



**COURT OF APPEAL OF ALBERTA**

COURT OF APPEAL FILE NUMBER: 2301-0216AC

TRIAL COURT FILE NUMBER: 2301-10358/25-2965622

REGISTRY OFFICE: CALGARY

APPLICANT: MANTLE MATERIALS GROUP, LTD.

STATUS ON APPEAL: Respondent

STATUS ON APPLICATION: Applicant

RESPONDENT: TRAVELERS CAPITAL CORP.

STATUS ON APPEAL: Appellant

STATUS ON APPLICATION: Respondent

DOCUMENT: **APPLICATION BY MANTLE MATERIALS GROUP, LTD. TO LIFT STAY OF PROCEEDINGS**

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**NOTICE TO RESPONDENT:**

**TRAVELERS CAPITAL CORP.**

**WARNING**

If you do not come to Court on the date and time shown below either in person or by your lawyer, the Court may give the applicant what it wants in your absence. You will be bound by any order that the Court makes. If you intend to rely on other evidence or a memorandum in support of your position when the application is heard or considered, you must file and serve those documents in compliance with the Rules. (Rule 14.41 and 14.43)

**NOTICE TO RESPONDENT:**

You have the right to state your side of this matter before the Court.

To do so, you must be in Court when the application is heard as shown below:

Date: October 18, 2023  
Time: 9:30 AM  
Where: Court of Appeal of Alberta, TransCanada Tower  
Before: Single judge of the court (Rule 14.37)

**Nature of Application and Relief Sought:**

1. If Travelers Capital Corp. (“**Travelers**”) is confirmed to have a right of appeal, or is granted leave to appeal, the order granted on August 15, 2023 and amended on August 28, 2023 (“**Amended Order**”) in Mantle’s proposal proceedings (“**Proposal Proceedings**”) under the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended (“**BIA**”), the Applicant Mantle Materials Group, Ltd. (“**Mantle**”) seeks an Order:

- (a) lifting the stay of proceedings under s. 195 of the *BIA* with respect to the Amended Order; or
- (b) in the alternative, lifting the stay of the Amended Order for all but that portion of the Amended Order granting priority to the Interim Charge over Travelers’s purchase-money security interest (“**PMSI**”) in respect of the costs of the Reclamation Work (as defined below); and
- (c) costs of this application payable forthwith and in any event of the cause.

**Grounds for making this application:**

2. Mantle produces and sells gravel and aggregate in Alberta from 9 operational gravel pits (“**Active Pits**”) and holds an interest in 10 other inactive pits (“**Inactive Pits**”). The Inactive Pits have environmental reclamation liabilities (“**Reclamation Liabilities**”) equal to approximately \$1,678,309. Mantle is required by Alberta Environment and Protected Areas to complete reclamation work (“**Reclamation Work**”) on the Inactive Pits by no later than November 1, 2023.

3. The Amended Order approves an interim financing (“**Interim Financing**”) and grants charges securing the Interim Financing (“**Interim Charge**”), administrative costs (“**Administration Charge**”) and an indemnity in favour of officers and directors (“**D&O Charge**”), ranking in priority to a purchase-money security interest (“**PMSI**”) held by Travelers in certain equipment used in Mantle’s business (“**Equipment**”). The Interim Financing is to be used in part to complete the Reclamation Work.

4. Travelers applies for an order confirming it has a right to appeal the Amended Order without leave under s. 193(c) of the *BIA*, or in the alternative, an order granting it leave to appeal under s. 193(e) of the *BIA* (“**193 Application**”). Travelers asserts that the Reclamation Liabilities do not have to be satisfied, and thus the Reclamation Work not completed, before holders of equipment PMSIs are able to realize on their security and receive distributions. If Travelers is entitled to appeal the Amended Order, s. 195 of the *BIA* acts to stay all provisions of the Amended Order until the appeal is disposed of, unless the stay is varied or cancelled by this Honourable Court on any grounds it deems proper.

5. Mantle commenced the Proposal Proceedings to ensure it is able to complete the Reclamation Work; sell its inventory of gravel and aggregate, the Equipment, other capital assets, and the Active Aggregate Pits to purchasers who assume the Reclamation Liabilities associated therewith; and to prepare a proposal under which it will make distributions to secured creditors once the Reclamation Work is complete to the satisfaction of Alberta.

6. Mantle has insufficient working capital to carry out these activities and therefore requires funding under the Interim Facility. The availability of the Interim Facility was conditional on the Amended Order granting the Interim Charge priority to all security and encumbrances other than

the Administration Charge.

7. Lifting the stay of the Amended Order is warranted in the circumstances, as:
  - (a) There is serious issue to be tried;
  - (b) Mantle will suffer irreparable harm if the stay is not lifted, as the Interim Facility is required to complete the Reclamation Work;
  - (c) The Interim Financing is required to continue selling inventory, collecting accounts receivable, conducting a sale process with respect to the Equipment and other capital assets and the Active Pits, preparing the form of a proposal, and paying its employees and the costs incurred during the Proposal Proceedings (“**Restructuring Costs**”);
  - (d) If the Amended Order is stayed, Mantle will be unable to fund these activities and they will have to cease operations immediately, thereby putting at risk any proceeds that could be realized from these activities; and
  - (e) The balance of convenience favours lifting the stay, as permitting Mantle to continue with the activities set out in the Amended Order will ultimately benefit its stakeholders, including Travelers. In addition, Travelers appears to be challenging only the priority ranking of the Interim Charge with respect to the Reclamation Liabilities.

**Material to be relied upon:**

8. Affidavit of Alex Henze affirmed September 7, 2023;
9. Affidavit of Samah Zeineddine sworn October 10, 2023;
10. Memorandum of Law and Argument in support of this Application;
11. Memorandum of Law and Argument of Travelers Capital Corp. filed September 7, 2023;

and

12. Such further and other material as counsel may advise and this Honourable Court may permit.

**Applicable Acts, regulations and rules:**

13. Part 14, Division 4 of the *Alberta Rules of Court*, Alta Reg 124/2010;

14. *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended, and in particular, s. 195;

15. Such further and other Acts, regulations and rules as counsel may advise and this Honourable Court may permit.