

COURT OF APPEAL OF ALBERTA

Form AP-3
[Rule 14.53]



COURT OF APPEAL FILE NUMBER	2301-0216AC
TRIAL COURT FILE NUMBERS	2301-10358 / 25-2965622
REGISTRY OFFICE	CALGARY
APPLICANT	MANTLE MATERIALS GROUP, LTD.
STATUS ON APPEAL	RESPONDENT
STATUS ON APPLICATION	RESPONDENT
RESPONDENT	TRAVELERS CAPITAL CORP.
STATUS ON APPEAL	APPELLANT
STATUS ON APPLICATION	APPLICANT
DOCUMENT	APPLICATION OF PROPOSED APPELLANT, TRAVELERS CAPITAL CORP., FOR DECLARATION THAT LEAVE IS NOT REQUIRED, AND ALTERNATIVELY, FOR LEAVE TO APPEAL, UNDER SECTIONS 193(b), 193(c) and 193(e) OF THE <i>BANKRUPTCY AND INSOLVENCY ACT</i>, R.S.C. 1985, c. B-3, AS AMENDED
APPELLANT'S ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Lawson Lundell LLP 1100, 225 – 6 th Avenue S.W. Calgary, AB T2P 1N2 Lawyer: Alexis Teasdale / Joel Schachter Phone Number: 403.218.7564 / 604.631.9238 Email Address: ateasdale@lawsonlundell.com / jschachter@lawsonlundell.com <i>Counsel for Travelers Capital Corp.</i> [File No. 36583.159753]

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And to the Service List

NOTICE TO RESPONDENTS: MANTLE MATERIALS GROUP, LTD., FTI CONSULTING CANADA INC. in its capacity as Proposal Trustee of MANTLE MATERIALS GROUP, LTD., ALBERTA ENVIRONMENT AND PROTECTED AREAS

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:	As determined by the Court
Time:	9:30 a.m.
Where:	Court of Appeal of Alberta, TransCanada Tower
Before:	A single judge of the court (Rule 14.37)

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant what it wants in your absence. You will be bound by an order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown in the beginning of the form. If you intend to give evidence or prepare a memorandum in response to the application, you must file and serve those documents in compliance with the Rules. (Rule 14.41 and 14.43)

Nature of application and relief sought:

1. Travelers Capital Corp. (“**Travelers**” or the “**Applicant**”) has a right of appeal, without leave, from the Reasons for Judgment of the Honourable Justice C.C.J. Feasby (the

“**Chambers Judge**”), pronounced August 28, 2023 (neutral citation: 2023 ABKB 488) under subsection 193(c) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “**BIA**”), because the property involved in the appeal exceeds ten thousand dollars. Travelers has filed a Civil Notice of Appeal on that basis.

2. Travelers thus seeks an order confirming that it has a right of appeal without leave under subsection 193(c) of the *BIA*.
3. In the alternative, if Travelers’ right of appeal without leave is not confirmed, it seeks an order:
 - (a) granting leave to appeal under s. 193(e) of the *BIA*;
 - (b) adjourning this Application so it is heard concurrently with Travelers’ Appeal, or alternatively to a fixed date before the Appeal (before a panel, if necessary); and
 - (c) granting such further and other related relief as counsel may request and this Honourable Court may grant.

Grounds for making this application:

4. Travelers seeks to appeal a decision of the Chambers Judge granting an interim financing charge (the “**Financing Charge**”) priority over Travelers’ purchase money security interest (the “**Travelers PMSI**”) in certain equipment (the “**Travelers Equipment**”).
5. The Chambers Judge ruled that the Financing Charge has priority to the Travelers PMSI in respect of the Travelers Equipment. The Financing Charge secures interim financing being advanced by an affiliate of Mantle, which financing is to be used to fund environmental reclamation work that Mantle must complete to the satisfaction of Alberta Environment and Protected Areas (“**Alberta Environment**”).
6. In so ruling, the Chambers Judge relied on the decision in *Orphan Well Association v. Trident Exploration Corp.*, 2022 ABKB 839 (“**Trident**”), and the interpretation by the Court in *Trident* of the decision in *Orphan Well Association v. Grant Thornton Ltd.*, 2019 SCC 5 (“**Redwater**”).
7. The Applicant has a statutory right of appeal under section 193(c) of the *BIA* because the property involved in the appeal exceeds \$10,000 in value. More particularly, the Travelers’ Equipment has an estimated value in excess of \$1,000,000, and as of July 21, 2023, Travelers was owed approximately \$1,076,000.
8. There are also serious and arguable grounds for appeal, including that the Chambers Judge erred in law or in law and fact in finding that:
 - (i) that there was no *ratio decidendi* in *Redwater* regarding the issue before him, namely whether assets unrelated to the environmental condition or damage giving rise to environmental remediation obligations must be used to satisfy such obligations before any creditor is entitled to payment;
 - (ii) *Trident* is consistent with *Redwater* and *Manitok*; and

- (iii) ultimately, that he was not bound to follow *Redwater* on the issue before him, and instead was bound to follow *Trident*.

9. The Civil Notice of Appeal also raises issues that:

- (a) are significant to insolvency law, in particular the interests of creditors that hold purchase money security interests against equipment;
- (b) are significant to the proposal proceedings and the immediate interests of Travelers;
- (c) are *prima facie* meritorious; and
- (d) will not unduly hinder Mantle's proposal proceedings.

Material or evidence to be relied on:

10. The Reasons for Judgment of the Chambers Judge dated August 28, 2023;

11. The Affidavit of Alex Henze, Affirmed on September 7, 2023, which includes copies of:

- (a) The following prior Orders of the Court of King's Bench:
 - (i) Order of Madam Justice Campbell, pronounced on August 8, 2023 and filed August 15, 2023; and
 - (ii) Order of the Chambers Judge, pronounced on August 15, 2023 and filed August 18, 2023.
- (b) The application materials that were before the Chambers Judge on August 15, 2023, including but not limited to:
 - (i) Originating Application filed by Mantle on August, 8, 2023;
 - (ii) First Report of the Proposal Trustee, including Appendices "A" and "B" thereto, filed August 11, 2023;
 - (iii) the Affidavit of Byron Levkulich, filed by Mantle on August 8, 2023;
 - (iv) the Affidavit of Cory Pichota, filed by Mantle on August 8, 2023;
 - (v) the Supplemental Affidavit of Byron Levkulich, filed by Mantle on August 11, 2023;
 - (vi) Affidavit of Warren Miller, served on August 8, 2023 and filed by Travelers on August 15, 2023;
 - (vii) Second Supplemental Affidavit of Byron Levkulich, filed by Mantle on August 11, 2023;

- (viii) Affidavit of Heather Dent, filed by Alberta Environment on August 11, 2023; and
- (ix) Supplement to the First Report of the Proposal Trustee, filed August 11, 2023.