum has also provided a partial guarantee of the BMO debt.
- d) Sub-contractor obligations represent amounts owing to parties who provided work or materials to the Project and as such may have lien rights. Certain of the parties have placed liens on the Project and the 3rd Party Lands. The sub-contractors who provided work or materials to the Project may also have trust claims against funds paid to the Company in respect of the Project. Amounts owing to sub-contractors are summarized in the table below.

Sub-contractor	Amount (\$000's)
Techmation Electric & Controls Ltd.	11,036
CIF Construction Ltd.	2,094
Industrial Scaffold Services LP	1,418
Alberta Pipe Support & Fabrication Inc.	434
Transcendent Mining & Mobilization Inc.	291
Other (17 sub-contractors)	1,613
Total	16,886

- e) Other vendor obligations include amounts owing to equipment lessors, transport companies and other suppliers and service providers.

4.0 Court-Ordered Charges

4.1 Interim Financing Charge²

1. The Company is in default of its credit agreement with BMO. Since the termination of the Teck Contract, BMO has continued to make advances to the Company while the Company considered its restructuring options. BMO has advised that it requires the benefit of a court-ordered priority charge for any further advances to the Company. Absent additional financing, the Company will not have the ability to continue to fund its costs, the professional fees associated with its litigation and these proceedings. The Company cannot currently meet its obligations as they come due.
2. BMO has agreed to fund these proceedings under the Interim Financing Facility subject to the granting of the Interim Financing Charge. The Interim Financing Charge is proposed to rank in priority to all other creditors, except for the priority contemplated to be afforded to the proposed Administration Charge. The terms of the Interim Financing Facility are set out in a term sheet dated February 1, 2021 (the "Term Sheet"). The final Term Sheet, or a substantially final copy of it, is attached as an exhibit to the Affidavit. If the finalized version is not attached to the Affidavit, it is expected that it will be provided to interested parties in advance of the return of the Company's application.
3. The principal terms of the Interim Financing Facility are as follows:
 - a) Description of Facility: Senior secured super priority, interim, revolving credit facility of \$1.9 million, subject only to the Administration Charge.
 - b) Maturity Date: The earliest of: (i) the occurrence of any Event of Default which is continuing and has not been cured to BMO's satisfaction; (ii) the implementation of a proposal which has been approved by the court and the requisite majorities of the Company's creditors, including BMO; (iii) the conversion of the NOI proceedings into a proceeding under the *Companies' Creditors Arrangement Act*, absent BMO's approval; (iv) the conversion of the NOI proceedings into a receivership under the BIA; (v) the sale of all or substantially all of the Property; and (vi) March 3, 2021. All amounts outstanding under the Interim Financing Facility are payable in full on the Maturity Date, including all accrued interest and other amounts, fees and costs.
 - c) Interest Rate: 12% per annum, which shall accrue daily on the aggregate outstanding principal advanced under the Interim Financing Facility and shall be calculated and payable in arrears on the first Business Day of each month. The default rate of interest is 16%.
 - d) Closing Fee: \$65,000, which is payable on the date BMO makes the Initial Advance.

² Terms not defined in this section have the meaning provided to them in the term sheet dated February 1, 2021 to the Interim Financing Facility unless otherwise defined herein.

- e) Security and Priority: A court-ordered super-priority charge on the Company's Property. All obligations, other than the Administration Charge, are proposed to be subordinate to the Interim Financing Charge, including all construction trusts and lien claims that may be asserted by the Company's sub-contractors.
- f) Conditions: The conditions precedent include, among others, the following:
 - i. BMO's satisfaction with all material documents filed in respect of the proposed court order regarding the Interim Financing Facility and Charge;
 - ii. the court issuing the proposed order and granting the Interim Financing Charge;
 - iii. BMO's receipt of, and satisfaction with, the initial Cash Flow Forecast;
 - iv. BMO's receipt of, and satisfaction with, the initial Business Update from the Company;
 - v. BMO's receipt of, and satisfaction with, an executed copy of a consent Receivership Order; and
 - vi. the absence of any liens ranking in priority to the Interim Financing Charge over the Property, other than the Administration Charge.
- g) Reporting: The Company shall deliver rolling cash flow projections and variance reports on a weekly basis. Further, the Company will, among other things, provide an update to the initial Business Update on February 16, 2021.
- h) Events of Default: Events of Default include, *inter alia*, the following:
 - i. failure of Fulcrum to pay BMO on or before February 9, 2021 the amount of its guarantee of the BMO debt;
 - ii. the aggregate amount of all Priority Governmental Claims outstanding, except for the Existing Source Deduction, at any time exceeding \$100,000;
 - iii. a Material Adverse Change, which includes: (i) the making of a Restructuring Court Order; and (ii) a liability arising or an event occurring, including any change in the Collateral, business, assets, or conditions (financial or otherwise), of a Credit Party, that will, in BMO's judgment, acting reasonably, materially impair: (A) BMO's ability to recover the amounts owed to it by the Credit Parties, or (B) a Credit Party's financial condition or ability to comply with its obligations under the Interim Financing Facility, any other Interim Financing Credit Documentation, the Interim Lender Order, or any Restructuring Court Order, or carry out a Proposal or Restructuring Option reasonably acceptable to BMO;

- iv. if a Cash Flow Forecast or any update thereof contemplates or forecasts an adverse change or changes from the then existing Cash Flow Forecast and such change(s) constitute a Material Adverse Change, or any updated Cash Flow Forecast forecasts that borrowings under the Interim Financing Facility will exceed the Maximum Amount at any time (unless and until BMO consents to increase the Maximum Amount, which shall be in BMO's sole and absolute discretion);
 - v. if a Business Update or any update thereof contemplates or forecasts an adverse change or changes from the initial Business Update and such change(s) constitute a Material Adverse Change; and
 - vi. failure of the Company to perform or comply with any other term or covenant under the Interim Financing Facility or any other Interim Financing Credit Documentation, and such default shall continue unremedied for a period of five Business Days from the breach first occurring.
- i) Prepayment: Upon five days' prior written notice, the Company may prepay any amounts outstanding under the Interim Financing Facility at any time prior to the Maturity Date, without any prepayment fee or penalty.

4.2 Administration Charge

1. The Company is seeking court approval of an Administration Charge in the amount of \$300,000 as protection for the fees and disbursements of the Proposal Trustee, Bennett Jones and Lawson. The Administration Charge provides security to these professionals in the event that these proceedings are terminated and such professionals have not been paid in full at the date of termination.
2. An Administration Charge is a common feature in restructuring proceedings. The Proposal Trustee is of the view that the Administration Charge is appropriate in this case due to the Company's lack of liquidity and the need for assistance from the beneficiaries of the Administration Charge. The Administration Charge is to have a senior ranking charge on the Company's Property, including in priority to the Interim Financing Charge and the potential trust and lien claims in favour of the Company's sub-contractors.
3. For the reasons set out below, the Proposal Trustee believes it is appropriate for the Administration Charge to rank in priority to all claims against the Company.

4.3 Recommendation

1. The Proposal Trustee has considered the factors set out in subsection 50.6(5) of the BIA with respect to the granting of an order for interim financing and a charge related thereto. The Proposal Trustee believes that the terms of the Interim Financing Facility are reasonable and that the Interim Financing Charge and Administration Charge should be granted for the following reasons:
 - a) the Interim Financing Facility and the corresponding Interim Financing Charge enhance the prospect that the Company will be able to successfully restructure;

- b) the Company is without liquidity to fund these proceedings and its litigation against Teck. The litigation is complex – it involves a Project with an estimated cost to complete that has increased by more than \$100 million since its outset by the issuance of approximately 900 change order requests, many of which were approved and others which are pending approval. There were also approximately 1,700 requests for information (“RFIs”) on the Project. The involvement of management and Company personnel with intimate knowledge of the Project, the documentation supporting each change order request and change order, the RFIs and the Project accounting is critical to the successful outcome of the litigation. The Interim Financing Facility is necessary to fund these costs;
- c) absent the Interim Financing Facility, the Company will have no ability to pursue its lien litigation with Teck to the prejudice of all of the Company’s stakeholders, including BMO, Fulcrum and sub-contractors who have claims against the Company;
- d) the Administration Charge and the Interim Financing Charge are proposed to rank in priority to trust and lien claims in favour of the Company’s sub-contractors. In this regard:
 - i. in the circumstances, the proposed priority of the Interim Financing Charge is necessary as no commercially reasonable lender can be expected to provide the financing urgently required by the Company subordinate to the Company’s existing obligations;
 - ii. the Proposal Trustee believes the Interim Financing Facility is in the best interest of all of the Company’s stakeholders, including sub-contractors, as the Interim Financing Facility is integral to fund the costs associated with the Lien litigation and the Company’s operations so that there may be a recovery for the Company’s sub-contractors, which would be made available through a proposal or otherwise; and
 - iii. in an immediate liquidation of the Company, creditors are unlikely to have any material recovery and it is unclear whether sub-contractors will be able to recover on any trust claims that arise;
- e) in the Proposal Trustee’s view, the commercial terms of the Interim Financing Facility are reasonable. The closing fee (\$65,000) and the rate of interest (12%) are consistent with the costs of DIP financing facilities approved by Canadian courts in formal insolvency proceedings as reflected in a DIP loan summary schedule as of January 4, 2021, a copy of which is attached as Appendix “B”. The Proposal Trustee is also cognizant of the risks associated with financing construction litigation and believes that the rate of interest under the Interim Financing Facility is reflective of that risk;
- f) the Proposal Trustee has reviewed the Company’s cash flow forecast which supports the Interim Financing Facility (which is attached as an exhibit thereto) and believes that its underlying assumptions are reasonable;

- g) the Company's principal economic stakeholders, being BMO and Fulcrum, have advised that they consent to the relief being sought by the Company; and
- h) in the Proposal Trustee's view, these proceedings cannot advance without funding under the Interim Financing Facility and the professionals involved require certainty that their fees will be paid.

5.0 Administrative Consolidation

1. The Company is seeking an order to administratively consolidate the NOI proceedings into one estate.
2. As the consolidation is for administrative purposes only, TELP and TEI would remain separate for the purpose of a claims process, filing a proposal or making distributions to creditors.
3. The Company and the Proposal Trustee believe that administratively consolidating the proceedings is appropriate as:
 - a) TEI is an inactive holding company with no business operations or assets other than its partnership interest in TELP;
 - b) it will facilitate the orderly administration of these proceedings;
 - c) TEI and TELP have common ownership and management; and
 - d) it will significantly reduce professional costs, including by filing materials in one proceeding only.

6.0 Conclusion and Recommendation

1. Based on the foregoing, the Proposal Trustee respectfully recommends that this Honourable Court make an order granting the relief detailed in Section 1.1 (1)(g) of this Report.

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.
SOLELY IN ITS CAPACITY AS TRUSTEE UNDER THE
NOTICE OF INTENTION TO MAKE A PROPOSAL OF
TRADESMEN ENTERPRISES LIMITED PARTNERSHIP AND
TRADESMEN ENTERPRISES INC.
AND NOT IN ITS PERSONAL CAPACITY**

Appendix “B”

ENTERED

207582



COURT FILE NUMBER BK01 095189
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
MATTER IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL UNDER THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED, OF TRADESMEN ENTERPRISES LIMITED PARTNERSHIP

AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL UNDER THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED, OF TRADESMEN ENTERPRISES INC.

APPLICANTS TRADESMEN ENTERPRISES LIMITED PARTNERSHIP AND TRADESMEN ENTERPRISES INC.

DOCUMENT **SECOND REPORT OF KSV RESTRUCTURING INC. IN ITS CAPACITY AS PROPOSAL TRUSTEE UNDER THE NOTICES OF INTENTION TO MAKE A PROPOSAL**

FEBRUARY 24, 2021

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

PROPOSAL TRUSTEE
KSV RESTRUCTURING INC.
150 King Street West
Suite 2308
Toronto, ON M5H 1J9

Attention: Bobby Kofman/David Sieradzki
Telephone No.: 416-932-6228/647-282-6228
Email:
bkofman@ksvadvisory.com/dsieradzki@ksvadvisory.com

COUNSEL TO THE PROPOSAL TRUSTEE
BENNETT JONES LLP
3400 One First Canadian Place
PO Box 130
Toronto, ON M5X 1A4

Attention: Sean Zweig/Joshua Foster
Telephone No.: 416-777-6254/416-777-7906
Email: zweigs@bennettjones.com/fosterj@bennettjones.com



**Second Report to Court of
KSV Restructuring Inc. as
Proposal Trustee of
Tradesmen Enterprises Limited Partnership
and Tradesmen Enterprises Inc.**

February 24, 2021

Contents

	Page
1.0 Introduction.....	1
1.1 Purposes of this Report.....	2
1.2 Restrictions	3
2.0 Background	3
3.0 Interim Financing Agreement.....	5
3.1 Cash Flow Forecast	6
3.2 Recommendation	6
4.0 KERP.....	7
5.0 Company's Request for an Extension	8
6.0 Conclusion and Recommendation	9

Appendices

Appendix	Tab
Certificates of NOI Filings.....	A
Court Order dated February 3, 2021	B
Proposal Trustee's First Report to Court dated February 1, 2021 (without appendices)...	C
Cash Flow Forecast and Management's Report on Cash Flow Forecast.....	D
Proposal Trustee's Report on Cash Flow Forecast.....	E

Confidential Appendices

Appendix	Tab
KERP summary	1

COURT FILE NUMBER: BK01 095189

COURT OF QUEEN'S BENCH OF ALBERTA

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
TRADESMEN ENTERPRISES LIMITED PARTNERSHIP,
OF THE CITY OF CALGARY,
IN THE PROVINCE OF ALBERTA

AND

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
TRADESMEN ENTERPRISES INC.,
OF THE CITY OF CALGARY,
IN THE PROVINCE OF ALBERTA

SECOND REPORT OF KSV RESTRUCTURING INC.
AS PROPOSAL TRUSTEE OF
TRADESMEN ENTERPRISES LIMITED PARTNERSHIP AND
TRADESMEN ENTERPRISES INC.

FEBRUARY 24, 2021

1.0 Introduction

1. This report (the "Report") is filed by KSV Restructuring Inc. in its capacity as proposal trustee (the "Proposal Trustee") in connection with Notices of Intention to Make a Proposal filed by Tradesmen Enterprises Limited Partnership ("TELP") and Tradesmen Enterprises Inc. ("TEI", and together with TELP, the "Company") on February 1, 2021 pursuant to subsection 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA"). Copies of the certificates of filing issued by the Office of the Superintendent of Bankruptcy are provided in Appendix "A".
2. Pursuant to an order of the Court of Queen's Bench of Alberta (the "Court") made on February 3, 2021 (the "February 3rd Order"), the estates of TEI and TELP were procedurally consolidated. A copy of the February 3rd Order is attached as Appendix "B".
3. The principal purposes of these proceedings are for the Company to:
 - a) obtain a stay of proceedings so that the Company is afforded the necessary breathing space to expediently advance its litigation against Teck Coal Limited ("Teck"), Fluor Canada Ltd. ("Fluor"), Canadian Pacific Limited, the Province of British Columbia and FortisBC Energy (the "Litigation");

- b) access funding to pursue the Litigation under an interim financing credit facility dated February 1, 2021 (the “Interim Financing Agreement”) between the Company and Bank of Montreal (“BMO”), which was approved pursuant to the February 3rd Order; and
- c) have the opportunity to formulate and make a proposal to its creditors.

1.1 Purposes of this Report

1. The purposes of this Report are to:
 - a) provide background information about the Company and these proceedings;
 - b) summarize the terms of an amending agreement to the Interim Financing Agreement dated March 2, 2021 (the “IF Amendment”) which, *inter alia*, increases the amount available under the Interim Financing Agreement from \$1.9 million to \$2.8 million, subject to Court approval of a corresponding increase in the Interim Financing Charge (as defined in the February 3rd Order);
 - c) summarize a proposed key employee retention plan (“KERP”) and a proposed charge of \$202,500 to secure amounts payable under the KERP (the “KERP Charge”);
 - d) report on the Company’s cash flow projection from the commencement of these proceedings to April 16, 2021 (the “Cash Flow Forecast”);
 - e) discuss the Company’s request for an extension of the time to make a proposal and the corresponding stay of proceedings from March 3, 2021 to April 16, 2021; and
 - f) recommend that this Honourable Court make an order:
 - i. approving the IF Amendment, which increases the amount of the Interim Financing Charge from \$1.9 million to \$2.8 million;
 - ii. approving the KERP and granting the KERP Charge in favour of the beneficiaries of the KERP in the amount of \$202,500, which is to rank subordinate to the Interim Financing Charge and the Administration Charge (as defined in the February 3rd Order);
 - iii. extending the time to make a proposal and the corresponding stay of proceedings from March 3, 2021 to April 16, 2021; and
 - iv. sealing the Confidential Appendix to this Report pending further Court order.

1.2 Restrictions

1. In preparing this Report, the Proposal Trustee has relied upon unaudited financial information prepared by the Company, the Company's books and records and discussions with the Company's management, legal counsel and majority owner, Fulcrum Capital Partners Inc. ("Fulcrum"). The Proposal Trustee has not audited, reviewed or otherwise verified the accuracy or completeness of the information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the *Chartered Professional Accountants of Canada Handbook*.
2. The Proposal Trustee expresses no opinion or other level of assurance with respect to the financial information presented in this Report or relied upon by the Proposal Trustee in preparing this Report. Any party wishing to place reliance on the Company's financial information should perform its own due diligence and any reliance placed by any party on the information presented herein shall not be considered sufficient for any purpose whatsoever.
3. An examination of the Cash Flow Forecast as outlined in the *Chartered Professional Accountants of Canada Handbook* has not been performed. Future oriented financial information relied upon in this Report is based upon the Company's assumptions regarding future events; actual results achieved may vary from this information and these variations may be material.

2.0 Background

1. The Company is a mechanical contractor specializing in facility and pipeline construction, piping and structure fabrication, module assembly and maintenance projects. The Company operates from two leased premises in Alberta: its head office is located in Calgary and its fabrication operations are located in Grande Prairie. The Company's workforce is not unionized and the Company does not maintain any registered pension plans.
2. Pursuant to an agreement dated May 28, 2019 (the "Teck Contract"), Teck retained the Company to act as the general contractor to construct the Fording River Operations Active Water Treatment Facility (South Project) located near Elkford, British Columbia (the "Project").
3. Since being awarded the Teck Contract, the Project became the only material contract performed by the Company. The Project was substantially overbudget – the Teck Contract originally had a budget of \$32 million and is now projected to have a total cost of approximately \$140 million. The Proposal Trustee has been advised that the Company issued approximately 900 change order requests and 1,700 requests for information to Teck in respect of the Project, all resulting from the significantly expanded scope of the Project. By letter dated January 11, 2021, Teck terminated the Teck Contract. The Company's position is that the grounds cited by Teck for the termination are improper.

4. Since the termination of the Teck Contract, the Company has, *inter alia*:
 - a) filed claims of builders liens in the amount of approximately \$52.8 million (the “Liens”);¹ and
 - b) registered the Liens against lands associated with the Project, including real property owned by each of Canadian Pacific Limited and the Province of British Columbia, and a statutory right of way registered in favour of FortisBC Energy Inc. Each of these parties, and Fluor, the engineering consultant on the Project, were notified by the Company that they will be named in, and will be parties to, the Litigation.
5. The Company’s business and operations have been severely affected by the termination of the Teck Contract. The Company has reduced its employee headcount from approximately 614 in early January to 16 as at the date of this Report. The Company expects to make further headcount reductions in the coming weeks. At this time, the Company’s principal asset is the Litigation and its central focus is pursuing the Litigation. The termination by Teck of the Teck Contract and its failure to pay the change orders, including approved change orders, caused the Company to have a significant liquidity crisis, requiring it to commence these proceedings.
6. BMO is the Company’s operating lender and largest creditor. It has continued to fund the Company’s operations during these proceedings pursuant to the Interim Financing Agreement. BMO’s pre-filing debt was approximately \$25 million, plus interest and costs, which continue to accrue. Fulcrum provided BMO with a partial guarantee of the Company’s indebtedness to BMO, and Fulcrum has funded that guarantee. As at the date of this Report, BMO has advanced approximately \$1.1 million under the Interim Financing Agreement.
7. The Company’s other significant creditors are its sub-contractors, which according to the Company’s books and records may be owed approximately \$18 million,² and Fulcrum, which is owed approximately \$1.8 million, plus the amount funded by Fulcrum pursuant to its guarantee of the BMO debt. The Proposal Trustee understands that Teck claims to be a creditor of the Company as well, but that is disputed by the Company. A summary of the Company’s financial position at the commencement of these proceedings was provided in the Proposal Trustee’s First Report to Court dated February 2, 2021 (the “First Report”) and, accordingly, is not repeated in this Report. A copy of the First Report, without appendices, is provided in Appendix “C”.

¹ Liens were filed in the amount of approximately \$48.6 million and \$4.15 million on January 11, 2021 and February 11, 2021, respectively.

² These amounts are subject to confirmation and continue to be reconciled by the Company.

8. Additional information about the Company and its activities over the course of these proceedings is included in the Affidavit No. 2 of Dean Kato sworn February 24, 2021 (the "Affidavit"), the Company's President and CEO, filed in support of the Company's motion. Court materials filed in these proceedings are available on the Proposal Trustee's website at <https://www.ksvadvisory.com/insolvency-cases/case/tradesmen-enterprises>.

3.0 Interim Financing Agreement³

1. The Interim Financing Agreement approved pursuant to the February 3rd Order matures on March 3, 2021 and provides for borrowings of up to \$1.9 million. The February 3rd Order granted the Interim Financing Charge to secure BMO's advances under the Interim Financing Agreement.
2. The Company's borrowings to-date under the Interim Financing Agreement total approximately \$1.1 million, which is consistent with the cash flow filed with the Court in support of the Company's motion heard February 3, 2021. Based on the Cash Flow Forecast, the Company's projected funding requirement to the proposed stay extension date of April 16, 2021 is approximately \$2.8 million.
3. The terms and conditions of the Interim Financing Agreement were set out in the First Report. As of the date of this Report, it is anticipated that the Company and BMO will execute the IF Amendment on February 24, 2021. The IF Amendment:
 - a) increases the maximum amount available under the Interim Financing Agreement from \$1.9 million to \$2.8 million and
 - b) extends the maturity date to the earlier of:
 - the occurrence of any Event of Default under the IF Amendment which is continuing and has not been cured to the satisfaction of BMO;
 - the implementation of the Proposal, which has been approved by the requisite majorities of the Company's creditors, including by BMO and the Court;
 - the conversion of the NOI Proceedings into a proceeding under the *Companies' Creditors Arrangement Act* (Canada), unless agreed to by BMO;
 - the conversion of the NOI Proceedings into a receivership under the BIA;
 - the sale of all or substantially all of the Collateral; and
 - forty-five (45) days from the commencement of the Extended NOI Proceedings (being April 16, 2021).

³ Defined terms in the section of the Report have the meanings provided to them in the IF Amendment.

4. The IF Amendment is subject to Court approval and the Court granting an increase to the Interim Financing Charge to a maximum of \$2.8 million.
5. A copy of the IF Amendment is attached as an Exhibit to the Affidavit.

3.1 Cash Flow Forecast

1. Pursuant to the BIA, the Company is required to prepare a cash flow forecast for the stay extension period. The Company's Cash Flow Forecast for the period ending April 16, 2021 (the "Period"), together with Management's Report on the Cash-Flow Statement as required by subsection 50.4(2)(c) of the BIA, is provided in Appendix "D".
2. The Cash Flow Forecast was prepared by the Company with the assistance of the Proposal Trustee. The Company is not projecting any receipts during the Period. Projected disbursements are primarily: (a) rent until the Company's fixed assets are liquidated;⁴ (b) payroll costs for employees critical to the Litigation; and (c) professional fees involved in these proceedings, including the Company's counsel in the Litigation.
3. The Cash Flow Forecast reflects the minimum required to fund these proceedings with a view to generating recoveries for stakeholders, including the Company's sub-contractors, BMO and Fulcrum. In the Proposal Trustee's view, there are no unnecessary expenditures in the Cash Flow Forecast.
4. Based on the Proposal Trustee's review of the Cash Flow Forecast, there are no material assumptions which seem unreasonable. The Proposal Trustee's Report on the Company's Cash Flow Statement as required by subsection 50.4(2)(b) of the BIA is attached as Appendix "E".

3.2 Recommendation

1. The Proposal Trustee believes that the terms of the IF Amendment are reasonable and that the increase to the Interim Financing Charge should be granted for the following reasons:
 - a) it enhances the prospect that the Company will be able to make a viable proposal to its creditors;
 - b) absent funding under the Interim Financing Agreement, the Company will be without liquidity to continue to fund these proceedings and advance the Litigation, which will prejudice all of the Company's stakeholders, including BMO, Fulcrum and sub-contractors who have claims against the Company;
 - c) in an immediate liquidation of the Company, creditors are unlikely to have any material recovery;

⁴ The Company intends to disclaim the Grande Prairie lease once the fixed assets located there have been liquidated.

- d) the Proposal Trustee has reviewed the Company's Cash Flow Forecast which supports the IF Amendment and believes that its underlying assumptions are reasonable;
- e) the Cash Flow Forecast only includes those critical expenditures necessary to fund these proceedings, including rent, wages and professional costs; and
- f) in the Proposal Trustee's view, it is commercially unreasonable for any lender to advance funding in these circumstances without the benefit of a court-ordered senior ranking charge, and without such funding, creditors will suffer material prejudice as the Company will be unable to pursue the Litigation.

4.0 KERP

1. The KERP was developed by the Company, in consultation with the Proposal Trustee. The KERP is for nine of the Company's employees (the "KERP Employees").
2. The KERP is comprised of quarterly "stay bonuses" and a final bonus to be paid at the conclusion of the Litigation. The maximum amount payable to all KERP Employees at any given time is \$202,500, which is comprised of one quarterly bonus payment (\$39,500) plus the final payment (\$163,000).
3. The Company is seeking approval of the KERP and the creation of the corresponding KERP Charge in the amount of \$202,500 to secure the maximum amount payable under the KERP at any point in time. The KERP Charge is to rank subordinate to the Administration Charge and the Interim Financing Charge, but is to have priority over all other claims against the Company, consistent with the Administration Charge and the Interim Financing Charge.
4. The KERP Employees had significant involvement with the Teck Contract and are integral to the Company's Litigation due to their familiarity with it. The KERP is intended to incentivize the KERP Employees to assist the Company to the conclusion of the Litigation. The details of the KERP are provided in Confidential Appendix "1" and are summarized as follows:
 - a) all of the KERP Employees would be transitioned to hourly-based compensation as soon as their full-time responsibilities at the Company have been completed;
 - b) quarterly bonuses would be paid to the KERP Employees so that they remain available to assist the Company throughout the course of the Litigation; and
 - c) larger bonuses are payable to the KERP Employees upon resolution of the Litigation.
5. The Proposal Trustee supports the KERP for the following reasons:
 - a) the Company's Litigation is complex and requires the assistance of the KERP Employees, each of whom has deep knowledge of the Project, including its correspondence and accounting, 900 change order requests and 1,700 requests for information;

- b) the continued involvement and cooperation of the KERP Employees is critical to the success of the Litigation and thus maximizes value for the Company's stakeholders;
 - c) the Proposal Trustee believes that the KERP will assist the Company to retain the KERP Employees it requires to pursue the Litigation, which is in the interest of all stakeholders;
 - d) the amounts payable under the KERP are reasonable in the circumstances; and
 - e) BMO and Fulcrum are each supportive of the KERP.
6. The Company is requesting an order sealing Confidential Appendix "1" which contains personal, identifiable and commercially sensitive information in respect of the KERP Employees. The Proposal Trustee believes it is appropriate to seal this appendix in the circumstances. The sealing of this type of commercially sensitive and personal information is typical in insolvency proceedings to avoid disruption to the debtor company and to protect the privacy of the KERP Employees. The Proposal Trustee does not believe that any stakeholder will be prejudiced if the KERP information contained in Confidential Appendix "1" is sealed.

5.0 Company's Request for an Extension

1. The Company is seeking an extension of the time to file a proposal from March 3, 2021 to April 16, 2021.
2. The Company advises that it intends to use the stay extension period principally to advance its Litigation and to liquidate its fixed assets. In respect to the fixed assets, four liquidation proposals were submitted to the Proposal Trustee on February 18, 2021 and the Proposal Trustee is working with the Company to advance a prospective transaction, which would be subject to Court approval.
3. The Proposal Trustee supports the Company's extension request for the following reasons:
 - a) the Company is acting in good faith and with due diligence;
 - b) the Company's most material asset is the Litigation. The Company has expeditiously advanced the Litigation since the commencement of these proceedings, including securing and organizing all documents it will require for the Litigation, drafting a notice of civil claim which it intends to file imminently and increasing the amount of its lien claim by over \$4 million;
 - c) it will allow the Company to complete a liquidation of its fixed assets, subject to Court approval;
 - d) the Company's principal economic stakeholders, being BMO and Fulcrum, have advised the Proposal Trustee that they consent to the Company's stay extension request;

- e) subject to Court approval of the IF Amendment and the increase to the Interim Financing Charge, the Company is projected to have sufficient liquidity to fund its post-filing obligations during the extension period; and
- f) no creditor will be materially prejudiced if the extension is granted.

6.0 Conclusion and Recommendation

1. Based on the foregoing, the Proposal Trustee respectfully recommends that this Honourable Court make an order granting the relief detailed in Section 1.1 (1)(f) of this Report.

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.
SOLELY IN ITS CAPACITY AS TRUSTEE UNDER THE
NOTICE OF INTENTION TO MAKE A PROPOSAL OF
TRADESMEN ENTERPRISES LIMITED PARTNERSHIP AND
TRADESMEN ENTERPRISES INC.
AND NOT IN ITS PERSONAL CAPACITY**