

Clerk's Stamp

COURT FILE NUMBER 2301-10358

COURT COURT OF KING'S BENCH OF ALBERTA
IN BANKRUPTCY AND INSOLVENCY

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 **WRITTEN SUBMISSIONS**

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Attention: Alexis Teasdale and Joel Schachter

Written Submissions of Travelers Capital Corp.

1. All capitalized terms used but not defined in these written submissions have the meaning given to them in Travelers' Bench Briefs dated August 8, 2023 and August 11, 2023, respectively. References to the "Hearing" are to the hearing that took place before the Honourable Justice Feasby on August 15, 2023 on the Commercial List, commencing at 2:00 p.m. Calgary time.
2. During the Hearing, Travelers presented the practical and policy reasons justifying the position that the Travelers' Equipment cannot be used to satisfy Mantle's environmental reclamation obligations. These written submissions confirm that Travelers' position is consistent with the spirit and plain language of the decisions in *Orphan Well Association v Grant Thornton Ltd*, 2019 SCC 5 (*Redwater*) and *Manitok Energy Inc (Re)*, 2022 ABCA 117 (*Manitok*), and that this Court is free to make a decision of first instance based on the principles set out in that case.
3. These submissions also address how the more recent decision of the Court of King's Bench of Alberta in *Orphan Well Association v Trident Exploration Corp*, 2022 ABKB 839 (*Trident*) is inconsistent with both *Redwater* and *Manitok* and thus is not persuasive authority.

Travelers' Position is Consistent with *Redwater* and *Manitok*

4. Travelers' position is that only licenced assets (and cash, accounts receivable and inventory or sale proceeds derived therefrom) may be used to satisfy end-of-life obligations, which, per *Redwater*, are inherent in the value of such assets.¹ Mantle wants to use the Travelers' Equipment to secure its interim financing and thereby satisfy the reclamation obligations associated with Mantle's licenced assets. Mantle justifies the priority of its interim financing over the Travelers' Equipment on the basis that environmental reclamation costs attach to all of Mantle's assets, and not only its licenced assets.
5. If Mantle's position is upheld, this Court's decision would create an incentive for companies on the eve of insolvency to finance new assets unaffected by environmental obligations for the sole purpose of padding their balance sheets in order to secure interim financing, which in turn would be used to satisfy reclamation obligations, at the expense of the new lender. This would make the lending process for equipment financiers and other PMSI lenders economically and practically unfeasible, not least due to disproportionate due diligence requirements, and could significantly increase the cost of such financing.
6. The decision in *Redwater* supports Travelers' position. As was acknowledged by the Court of Appeal in *Manitok*, *Redwater* did not directly grapple with the question of whether a debtor's non-licenced assets may be used to satisfy end-of-life obligations inherent in the debtor's licenced assets.² Instead, *Redwater* dealt with the question of whether provincial legislation for the regulation of the oil and gas industry was in conflict with the BIA priority scheme, such that the latter prevailed. Furthermore, *Redwater* involved a company whose "substantial assets" were comprised of oil and gas assets, and specifically, 84 wells, 7 facilities and 36 pipelines."³

¹ *Redwater* at paras 29 and 157.

² *Manitok* at para 34.

³ *Ibid* at paras 48 and 159.

7. For these reasons, *Redwater* cannot support Mantle’s argument that the terms “bankrupt estate” or “estate”, as they are used in *Redwater* should be interpreted broadly to include all of the debtor’s assets, whether licenced or not. The Court in *Redwater* was not asked to consider the question before this Court, and its use of the terms “estate” and “bankrupt estate” should be limited to the context in which they were made, namely a case in which the debtor’s “substantial assets” were licenced assets.
8. The Court in *Redwater* held there was no conflict between the BIA and Alberta’s oil and gas regulatory scheme because “...the BIA explicitly contemplates that environmental regulators will extract value from the bankrupt’s real property if that property is affected by an environmental condition or damage”, and that the regulatory tools used in *Redwater* “...did not seek to force Redwater to fulfill end-of-life obligations with assets unrelated to the environmental condition or damage.”⁴
9. Thus, *Redwater* found that harmony is achieved between the provincial regulatory scheme and the priority scheme of the BIA by ensuring that end-of-life obligations are satisfied using only those assets in which such obligations are inherent.⁵ Using non-licenced assets, which carry no inherent regulatory obligations, to fulfill regulatory obligations associated with licenced assets, creates impermissible conflict between the aims of provincial regulatory laws and the *BIA*.⁶ This is consistent with Travelers’ arguments.
10. The Court of Appeal’s decision in *Manitok* is also consistent with Travelers’ position. The Court in *Manitok* held that no distinction should be made between economic licenced assets and uneconomic ones, because the concept of unrelated assets is inconsistent with *Redwater*.
11. The Court in *Manitok* expressly declined to decide the issue of whether assets unrelated to oil and gas activities could be used to satisfy abandonment and reclamation obligations arising from such activities. Specifically, the Court held that the type of assets in question (licenced oil and gas assets, with and without value) in both *Redwater* and the case before it were indistinguishable and held that “to the extent there is any issue about it, the status of assets completely unrelated to the oil and gas business can be left for another day.”⁷
12. Regarding the Court of Appeal’s commentary at para. 35 of *Manitok* about para. 159 of *Redwater*, while the Court of Appeal expressed doubt that para. 159 of *Redwater* can be read as excluding resort to “unrelated” non-oil and gas assets to cover abandonment and reclamation costs, this is not borne out by a close reading of *Redwater*. In particular, the Supreme Court of Canada’s comments at paragraphs 76, 102, 107 and 114 all relate specifically to *Redwater*’s estate – which was comprised substantially of licenced assets – and were not referring to bankrupt estates more generally.
13. In addition, as with the decision in *Redwater*, the decision in *Manitok* must be considered in its context. In that case, the Court of Appeal considered whether economic licenced assets

⁴ *Ibid.*

⁵ *Ibid* at paras 29 and 157.

⁶ *Ibid.*

⁷ *Manitok* at para 36.

should be treated differently from uneconomic ones in terms of being used to satisfy abandonment and reclamation obligations. The Court answered this question in the negative, relying on the fact that the Court in *Redwater* “... accepted ... the approach of the [regulator] to treat all the assets of an oil and gas company as a ‘package’.”⁸

14. Thus, the Courts in *Redwater* and *Manitok* endorsed the treatment of all licenced assets of a debtor as a package subject to end-of-life obligations, based on how those assets are treated by the regulator overseeing their licensing and abandonment. These cases do not support a finding that all assets of a debtor ought to be treated as a package. For this and the other reasons set out below, *Trident* is inconsistent with these decisions.

Trident is Inconsistent with *Redwater* and *Manitok*

15. In *Trident*, the Court held the assets subject to the AER “super priority” are not limited to licenced assets because Trident had only one business (petroleum exploration and production) and that “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 licenced assets from uneconomic ones.”⁹ Respectfully, this finding fails to recognize the basis for the Court of Appeal’s decision in *Manitok* not to segregate economic licenced assets from uneconomic ones, which was that the regulator treats all licenced assets as a package. The Court in *Trident* offers no similar rationale for its decision.
16. Further, in *Trident*, the Court held that differentiating real estate assets owned by Trident from other assets used in the operation of its business would undermine the policy purposes upon which the super priority principle is based.¹⁰ The Court in *Trident* does not identify the “policy purposes” being addressed, nor does it explain how such purposes are undermined.
17. Based on the reasons in *Trident*, the reference to the “super priority principle” appears to mean the principle that ongoing regulatory obligations of a debtor cannot be reduced to a provable claim, and therefore, are not subject to the BIA priority scheme. The reasons in *Trident* suggest the policy purposes of this principle are to ensure oil and gas industry participants comply with their legal obligations to abandon and reclaim licenced assets, and do not use insolvency to avoid the general law aimed at protecting the public from the costs of environmental damage.¹¹
18. As noted in *Redwater*, compliance with Alberta’s oil and gas regulatory regime reflects the inherent value of the assets held by the bankrupt estate, as all licences are received subject to future end-of-life obligations. After receiving the benefit of licenced assets during their productive lives, a licensee cannot avoid the associated liabilities.¹² This structure supports Travelers’ position that only a debtor’s licenced assets and their proceeds must be used to fulfill end-of-life obligations, because the end-of-life obligations stem from and are inherent in those assets alone, and not other, non-licenced, assets of the debtor.

⁸ *Ibid* at paras 28-30, citing *Redwater* at para 18.

⁹ *Trident* at para 67.

¹⁰ *Ibid*.

¹¹ *Ibid* at paras 61-62.

¹² *Redwater* at para 157.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 18th day of August, 2023.

LAWSON LUNDELL LLP

A handwritten signature in blue ink, consisting of several overlapping loops and lines, positioned above a horizontal line.

Per: _____
Alexis Teasdale / Joel Schachter
Counsel for Travelers Capital Corp.