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COURT FILE NUMBER	25-2965622
COURT	COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
	IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, RSC 1985, C B-3, AS AMENDED
	AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF MANTLE MATERIALS GROUP, LTD.
DOCUMENT	SUPPLEMENTAL BENCH BRIEF OF MANTLE MATERIALS GROUP, LTD.
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	**GOWLING WLG (CANADA) LLP** Suite 1600, 421 – 7th Avenue SW Calgary, AB T2P 4K9 Telephone: 403-298-1938 / 403-298-1018 Fax: 403-263-9193 Email: tom.cumming@gowlingwlg.com / sam.gabor@gowlingwlg.com / stephen.kroeger@gowlingwlg.com File No.: A171561 **Attention: Tom Cumming / Sam Gabor / Stephen Kroeger**

APPLICATION BEFORE THE HONOURABLE JUSTICE FEASBY
AUGUST 15, 2023 AT 2:00 PM ON THE CALGARY COMMERCIAL LIST

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I. INTRODUCTION

1. Mantle Materials Group, Ltd. ("**Mantle**") is in the business of operating aggregate and gravel pits in Alberta. Mantle crushes and sells the aggregate and gravel to customer specifications in order to supply construction projects throughout Alberta.

2. This application is supported by an Affidavit sworn on August 7, 2023 by Byron Levkulich, a director of Mantle (the "**August 7 Affidavit**"), the Supplemental Affidavit of Cory Pichota sworn August 8, 2023 (the "**August 8 Affidavit**") and the Supplemental Affidavit of Mr. Levkulich sworn August 11, 2023 (the "**August 11 Affidavit**" and together with the August 7 Affidavit and the August 8 Affidavit, the "**Affidavits**"). The further facts with respect to this Application are more fully set out in the Affidavits and capitalized terms not defined herein have the meanings given to them in the August 7 Affidavit and August 11 Affidavit.

3. All references to monetary amounts referenced herein are in Canadian dollars, unless otherwise stated.

4. This Supplemental Bench Brief is submitted in support of the application and order being sought, and to address issues raised by Travelers Capital Corporation ("**Travelers**") in its Bench Brief filed on August 14, 2023 (the "**Travelers Brief**"). As set out in the August 7 Affidavit and August 8 Affidavit, Travelers financed the acquisition by Mantle of approximately 46 pieces of serial numbered equipment pursuant to a loan and security agreement dated October 8, 2021 (as amended on October 15, 2022, the "**Travelers Loan Agreement**"), a copy of which is attached to the August 7 Affidavit as Exhibit "C" and August 8 Affidavit as Exhibit "A". Mantle's indebtedness under the Travelers Loan Agreement was secured by a purchase-money security interest in the Travelers Equipment (the "**Travelers Security**"). On August 8, 2023, approximately 90 minutes prior to the initial application before the Honourable Justice Campbell, Travelers filed the Travelers Brief and the Affidavit of Warren Miller sworn August 4, 2023. According to the Travelers Brief, Travelers is expected to advance several arguments in opposition to Mantle's application including, among other things, that:

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(a) the Travelers Security should hold priority over all of Mantle's creditors and the Reclamation Obligations, notwithstanding the 2019 decision of the Supreme Court of Canada (the "**SCC**") in *Orphan Well Association v. Grant Thornton Ltd*.[1] ("***Redwater***");

(b) it is wholly inappropriate for this Honourable Court to make an order declaring all or part of the Travelers Security subject to the BIA Charges (as defined in the August 7 Affidavit); and

(c) in the alternative, the Travelers Security against the Travelers Equipment should rank in priority to the Interim Financing Charge, Administration Charge and D&O Charge.

II. ISSUES

5. This Brief addresses the following questions:

(a) is security over personal property excluded from the requirement in *Redwater* that regulatory environmental obligations, which are not provable in bankruptcy, be satisfied before any distributions are made to the applicable secured creditors;

(b) are the environmental reclamation obligations of Mantle, including under the EPOs, regulatory in nature or claims provable in bankruptcy that are subject to the priority regime contemplated by the *BIA*; and

(c) should the Interim Financing Charge, Administration Charge and D&O Charge rank in priority to the Travelers Security, including with respect to the Travelers Equipment?

III. LAW AND ARGUMENT

A. The property subject to the *Redwater* super-priority

6. Travelers essentially argues that personal property subject to its purchase-money security interest ought not to be applied to the performance by Mantle of its reclamation obligations. The modern treatment of regulatory obligations was first reviewed by the SCC in

[1] *Orphan Well Association v. Grant Thornton Ltd*., 2019 SCC 5 (CanLII), [2019] 1 SCR 150 [*Redwater*] **[Tab 4]**.

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Newfoundland and Labrador v. AbitibiBowater Inc.[2] ("***Abitibi***"), where Deschamps J. wrote as follows:

> [2] Regulatory bodies may become involved in reorganization proceedings when they order the debtor to comply with statutory rules. As a matter of principle, reorganization does not amount to a licence to disregard rules. Yet there are circumstances in which valid and enforceable orders will be subject to an arrangement under the CCAA. One such circumstance is where a regulatory body makes an environmental order that explicitly asserts a monetary claim.
>
> [3] In other circumstances, it is less clear whether an order can be treated as a monetary claim. The appellant and a number of interveners posit that an order issued by an environmental body is not a claim under the CCAA if the order does not require the debtor to make a payment. I agree that not all orders issued by regulatory bodies are monetary in nature and thus provable claims in an insolvency proceeding, but some may be, even if the amounts involved are not quantified at the outset of the proceeding. [*emphasis added*][3]

7. Following *Abitibi*, in *Redwater* Wagner C.J. of the SCC, writing for the majority, examined the effect of the disclaimer by a receiver/trustee pursuant to section 14.06(4) of the *BIA* of the interest of the estate of a bankrupt corporation in lands subject to mineral leases that were regulated under the *Oil and Gas Conservation Act*, the *Pipeline Act* and the *Environmental Protection and Enhancement Act*[4] (the "***EPEA***"), whether the regulator was acting as a creditor or in its regulatory capacity, and whether orders and requirements under the regulatory scheme amounted to claims provable in bankruptcy that were subject to the priority scheme contemplated by the *BIA*. In his decision, Wagner C.J. determined the following:

    (a) section 14.06(4) of the *BIA* only protected a receiver or trustee from personal liability for environmental orders or obligations, but the liability of the bankrupt estate was not affected;[5]

[2] *Newfoundland and Labrador v. AbitibiBowater Inc*., 2012 SCC 67, [2012] 3 S.C.R. 443 [*Abitibi*] **[Tab 5]**.
[3] *Abitibi*, at paras 2 and 3 **[Tab 5]**.
[4] *Oil and Gas Conservation Act*, R.S.A. 2000, c. O-6; *Pipeline Act*, R.S.A. 2000, c. P-15; and *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12.
[5] *Redwater*, *supra* note 1, at paras 75, 76, 79, 88, 93, 98, 99 and 100 **[Tab 4]**.

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(b) whether a trustee must comply with environmental obligations in priority to all other claims depends upon whether the environmental obligation is a claim provable in bankruptcy;[6]

(c) referring to *Abitibi*, he confirmed that not all regulatory obligations enforced by a regulator will be claims provable in bankruptcy, and that bankrupt estates are obliged to comply with environmental obligations that do not amount to claims provable in bankruptcy, to the extent that assets are available to do so;[7]

(d) the test for whether a regulatory obligation amounts to a claim provable in bankruptcy, as set out in *Abitibi*, was:

> First, there must be a debt, a liability or an obligation to a creditor. Second, the debt, liability or obligation must be incurred before the debtor becomes bankrupt. Third, it must be possible to attach a monetary value to the debt, liability or obligation.[8]

(e) in seeking to enforce Redwater's end-of-life obligations, the regulator was acting in a *bona fide* regulatory capacity and did not stand to benefit financially. The regulator's ultimate goal was to have the environmental work actually performed for the benefit of third-party landowners and the public at large.[9] A regulator, in exercising its enforcement powers, is not necessarily acting as a creditor.[10] Rather, a regulator enforcing a public duty owed by all citizens of a community to fellow citizens is simply enforcing the general law and is not a creditor of the citizen on whom the duty is imposed;[11]

(f) even if a regulator was acting as a creditor, end-of-life obligations require the estate to "do something" (perform environmental work) and do not directly require it to make a payment to the regulator – they are therefore contingent claims, which will only be claims provable in bankruptcy if it is sufficiently certain that the

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[6] *Redwater*, para 99 **[Tab 4]**.
[7] *Redwater*, at para 118 **[Tab 4]**.
[8] *Redwater*, at para 119 **[Tab 4]**, referring to *Abitibi*, *supra* note 2, at para 26 **[Tab 5]**.
[9] *Redwater*, at paras 128 & 135 **[Tab 1]**.
[10] *Redwater*, at para 131 **[Tab 1]**.
[11] *Redwater*, at para 134, **[Tab 4]** referring to the decision of the Alberta Court of Appeal in *Panamericana de Bienes y Servicios S.A. v. Northern Badger Oil & Gas Ltd.*, 1991 ABCA 181, 81 Alta. L.R. (2d) 45, at para 33 **[Tab 6]**.

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contingency will come to pass. The test is not whether the performance of environmental work is intrinsically financial,[12] it is whether the regulator has enforced the obligation by performing the environmental work and is seeking reimbursement for the costs incurred, or it is sufficiently certain that the regulator will perform such work and seek reimbursement.[13]

8. Travelers' argument focusses on the question of whether the equipment financed by it is subject to the principles expressed in *Redwater*. There are statements in the reasons of the majority that if read in isolation, could be interpreted as supporting that proposition. In paragraphs 158 and 159 of the decision, Wagner C.J. wrote that the regulatory conditions depress the value of the licensed assets, that section 14.06(7) of the *BIA*[14] was intended to give regulators a first charge on real property of a bankrupt affected by an environmental condition or damage to fund the costs of remediation, thereby permitting environmental regulators to extract value from a bankrupt's affected real property. He also noted that Redwater's only substantial assets were affected by an environmental condition or damage and that the regulator was not seeking to force Redwater to fulfill end-of-life obligations with assets unrelated to the environmental condition or damage. He concluded that "recognizing that the Abandonment Orders and LMR requirements are not provable claims in this case does not interfere with the aims of the *BIA* — rather, it facilitates them."[15]

9. The Alberta Court of Appeal considered these questions in *Re Manitok Energy Inc*.[16] ("***Manitok***"), and stated that the reference to "unrelated" non-oil and gas assets did not exclude resort to such assets, noting the repeated reference in *Redwater* to "assets of the estate" without drawing such a distinction and the lack of any clear boundary between licensed assets and other assets. The court did, however, leave for another day the

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[12] *Redwater*, at para 146 **[Tab 4]** referring to the decision of the Ontario Court of Appeal in *Nortel Networks Corp., Re*, 2013 ONCA 599, 368 D.L.R. (4th) 122, at paras 31-32 **[Tab 7]**.
[13] *Redwater*, at para 140 **[Tab 4]**.
[14] Section 14.06(7) of the *BIA* provides that any claim of the Crown in right of Canada or a province for costs of remedying any environmental condition or damage affecting real property is secured by security on the real property affected by the environmental condition or damage and on any other real property of the debtor that is contiguous with that real property and that is related to the activity that caused the environmental condition or damage, and that the security ranks above any other claim, right, charge or security against the property **[Tab 1]**.
[15] *Redwater*, *supra* note 1, at para 158-159 **[Tab 4]**.
[16] *Manitok Energy Inc (Re)*, 2022 ABCA 117 [*Manitok*] **[Tab 8]**.

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determination of the status of assets completely unrelated to the oil and gas business.[17] It also noted that the reference to the priority charge against land in section 14.06(7) of the *BIA* was only intended to illustrate that the enforcement of environmental obligations in an insolvency is no more inconsistent with the *BIA* than section 14.06(7), which grants a priority charge to secure remediation costs.[18]

10. In *Orphan Well Association v Trident Exploration Corp*[19] ("***Trident***"), Justice Neufeld of the Alberta Court of King's Bench noted that although paragraph 159 of the decision in *Redwater* presented interpretative challenges, all assets of an insolvent estate were subject to the "super-priority" for environmental obligations confirmed by *Redwater*:

> [65] There are those who might characterize the outcome of *Redwater* as shifting liability for environmental remediation in the oil and gas industry from "polluter-pay" to "lender-pay." I disagree.
>
> [66] In my view, *Redwater* shifts liability from "polluter-pay" to "everyone pays," starting with all of those who have suffered financial losses in dealing with the insolvent company, and ending with the OWA, which spreads remaining losses between the Province of Alberta and industry. This includes secured creditors who have lent money to the insolvent entity in good faith, trade creditors who have provided goods or services and remain unpaid, landowners who have hosted the wells, pipelines and production facilities, and municipal governments who are owed taxes dating back to pre-insolvency, among many others. *The essence of the AER super priority is that it is not subject to prioritization because the obligation must be met before a distribution can be made to anyone else. It defines the contours of the funds that may be available for distribution*.
>
> [67] I also find that the assets subject to the AER super priority are not limited to licenced oil and gas wells, pipelines and production facilities. Trident had certain real estate assets that were used for office or equipment storage and the like. However, Trident had only one business: exploration and production of oil and gas. It makes no sense to differentiate real estate assets from other assets used in that business, just as it made no sense in Manitok to carve out economic licensed assets from uneconomic ones. In either case, the result would be to undermine the policy purposes upon which the super priority principle is based. [emphasis added][20]

[17] *Manitok*, at paras 35 & 36 **[Tab 8]**.
[18] *Manitok*, at paras 39 & 40 **[Tab 8]**.
[19] *Orphan Well Association v Trident Exploration Corp*, 2022 ABKB 839 [*Trident*] at paras 65 to 67 **[Tab 9]**.
[20] *Trident*, at paras 65-67 **[Tab 9]**.

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11. Finally, in the recent decision of the Court of King's Bench of Alberta in *Qualex-Landmark Towers Inc v 12-10 Capital Corp*[21] ("***Qualex***"), Justice Nixon wrote that whether or not an insolvent corporation enters formal insolvency proceedings, the "super-priority" of the environmental obligations to remediate applies, as the obligation to remediate likely arises upon real property being contaminated and continues to hang over the real property like an umbrella until the environmental remediation obligation is satisfied. He summarized by stating that the binding principles of *Redwater* and *Manitok* apply at common law where an insolvent corporation has environmental obligations.[22] Further, he wrote that based on appellate court guidance, environmental obligations arise independent of a regulator's enforcement and "are an intrinsic part of that entity [the insolvent corporation] because it is an owner or past owner" of the contaminated lands.[23]

12. To summarize, the Courts since the SCC's decision in Redwater confirm the following:

    (a) Wagner C.J., who in Redwater stated approximately 79 times that environmental obligations were binding on the estate of a bankrupt, characterized these obligations as public duties that were owed to the public at large, had to be performed before any distribution to creditors could be made, and defined the contours of the estate available for distribution;[24]

    (b) the value of the estate was reduced by the costs of addressing environmental obligations, but the fact that such costs had a financial impact did not mean that they were claims provable in bankruptcy and subject to the *BIA's* priorities;

    (c) the "super-priority" applies to all assets in the estate of an insolvent entity, and there is no basis for limiting it to particular classes of assets, notwithstanding the difficult wording of paragraph 159 of *Redwater*; and

    (d) an environmental obligation will only be a monetary claim provable in bankruptcy if the *Abitibi* test, as applied in *Redwater*, is satisfied, namely that the regulator

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[21] *Qualex-Landmark Towers Inc v 12-10 Capital Corp*, 2023 ABKB 109 [*Qualex*] **[Tab 10]**.
[22] *Qualex*, at paras 86-88 **[Tab 10]**.
[23] Qualex, at paras 96 and 97 **[Tab 10]**.
[24] *Redwater*, *supra* note 1, at para 160 **[Tab 4]**.

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must be acting as a creditor enforcing a monetary claim rather than as a regulator enforcing performance of environmental obligations, and in any case, the obligations will only be found to be claims provable in bankruptcy where either the regulator has performed the remediation/reclamation work and is seeking reimbursement, or it is sufficiently certain that it will do so.

13. Based on the forgoing, it is respectfully submitted that there is no basis for carving personal property out of the estate of Mantle, and that the equipment subject to the security in favour of Travelers is subject to that super-priority.

B. Environmental Protection Orders against Mantle

14. The construction, operation and reclamation of aggregate pits on privately owned land is regulated under the *EPEA*, the *Conservation and Reclamation Regulation* (the "***CRR***"), the *Activities Designation Regulation* (the "***ADR***"), the *Approvals and Registrations Procedure Regulation*,[25] the *Code of Practice for Pits* (the "**Code**") and certain other regulations and instruments issued thereunder (collectively, the "***EPEA*** **Regime**"). Under the *EPEA*, an operator of an aggregate pit on private land is required to obtain a registration from Alberta Environment and Protected Areas ("**EPA**").

15. Aggregate pits located on lands leased from the provincial Crown are regulated under the *Public Lands Act* and *Public Lands Administration Regulation*[26] (collectively, the "***PLA***"), which also provides for dispositions ("**Dispositions**") giving rights to access and extract aggregate from such lands. The Dispositions, the *PLA*, the *EPEA* Regime and plans filed by the holders of the Dispositions with the Ministry of Forestry and Parks ("**FP**") thereunder regulate the construction, operation and reclamation of aggregate pits on these lands. The Dispositions held by Mantle consist of surface material leases ("**SMLs**") and one commercial/industrial miscellaneous lease.

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[25] *Conservation and Reclamation Regulation*, AR 115/93, the *Activities Designation Regulation*, AR 276/2003, the *Approvals and Registrations Procedure Regulation*, AR113/93.
[26] *Public Lands Act*, RSA 2000, c P-4; *Public Lands Administration Regulation*, AR 187/2001.

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16. The construction, operation and reclamation of an aggregate pit is an "activity" that is subject to the *EPEA*.[27] Under section 88.1 of the *EPEA*, "activities" must be carried out in accordance with an applicable code of practice.[28] An "operator"[29] of a pit is required under section 137(1)(b) of the *EPEA* to reclaim specified land (which includes pits). Under the SMLs, Mantle is required to reclaim the surface of the lands subject thereto in a manner satisfactory to FP.

17. During the *CCAA* Proceedings of JMB and 216, Alberta Environment and Parks (the "**AEP**", which at the time was the designated regulator under the *EPEA* and PLA) issued environmental protection orders under section 140 of the *EPEA*, ordering that JMB and 216 (now Mantle by virtue of their amalgamation) prepare reclamation plans and carry out reclamation[30] work in respect of and reclaim the Aggregate Pits, and report to the AEP on the progress of the reclamation work and the completion of such work (such orders being, collectively, the "**EPOs**").[31] The EPOs were amended from time to time, including to permit Mantle to extract and process aggregate from the active Aggregate Pits.

18. Under the EPOs, Mantle's reclamation activities had to be performed in accordance with the *EPEA* Regime, the PLA, the EPOs and the plans submitted by Mantle to the AEP. Reclamation, as noted above, is a regulated activity under that legislation and the and in ordering that Mantle perform such activity, the AEP was acting in a regulatory capacity. The EPOs did not seek the reimbursement of costs incurred by the AEP in performing such activities, and indeed, the AEP has not carried out such activities. Therefore, neither the

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[27] The term "activity" is defined in 1.1(a) of the *EPEA*, "pit" is defined in 1.1(ddd) of the *EPEA*, and the construction, operation or reclamation of a pit is included as an "activity" by the Schedule of Activities attached to the *EPEA* **[Tab 2]**.

[28] The code of practice for pits is provided for in section 3.1(1)(b) of the CRR **[Tab 3]**.

[29] "Operator" is defined in section 134(b) of the EPEA as an approval or registration holder who carries on or has carried on an activity on specified land, and "specified land" is defined in section 1(t) of the CRR as land being used in connection with the construction, operation or reclamation of a pit **[Tabs 2 and 3]**.

[30] The term "reclamation" is defined in section 1.1(ddd) of the *EPEA* as (i) the removal of equipment or buildings or other structures or appurtenances; (ii) the decontamination of buildings or other structures or other appurtenances, or land or water; (iii) the stabilization, contouring, maintenance, conditioning or reconstruction of the surface of land; (iv) any other procedure, operation or requirement specified in the regulations **[Tab 2]**.

[31] The EPOs are described in para 11 of the August 13 Affidavit, and are attached to the August 11 Affidavit as Exhibit "D".

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EPOs nor the Reclamation Obligations satisfied the first branch of *Abitibi* and *Redwater* test for whether a regulatory obligation is a claim provable in bankruptcy.

19. In addition, neither the AEP, the EPA nor the FP have carried out reclamation activities in connection with any of the Aggregate Pits, and therefore are not seeking the reimbursement from Mantle's estate of any reclamation costs that they might incur, and there is no evidence that would suggest it is sufficiently certain that they would do so.[32] In fact, if the Order should by Mantle is made, there will be no need for the EPA or FP to carry out reclamation work and seek reimbursement. Therefore, on the basis of the third branch of the test articulated in *Abitibi* and *Redwater*, the EPOs are regulatory obligations rather than claims provable in bankruptcy that are subject to the priority scheme contemplated by the *BIA*. As such, the obligations of Mantle under the EPOs must be performed prior to any distribution to or recovery by secured or unsecured creditors of Mantle.

C. Original Cash Flow Projections, Revised Cash Flow Projections, and Interim Financing Facility

20. Following the filing of the Original Cash Flow Projections by the Proposal Trustee, an error was discovered in the underlying excel spreadsheet that significantly overstated the royalties that would be payable on the sale of aggregate during the Proposal Proceedings. In addition, the Proposal Trustee sought to provide Travelers with more detailed information relating to whether the cash projected to be received from the operations described in paragraph 8 of the August 11 Affidavit would exceed the expenditures that would be incurred. In order to make that determination, Mantle and the Proposal Trustee extended the period covered from 13 weeks in the Original Cash Flow Projections to 21 weeks in the Revised Cash Flow Projections, ending December 29, 2023.[33]

21. Under the Revised Cash Flow Projections, for the 21-week period, the aggregate revenues and cash collected, net of any possible liens, is $4,521,626 and the aggregate operating disbursements is $4,506,279. The largest components of the disbursements consist of $456,369 for employee compensation and withholdings, $1,646,724 for trucking and fuel,

[32] August 11 Affidavit, at para 13 to 15.
[33] August 11 Affidavit, at para 10.

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and $1,640,869 for the reclamation of the inactive Aggregate Pits. Essentially, the Revised Cash Flow Projections project that the reclamation of inactive Aggregate Pits should be paid for by the continued operations.

22. Mantle's management and the Proposal Trustee determined that because the sale of aggregate would require that expenditures for trucking and fuel be incurred earlier than set out in the Original Cash Flow Projections, it would be necessary to increase the maximum amount of the Interim Financing Facility from $1,400,000 to $2,200,000. The increase to $2,200,000 is provided for in the Revised Cash Flow Projections.[34]

23. Mantle and RLF Lender therefore executed a revised Interim Loan Agreement dated August 10, 2023 reflecting the increase in the maximum principal amount to $2,200,000, and is seeking the approval of this Honourable Court for the revised Interim Loan Agreement.[35]

D. Should Interim Financing Charge, Administration Charge and D&O Charge rank prior to Travelers Security?

24. If, based on the three part test set out in *Abitibi* and *Redwater*, the Reclamation Obligations and the EPOs are environmental regulatory obligations that are not actual or potential monetary claims provable in bankruptcy, they must be satisfied by Mantle's estate to the extent of any assets therein prior to any distribution being made or recovery being realized by the secured or unsecured creditors.

25. Since the decisions in *Redwater*, *Manitok*, *Trident* and *Qualex* all indicate that the entire estate of an insolvent entity must be applied to the satisfaction of environmental regulatory obligations, to the extent of its assets, and without regard to security held by secured creditors, there is no basis for excluding the Travelers Equipment from those assets of Mantle which must be used to satisfy those environmental regulatory obligations prior to any distribution to or recovery by Travelers.

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[34] August 11 Affidavit, at para 19, Exhibits "G".
[35] A copy of the revised Interim Loan Agreement and a blackline as against the original Interim Loan Agreement is attached to the August 11 Affidavit as Exhibit "H".

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26. The Proposal Proceedings, the professional costs incurred therein that would be secured by the Administration Charge, and the operating and reclamation costs that would be funded by the Interim Financing Facility and secured by the Interim Financing Charge, and the obligation to reimburse directors and officers who remain in place for liabilities they may incur during the Proposal Proceedings which is secured by the D&O Charge, all permit the Reclamation Obligations to be performed (in the case of the inactive Aggregate Pits) or provided for (in the case of the active Aggregate Pits).

27. Addressing the Reclamation Obligations will, to the extent that there is any value remaining in the estate after repayment of the Interim Financing Facility, permit distributions to be made to Mantle's secured creditors, including Travelers. In absence of the protections provided by the Administration Charge, the Interim Financing Charge and the D&O Charge, none of these activities would proceed and the Reclamation Obligations would remain unsatisfied.

28. Based on the forgoing, it is respectfully submitted that it is appropriate for this Honourable Court to approve the revised Interim Financing Facility, grant the Interim Financing Charge, the Administration Charge and D&O Charge, and assign these charges priority to the Travelers Security.

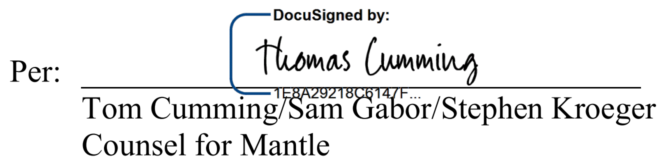
IV. CONCLUSION AND RELIEF SOUGHT

29. For the reasons above, Mantle requests the Orders sought be granted as they are fair, necessary and reasonable in the circumstances and represent the best option to permit Mantle to present a proposal to the benefit of its creditors.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 11th day of August, 2023.

GOWLING WLG (CANADA) LLP

Per:



Tom Cumming/Sam Gabor/Stephen Kroeger
Counsel for Mantle

TABLE OF AUTHORITIES

TAB	AUTHORITY
1.	*Bankruptcy and Insolvency Act,* RSC 1985, c B-3
2.	*Environmental Protection and Enhancement Act,* R.S.A. 2000, c. E-12
3.	*Conservation and Reclamation Regulation,* AR 115/93
4.	*Orphan Well Association v. Grant Thornton Ltd.,* 2019 SCC 5 (CanLII), [2019] 1 SCR 150
5.	*Newfoundland and Labrador v. AbitibiBowater Inc.,* 2012 SCC 67, [2012] 3 S.C.R. 443
6.	*PanAmericana de Bienes y Servicios v. Northern Badger Oil & Gas Limited,* 1991 ABCA 181
7.	*Nortel Networks Corporation (Re),* 2013 ONCA 599
8.	*Manitok Energy Inc (Re),* 2022 ABCA 117
9.	*Orphan Well Association v Trident Exploration Corp*, 2022 ABKB 839
10.	*Qualex-Landmark Towers Inc v 12-10 Capital Corp*, 2023 ABKB 109