

Clerk's Stamp

Clerk's stamp:

COURT FILE NUMBER	1703 19347
COURT OF QUEEN'S BENCH OF ALBERTA	
JUDICIAL CENTRE	EDMONTON
APPLICANTS	WESCO DISTRIBUTION CANADA LP and ECS ELECTRICAL CABLE SUPPLY LTD.
RESPONDENT (RECEIVER)	ALVAREZ & MARSAL CANADA INC. THE COURT APPOINTED RECEIVER AND MANAGER OF THE UNDERTAKINGS, PROPERTY AND ASSETS OF INDEPENDENT ELECTRIC AND CONTROLS LTD., IEC BUSINESS HOLDINGS INC., SUMMIT CONTROLS (2012) CORP., BLACK KNIGHTS ELECTRIC INC., BRADLEY TURNBULL, BRENT CAMERON ERICKSON, and TODD GUY  AND IN THE MATTER OF THE RECEIVERSHIP OF INDEPENDENT ELECTRIC AND CONTROLS LTD., IEC BUSINESS HOLDINGS INC., BLACK KNIGHTS ELECTRIC INC and SUMMIT CONTROLS (2012) CORP.
RESPONDENT (PLAINTIFF)	ROYAL BANK OF CANADA
RESPONDENTS (LIENHOLDERS)	GUNTHER CONSTRUCTION (1988) LTD., NORAMCO WIRE AND CABLE, A DIVISION OF NCS INTERNATIONAL CO., GLOBAL CONTROLS INCORPORATED, GUILLEVIN INTERNATIONAL CO., STRAIGHT-UP METAL BUILDINGS LTD., and WARWICK STRUCTURES GROUP LTD.
RESPONDENT (OWNER)	PEMBINA MIDSTREAM LIMITED PARTNERSHIP, PEMBINA MARKETING LTD., PEMBINA PIPELINE CORPORATION, PEMBINA GAS SERVICES LTD., and PEMBINA GAS SERVICES LIMITED PARTNERSHIP

DOCUMENT

**SECOND REPORT OF THE RECEIVER**

**NOVEMBER 6, 2018**

**RECEIVER**

ALVAREZ & MARSAL CANADA INC.  
Bow Valley Square 1  
Suite 1100, 250 – 6<sup>th</sup> Avenue SW Calgary,  
Alberta T2P 3H7

Attn: Orest Konowalchuk / Tim Reid  
Phone: (403) 538-4736 / (403) 538-4756  
Email:  
[okonowalchuk@alvarezandmarsal.com](mailto:okonowalchuk@alvarezandmarsal.com) /  
[treid@alvarezandmarsal.com](mailto:treid@alvarezandmarsal.com)

ADDRESS FOR SERVICE AND  
CONTACT INFORMATION OF  
PARTY FILING THIS DOCUMENT

MILLER THOMSON LLP  
Barristers and Solicitors  
2700, Commerce Place  
10155-102 Street  
Edmonton, AB, Canada T5J 4G8  
Phone: 780.429.1751 Fax: 780.424.5866

Lawyer's  
Name: Emma L. Johnston  
Lawyer's  
Email: [ejohnston@millerthomson.com](mailto:ejohnston@millerthomson.com)  
File No.: 182818.3

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## INTRODUCTION

1. Effective September 29, 2017, and pursuant to the Order of Justice K.G. Neilsen, Alvarez & Marsal Canada Inc. was appointed receiver and manager (the “**Receiver**”), without security, of all the future and current assets, undertakings and properties of every nature and kind whatsoever, and wherever situated including all proceeds thereof (the “**Property**”) of Independent Electric and Controls Ltd., IEC Business Holdings Inc., Black Knights Electric Inc. and Summit Controls (2012) Corp. (collectively “**IEC**”) pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended, and sections 13(2) of the *Judicature Act*, RSA 2000 c J-2 and 65(7) of the *Personal Property Security Act*, RSA 2000 c P-7 in the within Action.
2. The Receivership realization process is substantially complete except for finalizing priority to proceeds received from the settlement with Pembina discussed further in this report. That priority depends partly on the outcome of two applications brought by Wesco and ECS.
3. The purpose of this second report of the Receiver (the “**Second Report**” or this “**Report**”) is to provide this Honourable Court with information relevant to the two applications currently scheduled for November 21, 2018 at 2:00 PM. Copies of the applications are annexed hereto as Appendix A and B.
4. The issue in both applications is the same, whether the Applicants’, Wesco Distribution Canada LP (“**Wesco**”) and ECS Electrical Cable Supply Ltd. (“**ECS**”), are entitled to have builders’ liens (the “**Liens**”) reinstated after the Receiver caused their discharge pursuant to Section 43 of the *Builders’ Lien Act*, RSA 2000 c. B-7.
5. The Receiver has reviewed the Applications and the Affidavit of Craig Schluz (the “**Wesco Affidavit**”) and the Affidavit of Lina Desouki (the “**ECS Affidavit**”). A summary of the matter and the Receiver’s position is set out below.

## RELATIONSHIP BETWEEN WESCO AND ECS AND THE WITHIN RECEIVERSHIP

6. IEC’s preliminary financial position is set out at paragraphs 24-27 of the First Receiver’s Report.
7. IEC is a privately held company that specialized in providing electrical and instrumentation services. As set out in the First Report to the Court filed previously by the Receiver, the majority of IEC’s assets are accounts receivable. A significant portion of these accounts receivable are outstanding from Pembina Pipeline Corporation, Pembina Midstream Limited and Pembina West Limited Partnership. This Report will refer to those entities as “Pembina”.
8. The Receiver understands, through conversations with Pembina and representatives of IEC, that IEC was working on three Pembina projects in the fall of 2017 (the “**Pembina Projects**”). However, based on our current understanding there is no clear contractual chain on the Pembina Projects, only service agreements and many purchase orders.
9. A number of builders’ liens were registered by suppliers of IEC (the “**Lien Claimants**”) in relation to the Pembina Projects. All of the Lien Claimants are represented by Counsel.
10. ECS and Wesco were amongst these Lien Claimants.

11. Since the fall of 2017, the Receiver has been working with Pembina to reach an agreement on the amount Pembina would pay to the Receiver based on amounts invoiced by IEC and back charges Pembina incurred to complete the work.
12. The Receiver took steps to obtain some information about the Liens by serving Notices to Prove Lien on the majority of Lien Claimants in November of 2017 (the “**Notices**”).
13. The Notices were filed in the Receivership Action, but no Notice of Application was filed.
14. Most Lien Claimants filed an Affidavit to prove their lien in the time period required by the Notice; however, Wesco did not, The Notice to Prove Lien was served on November 24, 2018 and the Affidavit Proving Lien was filed December 18, 2017. The Receiver is advised by its Counsel that Counsel for Wesco specifically advised that Wesco would not be filing the Affidavit in 15 days, and the Receiver’s Counsel confirmed that that it had no issues with this.
15. One of the preliminary issues the Receiver wanted to assess was duplication between the liens as most of the Lien Claimants had registered more than one lien and for the most part the liens were not registered against the same properties. To obtain further clarification on these issues, Counsel for the Receiver sent an email dated January 31, 2018 (the “Email”), which is included in both the Wesco and ECS Affidavits and for ease of reference is attached again here as Appendix C.
16. As noted in the Email, the Receiver was “considering” posting security for the liens. The Receiver understands that posting of security generally occurs pursuant to a standard form consent order, and that the Calgary Bar has endorsed a Standard Form Consent Order which is available on the Courts website. A copy of this Order is attached as Appendix D.

#### **DETAILS OF THE LIENS**

17. Copies of the liens are appended hereto as Appendices E-L. The Receiver has prepared the below summary of the liens:

<b>Appendix</b>	<b>Lien Claimant</b>	<b>Instrument Nos</b>	<b>Amount</b>	<b>Date Registered</b>
<b>E</b>	Noramco Wire and Cable, a division of NCS International Co	172 257 270	\$250,566.07	September 29, 2017
<b>F</b>	Guillevin International Co	172 258 714	\$33,026.73	October 2, 2017
		172 258 699	\$103,141.43	October 2, 2017
<b>G</b>	Gunther Construction (1988) Ltd.	172 266 069	\$66,827.66	October 10, 2017
<b>H</b>	Global Controls Incorporated	172 265 918 172 265 919	\$53,020.80	October 11, 2017

Appendix	Lien Claimant	Instrument Nos	Amount	Date Registered
		172 265 955 172 265 956	\$62,454.00	October 11, 2017
		172 295 115 172 295 105	\$30,229.50	November 9, 2017
I	ECS Electrical Cable Supply Ltd.	172 266 150	\$187,080.34	October 11, 2017
J	Straight-up Metal Buildings Ltd.	172 280 622 172 280 623	\$32,470.20	October 25, 2017
K	Wesco Distribution Canada LP	172 276 806	\$290,222.07	October 20, 2017
L	Warwick Structures Group Ltd.	172 285 062	\$30,451.05	October 31, 2017
		172 285 053	\$32,455.50	October 31, 2017

18. The Lien registered by Wesco was registered against lands owned by Pembina Marketing Ltd. and legally described as:

THE SOUTH EAST QUARTER OF SECTION TWENTY NINE (29)  
TOWNSHIP FIFTY FIVE (55)  
RANGE TWENTY ONE (21)  
WEST OF THE FOURTH MERIDIAN  
CONTAINING 65.2 HECTARES (161 ACRES) MORE OR LESS  
EXCEPTING THEREOUT: 2.47 HECTARES (6.10 ACRES) MORE OR LESS  
FOR THE EXTRA RIGHT OF WAY AS SHOWN ON EXPROPRIATION PLAN  
8221058

19. The Lien registered by ECS was registered against lands owned by Pembina Marketing Ltd. and legally described as:

PLAN 1027069  
AREA "A" (PIPELINE TERMINAL SITE)  
CONTAINING 27.5 HECTARES (67.34 ACRES) MORE OR LESS  
EXCEPTING THEREOUT ALL MINES AND MINERALS

#### **PEMBINA SETTLEMENT AND THE REMOVAL OF THE WESCO AND ECS LIENS**

20. Discussions with Pembina were protracted and the Receiver did not reach an agreement in principal until mid-May 2018. Between January and May, the Receiver's counsel responded to various requests for updates from the Lien Claimants.
21. To prepare for the settlement, Counsel for the Receiver pulled titles to liened properties, to confirm information about the Liens which would be necessary to post security for the Liens pursuant to Section 48 of the *Builders' Lien Act*, RSA 2000 c B-7. Based on the registration dates of the Liens set out in paragraph 14 herein, all liens should have had a

*certificate of lis pendens* (“CLP”) registered on specified dates before April 29, 2018, which is 180 days after the registration of the registration of the last lien.

22. All of the Lien Claimants with the exception of Wesco and ECS registered a CLP. Copies of the registered CLPs are annexed hereto as Appendix M.
23. Appendix M is a copy of correspondence counsel for the Receiver sent to the Land Titles office requesting removal of the Liens registered by Wesco and ECS pursuant to Section 43 of the *Builders’ Lien Act*, RSA 2000 c B-7.
24. The settlement agreement with Pembina was signed in October of 2018. While the delay in signing occurred for a number of reasons, discussions with Pembina were complicated by the uncertain status of the Wesco and ECS Liens. The status was uncertain because counsel for both Wesco and ECS had indicated application may be brought to reinstate the Liens in accordance with the Court of Appeal’s decision in *TRG Developments Corp v Kee Installations Ltd*, 2015 ABCA 187, but did not actually file applications until August of 2018.

#### **CORRESPONDENCE WITH WESCO AND ECS**

25. The Receiver has reviewed the correspondence produced in the Wesco and ECS Affidavits and agrees that it was sent. The Receiver notes that Exhibit A to the Wesco Affidavit does not include correspondence from the Receiver’s counsel serving the Notice to Prove Lien. A copy of the same is annexed as Appendix N.
26. The Receiver also notes that neither Affidavit makes any mention of correspondence between Pembina and Wesco or ECS. The Receiver has inquired with its contacts at Pembina and, as far as they are aware, they have had no contact with Wesco or ECS or their respective counsel. The Receiver’s Counsel also inquired with counsel for Wesco and ECS. ECS confirmed that no correspondence with Pembina occurred. Wesco has not responded to the inquiry. Copies of the correspondence between Counsel is attached hereto as Appendix O.

#### **IMPACT OF REINSTATING THE LIENS**

27. It is the Receiver’s view that various parties including Royal Bank of Canada (“RBC”) and lien holders who have pursued their claims properly will be prejudiced if the Liens are reinstated.
28. Firstly, RBC is the secured and primary creditor in this matter and have funded the receivership proceedings including the complex assessment of the Pembina project and protracted negotiation with Pembina to recover substantial funds for the benefit of the estate. Any money owed to IEC which the Lien Claimants cannot claim will be distributed to RBC. The amounts owed to RBC exceed all realization from the estate including the settlement proceeds from Pembina.
29. Secondly, the relief sought by ECS and Wesco is for the Liens to be reinstated against Pembina’s lands. While the Receiver is not currently aware if Pembina will take a position on these applications, the Receiver believes this is prejudicial to Pembina to have Liens reinstated against its property.
30. Lastly, the Receiver has yet to decide how it will address the claims of the remaining Lien Claimants, but it may be necessary to set lien funds, if the Liens are reinstated the Lien Claimants who did register their CLPs may receive a smaller share of the fund.

31. Consequently, the Receiver's position is that the Wesco and ECS Liens should not be reinstated as they failed to pursue their claims properly and other parties will be prejudiced by such reinstatement.

All of which is respectfully submitted this 7<sup>th</sup>, day of November, 2018.

**ALVAREZ & MARSAL CANADA INC.**  
**In its capacity as court-appointed**  
**Receiver of Independent Electric and**  
**Controls Ltd., IEC Business Holdings**  
**Inc., Summit Controls (2012) Corp.,**  
**Black Knights Electric Inc.**



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Per: Orest Konowalchuk, CPA, CA, CIRP, LIT  
Senior Vice President