Clerk's Stamp

COURT FILE NUMBER	2301-16114
COURT	COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
	IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, as amended AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF MANTLE MATERIALS GROUP, LTD.
DOCUMENT	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 / stephen.kroeger@gowlingwlg.com File No.: A171561 **Attention: Tom Cumming Stephen Kroeger**

APPLICATION BEFORE THE HONOURABLE JUSTICE MICHELE H. HOLLINS
FEBRUARY 23 AT 11:00 AM ON THE CALGARY COMMERCIAL LIST
VIA WEBEX

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PART 1 – INTRODUCTION

1. Mantle Materials Group, Ltd. ("**Mantle**") carries on the business of extracting, processing and selling gravel and other aggregates ("**Aggregate**") from pits that it operates in the Province of Alberta.

2. On July 14, 2023 Mantle filed a notice of intention to make a proposal (the "**NOI**") under section 50.4 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended (the "***BIA***"), and FTI Consulting Canada Inc. ("**FTI**"), a licensed insolvency trustee, was named as the proposal trustee of Mantle (in such capacity, the "**Proposal Trustee**"). The *BIA* proceedings were commenced before this Honourable Court under Court of King's Bench of Alberta action number B201-965622 (the "**Proposal Proceedings**").

3. Pursuant to the initial Order of the Honourable Associate Chief Justice D.B. Nixon pronounced on January 10, 2024 (the "**Initial Order**"), the NOI Proceedings were taken up and continued under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the "***CCAA***" and these proceedings, the "***CCAA Proceedings***"), FTI was appointed as monitor (the "**Monitor**") and proceedings against Mantle were stayed until January 20, 2024 (the period of the stay being the "**Stay Period**"). The Initial Order was amended and restated by the Order of the Honourable Justice R.A. Neufeld pronounced on January 16, 2024 ("**Amended Initial Order**") and the Stay Period was extended to March 1, 2024.

4. This Bench Brief is submitted on behalf of Mantle in support of an Application seeking, *inter alia*, the following relief from this Honourable Court (the "**Initial Order**"):

   (a) if necessary, abridging the time for service and deeming service of the Application and supporting materials to be good and sufficient;

   (a) an Order (the "**St. Paul SAVO**") approving the sale of Mantle's interest in the Freehold Pit Assets (as defined below) to the County of St. Paul No. 19 ("**St. Paul**") pursuant to an asset purchase agreement dated January 8, 2024 (the "**St. Paul APA**") between St. Paul and Mantle and the purchase and sale transaction

contemplated thereby (the "**St. Paul Transaction**"), and vesting all of the right title and interest of Mantle in the Freehold Pit Assets in St. Paul free and clear of any and all caveats, security interests, hypothecs, pledges, mortgages, liens, trusts, reservations of ownership, privileges, interests, assignments, actions, judgments, executions, levies, taxes, writs of enforcement, charges, or other claims (collectively, "**Encumbrances**") other than Encumbrances permitted by the St. Paul APA;

(b) an Order (the "**PEA SAVO**") approving the sale of Mantle's interest in Public Pit Assets (as defined below) in the Counties of Smoky Lake and Long Lake to PEA Holdings Incorporated ("**PEA**") pursuant to an asset purchase agreement dated February 9, 2024 (the "**PEA APA**") between PEA and Mantle and the purchase and sale transaction contemplated thereby (the "**PEA Transaction**"), and vesting all of the right title and interest of Mantle the Public Pit Assets in PEA free and clear of any Encumbrances other than Encumbrances permitted by the PEA APA;

(c) an Order (the "**Arrow West SAVO**") approving the sale of the Atlas Shares (as defined in paragraph 11(c) of this Brief) held by Mantle in Atlas Aggregates Inc. ("**Atlas**") to Arrow-West Holdings Ltd. ("**Arrow West**") pursuant to a share purchase agreement dated January 19, 2024 (the "**Arrow West SPA**") between Arrow West and Mantle and the purchase and sale transaction contemplated thereby (the "**Arrow West Transaction**", and together with the St. Paul Transaction and the PEA Transaction, the "**Transactions**"), and vesting all of the right title and interest of Mantle in the Atlas Shares in Arrow West free and clear of any Encumbrances other than Encumbrances permitted by the Arrow West SPA;

(d) an Order extending the Stay Period from March 1, 2024 to September 30, 2024; and

(e) an Order sealing the Confidential Affidavit of Byron Levkulich sworn February 13, 2024 (the "**Confidential Affidavit**") and the Confidential Supplement (the "**Confidential Supplement**") appended to the Second Report of FTI Consulting Canada Inc. ("**FTI**") in its capacity as Court-appointed monitor of Mantle (in such

capacity, the "**Monitor**") on the court file until the termination of these *CCAA* Proceedings.

(b) such further and other relief as this Honourable Court deems just.

5. This Application is supported by the Affidavit of Byron Levkulich sworn February 13, 2024 (the "**Levkulich Affidavit**") and the Confidential Affidavit. Mr. Levkulich is a director of Mantle.

PART 2– FACTS

6. The facts forming the background to this Application are set out in more detail in the Levkulich Affidavit. Further information with respect to the background of, and developments in, the Proposal Proceedings can be found in the materials filed in the Proposal Proceedings including, *inter alia*, the Affidavits of Mr. Levkulich sworn August 7 and 11, September 15, November 2, November 27 and December 18, 2023, the Affidavit of Cory Pichota, President and Chief Executive Officer of Mantle, sworn August 8, 2023, the Proposal Trustee's Reports dated August 4 and 11, September 18 and November 3, 2023 and the fourth report of the Proposal Trustee and first report of FTI the then proposed monitor dated December 11, 2023.

7. Capitalized terms that are not defined in this brief have the meanings given to them in the Levkulich Affidavit. All references to monetary amounts referenced herein are in Canadian dollars, unless otherwise stated.

The Assets

8. Mantle has or had access to the Crown lands through fourteen (14) surface material leases (each a "**SML**"). Of these, the pits subject to four (4) SMLs were being reclaimed (the "**Public Reclamation Pits**"), the pits subject to five (5) SMLs are open (the "**Public Operational Pits**"), the SMLs for two (2) land parcels expired but Mantle has applied to have them renewed (the "**Public Expired Pits**"), and pits which have never been opened on the Crown lands are subject to three (3) SMLs (the "**Public Unopened Pits**", which

together with the Public Operational Pits and the Public Expired Pits are the "**Public Sellable Pits**").[1]

9. Mantle has access to the freehold lands pursuant to eight (8) royalty agreements with the landowners thereof, each of which granted to Mantle a chose in action under which Mantle had the right to explore for, extract, process and sell Aggregate in exchange for the payment of royalties (the "**Royalty Agreements**"). Of these, the pits on the lands subject to two (2) Royalty Agreements are operational (the "**Freehold Operational Pits**"), the pits on the lands subject to four (4) Royalty Agreements have not been operated since before the Predecessor CCAA Proceedings and are being reclaimed (the "**Freehold Reclamation Pits**"), Mantle's interest in the lands subject to one (1) Royalty Agreement has been transferred to a third party, and no registration was obtained for the lands subject to one (1) Royalty Agreement and those lands were never developed.[2]

10. The reclamation of the pits located on freehold and Crown lands is being performed pursuant to a series of environmental protection orders issued by Alberta Environment and Public Areas (the "**AEPA**") during the Predecessor CCAA Proceedings (the "**2021 EPOs**") and a series of reclamation plan submitted by Mantle to and accepted by the AEPA. Under the Environmental Protection and Enhancement Act, RSA 2000, E-12, as amended, the Conservation and Reclamation Regulation, AR 115/93, as amended, and the regulations and codes thereunder (collectively, the "***EPEA***"), operators of aggregate pits are required to reclaim the lands on which the pits are located in order to restore the lands to a state similar to their state prior to the Aggregate operations being undertaken (the obligations under the EPEA to reclaim being the "**Reclamation Obligations**"). Under the 2021 EPOs, Mantle was to complete the debris removal, recontouring, topsoil placement and planting required to reclaim the pits subject to such orders. There is then a two year assessment period during which any additional reclamation work to address issues such as erosion, excessive weeds or the failure of the planting to take must be addressed before Mantle is entitled to apply for reclamation certificates.[3]

[1] Affidavit of Byron Levkulich sworn February 13, 2024 ["**Levkulich** Affidavit], para 8.
[2] Levkulich Affidavit, para 9.
[3] Levkulich Affidavit, para 10.

11. Mantle's assets subject to the St. Paul SAVO, the PEA SAVO and the Arrow West SAVO being applied for include[4]:

(a) for the St. Paul Transaction:

(i) Mantle's interest in the freehold lands subject to a Royalty Agreement with the landowner, Jerry Shankowski, and his company 945441 Alberta Ltd. and Mantle, together with the estimated 4,755,104 metric tons of Aggregate reserves associated therewith and any Aggregate inventory located thereon; and

(ii) Mantle's interest in the freehold lands pursuant to a Royalty Agreement to which the landowners, Gail Charlene Havener, Lynne Havener, Terri Breen and Karren Richards, and Mantle are parties, together with the 2,143,128 metric tons of Aggregate reserves associated therewith and any Aggregate inventory located thereon,

(such interests, Royalty Agreements and Aggregate reserves and inventory being the "**Freehold Pit Assets**");

(b) for the PEA Transaction:

(i) Mantle's interest in the Public Sellable Pits and associated SMLs located in the County of Smoky Lake identified as SML 110025, SML 110026, SML 110045, SML 110046, SML 110047, SML 120005 and SML 120100, together with the estimated 4,785,160 metric tons of Aggregate reserves in opened pits and 2,440,000 metric tons of Aggregate in unopened pits and the Aggregate inventory located thereon; and

(ii) Mantle's interest in the Public Sellable Pit and associated SML 100085 located in Thorhild County near Long Lake, together with the estimated

[4] Levkulich Affidavit, paras 22(a), 22(b).

2,756,406 metric tons of Aggregate reserves in the unopened pits associated therewith,

(such interests, SMLs, Aggregate reserves and inventory being the "**Public Pit Assets**"); and

(c) for the Arrow West Transaction the Atlas shares consisting of 7,820,077 Class "A" Common Shares in Atlas (the "**Atlas Shares**"), which represent a 31.7% ownership interest in Atlas on a fully diluted basis. Atlas is a private corporation incorporated under the laws of Alberta.[5]

12. As more particularly described in paragraphs 46 to 57 of the Levkulich Affidavit, the AEPA issued the New EPOs in relation to certain of Mantle's assets requiring the Reclamation Obligations be completed on an accelerated basis. Mantle has appealed the New EPOs and sought a stay of their enforcement.[6] Mantle has also applied to Alberta Forestry and Parks ("**AFP**") to have 4 SMLs reinstated, which SMLs were cancelled in November 2023 during the Pit Sales Process.[7]

Pit Sale Process

13. The Public Reclamation Pits and the Freehold Reclamation Pits were considered by both Mantle and the Proposal Trustee to be unsellable. However, Mantle and the Proposal Trustee concluded that because the Freehold Operational Pits and Public Sellable Pits (collectively, the "**Sellable Pits**") had significant reserves of Aggregate that exceeded their associated Reclamation Obligations, there was a realistic prospect that those pits could be sold to other companies or entities that would be acceptable to the AEPA and would assume the associated Reclamation Obligations. Since such sales would have the effect of removing these Reclamation Obligations from the estate, and these obligations would

[5] Levkulich Affidavit, para 11.
[6] Levkulich Affidavit, paras 46 to 47.
[7] Levkulich Affidavit paras 34(b), 36.

otherwise have to be performed before any distribution could be made to creditors, such sales would result in substantial net benefits to Mantle's estate.[8]

14. In August and September of 2023, Mantle's management worked together with the Proposal Trustee to prepare marketing materials and a sale and marketing process for the Sellable Pits (the "**Pit Sale Process**"), set up an electronic data room (the "**Data Room**") containing information relating to those pits in order to permit potentially interested parties to carry out due diligence, and prepared a form of non-disclosure agreement (a "**NDA**") that potentially interested parties would need to execute in order to obtain access to the Data Room.[9] The Pit Sale Process required that the deadline for submitting bids to acquire Sellable Pits was October 25, 2023.[10]

15. On September 20 and 21, 2023, Jason Mercier, Mantle's former Business Development Manager, distributed a notice (the "**Sale Process Notice**") that described the Pit Sale Process, indicated the Data Room could be accessed by executing an NDA, gave notice of the October 25, 2023 deadline for submitting bids, and described the Sellable Pits and their respective reserves of Aggregate. The Sale Process Notice was distributed to 92 companies and other organizations that Mantle believed would be potentially interested in acquiring the Sellable Pits, any inventory of Aggregate located thereon and their respective reserves.[11]

16. Seven (7) parties entered into NDAs and accessed the Data Room prior to the bid deadline. In addition, a governmental body was permitted to access the Data Room without signing an NDA as there was insufficient time to negotiate the terms of that document with that body and both Mantle and the Proposal Trustee concluded that there was limited risk in allowing access.[12]

17. Only St. Paul and PEA submitted bids by October 25, 2023 and no other party submitted bids after that date. St. Paul's bid was for the Freehold Pit Assets and PEA's bid was for

[8] Levkulich Affidavit, para 19.
[9] Levkulich Affidavit, para 19.
[10] Levkulich Affidavit, para 20.
[11] Levkulich Affidavit, para 20.
[12] Levkulich Affidavit, para 21.

the Public Pit Assets. On January 31, 2023, the St. Paul APA was fully executed by St. Paul and Mantle and on February 12, 2024, the PEA APA was fully executed by PEA and Mantle.[13]

18. Pursuant to the terms of the St. Paul APA and the PEA APA, St. Paul and PEA have agreed to assume the Reclamation Obligations for the Freehold Pit Assets and the Public Pit Assets respectively.[14]

19. PEA requested that Mantle grant access to the Public Pit Assets in the period between the PEA SAVO being made and the completion of the PEA Transaction in order to carry out certain task to prepare the sites for the commencement of operations. Accordingly, Mantle and PEA entered into an Interim Access Agreement dated February 9, 2024 which sets out the terms under which PEA will be able to have such access.[15]

Share Sales Process

20. Mantle and FTI also prepared a sale process for the Atlas Shares (the "**Share Sale Process**"). However, Atlas is a private company, the consent its board of directors was required to transfer shares in its capital, and its governance was subject to significant dispute between its management and many of its shareholders. As a result, Mantle and the Proposal Trustee concluded that only current shareholders or parties with significant knowledge of Atlas' assets, business and affairs would likely be interested in purchasing the Atlas Shares.[16]

21. In December of 2023, Mantle and the Proposal Trustee created an electronic data room (the "**Share Data Room**"), containing due diligence and financial information relating to the Atlas Shares and the assets of Atlas and Glacier Aggregates, prepared a NDA that parties had to sign before being given access to the Share Data Room, and prepared a sale and solicitation process overview (the "**Atlas Share Sale Notice**") in respect of the Atlas

[13] Levkulich Affidavit, para 23.
[14] Levkulich Affidavit, paras 39(a), 39(c).
[15] Levkulich Affidavit, para 38.
[16] Levkulich Affidavit, para 24.

Shares, describing the Atlas Shares, the timeline for due diligence and requiring that bids to acquire the Atlas Shares be submitted by no later than January 4, 2024.[17]

22. On December 4, 2023, the Proposal Trustee sent the Atlas Share Sale Notice to all shareholders of Atlas listed in Mantle's share register as well as any other potentially interest parties to solicit interest in the Atlas Shares.[18]

23. Mantle and/or the Proposal Trustee received three (3) bids to acquire the Atlas Shares, which are more fully described in the Confidential Supplement. The bid provided by Arrow West was determined by Mantle and the Proposal Trustee to be the best bid, and therefore Mantle and Arrow West entered into the Arrow West SPA on January 19, 2024.[19]

PART 3- ISSUES

24. The issues to be determined by this Honourable Court are:

    (a) whether this Honourable Court should grant the St. Paul SAVO, the PEA SAVO and the Arrow West SAVO;

    (b) whether this Honourable Court should extend the Stay Period; and

    (c) whether this Honourable Court should grant the Sealing Order.

PART 4– LAW AND ARGUMENT

The Transactions Should be Approved

25. The St. Paul Transaction, the PEA Transaction and the Arrow West Transaction (collectively, the "**Transactions**") are described in detail in the Levkulich Affidavit and in the Monitor's Second Report.[20] Mantle respectfully submits that the Transactions should be approved, as they are in the best interest of Mantle's estate and its stakeholders.

[17] Levkulich Affidavit, para 26.
[18] Levkulich Affidavit, para 27.
[19] Levkulich Affidavit, para 28.
[20] Levkulich Affidavit, paras 29 to 45.

26. It is well established under both the common law and the *CCAA* that the Court has the jurisdiction to approve a sale of all or substantially all of the assets of a debtor company in a *CCAA* proceeding in the absence of plan of arrangement where the sale is in the best interests of the stakeholders generally.[21] Pursuant to section 36 of the *CCAA*, this Court has the jurisdiction to approve a sale or disposition of assets outside of the ordinary course of business. Sections 36(1), (2), (6) and (7) of the *CCAA* provide as follows:

> **Restriction on disposition of business assets**
>
> 36 (1) A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.
>
> **Notice to creditors**
>
> (2) A company that applies to the court for an authorization is to give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.
>
> **Assets may be disposed of free and clear**
>
> (6) The court may authorize a sale or disposition free and clear of any security, charge or other restriction and, if it does, it shall also order that other assets of the company or the proceeds of the sale or disposition be subject to a security, charge or other restriction in favour of the creditor whose security, charge or other restriction is to be affected by the order.
>
> **Restriction — employers**
>
> (7) The court may grant the authorization only if the court is satisfied that the company can and will make the payments that would have been required under paragraphs 6(5)(a) and (6)(a) if the court had sanctioned the compromise or arrangement.

[21] *Re Nortel Networks Corporation*, 2009 CarswellOnt 4467 (SC) at paras 35-41 and 48 [**Tab 2**].

27. Section 36(3) sets out the following list of non-exhaustive factors for the Court to consider in determining whether to approve a debtor company's sale or disposition of assets outside the ordinary course[22]:

    (a) whether the process leading to the proposed sale or disposition was reasonable;

    (b) whether the monitor approved that process;

    (c) whether the monitor filed with the Court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;

    (d) the extent to which the creditors were consulted;

    (e) the effect of the proposed sale or disposition on the creditors and other interested parties; and

    (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

28. Also relevant when reviewing a sale or disposition of assets in a *CCAA* proceeding are the factors set out in *Royal Bank v Soundair Corp.*, which include considering whether sufficient effort was made to obtain the best price, the interests of all parties have been considered, the efficacy and integrity of the sales process and whether the process was fair.[23]

29. A Court should also give effect to the business judgment rule, which affords deference to the exercise of the commercial and business judgment of the debtor company in the context of an asset sale where the marketing and sale process was fair, reasonable, transparent and efficient.[24]

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[22] *CCAA*, s. 36(3) [Tab 1]; *Re Nelson Education Ltd.*, 2015 ONSC 5557 [***Nelson***] at para 38 [**Tab 3**].
[23] *Royal Bank v Soundair Corp.*, 1991 CarswellOnt 205 (ONCA) at para 16 [**Tab 4**]; *Nelson*, supra at paras 37-38 [**Tab 3**]; *Pricewaterhousecoopers Inc. v 1905393 Alberta Ltd*., 2019 ABCA 433 at paras 10-13 [**Tab 5**]
[24] *Re Bloom Lake*, 2015 QCCS 1920 at para 28 [**Tab 6**]

30. Mantle submits that the Transactions satisfy the criteria in section 36(3) of the *CCAA* and the *Soundair* principles as follows:

(a) with respect to the St. Paul APA and the PEA APA (collectively, the "**APAs**")[25]:

(i) the Pit Sale Process was prepared in consultation with the Proposal Trustee, gave potentially interested parties sufficient time within which to conduct due diligence and determine whether they were interested in submitting bids, and was administered in a fair and commercially reasonable manner;

(ii) the Sale Process Notice was widely distributed to those parties reasonably considered to be potentially interested in the Sellable Pits and associated assets, and such parties were contacted by both email and telephone;

(iii) seven (7) parties ultimately accessed the Data Room and carried out varying levels of due diligence and Mantle's management responded to their information requests;

(iv) St. Paul and PEA were the only parties who submitted bids;

(v) under the APAs, St. Paul and PEA will assume the Reclamation Obligations associated with the Sellable Pits subject to their respective Transactions;

(vi) the Monitor agrees that the APAs would be more beneficial to Mantle's creditors than a sale or disposition under a bankruptcy, and is of the view that the APAs represent the best available outcome for all stakeholders;

(vii) the total consideration under the APAs, including the cash purchase prices and the assumption of Reclamation Obligations and other liabilities, the highest and best consideration that that realistically can be obtained for the Freehold Pit Assets and Public Pit Assets in the current circumstances and is therefore reasonable and fair;

[25] Levkulich Affidavit, paras 19 to 21, 29 to 41.

(viii) the interests of the affected parties, including Mantle's creditors, the AEPA and the AFP have been considered; and

(ix) there is no unfairness as a result of the Pit Sale Process, as the Monitor (and in its capacity as Proposal Trustee) and Mantle undertook substantial efforts to obtain the best value for the subject assets;

(b) with respect to the Arrow West SPA[26]:

(i) the Share Sale Process was prepared by the Proposal Trustee in consultation with Mantle, gave potentially interested parties sufficient time to carry out due diligence and determine whether they were interested in submitting bids and was administered in a fair and commercially reasonable manner by the Proposal Trustee with the assistance of Mantle;

(ii) the Proposal Trustee delivered by email the Atlas Share Sale Notice to the shareholders of Atlas and other parties knowledgeable of the assets of Atlas and Glacier Aggregates and these were likely the only parties potentially interested in purchasing the Atlas Shares given that it is a private company;

(iii) the marketing process was comprehensive and both the Proposal Trustee and Mantle responded to any information requests that were made;

(iv) three (3) parties ultimately submitted bids to the Proposal Trustee for the Atlas Shares and the Monitor, in consultation with Mantle, determined that the bid submitted by Arrow West was the highest and best bid;

(v) the Monitor is of the view that the Arrow West Transaction is more beneficial to Mantle's creditors than a sale or disposition under a bankruptcy, the Arrow West Transaction represents the best available outcome for all stakeholders, and the purchase price payable under the Arrow West SPA represents the highest and best price that can be obtained

[26] Levkulich Affidavit, paras 24 to 28, 42 to 45.

for the Atlas Shares is reasonable and fair in the current market circumstances, as reflected in the Confidential Supplement;

(vi) the interests of the affected parties, including Mantle's creditors have been considered; and

(vii) there is no unfairness as a result of the Share Sale Process, as FTI in its capacities as first the Proposal Trustee and then the Monitor undertook commercially reasonable substantial to obtain the best value for the Atlas Shares.

31. In addition to normal conditions for purchase and sale transactions during insolvency proceedings, the St. Paul Transaction and PEA Transaction are subject to additional conditions precedent[27]:

(a) both the St. Paul Transaction and PEA Transaction are conditional on the AEPA withdrawing or cancelling the New EPOs which were issued in the Fall of 2023 and in January of 2024 against the Sellable Pits subject to those Transaction;

(b) the St. Paul Transaction is conditional on the landowners party to the Royalty Agreements consenting to that Transaction and agreeing to waive any recourse against either Mantle or St. Paul in respect of royalties that remain unpaid before closing;

(c) the St. Paul Transaction is conditional on the AEPA consenting to the transfer of the Registrations under the *EPEA* to St. Paul and agreeing to return to Mantle the security deposited by Mantle with the AEPA in respect of the Freehold Pit Assets;

(d) the PEA Transaction is conditional on:

(i) the AFP agreeing to renew the Expired SMLs and reinstate the Cancelled SMLs;

[27] Levkulich Affidavit, paras 30, 34, 35.

(ii) the AFP consenting to the assignment of all SMLs subject o the PEA APA; and

(iii) the AFP agreeing to provide PEA with the economic benefit of the security deposits provided by Mantle, and any additional security deposits being in amounts acceptable to PEA.

32. All of the Transactions are conditional upon this Honourable Court vesting the assets subject thereto free and clear of all Encumbrances.

33. Pursuant to the Supreme Court of Canada's decision in *Redwater*[28], insolvent corporations remain liable for end-of-life obligations for property affected by an environmental condition or damage. In the Honourable ACJ D.B. Nixon's decision[29] in this matter, he stated that these *CCAA* Proceedings would be the only available means by which the Reclamation Obligations and sale of the active pits could be completed. Accordingly, the APAs are reasonable and in the best interest of Mantle's stakeholders as they remove significant Reclamation Obligations from Mantle's estate to those of solvent entities which could ultimately lead to a distribution to creditors once all Reclamation Obligations have been completed. Absent the St. Paul Transaction and the PEA Transaction, the Reclamation Obligations would remain in Mantle and eliminate any likelihood of recovery by Mantle's creditors.

34. With respect to the Arrow West Transaction, as noted above, Atlas is a private corporation. Mantle has not received approval from Atlas' Board of Directors to transfer the Atlas Shares. Accordingly, in addition to the section 36 factors and the *Soundair* factors, it is submitted that this Court's authority to approve the Arrow West Transaction is further grounded in section 11 of the *CCAA*[30].

35. Mantle submits that the Transactions have satisfied the criteria under section 36(3) of the *CCAA* and the *Soundair* factors and should be approved by this Honourable Court.

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[28] *Orphan Well Association v. Grant Thornton Ltd.*, 2019 SCC 5 at paras 159, 160 [**Tab 7].**
[29] *Mantle Materials Group, Ltd (Re)*, 2024 ABKB 19 at para 27 [**Tab 8**].
[30] *CCAA*, s. 11 [**Tab 1**]

36. Notice of this application has been given to all secured creditors of Mantle as is required under section 36(2) of the *CCAA*.

The Stay Period Should be Extended

37. The Stay Period currently expires on March 1, 2024. Mantle is seeking an extension of the Stay Period to and including September 30, 2020.

38. Under section 11.02(2) of the *CCAA*, the Court has the discretion to extend the Stay Period on any terms it deems appropriate. Under of proceedings granted pursuant to an initial order. Under section 11.02(3), Mantle must satisfy the Court that circumstances exist that make the order appropriate and that Mantle has acted, and is acting, in good faith and with due diligence.[31]

39. Since the Amended Initial Order was made on January 16, 2024, Mantle has continued to act diligently and in good faith in these *CCAA* Proceedings by, among other things[32]:

(a) negotiating the terms of and finalizing the PEA APA and Interim Access Agreement;

(b) preparing and filing the response of Mantle to the Supreme Court of Canada leave application filed by Travelers Capital Corp. seeking to appeal the decisions of the Honourable Justice de Wit of the Alberta Court of Appeal pronounced on October 23 and November 27, 2023;

(c) negotiating the terms of and finalizing the Arrow West SPA;

(d) negotiating the terms of a consulting agreement with Cory Pichota, Mantle's President and Chief Operating Officer, to secure his continuing services for Mantle during the *CCAA* Proceedings;

[31] *CCAA*, s. 11.02(2) [**Tab 1**].
[32] Levkulich Affidavit, para 66.

(e) communicating with AEPA and AFP in relation to the environmental protection orders issued by the AEPA and with respect to the AFP's decision to cancel four dispositions due to failure to develop;

(f) preparing the within Application; and

(g) continuing to plan and prepare for the reclamation work to be conducted during the Spring, Summer and Fall of 2024.

40. The extension of the Stay Period to September 30, 2024 is necessary in order to provide Mantle with the stability under this Honourable Court's protection to, among other things, accomplish the following[33]:

(a) applying to the AEPA to transfer the Registrations issued in respect of certain of the Freehold Pit Assets to St. Paul;

(b) seeking from the AFP for the renewal of the Expired SMLs and the reinstatement of the Cancelled SMLs;

(c) applying to the AFP for the transfer of the SMLs in respect of the Public Sellable Pits;

(d) negotiating the return of the security deposits provided by Mantle to the AEPA following the completion of the St. Paul Transaction;

(e) seeking the cancellation or withdrawal of the New EPOs;

(f) seeking the cooperation of the AEPA and AFP to allow PEA to obtain the economic benefit of the security deposits currently posted in respect of the Public Sellable Pits;

(g) completing the Transactions; and

[33] Levkulich Affidavit, para 67.

(h) planning, carrying out and directing the reclamation work required to be performed in the Spring, Summer and Fall of 2024.

41. Until the Reclamation Obligations are satisfied or otherwise appropriately provided for, distributions to creditors will not be realistically possible and therefore it is in the interests of all stakeholders that the Stay Period be extended in order to permit Mantle to ensure this is accomplished.

42. During the NOI Proceedings and since the *CCAA* Proceedings were commenced by the Initial Order, Mantle has at all times acted to sell and realize upon its assets in a commercially reasonable manner for the benefit of all stakeholders and carry out the reclamation work and take the steps necessary to dispose of the Sellable Pits in order to ensure that the Reclamation Obligations associated with the Sellable Pits are assumed by solvent third parties acceptable to the AEPA and the Reclamation Obligations associated with all other pits are satisfied. Mantle has carried out these activities in good faith and with due diligence throughout the NOI Proceedings and *CCAA* Proceedings and respectfully submits that the requested stay extension is appropriate in the circumstances.

43. The Monitor supports the proposed extension to the Stay Period.

Sealing the Confidential Affidavit and the Confidential Supplement is Appropriate

44. Mantle requests a sealing order with respect to the Confidential Affidavit and the Confidential Supplement, until the filing of the Monitor's Certificates or further order of the court.

45. Part 6 of Division 4 of the *Alberta Rules of Court* and in particular Rules 6.28 to 6.30, provide that the Court may order that a document filed in a civil proceeding is confidential, may sealed and not form part of the public record of the proceedings.

46. The test to obtain a sealing order was set out by the Supreme Court of Canada in *Sierra Club of Canada v Canada (Minister of Finance)*[34] and revised by the Supreme Court in *Sherman Estate v Donovan:*

> "The test for discretionary limits on presumptive court openness has been expressed as a two-step inquiry involving the necessity and proportionality of the proposed order (*Sierra Club*, at para. 53). Upon examination, however, this test rests upon three core prerequisites that a person seeking such a limit must show. Recasting the test around these three prerequisites, without altering its essence, helps to clarify the burden on an applicant seeking an exception to the open court principle. In order to succeed, the person asking a court to exercise discretion in a way that limits the open court presumption must establish that:
>
> (1) court openness poses a serious risk to an important public interest;
>
> (2) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and,
>
> (3) as a matter of proportionality, the benefits of the order outweigh its negative effects.
>
> Only where all three of these prerequisites have been met can a discretionary limit on openness — for example, a sealing order, a publication ban, an order excluding the public from a hearing, or a redaction order — properly be ordered. This test applies to all discretionary limits on court openness, subject only to valid legislative enactments." [35]

47. In this case, the Confidential Affidavit attaches unredacted copies of the APAs and the Arrow West SPA and the Confidential Supplement compares the economic terms of Arrow West APA with the economic terms of other bid that were submitted, together with other confidential information relating to the Pit Sale Process and Share Sale Process.

48. The notice to the media that Mantle was seeking the Sealing Order was given on February February 14, 2024.

49. If any of the Transactions do not disclose, the disclosure of the confidential information in the Confidential Affidavit and Confidential Supplement would negatively impact any

[34] *Sierra Club of Canada v Canada (Minister of Finance)*, 2002 SCC 41, at para 53 [**Tab 9**].
[35] *Sherman Estate v Donovan*, 2021 SCC 25, at para 35 [**Tab 10**].

efforts to re-market the assets subject thereto. There are no reasonable alternative measures that would protect these sensitive commercial interests of Mantle and its stakeholders, and the limit on the open court principle contemplated by the Sealing Order is of limited duration because it only remains in effect until the Transactions close.[36]

50. Mantle therefore submits that the salutary effects of the Sealing Order outweighs any negative the temporary limits on any public access to that information pursuant to the open court principle.

PART 5– CONCLUSION AND RELIEF SOUGHT

51. For the reasons set out above, Mantle respectfully requests the relief described in paragraph Part 14 of this Brief.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 14th day of February, 2024.

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Per: _____

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[36] Levkulich Affidavit, paras 74, 75.

TABLE OF AUTHORITIES