

COURT FILE NO. 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 C-8, AS AMENDED

AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF MANTLE MATERIALS GROUP, LTD.

APPLICANTS MANTLE MATERIALS GROUP, LTD.

DOCUMENT **AFFIDAVIT**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

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File No. A171561
Attention: Tom Cumming / Sam Gabor / Stephen Kroeger

AFFIDAVIT OF BYRON LEVKULICH
SWORN ON NOVEMBER 1, 2023

I, BYRON LEVKULICH, of the City of Denver, in the State of Colorado, **MAKE OATH AND SAY THAT:**

1. I am a director of the applicant, Mantle Materials Group, Ltd. (“**Mantle**”) and have personal knowledge of the matters herein deposed to, except where stated to be based upon information and belief, in which case I verily believe same to be true. I am also a Principal with Resource Land Holdings, LLC (“**RLH LLC**”), which manages private equity funds that invest in land resources and is based in Denver, Colorado. Mantle is an indirect, wholly owned subsidiary of one of these funds.
2. I am authorized to swear this Affidavit as a corporate representative of Mantle.

3. In preparing this Affidavit, I have consulted with Mantle's management team together with the legal, financial and other advisors of Mantle. I have also reviewed the business records of Mantle relevant to these proceedings and have satisfied myself that I am possessed of sufficient information and knowledge to swear this Affidavit.
4. This Affidavit is in connection with Mantle's proceedings under Division I of Part III of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended (the "**BIA**"), and these proceedings, the "**Proposal Proceedings**"). Additional background information in connection with the Proposal Proceedings is contained in my Affidavit sworn August 7, 2023 (the "**August 7 Affidavit**"), the Affidavit of Cory Pichota sworn August 8, 2023 (the "**August 8 Affidavit**"), my Affidavit sworn August 11, 2023 (the "**August 11 Affidavit**"), my Affidavit sworn August 14, 2023 (the "**August 14 Affidavit**") and my Affidavit sworn September 15, 2023 (the "**September 15 Affidavit**").

Relief Requested

5. This Affidavit is sworn in support of an Application for , *inter alia*, the following Orders from this Honourable Court:
 - (a) an Order:
 - (i) abridging the time for service of notice of this Application, deeming service of notice of this Application to be good and sufficient, and declaring that there is no other person who ought to have been served with notice of this Application;
 - (ii) extending the 45 day period within which the Proposal Trustee is required to file a proposal with the official receiver under sections 50.4(8) and 50.4(9) of the *BIA* by an additional 45 days, ending December 28, 2023 (such period, as extended from time to time under section 50.4(9) of the *BIA*, being the "**Stay Period**", and the date on which the Stay Period expires being the "**Expiry Date**"); and

- (iii) declaring that the provision by Atlas Aggregates Inc. (“**Atlas**”) to Mantle of a list of Atlas’ shareholders, the number of securities held by each shareholder, the date and particulars of the issue and transfer of each security, and each shareholder’s respective address, phone number and email address (collectively the “**Shareholder Information**”) is not a violation of privacy law pursuant to the *Personal Information Protection Act* (Alberta);
 - (iv) authorizing and directing that Atlas forthwith provide the Shareholder Information to Mantle;
- (b) an Order:
- (i) approving a contract of auction between the Mantle and Ritchie Bros. Auctioneers (Canada) Ltd. (“**RB**”) dated October 31, 2023 (the “**Auction Agreement**”) providing for the auction and sale of the certain equipment owned by Mantle (the “**Equipment**”);
 - (ii) approving the sale of the Equipment in accordance with the terms of the Auction Agreement; and
 - (iii) vesting all of the right, title and interest of Mantle in and to the Equipment in each purchaser thereof in accordance with the Auction Agreement, free and clear of any security interest, charge, lien or other encumbrance;
- (c) an Order sealing the Confidential Affidavit of Byron Levkulich, sworn November 1, 2023, containing an unredacted version of the Auction Agreement and the Bid Summary (as defined herein) on the Court Record subject to the terms set forth therein (the “**Confidential Levkulich Affidavit**”); and
- (d) such further and other relief as Mantle may request and this Honourable Court may grant.

Background

6. Mantle was incorporated in British Columbia on July 17, 2020 as 1257568 B.C. Ltd. (“**125**”), continued in Alberta on April 30, 2021 and amalgamated with JMB Crushing Systems Inc. (“**JMB**”) and 2161889 Alberta Ltd. (“**216**”) on May 1, 2021 to form “Mantle Materials Group, Ltd.”. Mantle is a wholly owned subsidiary of RLF Canada Holdings Limited (“**RLF Holdco**”), a Colorado corporation, which in turn is a wholly owned subsidiary of Resource Land Fund V, LP (“**RLF LP**”), a Delaware limited partnership, which is a fund managed by RLH LLP.
7. Mantle carries on the business of extracting, processing and selling gravel and other aggregates (“**Aggregate**”) in Alberta. Mantle holds interests in aggregate pits (the “**Aggregate Pits**”) located in the Province of Alberta pursuant to:
 - (a) surface material leases in respect of public lands issued by Crown in right of the Province of Alberta, represented by the Minister of Environment and Protected Areas (the “**MEP**”) under the *Public Lands Act*, RSA 2000, c P-40 and the *Public Lands Administration Regulation*, AR 187/2011; and
 - (b) aggregate royalty agreements in respect of private lands with private land owners, under which Mantle was granted *profit à prendre* in such lands.
8. As related in the August 7 Affidavit, Mantle acquired the business and Aggregate Pits from JMB and 216 on May 1, 2021 during the proceedings of JMB and 216 under the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36 (the “**CCAA**”) in a purchase and corporate arrangement transaction where Mantle’s predecessor amalgamated with JMB and 216 (the “**Reorganization Transaction**”). JMB and 216 had previously been subsidiaries of RLF LP. Nine (9) of the Aggregate Pits are or prior to the Proposal Proceedings were being operated (the “**Active Aggregate Pits**”), ten (10) are no longer operational (the “**Inactive Aggregate Pits**”), and five (5) were never opened (the “**Unopened Lands**”). The environmental reclamation liabilities (the “**Reclamation Liabilities**”) in respect of the Active Aggregate Pits amounts to \$1,874,872, and the Reclamation Liabilities with respect to the Inactive Aggregate Pits amounts to \$1,678,308.

The security posted with the regulator, Alberta Environment and Protected Areas (the “**AEPA**”) amounts to \$1,057,961. The Unopened Lands have no Reclamation Liabilities associated with them.

9. During the proceedings of JMB and 216 under the *CCAA*, the AEPA issued environmental protection orders (“**EPO**”) requiring that the Reclamation Liabilities associated with the Aggregate Pits be addressed. The environmental reclamation work (the “**Reclamation Work**”) that the AEPA required to be addressed in respect of the Inactive Aggregate Pits pursuant to the EPOs is summarized in the Progress Update Report dated October 28, 2022 attached as Exhibit V to the August 7 Affidavit. As related in the August 7 Affidavit, the deadline for completing the Reclamation Work in respect of the Inactive Aggregate Pits is November 1, 2023.
10. Following the completion of the Reorganization Transaction, Mantle extracted, processed and sold Aggregate from the Active Aggregate Pits and carried out Reclamation Work during such operations to ensure that their Reclamation Liabilities did not accumulate. Since the completion of the Reorganization Transaction, Mantle has carried out Reclamation Work on the Inactive Aggregate Pits in accordance with the EPOs and reclamation plans filed with the AEPA.
11. From a business perspective, in the two years since the completion of the Reorganization Transaction, Mantle found that a large number of the projects where its customers and potential customers required Aggregate were not proximate to the Active Aggregate Pits. Because transportation costs forms a significant component of the pricing for Aggregate, Mantle’s pricing for Aggregate was uncompetitive for projects that were too far from the Active Aggregate Pits. Mantle was therefore unable to generate sufficient sales and cash flow to be financially viable, and the resulting working capital shortfalls negatively impacted Mantle’s ability to pay trade creditors, lenders and real property and equipment lessors, and to pay the contractors to perform the necessary Reclamation Work to address the Reclamation Liabilities under the EPOs.
12. In the circumstances, Mantle’s management and directors determined that the best course of action was to commence the Proposal Proceedings in order to ensure that the

Reclamation Liabilities were satisfied, sell its assets in a commercially reasonable manner, apply the net proceeds to help fund the Reclamation Work, and permit the excess to be distributed to its creditors once the professional and other costs incurred during the Proposal Proceedings were paid.

13. Therefore, on July 14, 2023 (the “**Filing Date**”), Mantle filed a notice of intention to make a proposal (the “**NOI**”) under section 50.4 of the *BIA*, and FTI Consulting Canada Inc. (“**FTI**”), a licensed trustee, was named as the proposal trustee of Mantle (in such capacity, the “**Proposal Trustee**”).
14. On August 8, 2023, the Honourable Justice Campbell granted an order, *inter alia*, extending the Stay Period and time within which Mantle was required to file a proposal Period to August 18, 2023.
15. On August 15, 2023, the Honourable Justice Feasby granted an order, *inter alia*:
 - (a) extending the Stay Period to September 27, 2023;
 - (b) approving an interim financing facility (the “**Interim Facility**”) provided under a interim facility agreement dated August 10, 2023;
 - (c) granting an administration charge in the maximum amount of \$425,000 securing the fees and expenses of the Proposal Trustee and counsel to the Proposal Trustee and Mantle (the “**Administration Charge**”);
 - (d) granting a charge securing the Interim Facility (the “**Interim Facility Charge**”);
 - (e) granting a charge in the maximum amount of \$150,000 securing Mantle’s obligation to indemnify its officers and directors for liabilities arising after the filing of the NOI (the “**D&O Charge**”, and together with the Administration Charge and Interim Facility Charge, the “**BIA Charges**”);
 - (f) declaring that the priority ranking of the *BIA* Charges amongst themselves is first, Administration Charge, second, the Interim Facility Charge, and third, the D&O Charge; and

- (g) determining that the *BIA* Charges rank in priority to any other mortgage, charge, security interest, lien or other encumbrance (collectively, “**Encumbrances**”) other than a purchase-money security interest (a “**PMSI**”) in favour of Travelers Capital Corp. (“**Travelers**”).
16. Travelers opposed the application, alleging that its PMSI ranked in priority to environmental obligations. On August 28, 2023, Feasby J. released his reasons for decision determining that environmental obligations rank before PMSIs and that the *BIA* Charges should therefore rank in priority to the PMSI in favour of Travelers. Attached to my affidavit as **Exhibit “A”** is a copy of Feasby J.’s decision, 2023 ABKB 488 (the “**KB Decision**”).
17. On September 7, 2023, Travelers filed an application to the Court of Appeal seeking confirmation that it could appeal the KB Decision without leave, or alternatively, seeking leave to appeal KB Decision 2023 (the “**Leave Application**”).
18. On September 22, 2023 the Honourable Justice Lema granted an order, *inter alia* extending the Stay Period and time within which Mantle was required to file a proposal Period to November 13, 2023 (the “**September 22 Order**”).
19. I am informed by Tom Cumming, lawyer with Gowling WLG (Canada) LLP, counsel to Mantle, and do verily believe that Traveler’s Leave Application was heard by de Wit J.A. on October 18, 2023, and on October 23, 2023, the Court of Appeal released its decision dismissing the Leave Application. Attached as **Exhibit “B”** hereto is a true copy of de Wit J.A.’s decision, 2023 ABCA 302.

Current Status

20. Since the September 22 Order, Mantle has been responding to Travelers’ Leave Application, working with its suppliers to permit the continuation of its operations during the Proposal Proceedings, selling and delivering Aggregate to its customers pursuant to its supply and sale contracts, and continuing the Reclamation Work on the Inactive Aggregate Pits in accordance with the EPOs.

21. Mantel and the Proposal Trustee also developed a sale solicitation process with respect to the Active Aggregate Pits (the “SSP”), prepared marketing materials, opened an electronic data room, and on September 20 and 21, 2023, distributed a teaser and the SSP to potentially interest parties by email. The SSP had a bid deadline of October 25, 2023 for submitting letters of intent or expressions of interest. Several parties have done so and Mantle and the Proposal Trustee are working to advance those letters of intent and expressions of interest,
22. Mantle further requires in the near future that the Proposal Proceedings continue as a *CCAA* proceeding so that Mantle can work towards a successful sale of its assets for the benefit of its creditors. Mantle will be unable to make a proposal to its creditors within the statutory time periods provided for under the *BIA* as its Reclamation Liabilities will extend past those statutory time periods. As such, Mantle is currently preparing court materials to continue the Proposal Proceedings as restructuring proceedings under the *CCAA*.

Interim Facility

23. As of October 30, 2023, Mantle has drawn \$1,803,700 under the Interim Facility to fund its working capital requirements arising subsequent to the Filing Date, including to pay employees, contractors, landlords for the premises leased by it in Edmonton and Bonnyville, insurers, internet service providers, lessors under leases of equipment that Mantle is utilizing to perform its sale and supply contracts with its customers and carry out Reclamation Work. Mantle has, with the consent of the Proposal Trustee, and pursuant to the August 15 Order, paid payables where it was required in order to secure the continued supply of critical goods and services.

Supply and Sale Contracts

24. Once its Interim Facility was in place, Mantle re-commenced its supply of Aggregate to customers with whom it had supply or sale contracts including Accurate Industries, Kehewin Cree Nation, Absolute MultiCorp Ltd., AMC Oilfield and E Construction Ltd. Mantle also entered into agreements to sell Aggregate to Cenovus Energy Inc. and Ledcor Highways Ltd. In each case, the Proposal Trustee had confirmed that these sales were

likely to yield a net benefit to the estate and were therefore economically viable. In order to carry out that work, Mantle deployed contractors and equipment and arranged for the transportation and delivery of the Aggregate, which actions were funded by the Interim Facility. This also required special arrangements with truckers and fuel suppliers to give those parties assurance that they would be paid for the services and supplies that they provided during the Proposal Proceedings.

25. Since July 14, 2023, Mantle has sold 131,295.74 tons of Aggregate for a total of \$3,724,373.92.

Alberta Environment and Protected Areas

26. On August 1, 2023, the AEPA wrote to Mantle confirming Mantle's duties to address the Reclamation Liabilities under the EPOs, and requiring the completion of the Reclamation Work by no later than November 1, 2023. Once the Interim Facility was approved on August 15, 2023, Mantle re-commenced the Reclamation Work through its environmental consultants and contractors. The majority of the Reclamation Work that has to be completed before the two-year assessment period has been completed, but because of the recent winter freeze and delays in receiving field authorizations from the AEPA, some activities will need to be carried over to the spring of 2024. On October 16, 2023, Mantle delivered to the AEPA a progress update report on the Inactive Aggregate Pits.
27. Mantle intends to complete the Reclamation Work that has to be performed before reclamation certificates are issued, and to sell pursuant to the SSP the Active Aggregate Pits on the basis that the purchasers thereof assume the Reclamation Liabilities associated with those Active Aggregate Pits and are able to satisfy the AEPA's requirements for transferring surface material leases for Public Lands and registrations under the *Environmental Protection and Enhancement Act*, RSA 2000, E12, as amended. If Active Aggregate Pits cannot be sold under the SSP, provided the Mantle is still able to carry out Reclamation Work, RLF Lender will fund that work.

Ritchie Bros. Auction Agreement

28. Mantle had previously been working with the Proposal Trustee and various equipment auctioneers in order to determine the most effective strategy for maximizing the amounts realized on the sale of its equipment. Mantle previously approached Ritchie Bros. (“**RB**”), Michener Allen, GD Auctions, McDougall Auctioneers and Global Machinery (collectively the “**Proposed Auctioneers**”).
29. In addition, Mantle and the Proposal Trustee previously prepared marketing materials and information with respect to the Active Aggregate Pits and developed a marketing and sale process appropriate to those pits. This involved the creation of an electronic data room, which Mantle and the Proposal Trustee have created and a relatively short due diligence period.
30. Mantle and the Proposal Trustee performed a two stage bid process and received five bids from the Proposed Auctioneers which bids will be attached as a confidential exhibit to a further affidavit from myself which Mantle will seek to seal (the “**Bid Summary**”). In stage one, Mantle received five bids and rejected two of them. In stage two, Mantle received three bids, each of which provided a net minimum guarantee.
31. Mantle has received sufficient information and has consulted with its secured creditors, including Travelers which is a PMSI holder in much of Mantle’s equipment, and the Proposal Trustee. Mantle has decided to enter into an agreement with RB to sell its equipment, a redacted version of which is attached as **Exhibit “C”** hereto (the “**Auction Agreement**”) and an unredacted version of which will be attached to the further affidavit from myself Mantle will seek to seal.
32. I believe that RB’s bid was the superior one because Travelers supports the selection of RB’s bid, RB has a superior market reach that increases the chances of its auction yielding the most favourable sale prices for the Equipment, and its financial resources mean that any credit risk is minimized. As such, RB’s bid appears likely to provide a superior recovery for Mantle’s stakeholders.
33. Under the Auction Agreement:

- (a) RB agrees to hold an auction over three days on December 13, 14 and 15, 2023 at its auction site, where the Equipment would be auctioned together with other equipment;
- (b) RB guarantees the minimum gross proceeds (the “MGP”) from the sale of the Equipment;
- (c) RB is paid a commission calculated on the basis of the MGP, and proceeds in excess of the MGP are split between RB and Mantle based on agreed upon percentages;
- (d) the Auction Agreement is subject to approval by this Honourable Court, and upon the sale of an item of Equipment by RB, the right, title and interest of Mantle in such item vests in the purchaser free and clear of Encumbrances; and
- (e) once the Auction Agreement is approved by this Honourable Court, a lien is granted by Mantle in favour of RB in the Equipment.

34. The Proposal Trustee supports Mantle entering into the Auction Agreement.

35. The Bid Summary and pricing in the Auction Agreement are commercially sensitive in nature. In the event that the Court does not grant an order approving the Auction Agreement, or that any of the proposed transactions for Mantle’s equipment do not close, Mantle is concerned that efforts to re-market any of the affected assets could be impaired by disclosure of the various bids in the Bid Summary and price details in the Auction Agreement. There is a serious risk that public disclosure of the information contained in the Bid Summary and Auction Agreement would compromise the auction sales process, and impact upon the ability of Mantle to maximize the recovery and obtain the best price for its equipment to the detriment of Mantle’s stakeholders.

Atlas Aggregates

36. Mantle owns approximately a third of the shares (the “Atlas Shares”) in Atlas Aggregates Inc. (“Atlas”), a private corporation incorporated under the laws of Alberta. Atlas holds half of the shares in 13866194 Alberta Ltd. (“1386”), which holds an interest in public lands under a surface material lease identified as SML 030074. Mantle has been advised

that the lands subject to SML 030074 hold significant reserves of Aggregate. Mantle therefore intends to market its shares in Atlas to other shareholders of Atlas, who because of the restrictions on transfers of shares in the articles of Atlas, are likely the only parties who would be interested in purchasing the Atlas Shares.

37. Because Atlas is a private company, Mantle has requested that Atlas provide Mantle with a list of Atlas' shareholders, the number of securities held by each shareholder, the date and particulars of the issue and transfer of each security, and each shareholder's respective address, phone number and email address (the "**Shareholder Information**") so that Mantle can provide those shareholders notice of the opportunity to purchase the Atlas Shares.
38. Cory Pichota, Mantle's President and Chief Operating Office, has informed me that he contacted Glenn Huber, the chairman of Atlas' board of directors, requesting this information, but was refused on the basis of privacy. Subsequently, Mr. Huber wrote to Mr. Pichota on October 24, 2023, repeating Atlas' refusal, and indicating that Atlas is considering acquiring the Atlas Shares, and Atlas would only provide notice to other shareholders if it decided not to acquire them. Attached as **Exhibit "D"** is a true copy of Mr. Huber's October 24, 2023 letter.
39. On October 25, 2023, Mantle's counsel wrote to Atlas requiring that Atlas permit Mantle to examine Atlas' shareholder register under section 23(1) of the *Business Corporations Act* (Alberta), noting that if the directors are considering making an offer for the Atlas Shares, they should not prevent other shareholders from learning of the opportunity. Attached as **Exhibit "E"** is a true copy of the October 25, 2023 letter. Thereafter, on October 25, 26 and 27, 2023, Mantle's counsel and Atlas' counsel corresponded by email, with such correspondence attached **Exhibit "F"**, wherein Atlas further refused to permit Mantle to have access to the shareholder register.
40. Mantle seeks an order of this Honourable Court declaring that the provision of the Shareholder Information from Atlas to Mantle is not a violation of privacy law pursuant to the *Personal Information Protection Act* (Alberta). Mantle further requires an order authorizing and directing that Atlas forthwith provide the Share Information to Mantle so that Mantle can take appropriate steps to market its Atlas Shares to the other shareholders

of Atlas Shareholders in order to maximize their value for the benefit of Mantle's stakeholders.

Future Continuation as CCAA Proceedings

41. As related in paragraphs 8 and 9 of my August 14 Affidavit, because the Reclamation Liabilities must be satisfied or provided for before distributions are made to creditors, and because the timeline for completing the Reclamation Work extends beyond the maximum six (6) month period for filing a proposal pursuant to sections 50.4(8) and (9) of the *BIA*, Mantle will in the near future file an originating application to continue these Proposal Proceedings under the *CCAA* to ensure that the Reclamation Work can continue and the proceeds of sale of the assets of Mantle can be distributed to the creditors with an economic interest in those assets. Further, as related in paragraph 10 of my August 14 Affidavit, the book value of Mantle's assets is less than the amount of its liabilities to secured creditors, as recorded in Mantle's books and records, and therefore there may not be sufficient value to make a distribution to unsecured creditors. However, as long as Mantle's Reclamation Liabilities are addressed, there should be potentially significant value available for distribution to secured creditors.

42. Based on the forgoing, Mantle continues to develop a restructuring plan based on the following:
 - (a) Mantle would continue to carry out the Reclamation Work in respect of the Inactive Aggregate Pits in accordance with the time-line permitted by the AEPA;
 - (b) Mantle will enter into the Auction Agreement with RB and RB will sell the equipment and other assets in a commercially reasonable manner pursuant to auctions or otherwise so as to maximize the proceeds thereof available to its secured creditors;
 - (c) Mantle will continue on the Proposal Proceedings as proceedings under the *CCAA*;
 - (d) Mantle, in consultation with the Proposal Trustee, and thereafter FTI as Monitor, would market and sell the Active Aggregate Pits to purchasers acceptable to the

AEPA on the basis that such purchasers assume all of the Reclamation Liabilities associated with the Active Aggregate Pits that they are purchasing;

- (e) the payment of indebtedness to secured creditors would be postponed until the Reclamation Liabilities were addressed or provided for to the satisfaction of the AEPA, whereupon proceeds available in the estate would be distributed to the secured creditors in accordance with their entitlement under applicable law;
- (f) Mantle would seek a reverse vesting order under the *CCAA* under which all unsecured claims would be vested in a corporation to be incorporated, and at the same time, upon such order becoming effective, Mantle would issue to such corporation an unsecured, non-interest bearing debenture in a principal amount equal to the aggregate amount of those liabilities, which would only become payable in the event that the amount realized by Mantle from the sale of its assets, after performing the Reclamation Liabilities and the payment of restructuring costs, exceeded the amount of its secured indebtedness, but the amount payable under the debenture would be limited to the amount of such excess.

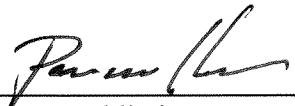
43. As related in paragraph 13 of the August 14 Affidavit, the benefit of the restructuring plan summarized above is that it would permit the completion of the Reclamation Work, which Mantle's counsel informs me is required before distributions are made to creditors, permits the release of security previously provided to the AEPA, and provides for the ultimate distribution to creditors of the net proceeds of realization of Mantle's assets. As related in paragraph 41 of my August 7 Affidavit, the aggregate amount of the security provided to the AEPA in the form of cash and letters of credit is \$1,057,961.24.

Extension of the Stay Period

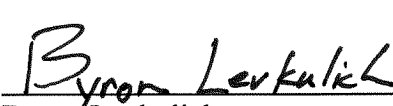
44. Based on the cash flow projections of Mantle for the period from the week ending September 22, 2023 to the week ending December 29, 2023, which will be attached to the Third Report of the Proposal Trustee filed in connection with this Application, Mantle will have sufficient cash in order to operate and carry out Reclamation Work during the Stay Period and to December 29, 2023.

- 45. An extension of the Stay Period would give Mantle additional time to complete the sale of its equipment to RB, convert these Proposal Proceedings into proceedings under the CCAA and continuing working towards the implementation of its restructuring plan.
- 46. As related above, Mantle has been diligently seeking to advance this matter for the benefit of all stakeholders, including the public in respect of its Reclamation Liabilities and its creditors.
- 47. I swear this Affidavit in support of an Application for the relief set out in paragraph 5 of this Affidavit and for no other or improper purpose.

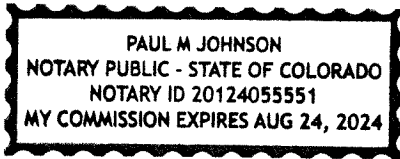
Sworn before me at the City of Denver, in the State of Colorado, on this 1st day of November, 2023



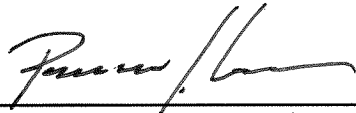
A Notary Public in
and for the State of Colorado

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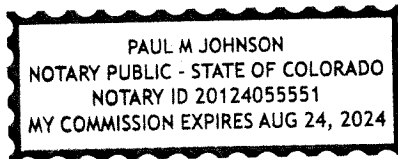
Byron Levkulich



This is **Exhibit "A"** referred to in the Affidavit of
Byron Levkulich sworn before me this 1st day of November, 2023



A Notary Public for the State of Colorado



Court of King's Bench of Alberta

Citation: Re Mantle Materials Group, Ltd, 2023 ABKB 488

Date: 20230828
Docket: 2301 10358
Registry: 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.

**Reasons for Decision
of the
Honourable Justice Colin C.J. Feasby**

Introduction

[1] Mantle Materials Group, Ltd. applied for an extension of time to make a proposal pursuant to the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 s 50.4(8), approval of various charges on the bankrupt estate (“Restructuring Charges”) including the priority of those charges, and approval of the payment of certain pre-filing debts to creditors whose support is required to perform environmental reclamation work that will be integral to the pending proposal. The application was granted with a temporary proviso with respect to the priority of the Restructuring Charges over certain equipment to ensure that Travelers Capital Corp, a secured lender, was not prejudiced prior to the release of these Reasons.

[2] Mantle advises that the proposal that it intends to make will not allow payment to any creditors before Mantle has satisfied its end-of-life obligations stemming from Environmental Protection Orders issued by Alberta Environment and Protected Areas (“AEPA” formerly Alberta Environment and Parks) with respect to several gravel producing properties. Mantle submits that this is what is required by *Orphan Well Association v Grant Thornton Ltd*, 2019 SCC 5 (“*Redwater*”) because the environmental remediation obligation is an obligation of the company that must be satisfied prior to distributions to creditors. AEPA supports Mantle’s position.

[3] Travelers asserts that it has priority with respect to security in certain equipment and Travelers' ability to realize on its security should not be postponed until after the remediation work has been completed to AEPA's satisfaction and subordinated to the Restructuring Charges. Travelers offers a different interpretation of *Redwater*. Travelers contends that *Redwater* held that an end-of-life environmental obligation need only be satisfied using assets encumbered by or related to the end-of-life obligation. Travelers submits the Court should find that a creditor with security over assets unrelated to assets burdened with the environmental remediation obligation may realize on such security without delay.

Background

[4] Mantle operates 14 gravel pits on public land pursuant to surface material leases issued by AEPA. Mantle also operates 10 gravel pits on private land pursuant to royalty agreements with the landowners.

[5] Mantle acquired its gravel-producing assets in 2021 in the *Companies' Creditors Arrangement Act* proceedings for JMB Crushing Systems Inc. and associated companies.¹ Financial liabilities of JMB were compromised and undesired assets were transferred to a residual company pursuant to a Reverse Vesting Order. The desired assets remained in JMB and its subsidiary 2161889 Alberta Ltd, both of which then amalgamated with Mantle on May 1, 2021.

[6] Following the commencement of the JMB CCAA proceedings, AEPA issued Environmental Protection Orders ("EPOs") to JMB and 216 in respect of some of the gravel-producing properties.

[7] EPOs are issued pursuant to AEPA's authority under the *Environmental Protection and Enhancement Act*, RSA 2000, c E-12 s 140. An AEPA inspector is permitted to "issue an environmental protection order regarding conservation and reclamation to an operator directing the performance of any work or the suspension of any work if in the inspector's opinion the performance or suspension of the work is necessary in order to conserve and reclaim the land."

[8] An EPO issued by AEPA in respect of end-of-life reclamation is similar in nature to an Abandonment and Reclamation Order ("ARO") issued by the Alberta Energy Regulator ("AER"). Indeed, all the parties in the present case proceeded on the basis that an EPO issued by AEPA had the same legal effect and should be subject to like treatment in insolvency proceedings as an ARO issued by the AER.

[9] The EPOs issued by AEPA to JMB address end-of-life reclamation steps to be taken at various gravel-producing or formerly gravel-producing assets operated by JMB on both public and private land.

[10] The original Reverse Vesting Order presented to the Court in the JMB CCAA proceedings sought to absolve the directors of JMB and 216 of responsibility for the EPOs and sought to usurp AEPA's regulatory role by putting the Court in a supervisory role with respect to

¹ For a discussion of the restructuring of JMB and the use of a reverse vesting order in that case, see Candace Formosa, "Dampening the Effect of *Redwater* Through a Reverse Vesting Order," in Jill Corrani & D. Blair Nixon, eds., *Annual Review of Insolvency Law*, (Toronto: Thomson Reuters, 2021) 697.

the performance of reclamation work by Mantle and compliance with the EPOs. AEPA objected to the original proposed Reverse Vesting Order.

[11] As a result of AEPA's objections, the Court approved a revised Reverse Vesting Order that provided that the order did not affect the liability of JMB, 216, or the directors of those companies for "Compliance Issues" or performing "Reclamation Obligations" in respect of the various gravel-producing properties. Mantle accordingly remained liable for the EPOs issued with respect to both the properties acquired in the amalgamation with JMB and 216 and the properties now possessed by the residual company. Mantle negotiated a plan with AEPA for the reclamation work to be done to satisfy the EPOs.

[12] Following completion of the JMB CCAA proceedings, Mantle entered a loan transaction with Travelers. Travelers loaned Mantle \$1,700,000 for the acquisition of equipment for use in its operations. Mantle granted Travelers a purchase-money security interest (PMSI) over the equipment. The security interest was registered in the Alberta Personal Property Registry. Pursuant to an agreement between Travelers, Mantle, and Fiera Private Debt Fund V LP, which holds a general security interest in all of Mantle's present and after acquired property, Travelers' security interest in the equipment was designated to have first priority. As of July 21, 2023, Mantle owed Travelers just short of \$1.1 million.

[13] Mantle experienced operational problems and was burdened with excessive debt inherited from the JMB CCAA proceedings and incurred in the period following the acquisition of the gravel-producing properties. Mantle's difficulties were compounded by the significant reclamation obligations it was required to complete to satisfy the EPOs. On July 14, 2023, Mantle filed a notice of intention to make a proposal under s 50.4 of the BIA.

[14] On August 15, 2023, I granted an extension of the BIA stay period and the time period to permit Mantle to make its proposal. I further approved the creation and priority ranking of various Restructuring Charges, including an Administration Charge, a Directors & Officers Charge, and an Interim Lending Facility Charge. I was satisfied that the participation of lawyers, insolvency professionals, and directors and officers was required for the proposal to succeed. I was further satisfied that the Interim Lending Facility, which is to be primarily used to fund reclamation work, is necessary for the success of the proposal.

[15] Travelers' argued that the Restructuring Charges should not have priority over Travelers' security interest in the equipment and that Travelers should be able to be paid out or realize on its security without delay. Mantle, supported by AEPA, submitted that the Restructuring Charges were necessary to put the proposal into effect and that the main plank of the proposal was the completion of the reclamation work to satisfy the EPOs. Mantle is of the view that the value of the gravel pits that are still active exceeds the amount of the reclamation obligations. Mantle has also posted more than \$1 million as security with AEPA which will be returned upon completion of the reclamation obligations to AEPA's satisfaction. Mantle submits that Travelers should not be permitted to realize on its security prior to the completion of the reclamation work because if it were allowed to do so, that would jeopardize Mantle's ability to complete the reclamation work and thereby jeopardize its ability to make a proposal to its creditors.

[16] I granted an Order to allow work on the pending proposal, including reclamation work, to get underway while preserving Travelers' position pending these Reasons. The Order provided, in part, as follows:

The Charges shall constitute a security and charge on the Property and, with the exception of the security interests in favour of Travelers registered in the Alberta Property Registry as base registration number 21100725361 (the “**Travelers’ Security Interests**”), such Charges shall rank in priority to all other security interests, trusts, liens, charges, deemed trusts, encumbrances and claims of secured creditors, statutory or otherwise in favour of any person, including liens and trusts created by federal and provincial legislation (collectively, the “**Encumbrances**”), provided, however, that the relative priority of Charges and the Travelers’ Security Interests is subject to further order of the Court....

Redwater, Manitok, Trident, and Stare Decisis

[17] Mantle and AEPA submit that three decisions dictate the outcome of this case: ***Redwater; Manitok Energy Inc (Re)***, 2022 ABCA 117; and ***Orphan Well Association v Trident Exploration Corp***, 2022 ABKB 839. These decisions, they say, stand for the principle that end-of-life environmental obligations must be satisfied before any creditors may recover and that the whole estate of the insolvent entity is to be used to satisfy such end-of-life environmental obligations. This rule leaves no room for those with security in assets unrelated to the environmental condition or damage to realize on that security until end-of-life obligations have been satisfied using, if necessary, the unrelated assets in which they have security.

[18] Travelers submits that Mantle and AEPA are wrong that ***Redwater*** and ***Manitok*** are controlling and that instead the present case is one of “first instance.” ***Redwater*** and ***Manitok*** indicate that there is an exception to the rule posited by Mantle and AEPA for assets unrelated to the environmental condition or damage and that it is for this Court to give that exception shape. Travelers, citing ***R v Comeau***, 2018 SCC 15 and ***R v Sullivan***, 2022 SCC 19, further asserts that ***Trident*** at para 66-67 is inconsistent with ***Redwater*** and ***Manitok*** and “violates the doctrine of vertical *stare decisis*....” ***Trident***, Travelers argues, should not be followed because of its conflict with ***Redwater*** and ***Manitok***.

[19] Rather than discussing a basic concept like *stare decisis* in Reasons, I normally just ask what the relevant cases and statutes say the law is and then apply the law to the facts of the case before me. Travelers, however, has raised the issue of *stare decisis* and provided me with some authorities, making it clear that they attach some importance to it.

[20] As a judge of a court of first instance, the principle of vertical *stare decisis* provides that I am bound to follow the *ratio decidendi* of decisions of higher courts. The inimitable Master Funduk explained: “The judicial pecking order does not permit little peckers to overrule big peckers. It is the other way around”: ***South Side Woodwork v R.C. Contracting***, 1989 CanLII 3384 (AB KB) at para 53.

[21] The Court held in ***Comeau*** at para 26 “[s]ubject to extraordinary exceptions, a lower court must apply the decisions of higher courts to the facts before it.” None of the exceptions apply in the present case. The issue, as will be come clear later in these Reasons, is whether there is a decision that is on point that must be followed or whether the reasons of the Supreme Court of Canada and the Court of Appeal left the question open.

[22] The principle of horizontal *stare decisis* requires that judges of the same Court pay heed to each others’ decisions. This is particularly important in the commercial arena where parties

plan their affairs and make significant investment decisions based on the law that emerges from this Court.

[23] Kasirer J, writing for the Court, observed in *Sullivan* at para 65 “Horizontal *stare decisis* applies to courts of coordinate jurisdiction within a province.... While not strictly binding in the same way as vertical *stare decisis*, decisions of the same court should be followed as a matter of judicial comity, as well as for the reasons supporting *stare decisis* generally.”

[24] Kasirer J explained in *Sullivan* at para 75 that a Court should only depart from horizontal *stare decisis* if:

1. The rationale of an earlier decision has been undermined by subsequent appellate decisions;
2. The earlier decision was reached per incuriam (“through carelessness” or “by inadvertence”); or
3. The earlier decision was not fully considered, e.g. taken in exigent circumstances.

[25] Vertical *stare decisis* requires me to determine the *ratio decidendi* of *Redwater* and *Manitok* while horizontal *stare decisis* demands that I determine the *ratio decidendi* of *Trident* with respect to the question before me – whether the whole of a debtor’s estate, including unrelated assets, must be used to satisfy end-of-life environmental obligations prior to any distribution to creditors.

[26] Justices Côté, Brown, and Rowe writing for themselves and Wagner CJC in dissent in *R v Kirkpatrick*, 2022 SCC 33 at para 127 explained what the *ratio decidendi* of a decision is:

The *ratio decidendi* of a decision is a statement of law, not facts, and “[q]uestions of law forming part of the *ratio* . . . of a decision are binding . . . as a matter of *stare decisis*.” A question of law cannot, therefore, be confused with the various factual matrices from which that question of law might arise [citations omitted].

[27] The *ratio decidendi* of a case can be difficult to separate from *obiter dictum*, which is an expression of opinion that is not essential to a decision. Binnie J explained in *R v Henry*, 2005 SCC 76 at para 52: “the submissions of the attorneys general presuppose a strict and tidy demarcation between the narrow *ratio decidendi* of a case, which is binding, and *obiter*, which they say may safely be ignored. I believe that this supposed dichotomy is an oversimplification of how the common law develops.”

[28] The discussion that follows shows that the issue in the present case is not one of distinguishing between *ratio decidendi* and *obiter dictum*; rather, it is to what extent the Court is bound by what *Redwater* and *Manitok* imply or, perhaps more accurately, what the parties infer from those decisions. With *Trident*, the question is whether the *ratio decidendi*, which is clear, applies on the facts of the present case.

[29] What does *Redwater* say about environmental obligations and unrelated assets? Wagner CJC, writing for the majority, pointed out that Redwater’s environmental liabilities were not required to be satisfied with unrelated assets. He held at para 159:

it is important to note that Redwater's only substantial assets were affected by an environmental condition or damage. Accordingly, the Abandonment Orders and LMR requirements did not seek to force Redwater to fulfill end-of-life obligations with assets unrelated to the environmental condition or damage. In other words, 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 [emphasis added].

[30] Travelers submits that Wagner CJC chose his words carefully and that the only plausible inference from those words is that unrelated assets cannot be conscripted to satisfy end-of-life environmental obligations. Though he may have chosen his words carefully in the sense that he did not want to foreclose a scenario where assets were so unrelated to an environmental obligation that they should not be called upon to satisfy the environmental obligation, he did not provide any guidance as to what he meant by “assets unrelated” or how unrelated the assets must be to escape the reach of the regulator.

[31] The Court of Appeal in *Manitok* addressed the question of whether a debtor's oil and gas assets could be divided into two pools, one consisting of valuable assets and the other consisting of assets burdened by environmental obligations. The Court viewed the situation in *Manitok* to be the same as in *Redwater* where the proceeds of the sale of valuable oil and gas assets “had to be used by Redwater's trustee to satisfy abandonment and reclamation obligations before any distribution to secured creditors” (para 31). The Court went on at para 31 to explain how it interpreted *Redwater*:

The point is that the outcome of *Redwater* demonstrates that the Supreme Court of Canada did not treat Redwater's assets as falling into different pools. All of the oil and gas assets were treated collectively as being contaminated, and they all had to answer for the abandonment and reclamation obligations attached to the disclaimed assets. None of the other oil and gas assets were ‘assets unrelated’ to the other oil and gas assets. *Manitok* is in exactly the same position. The ‘substantial assets’ of *Manitok* are the same as the ‘substantial assets’ of *Redwater*.

[32] Though the Court of Appeal adverted in *Manitok* to the question of whether in theory unrelated assets could not be called upon to satisfy environmental obligations it deferred the question because it did not have to be decided given the Court's conclusion that all of *Manitok*'s substantial assets were related to the environmental obligations. The Court held at para 36:

Redwater confirms that the proceeds of the sale of those assets must be applied first towards the satisfaction of abandonment and reclamation obligations. To the extent that there is any issue about it, the status of assets completely unrelated to the oil and gas business can be left for another day [emphasis added].

[33] Mantle and AEPA argue that Wagner CJC's words in para 159 must be viewed in the context of the whole ruling in *Redwater*. Wagner CJC held that environmental obligations are a corporate or estate obligation that must be satisfied before any creditor claims (para 98; see also, *Manitok* at para 17, 30, & 35). According to Mantle and AEPA, the logic of this ruling leaves no room for the exception for assets unrelated to the environmental condition or damage asserted by Travelers.

[34] The reference to “assets unrelated” in *Redwater* unaccompanied by any explanation followed by the Court of Appeal’s statement in *Manitok* that it was leaving the issue for “another day” indicates that there is no *ratio decidendi* in those cases that binds me in the present case. As I will explain below, the facts of the present case do not require me to decide whether Travelers is correct that some category of assets unrelated to the environmental condition or damage in issue may not be used to satisfy environmental regulatory obligations or Mantle and AEPA are correct that all the assets that comprise the estate of a debtor must be used to address environmental regulatory obligations before creditor claims are paid.

[35] That Redwater and Manitok’s substantial assets were all oil and gas assets was not surprising. Many oil and gas companies do not own much in the way of assets other than oil and gas rights and the equipment required to produce oil and gas from those interests in land such as compressors, pumpjacks, and tanks. And even this kind of equipment may be leased instead of owned. Jack R Maslen & Tiffany Bennett, “Going Green? New Interpretations of Redwater from Canada’s Natural Resource Sectors” in Jill Corrani Nadeau & D. Blair Nixon, eds., *Annual Review of Insolvency Law*, (Toronto: Thomson Reuters, 2022) 105 concluded at 119, “based on *Manitok*, assets or proceeds that relate in any way to the debtor’s oil and gas business will be used to satisfy non-monetary end-of-life obligations. For most oil and gas producers, this likely means all of their property.” A question to be considered later in these Reasons is whether Mantle, a gravel company, is any different than oil and gas companies like Redwater and Manitok.

[36] Whether assets of an oil and gas company other than oil and gas rights are unrelated assets was tested in *Trident*. Justice Neufeld in *Trident* was required to consider whether a receiver was required to allocate proceeds of the sale of assets, including “non-licensed assets such as real estate and equipment” (para 80) to satisfy environmental obligations in priority to municipal tax claims. Neufeld J took a pragmatic approach, refusing to get engaged in a debate over how to draw a line between related and unrelated assets of an oil and gas company. He concluded that because Trident had one business, oil and gas exploration and production, that all assets were related to the environmental obligation. He wrote at para 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.

[37] Neufeld J’s statement of the law in *Trident* is consistent with *Redwater* and *Manitok* though his application of the law breaks new ground. Whereas in *Redwater* and *Manitok*, it was held that all oil and gas assets should be treated as related to environmental obligations that attached only to some of the oil and gas assets, *Trident* extended this principle to other assets used in an oil and gas business even if they were not directly involved in oil and gas production (e.g. the real estate used to store equipment).

[38] None of the exceptions to the principle of horizontal *stare decisis* apply to *Trident*. The decision was fully considered, carefully reasoned, and has not been undermined by appellate

authority. That means that the question in the present case is whether Mantle's equipment subject to the Travelers security interest is analogous to the equipment and real estate in *Trident*.

[39] Warren Miller, Vice President of Structured Finance and Capital Markets at Travelers, deposed that it was his understanding that Mantle sought financing from Travelers so that it could "purchas[e] the equipment necessary to operate its business (instead of renting it)." Mr. Miller's Affidavit attached as part of an exhibit a Notice of Intention to Enforce Security which listed all Mantle's equipment that Travelers had financed. The descriptions include the following: Jaw Crushing Plant, Cone Crushing Plant, Screen Plant, Aggregate Feeder, Aggregate Surge Bin, Material Washer, Conveyor, Truck Scale, Articulated Dump Truck, Tracked Excavator, and the like. The equipment in which Travelers has a security interest appears to be part to Mantle's gravel production business.

[40] In my view, no sensible distinction can be made between the equipment and real estate in *Trident* and the equipment in the present case. The equipment over which Travelers has a security interest is as much a part of Mantle's gravel business as the equipment and real estate in *Trident* was a part of Trident's oil and gas business. Based on this factual finding, I am bound by the principle of horizontal *stare decisis* to follow *Trident*. In finding that the equipment in the present case is part of Mantle's gravel business, I make no comment on how in theory a line should be drawn between related and unrelated assets or even if a line should be drawn. As the Court of Appeal said in *Manitok*, that "can be left for another day."

[41] Travelers advanced policy arguments as to why it should not have to wait to realize upon its security until after Mantle completes the reclamation work required by the EPOs. Mantle and AEPA responded with policy arguments supporting the deferral of realization of all secured creditors, including Travelers, until after the satisfactory completion of the reclamation work. Given my conclusion that the equipment subject to the Travelers security interest is related to the assets to which Mantle's environmental obligations pertain in the sense that the equipment is used in gravel production, it is not necessary to explore these policy arguments.

[42] Though I decline to debate the wisdom of the policy of effectively subordinating secured creditors to environmental obligations in these Reasons, it is noteworthy that the evidential record shows that Travelers conducted due diligence prior to entering the financing arrangement with Mantle. Among the materials available to Travelers as part of that due diligence process were documents indicating the existence of Mantle's environmental reclamation obligations and the security posted by Mantle with AEPA. Prior to entering the financing arrangement, Travelers had the opportunity to assess the risk of doing business with Mantle, make an informed decision whether to do business with Mantle, and to negotiate a cost of borrowing that reflected the risk inherent in Mantle's business.

Conclusion

[43] The Travelers security interest in the equipment must be subordinated to the Restructuring Charges because the Restructuring Charges are necessary to the completion of the environmental remediation work that is an important part of the pending proposal. Travelers cannot realize on its security until the environmental reclamation work is completed to AEPA's satisfaction and the only way that such work can be done is with the support of the officers and directors of Mantle, lawyers and insolvency professionals, and the interim lender who are all protected by the Restructuring Charges.

[44] Paragraph 10 of the Order dated August 15, 2023 shall be amended to provide that the Restructuring Charges have priority over the Travelers security interest in the equipment identified in the Travelers security registration.

Heard on the 15th day of August, 2023.

Dated at the City of Calgary, Alberta this 28th day of August, 2023.

Colin C.J. Feasby
J.C.K.B.A.

Appearances:

Tom Cumming & Stephen Kroeger, Gowling WLG
for Mantle Materials Group, Ltd.

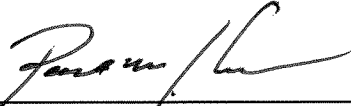
Alexis Teasdale & Joel Schachter, Lawson Lundell LLP
for Travelers Capital Corp

Pantelis Kyriakakis, McCarthy Tétrault LLP
for the Proposal Trustee, FTI Consulting Canada Inc.

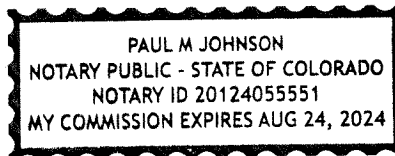
Doug Nishimura, Field LLP,
for Alberta Environment and Protected Areas

Darren Bieganek, Duncan Craig LLP
for 945441 Alberta Ltd

This is **Exhibit "B"** referred to in the Affidavit of
Byron Levkulich sworn before me this 1st day of November, 2023



A Notary Public for the State of Colorado



In the Court of Appeal of Alberta

Citation: Mantle Materials Group, Ltd v Travelers Capital Corp, 2023 ABCA 302

Date: 20231023
Docket: 2301-0216AC
Registry: Calgary

Between:

Mantle Materials Group, Ltd

Respondent

- and -

Travelers Capital Corp

Applicant

Corrected judgment: A corrigendum was issued on October 24, 2023; the corrections have been made to the text and the corrigendum is appended to this judgment.

**Reasons for Decision of
The Honourable Justice William T. de Wit**

Application for Permission to Appeal

**Reasons for Decision of
The Honourable Justice William T. de Wit**

Introduction

[1] Travelers Capital Corp (Travelers) applies for a declaration that leave is not required to appeal the August 28, 2023 decision of Feasby J or alternatively, applies for permission to appeal that same order.

[2] The respondent, Mantle Materials Group, Ltd. (Mantle), opposes the application and cross applies for a lifting of a stay in the event that leave is granted.

[3] Alberta Environment and Protected Areas (AEPA), the provincial ministry responsible for environmental issues, supports Mantle in opposing the application.

Facts

[4] This application arises in the context of Mantle's insolvency proceedings under the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (*BIA*). Mantle operates gravel pits on lands both public and private, some of which are subject to Environment Protection Orders (EPO) issued by the AEPA.

[5] After conducting due diligence, Travelers financed Mantle's purchase of equipment for use in its operations and Mantle granted Travelers a purchase-money security interest over the equipment, and pursuant to an agreement, Travelers' security interest in the equipment was designated to have first priority. As of the date of this application, Mantle owes Travelers over \$1 million.

[6] Financial difficulties led Mantle to file a notice of intention to make a proposal under section 50.4 of the *BIA*. On August 15, 2023, Mantle was granted an order extending time to make a proposal. In addition, the order approved various charges on the bankrupt estate including the priority of those charges, and approval of the payment of certain pre-filing debts to creditors whose support is required to perform environmental reclamation work that will be integral to the pending proposal. The application was granted without prejudice with respect to the priority of the charges that Travelers holds over the equipment until the chambers judge released his reasons regarding Travelers' priority claim.

[7] Mantle's intended proposal will not allow payment to any creditors before Mantle has satisfied its end-of-life obligations stemming from EPOs. Mantle submits this is required by the Supreme Court of Canada decision known as *Redwater* or *Orphan Well Association v Grant Thornton Ltd*, 2019 SCC 5, which held the environmental remediation obligations must be satisfied prior to distributions to creditors.

[8] Travelers submitted that it has priority with respect to security in certain equipment and its ability to realize on its security should not be postponed until after the remediation work has been completed. Travelers takes the position that *Redwater* held that an end-of-life environmental obligation need only be satisfied using assets encumbered by or related to the end-of-life obligation. A creditor with security over assets unrelated to assets burdened with the environmental remediation obligation may realize on such security without delay.

[9] The chambers judge disagreed with Travelers and amended his August 15, 2023 order to provide that the various approved charges on the bankrupt's estate have priority over Travelers' security interest in the equipment. The reasons of the chambers judge can be found at *Re Mantle Materials Group, Ltd*, 2023 ABKB 488.

Is Leave Required?

[10] Travelers submits that leave to appeal is not required because section 193(c) of the *BIA* provides "an appeal lies to the Court of Appeal from any order or decision of a judge of the court . . . if the property involved in the appeal exceeds in value ten thousand dollars". As it is owed over \$1 million, Travelers submits it is entitled to appeal as of right.

[11] Travelers is required to obtain leave. Case authorities have held that section 193(c) is not satisfied simply where the value of the property exceeds \$10,000. In *Manitok Energy Inc (Re)*, 2022 ABCA 260 (*Manitok leave decision*), this court held that an appeal is not available under section 193(c) in situations where the order is procedural in nature (para 27). Where the order does not result in a gain or loss to an interested party, the order is procedural in nature: *Athabasca Workforce Solutions Inc v Greenfire Oil & Gas Ltd*, 2021 ABCA 66 at para 15; *Manitok leave decision* at para 30.

[12] Travelers has not filed evidence showing the value of the equipment at issue and has not shown that its recovery is in jeopardy. The order it seeks to appeal is an order extending time to make a proposal, approved various charges on the bankrupt estate, and approved payment of certain pre-filing debts. The order is procedural in nature and section 193(c) does not apply to give Travelers a right to appeal.

Test for Leave to Appeal

[13] As set out in *Athabasca* at paras 17-18, the following factors are considered on an application for leave to appeal under section 193(e) of the *BIA*:

- a) whether the point on appeal is of significance to the practice;

- b) whether the point raised is of significance to the action itself;
- c) whether the appeal is *prima facie* meritorious or frivolous; and
- d) whether the appeal will unduly hinder the progress of the action.

In addition, leave should only be granted if the judgment appears to be contrary to law, amounts to an abuse of judicial power or involves an obvious error, causing prejudice for which there is no remedy.

[14] The test essentially requires that the proposed appeal must be on a point of significance for which there is at least an arguable case. I find that is where the application fails.

[15] Travelers points to paragraph 159 in *Redwater*, where Wagner CJC for the majority stated that the Alberta Energy Regulator’s orders and assessment of liability “did not seek to force Redwater to fulfill end-of-life obligations with assets unrelated to the environmental condition or damage”.

[16] This court in *Manitok Energy Inc (Re)*, 2022 ABCA 117 (*Manitok*), viewed the situation in the appeal before it to be the same as in *Redwater* and at paragraph 31 explained *Redwater*:

The point is that the outcome of *Redwater* demonstrates that the Supreme Court of Canada did not treat Redwater’s assets as falling into different pools. All of the oil and gas assets were treated collectively as being contaminated, and they all had to answer for the abandonment and reclamation obligations attached to the disclaimed assets. None of the other oil and gas assets were ‘assets unrelated’ to the other oil and gas assets. Manitok is in exactly the same position. The ‘substantial assets’ of Manitok are the same as the ‘substantial assets’ of Redwater.

[17] Whether in theory unrelated assets could not be called upon to satisfy environmental obligations did not have to be decided by this court given that all of Manitok’s substantial assets were related to the environmental obligations. As this court stated at paragraph 36:

Redwater confirms that the proceeds of the sale of those assets must be applied first towards the satisfaction of abandonment and reclamation obligations. To the extent that there is any issue about it, the status of assets completely unrelated to the oil and gas business can be left for another day.

[18] Travelers argues that the unaddressed issue arises in its case because the equipment over which it has a secured interest was not affected by an environmental condition or damage and

therefore, it should not have to wait for Mantle to complete its environmental obligations before Travelers can realize upon its security.

[19] Travelers' proposed arguments on appeal ignore a basic principle arising from *Redwater* and reiterated in *Manitok* that abandonment and reclamation obligations are binding "on the bankrupt estate": *Redwater* at para 93, 98, *Manitok* at para 17. The obligation was not tied to the type of asset.

[20] In *Redwater* and *Manitok* all the assets were oil and gas assets and none were "assets unrelated" to the other oil and gas assets. Distinguishing oil and gas assets from non-oil and gas assets as "assets unrelated to the environmental condition or damage" was argued in *Manitok* and rejected by this court at paragraph 35:

One could read para 159 of *Redwater* as excluding resort to "unrelated" non-oil and gas assets to cover abandonment and reclamation costs. However, as was pointed out by the Orphan Well Association, the reasons in *Redwater* refer repeatedly to the "assets of the estate", without drawing any such distinction: see for example *Redwater* at paras 76, 102, 107, 114. Further, there is no clear boundary between licensed assets and other assets. For example, the sale to Persist (like many similar sales) included not only licensed assets but oil and gas rights, royalty rights, intellectual property, seismic data, vehicles and other chattels. *Redwater* gives no support to the municipalities' argument.

[21] Travelers is in no different position in its proposed appeal. As the chambers judge found, the equipment in which Travelers has a security interest is part of Mantle's gravel production business: "Jaw Crushing Plant, Cone Crushing Plant, Screen Plant, Aggregate Feeder, Aggregate Surge Bin, Material Washer, Conveyor, Truck Scale, Articulated Dump Truck, Tracked Excavator, and the like" (para 39 and see paras 40-41). These are "vehicles and other chattels" as referred to in *Manitok* quoted above. Moreover, the equipment is being used in the reclamation efforts. Mantle is not an oil and gas company but that distinction does not change the application of the reasons in *Redwater* or *Manitok*. Mantle's only business is gravel production. It has no assets unrelated to those operations. While the question of what are "assets unrelated to the environmental condition or damage" and the policy concerns related to financing businesses that have environmental obligations are significant matters, they are not arguable on the facts of this case.

[22] Additionally, Travelers cannot satisfy the factor that an appeal will not unduly hinder the progress of the action. Section 195 of the *BIA* automatically stays proceedings until an appeal is disposed of. Staying the proceedings would cause significant harm to Mantle as it is required to complete the EPOs by November 1, 2023, and it cannot continue once winter freeze sets in.

Conclusion

[23] The application for leave to appeal is dismissed. As leave has not been granted, there is no need for Mantle's cross-application.

Application heard on October 18, 2023

Reasons filed at Calgary, Alberta
this 23rd day of October, 2023

de Wit J.A.

Appearances:

T.S. Cumming
S.P. Kroeger
for the Respondent

A.E. Teasdale
for the Applicant

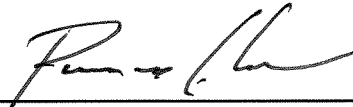
T.A. Batty
for Alberta Environment and Protected Areas

P. Kyriakakis
for the Proposal Trustee

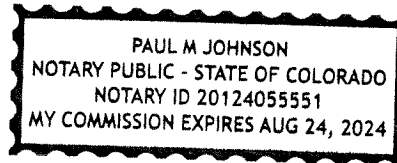
Corrigendum of the Reasons for Decision

Page 6, counsel's name "S.J. Kroeger" has been corrected to "S.P. Kroeger".

This is **Exhibit "C"** referred to in the Affidavit of
Byron Levkulich sworn before me this 1st day of November, 2023



A Notary Public for the State of Colorado





CONTRACT TO AUCTION

DATED (dd/mm/yyyy), 31/10/2023

BETWEEN:

Ritchie Bros. Auctioneers (Canada) Ltd., having its head office at 9500 Glenlyon Parkway, in the City of Burnaby, in the Province of British Columbia, V5J 0C6

Web Site: www.rbauktion.com

(the "Auctioneer")

OF THE FIRST PART

AND:

Mantle Materials Group Ltd. having a place of business at Po Box 6977, Bonnyville, AB, Canada T9N 2H4

Telephone No. 1 (587) 991-8440

E-Mail Address: cory.pichota@mantlegroup.ca

(the "Owner")

OF THE SECOND PART

TERMS AND CONDITIONS OF THIS CONTRACT

Agreement

For valuable consideration, the above parties enter into this Contract (the "Contract") which sets out their respective rights, obligations and undertakings regarding the sale by unreserved public auction of all those items described on **Schedule "A"** attached hereto (the "Equipment").

1. AUCTIONEER'S OBLIGATIONS AND RESPONSIBILITIES

1.1 Sale Date

Subject to the satisfaction or waiver of the conditions precedent in sections 4.1(a) and 4.2(a), the Auctioneer shall, as agent of the Owner, offer the Equipment, together with any

Owner Initials	
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additional items delivered by the Owner to the auction site, for sale at unreserved public auction on or about 13/12/2023 to 15/12/2023 (dd/mm/yyyy), at 1500 Sparrow Dr Nisku Alberta T9E 8H6.

1.2 Payment

The Auctioneer shall make payment to the Owner within 21 days after the auction, the amount due and owing to the Owner from monies collected from the sale of the Equipment after making all deductions permitted under this Contract.

1.3 Guarantee

The Auctioneer guarantees to the Owner that the minimum gross proceeds of the sale of the Equipment shall be [REDACTED]

1.4 Commission

The Auctioneer shall be entitled to the following commission payable at the time of the auction:

- (a) [REDACTED] of the guaranteed minimum gross proceeds set out in section 1.3; and
- (b) any proceeds realized from the sale of the Equipment in excess of the guaranteed minimum gross proceeds shall be divided:

	Proceeds Value	Auctioneer	Owner
Firstly	[REDACTED]	[REDACTED]	[REDACTED]
And Then, Remaining Proceeds			

1.5 Other

Subject to the conditions in section 4.1(a) being satisfied or waived, the Auctioneer shall:

- (a) conduct marketing of the Equipment;
- (b) arranging for the transport of the Equipment to the auction site;
- (c) upload details of the Equipment to the Auctioneers web sites (rbauktion.com and IronPlanet.com) together with photos taken of the Equipment during the Auctioneer's inspection;
- (d) advertise in local and industry-specific print and online publications and use search engine optimization to reach the widest audience of potential buyers; and
- (e) conduct direct mail and email campaigns to target select individuals from its database of customers in approximately 190 countries (by industry, region and buying preferences);

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- (f) carry out and manage all aspects of the on-site preparation and organization of the Equipment for the auction and mobilize its employees to carry out such work;
- (g) catalogue and photograph the Equipment for posting on its web site and other marketing channels, including providing listing catalogs of the lots offered for sale to potential buyers at the auction;
- (h) carry out comprehensive, integrated print and online marketing of the auction and Equipment;
- (i) organize and manage site visits and inspections of the assets by potential bidders;
- (j) enable on-site and real-time online bidding on auction day;
- (k) supply all managerial, labor, accounting and auction day personnel;
- (l) provide all on-site and auction day customer amenities including restroom facilities, first aid attendants and convenient buyer services;
- (m) provide auctioneers and accountants required for an auction of this type;
- (n) invoice and collect auction proceeds in accordance with the Auctioneer's standard auction terms;
- (o) provide detailed post-auction settlement reporting and allow the Owner access to records concerning the sale of the Equipment at the auction, excluding the names or contact information of the buyers thereof; and
- (p) collect and remit Federal and Provincial sales tax arising upon the sale of the Equipment at the auction.

1.6 Sale Site

The Auctioneer shall provide, at no cost to the Owner, a suitable site for conduct of the auction.

2. REPRESENTATIONS AND WARRANTIES

2.1 Title and Condition

The Owner hereby represents and warrants in favour of the Auctioneer that:

- (a) the Owner is a valid and subsisting corporation under the laws of Alberta and is authorized to carry on business in Alberta;
- (b) subject to the satisfaction of the conditions in sections 4.1(a)(i) and 4.1(a)(ii), the Owner has complied with all laws necessary to allow the sale of the Equipment;

Owner Initials	
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- (c) subject to the satisfaction of the conditions in sections 4.1(a)(i) and 4.1(a)(ii), the Owner has duly authorized, executed and delivered this Contract;
- (d) the Equipment is owned by the Owner, subject only to those Encumbrances listed on Schedule "B" attached;
- (e) subject to the satisfaction of the conditions in sections 4.1(a)(i) and 4.1(a)(ii), the Equipment will be, at the date of the auction, transferred and conveyed to purchasers free and clear of any and all Encumbrances;
- (f) the Equipment is in good operating condition, free of material defects, except as disclosed to the Auctioneer;
- (g) the description of the Equipment is accurately set forth on Schedule "A" attached, and in the case of all motor vehicle Equipment, such Equipment has never been rebuilt or salvaged except as disclosed to the Auctioneer;
- (h) all odometer and hour meters on the Equipment reflect actual mileage or usage unless otherwise disclosed to the Auctioneer on Schedule "A";
- (i) the offering for sale, advertising or selling of the Equipment will not contravene or infringe upon any patent, copyright, trademark, agreement or similar right of any third party; and
- (j) the Owner is not and will not at the date of the auction be a non-resident of Canada within the meaning and intent of section 116 of the *Income Tax Act* (Canada).

2.2 Auctioneer's Representations and Warranties

The Auctioneer hereby represents and warrants in favour of the Owner that:

- (a) the Auctioneer is a valid and subsisting corporation under the laws of the jurisdiction of its incorporation and is authorized to carry on business in Alberta;
- (b) the Auctioneer has duly authorized, executed and delivered this Contract; and
- (c) the Auctioneer has in place all necessary governmental and other regulatory permits and approvals for entering into this Contract and conducting the auction;

3. OWNER'S OBLIGATIONS AND RESPONSIBILITIES

3.1 Refurbishing

Subject to the conditions in section 4.1(a) being satisfied or waived, the Owner shall:

- (a) weld, sandblast, paint, clean, and refurbish (the "Refurbishing"), prior to the auction, the Equipment to a standard acceptable to the Auctioneer, provided that at the request of the Owner, the Auctioneer shall organize and pay for the

Owner Initials	
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Refurbishing of any part of the Equipment, in which event the Auctioneer shall be reimbursed for these costs plus [REDACTED] provided that the total cost shall not exceed [REDACTED] without written authorization from the Owner; and

- (b) reimburse the Auctioneer for the cost of fuel and batteries as the Auctioneer deems necessary for demonstration and sale of the Equipment.

3.2 Delivery

- (a) Subject to the conditions in section 4.1(a) being satisfied or waived, the Owner shall deliver the Equipment, at the Owner's cost, to the auction site on or before 15/11/2023 (dd/mm/yyyy):

- (i) in good operating condition, free of material defects except as disclosed to the Auctioneer, with adequate fuel and batteries and starting at the key;
- (ii) free of hazardous materials other than normal operating fuels, oils, and lubricants; and
- (iii) in a condition equivalent to or better than its condition when viewed by the Auctioneer's representative on or about 20/09/2023 (dd/mm/yyyy):

together with all documents evidencing Owner's title, and/or necessary to transfer title, to the Equipment, properly endorsed.

- (b) The Auctioneer shall be reimbursed for the reasonable costs of transportation of the Equipment to the auction site plus [REDACTED], provided that the total cost shall not exceed [REDACTED] without written authorization from the Owner.
- (c) The Owner hereby assigns Power of Attorney to the Auctioneer for the limited purpose of executing on the Owner's behalf, all documents required to transfer title to, and permit registration or ownership of, any part of the Equipment by the purchaser thereof.

3.3 Searching and Title Document

- (a) The Owner authorizes the Auctioneer to conduct searches, at the Owner's cost, or use other means available, as deemed necessary by the Auctioneer for the disclosure of Encumbrances, and contact creditors to determine amounts claimed against the Equipment, however in no case shall the Auctioneer have a duty to conduct such searches, nor be responsible for the result thereof; and
- (b) the Owner shall pay a document administration fee of CAD 115.00 per unit for each item of Equipment requiring title or registration documents that are provided by the Auctioneer.

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3.4 Risk of Loss, Insurance

Subject to the conditions in section 4.1(a) being satisfied or waived, the Owner shall:

- (a) be responsible for loss or damage to the Equipment, other than loss or damage arising as a result of the negligence of the Auctioneer, its agents or employees, until the earliest of:
 - (i) the removal of the Equipment from the auction site by the purchaser; or
 - (ii) receipt by the Owner of all proceeds from the sale of the Equipment;
- (b) insure the Equipment, with the Auctioneer as additional insured, to its fair market value against all perils so that in the event of damage to, or destruction of, the Equipment or any part thereof, all insurance proceeds shall be credited to the gross proceeds of the auction and payment made to the Auctioneer forthwith for all deductions permitted by this Contract; and
- (c) upon request, provide Auctioneer with a copy of the insurance certificate, or other documentation evidencing the Auctioneer as an additional insured, to the satisfaction of the Auctioneer.

3.5 Indemnity

Subject to the conditions in section 4.1(a) being satisfied or waived, the Owner shall defend, indemnify and save the Auctioneer, its parents, subsidiaries and affiliates, and each of their officers, directors, shareholders, employees, and agents, harmless against any and all claims, demands, suits, actions, causes of action, damages, costs or charges whatsoever arising from:

- (a) any breach of the representations, warranties or covenants set out herein;
- (b) hazardous materials associated with the Equipment or contamination resulting from any leakage, spills, or malfunction of the Equipment;
- (c) failure by the Owner to comply with any laws relating to the Owner's right to sell the Equipment;
- (d) deficiencies in the provision of documents required for the purpose of titling or registering any part of the Equipment by any purchaser thereof;
- (e) any deficiency in the compliance with applicable environmental and/or safety laws, rules or regulations; and
- (f) any infringement of a patent, copyright, trademark, agreement or similar right of any third party caused by the offering for sale, advertising or sale of any part of the Equipment.

Owner Initials	
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3.6 No Buybacks, Unreserved Auction Sale

Subject to the conditions in section 4.1(a) being satisfied or waived:

- (a) the Owner shall not bid, directly or indirectly, nor allow any other person to bid on the Owner's behalf or for the Owner's benefit, by agency or otherwise, on the Equipment or any part thereof at the auction and
- (b) the Owner acknowledges the auction is unreserved and the Auctioneer shall have no obligation or duty to withdraw the Equipment or any part thereof from the auction sale or to cancel the auction. The Equipment shall be sold to the highest bidder on the date of the auction.

3.7 Specific Performance

Subject to the conditions in section 4.1(a) being satisfied or waived, the Owner shall not withdraw the Equipment or any part thereof from the auction sale. If the Owner is in breach of this provision within forty (40) days prior to the auction, then in addition to any other remedies set out in this Contract, the parties hereto agree:

- (a) the damages to the Auctioneer's business reputation and customer relations are not readily ascertainable;
- (b) available remedies at law are not adequate in the event of breach; and
- (c) the Auctioneer may not be made whole solely by monetary recompense;

therefore, the Auctioneer may elect, at its sole option, to apply for an order for specific performance of this Contract and the Owner hereby waives all rights to object to such application.

3.8 Other

Subject to the conditions in section 4.1(a) being satisfied or waived, the Owner shall:

- (a) comply with all legislation, regulations, or requirements of any authority of competent jurisdiction relating to the sale of the Equipment; and
- (b) be responsible for the payment of any tax or duty whatsoever that may legally be construed as being the responsibility of the Owner.

4. CONDITIONS PRECEDENT

4.1 Owner's Conditions Precedent

- (a) The obligations of the Owner under this Contract are subject to the satisfaction or waiver of the following conditions precedent:

Owner Initials	
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- (i) the Court of King's Bench of Alberta (the "**Court**") shall have issued an Order (the "**Approval Order**") approving this Contract and, effective upon a purchaser paying to the Auctioneer the purchase price for an item of Equipment, vesting all the right, title and interest of the Owner in and to the Equipment free and clear of any and all caveats, security interests, hypothecs, pledges, mortgages, liens, trusts or deemed trusts, reservations of ownership, royalties, options, rights of pre-emption, privileges, interests, assignments, actions, judgements, executions, levies, taxes, writs of enforcement, charges, or other claims, whether contractual, statutory, financial, monetary or otherwise, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Encumbrances**", and individually, an "**Encumbrance**");
 - (ii) there shall not be any appeal of, or application to set aside, stay, vary or amend the Approval Order which has not been abandoned or dismissed;
 - (iii) all representations and warranties of the Auctioneer shall be true in all material respects; and
 - (iv) the Auctioneer shall have duly executed and delivered this Contract.
- (b) Each of the conditions in section 4.1(a) has been inserted for the benefit of the Auctioneer, and may, without prejudice to any rights of the Auctioneer hereunder, be waived by notice in writing to the Owner.

4.2 Auctioneer's Conditions Precedent

- (a) The obligations of the Auctioneer under this Contract are subject to the satisfaction or waiver of the following conditions precedent:
- (i) the Court shall have issued the Approval Order;
 - (ii) there shall not be any appeal of, or application to set aside, stay, vary or amend the Approval Order which has not been abandoned or dismissed;
 - (iii) all representations and warranties of the Owner shall be true in all material respects;
 - (iv) the Owner shall have duly executed and delivered this Contract; and
- (b) Each of the conditions in section 4.2(a) has been inserted for the benefit of the Auctioneer, and may, without prejudice to any rights of the Auctioneer hereunder, be waived by notice in writing to the Owner.

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5. MUTUAL AGREEMENTS

5.1 Timeliness

Time is of the essence of this Contract.

5.2 Waiver

A waiver by either party of any breach of any of the provisions herein shall be limited to such particular instance and shall not operate as a waiver of, or be deemed to waive, any other or future breaches of the same or any other provisions hereof.

5.3 Legal Costs

Should either party be required to participate in any action or proceeding in respect of this Contract, the prevailing party shall be entitled to recover all costs, including attorney's fees, incurred as a result thereof.

5.4 Prohibition of Pre-Sale

Subject to the conditions in section 4.1(a) being satisfied or waived, neither the Auctioneer nor the Owner shall sell or offer for sale any part of the Equipment prior to the auction without the written permission of the other.

5.5 Default by Owner

- (a) Subject to the conditions in section 4.1(a) being satisfied or waived, if:
- (i) the Owner withdraws or fails to timely deliver the Equipment or any part thereof or any documents required hereunder, or if the auction sale does not occur as a result of the actions or inaction of the Owner; or
 - (ii) the Owner, directly or indirectly, bids or permits another to bid on the Owner's behalf or for the Owner's benefit, on the Equipment or any part thereof at the auction; or
 - (iii) the Owner's representations and warranties set out in Section 2 hereof are not true, complete and correct in all respects;
- then:
- (iv) any damages suffered by the Auctioneer shall be deducted from the guarantee of minimum gross proceeds from the sale of the Equipment;
 - (v) commissions shall be payable to the Auctioneer upon demand, based upon the fair market value of any withdrawn or undelivered parts of the Equipment as if they had been sold;

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- (vi) any advances made by the Auctioneer to the Owner together with accrued interest shall become due and repayable immediately; and
 - (vii) the Owner will upon demand, reimburse the Auctioneer for all out-of-pocket expenses incurred in preparation for the auction.
- (b) Subject to the conditions in section 4.1(a) being satisfied or waived, if, as a result of the actions or inactions of the Owner, the Auctioneer's guarantee of minimum gross proceeds from the sale of the Equipment is unenforceable, the commission rate to be paid by Owner to the Auctioneer shall be [REDACTED] of the gross proceeds on Equipment sold at the auction or, in the case of Equipment not sold at the auction, [REDACTED] of the fair market value of such Equipment.
- (c) Subject to the conditions in section 4.1(a) being satisfied or waived, in the event the Owner is in violation of section 5.5(a)(ii), in addition to any other rights or remedies the Auctioneer may have under this Contract, the Auctioneer shall, at its sole discretion, have the right to sell or re-sell the Equipment by public or private sale and the Owner shall pay to the Auctioneer as liquidated damages in addition to all other amounts due hereunder, an amount equal to [REDACTED] of the proceeds realized from such sale or resale.

5.6 Auctioneer's Right to Withdraw Equipment from Sale

Subject to the conditions in section 4.2(a) being satisfied or waived, if there are any Encumbrances against an item of Equipment which are not vested out and discharged by the Approval Order or the Owner is in breach of any of its representations or warranties under section 2.1 with respect to any Equipment, the Auctioneer shall have the right in its sole discretion to remove such Equipment from Schedule A and reduce the guaranteed minimum gross proceeds by an amount determined by the Auctioneer, acting reasonably.

5.7 Creation of Lien

Subject to the conditions in section 4.1(a) being satisfied or waived, in addition to any other rights or remedies available to the Auctioneer, this Contract creates a lien and charge upon the Equipment and may be registered under any applicable personal property security legislation as may be in effect from time to time and entitles the Auctioneer to seize and retain possession of the Equipment as security for, and/or to sell the Equipment to recover, all sums owing hereunder.

5.8 Use of Equipment

Subject to the conditions in section 4.1(a) being satisfied or waived, the Owner authorizes the Auctioneer to operate the Equipment for purpose of demonstrating it at the auction.

Owner Initials	
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5.9 Lots

Subject to the conditions in section 4.1(a) being satisfied or waived, the Auctioneer may divide the Equipment into such lots as it may in its absolute discretion deem desirable for sale at the auction. The Auctioneer shall not be liable for any loss or damages claimed in respect of the manner in which the Equipment is divided into lots nor in respect of any failure to divide the Equipment into lots.

5.10 Transaction Fee

Subject to the conditions in section 4.1(a) being satisfied or waived, the Owner acknowledges that the Auctioneer may charge purchasers a transaction fee based on the selling price of each lot, provided that the transaction fee for each lot shall not exceed: (a) [redacted] on all Lots selling for [redacted] or less, with a minimum fee of [redacted] per Lot, (b) [redacted] on all Lots selling for over [redacted] up to [redacted], with a minimum fee of [redacted] per Lot or, (c) [redacted] on all Lots selling for over [redacted].

5.11 Collection of Proceeds

Subject to the conditions in section 4.1(a) being satisfied or waived, the Auctioneer shall collect the full proceeds from the sale of the Equipment and the Owner assigns to the Auctioneer:

- (a) the amount required to discharge and satisfy all Encumbrances in respect of the Equipment which are not vested out and discharged by the Court Order; and
- (b) all amounts payable to the Auctioneer hereunder, including commission, and any advances, together with interest thereon which shall be repayable at the time of the sale.

5.12 Auctioneer's Right of Set-Off

The Auctioneer may, in its discretion, apply any proceeds from the sale of the Equipment towards any outstanding amounts otherwise due and owing by the Owner to the Auctioneer in connection with any purchases, deficiencies or services rendered by the Auctioneer.

5.13 Uncollected Proceeds

The Auctioneer may, as it deems necessary, re-auction any part of the Equipment not sold or paid for at the auction and the Owner acknowledges that no monies in excess of the guaranteed minimum gross proceeds, less all deductions permitted under this Contract, shall be payable by the Auctioneer for any part of the Equipment until it has been paid for in full by the purchaser thereof.

5.14 Other Consignments

Equipment belonging to other owners may be sold at the auction.

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5.15 Owner's Name

The Owner authorizes the Auctioneer to use Owner's name, trademark and logo in advertising the auction.

5.16 Entire Agreement

This Contract:

- (a) constitutes the entire agreement between the parties and supersedes and takes the place of all prior contracts, understandings, representations or warranties;
- (b) may not be amended except in writing. There are no understandings, agreements, promises, terms, conditions, or warranties expressed or implied, whether orally or by law, statute or trade usage, other than as specifically stated herein; and
- (c) shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns.

5.17 Internet Bidding and Timed Auction Lot System

The Auctioneer may in its sole discretion offer certain lots for sale, in conjunction with its public unreserved auction, to registered bidders using its proprietary online bidding service or using its silent "timed auction lot" system. The Auctioneer shall use its best effort to ensure that such technologies and systems are available at all auctions for which they have been advertised, however at any given sale

- (a) only those lots which the Auctioneer deems appropriate shall be offered using such technologies and systems, and
- (b) certain circumstances concerning the Internet and the technology in use are beyond the Auctioneer's control, and such systems may not be available at any given time or auction.

5.18 The Auctioneer shall not be liable for any claims, demands, suits, actions, causes of action, damages, costs or charges arising from the Auctioneer's decision whether or not to use such technologies or systems or its failure to offer such systems at any time, other than arising as a result of the Auctioneer's negligence or willful misconduct.

5.19 Force Majeure

Neither party shall be held liable or responsible to the other party nor be deemed to have defaulted under or breached this Contract for failure or delay in fulfilling or performing any term of this Contract when such failure or delay is caused by or results from causes beyond the reasonable control of the affected party, including but not limited to fires, strikes, floods, adverse weather that has the potential to injure persons or damage property, acts of war, terrorism, riot, or public disorder, acts of God, lawful acts of public authorities or electronic failures and internet service provider disruptions.

Owner Initials	
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5.20 Jurisdiction

This Contract is subject to and governed by the laws of the Province of Alberta. Any legal action brought by a party arising from or relating to this Contract shall be litigated exclusively in the Court in Calgary, Alberta, and the parties irrevocably attorn to the exclusive jurisdiction of such court for the resolution of such disputes.

5.21 Notice

Any notice given hereunder shall be delivered by prepaid registered mail to the parties hereto at the address set out on page 1, with any notice to the Auctioneer sent to the attention of Legal Affairs.

5.22 Headings

All headings in this Contract are for reference purposes only and this Contract shall be interpreted without reference to such headings.

5.23 Severability

If any provision of this Contract is held by a court of competent jurisdiction to be contrary to law, then the remaining provisions of this Contract will remain in full force and effect.

5.24 Execution by Facsimile, Electronic Transmission and Counterpart

This Contract may be executed by fax, PDF, or other electronic transmission and in counterpart, each of which when taken together shall be deemed to constitute an original and form part of the same document, and, upon acceptance by the Auctioneer, be effective and binding on both parties.

5.25 Privacy

Information provided in this Contract will be retained by the Auctioneer in accordance with its formal Privacy Statement, provided on the Auctioneer's website at www.rbauktion.com.


5.26 Further Assurances

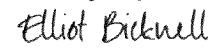
The parties shall execute such further documents and do any and all such further things as may be necessary to implement and carry out the intent of this Contract.

[signature page follows]

Owner Initials	
DS CP	DS EB

IN WITNESS WHEREOF this Contract has been executed by the parties hereto as of date first above written.

Owner Name:	Mantle Materials Group, Ltd	Title:	COO
Authorized Person:	Cory Pichota	Date Signed:	31/10/2023 (dd/mm/yyyy)
Signature:	DocuSigned by:  <small>AFF40145FC37410</small>		

RITCHIE BROS. AUCTIONEERS (CANADA) LTD			
Name:	Elliot Bicknell	Title:	Territory Manager
Signature:	DocuSigned by:  <small>6413157AE671460</small>	Date Signed:	31/10/2023 (dd/mm/yyyy)

Attached to and forming part of
CONTRACT TO AUCTION

LIENHOLDER INFORMATION

Owner's Name:


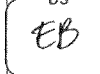
Mantle Materials Group Ltd

Auction Site	Auction Location
Edmonton, AB.CAN - Dec 14, 2023	Nisku, Alberta

Encumbrances:

Administration Charge, Interim Facility Charge and Directors' and Officers' Charge granted pursuant to the Orders of the Honourable Justice Feasby of the Court of King's Bench of Alberta made as of August 15, 2023 and August 28, 2023.


Fiera Private Debt Fund VI LP
Fiera Private Debt Fund V LP
Canadian Western Bank
Travelers Capital Corp.


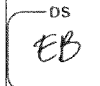
Owner Initials	
<small>DS</small> 	<small>DS</small> 

Crestmark, a division of Metabank, National Association
 Metabank, National Association
 Pathward, National Association
 Alberta Auto Finance Ltd.
 RLF Canada Lender Limited
 ATB Financial

To Whom It May Concern:

The undersigned party hereby authorizes Ritchie Bros. Auctioneers (Canada) Ltd. (the **"Auctioneer"**) to conduct searches and contact creditors as required for the disclosure of liens, charges and encumbrances and to determine amounts claimed against the equipment (the **"Equipment"**) described on the attached Schedule "A". The undersigned further consents to the release to the Auctioneer of any and all information pertaining to any such lien, charge or other encumbrance or security interest claimed in any assets of the undersigned.

Owner Name:	Mantle Materials Group Ltd		
Authorized Person:	Cory Pichota	Title:	COO
Signature:		Date Signed:	31/10/2023 (dd/mm/yyyy)

Owner Initials	
	

SCHEDULE A Part of a Contract to Auction

Owner's Name:

Mantle Materials Group Ltd

Auction Site	Auction Location
Edmonton, AB, CAN - Dec 14, 2023	Nisku, Alberta

#	Item Description
1	Owner Equipment ID: BF100 Year: 2014 Manufacturer: Elrus Model: 42 belt feeder Description: 2014 Elrus 42 belt feeder 8 ft x 15 ft 42 In T/A Aggregate Feeder Machine Type: Aggregate Feeder S/N: M6443ERC14F Tires / U/C: 55% C/W: Hydraulic Raise Grizzly
2	Owner Equipment ID: CY001 Year: 2007 Manufacturer: Superior Description: 2007 Superior 36 in x 60 ft Portable Radial Stacking Conveyor Machine Type: Conveyor S/N: 725207 Tires / U/C: 60 C/W: Manual Raise. Electric Radial Drive. Pintle Ring
3	Owner Equipment ID: CY002 Year: 2008 Manufacturer: Superior Description: 2008 Superior 36 in x 60 ft Portable Radial Stacking Conveyor Machine Type: Conveyor S/N: 860808 Tires / U/C: 70 C/W: Manual Raise. Electric Radial Drive. Pintle Ring
4	Owner Equipment ID: CY003 Year: 2008 Manufacturer: Superior Description: 2008 Superior 36 in x 60 ft Portable Radial Stacking Conveyor Machine Type: Conveyor S/N: 860708 Tires / U/C: 50 C/W: Manual Raise. Electric Radial Drive. Pintle Ring
5	Owner Equipment ID: CY004 Year: 2007 Manufacturer: Superior Description: 2007 Superior 36 in x 60 ft Portable Transfer Conveyor Machine Type: Conveyor S/N: 819007 Tires / U/C: 50 C/W: Manual Raise. Electric Radial Drive. Pintle Ring
6	Owner Equipment ID: CY005 Year: 2011 Manufacturer: Superior Description: 2011 Superior 36 in x 125 ft Portable Radial Stacking Conveyor Machine Type: Conveyor S/N: 216044 Tires / U/C: 60 C/W: Folding End Section. Hydraulic Raise. Electric Radial Drive. Kingpin

Owner Initials	
CS	DS
CP	EB

7	<p>Owner Equipment ID: CY006 Manufacturer: Superior Description: Superior 36 in x 60 ft Portable Transfer Conveyor Machine Type: Conveyor S/N: 8191 Tires / U/C: 50 C/W: Manual Raise, Electric Radial Drive, Pintle Ring</p>
8	<p>Owner Equipment ID: CY007 Manufacturer: TelSmith Description: TelSmith 20 in x 40 ft Portable Transfer Conveyor Machine Type: Conveyor S/N: PK40T274 Tires / U/C: 30 C/W: Hydraulic Raise, Electric Radial Drive, Pintle Ring</p>
9	<p>Owner Equipment ID: EX001 Year: 2012 Manufacturer: Komatsu Model: PC290LC-10 Description: 2012 Komatsu PC290LC-10 Tracked Excavator Machine Type: Tracked Excavator S/N: KMTPC241E54A25013 Hrs/Mil: 7165.0 Hours Tires / U/C: 60 EPA: EPA C/W: Air Conditioner, Air Ride Seat, Cab Screens, Rear View Camera, 2011 US EPA Label, 10 ft 8 in Stick, 31.5 in Triple Grouser Track Shoes, Manual Quick Coupler, 67 in Cleanup Bucket, Additional 45 in Digging Bucket, Hydraulic Thumb, Catwalks</p>
10	<p>Owner Equipment ID: EX002 Year: 2013 Manufacturer: Komatsu Model: PC490LC-10 Description: 2013 Komatsu PC490LC-10 Tracked Excavator Machine Type: Tracked Excavator S/N: KMTPC239C54A40412 Hrs/Mil: 8838.0 Hours Tires / U/C: 60 EPA: EPA C/W: Air Conditioner, Air Ride Seat, Tier 4, US EPA Label, Positive Air Shutoff, 13 ft Stick, 35.5 in Triple Grouser Track Shoes, Manual Quick Coupler, 82 in Cleanup Bucket</p>
11	<p>Owner Equipment ID: FL001 Year: 2001 Manufacturer: Toyota Model: 7FGU30 Description: 2001 Toyota 7FGU30 6000 lb Pneumatic Tire Forklift Machine Type: Pneumatic Tire Forklift S/N: 61607 Hrs/Mil: 18212.0 Hours Tires / U/C: 50 C/W: 3 Stage Mast, 131 in Max Lift Height, 85 in Lowered Mast Height, 48 in Forks, Side Shift, Solid Pneumatic Tires</p>
12	<p>Owner Equipment ID: PT001 Year: 2015 Manufacturer: Chevrolet Model: 2500 Description: 2015 Chevrolet 2500 LTZ 4x4 Crew Cab Pickup Machine Type: Pickup S/N: 1GCTKWEG7FF613309 Hrs/Mil: 291503.0 KM Tires / U/C: 70 EPA: EPA C/W: 6.0 L V8 Engine, 2015 US EPA Label, Automatic Transmission, Air Conditioner, Power Driver's Seat, Power Windows, Sunroof, Power Sliding Rear Window, Fuel Tank, DeeZee Tool Box, Spray-On Bed Liner, 9500.0 lb GVWR, 275-65R18 Tires, 6 ft 6 in Bed</p>

Owner Initials	
DS CP	DS EB

13	Owner Equipment ID: PT002 Year: 2013 Manufacturer: Chevrolet Model: 2500 Description: 2013 Chevrolet 2500 LTZ 4x4 Crew Cab Pickup Machine Type: Pickup S/N: 1GC1KYEG5DF106658 Hrs/Mil: 213467.0 KM Tires / U/C: 70 EPA: EPA C/W: 6.0 L V8 Engine, 2013 US EPA Label, Automatic Transmission, Air Conditioner, Power Driver's Seat, Power Windows, Fuel Tank, DecZee Tool Box, Spray-On Bed Liner, 9500.0 lb GVWR, 275/65R18 Tires, 6 ft 6 in Bed
14	Owner Equipment ID: PT003 Year: 1985 Manufacturer: GMC Model: P3500 Description: 1985 GMC P3500 4x2 Parts Van Truck Machine Type: Van Truck S/N: 1GDHP32T3F3510093 Hrs/Mil: 396107.0 KM Tires / U/C: 40 C/W: 6 Cylinder 4.8 L Engine, Manual Transmission, 10000.0 lb GVWR, 8R19.5, Spring Suspension, 160 in Wheelbase, x 82 in Wide x 92 in High Body, Liftgate
17	Owner Equipment ID: PT006 Year: 2008 Manufacturer: Ford Model: F-350 Description: 2008 Ford F-350 XL 4x4 Crew Cab Pickup Machine Type: Pickup S/N: 1FTWW31518EE16691 Hrs/Mil: 312254.0 KM Tires / U/C: f10 r 40 EPA: EPA C/W: 6.4 L V8 Diesel Engine, 2008 US EPA Label, Automatic Transmission, Air Conditioner, Headache Rack, Fuel Tank /w Pump, 11000.0 lb GVWR, 275/70R18 Tires, 8 ft Bed
18	Owner Equipment ID: PT034 Year: 2019 Manufacturer: Ford Model: F-150 Description: 2019 Ford F-150 XLT 4x4 Crew Cab Pickup Machine Type: Pickup S/N: 1FTFW1E52KFC66669 Hrs/Mil: 127038.0 KM Tires / U/C: 60 EPA: EPA C/W: 5.0 L V8 Engine, 2019 US EPA Label, Automatic Transmission, Air Conditioner, Power Windows, 7050.0 lb GVWR, 265/70R17 Tires, 6 ft 6 in Bed
19	Owner Equipment ID: RG001 Manufacturer: Grizzly Description: Grizzly Rock Separator Machine Type: :Misc. Industrial C/W: 8 x 15ft

DS
CP

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EB

Owner Initials	
DS CP	DS EB

20	<p>Owner Equipment ID: RT001 Year: 2008 Manufacturer: Komatsu Model: HM300-2 Description: 2008 Komatsu HM300-2 Articulated Dump Truck Machine Type: Articulated Dump Truck S/N: KMTHM005K54A11150 Hrs/Mil: 11913.0 Hours Tires / U/C: F 39-40% R done EPA: EPA C/W: Air Conditioner, Retarder, Air Ride Seat, E-Stops, 2006 US EPA Label, Positive Air Shutoff, Heated Body, Steel Body Liner, 23.5R25 Tires</p>
21	<p>Owner Equipment ID: RT002 Year: 2014 Manufacturer: Komatsu Model: HM300-3 Description: 2014 Komatsu HM300-3 Articulated Dump Truck Machine Type: Articulated Dump Truck S/N: KMTHM011H29003484 Hrs/Mil: 10160.0 Hours Tires / U/C: 65-70% EPA: EPA C/W: Air Conditioner, Retarder, Rear View Camera, Air Ride Seat, E-Stops, 2013 US EPA Label, Positive Air Shutoff, Heated Body, Tailgate, 750/65R25 Tires</p>
22	<p>Owner Equipment ID: SB100 Year: 2011 Manufacturer: Elrus Model: 30YRDSB Description: 2011 Elrus 30YRDSB Aggregate Surge Bin Machine Type: Aggregate Surge Bin S/N: M5379ERC11SB Tires / U/C: 50</p>
23	<p>Owner Equipment ID: SC001 Year: 1975 Manufacturer: Eagle Iron Works Description: 1975 Eagle Iron Works Sand Screw Machine Type: :Misc. Industrial S/N: 9789 C/W: 30 in x 24 ft</p>
24	<p>Owner Equipment ID: SS001 Manufacturer: Custom Built Description: Custom Built 8 ft 4 in x 6 ft 10 in Skid-Mounted Scale Shack Machine Type: :Misc. Portable Structure</p>
25	<p>Owner Equipment ID: TP001 Year: 2008 Manufacturer: Magnum Model: P4097L1-E410 Description: 2008 Magnum P4097L1-E410 4 In S/A Diesel Machine Type: :Misc. Pump S/N: 5AJGS11168B000784 Hrs/Mil: 84467.0 Hours Tires / U/C: 60 EPA: EPA C/W: 4 in Intake, 4 in Discharge, Self Priming Diaphragm Water Pump, 2006 US EPA Label, John Deere 4 Cylinder 49 kW 2.4 L Diesel Engine, S/A Trailer, Ball Hitch, Electric Brakes</p>

Owner Initials	
DS CP	DS EB

26	<p>Owner Equipment ID: TP002 Year: 2008 Manufacturer: Magnum Model: P4097L1-E410 Description: 2008 Magnum P4097L1-E410 4 In S/A Diesel Machine Type: Misc. Pump S/N: 5AJGS11198B000746 Hrs/Mil: 73033.0 Hours Tires / U/C: 50 EPA: EPA C/W: 4 in Intake, 4 in Discharge, Self Priming Diaphragm Water Pump, 2006 US EPA Label, John Deere 4 Cylinder 49 kW 2.4 L Diesel Engine, S/A Trailer, Ball Hitch, Electric Brakes</p>
27	<p>Owner Equipment ID: WL004 Year: 2012 Manufacturer: Komatsu Model: WA380-7 Description: 2012 Komatsu WA380-7 Wheel Loader Machine Type: Wheel Loader S/N: KMTWA118A01010060 Hrs/Mil: 15015.0 Hours Tires / U/C: 50-60% EPA: EPA C/W: Enclosed Cab, Air Conditioner, Rear View Camera, Air Ride Seat, Ride Control, Autoshift, Compuload 4000 On-Board Scale w/Printer, E-Stops, 2011 US EPA Label, 114 in Bucket, 23.5R25 Tires</p>
28	<p>Owner Equipment ID: WL005 Year: 2014 Manufacturer: Case Model: SR200 Description: 2014 Case SR200 Skid Steer Loader Machine Type: Skid Steer Loader S/N: JAFSR200KEM467993 Hrs/Mil: 9412.0 Hours Tires / U/C: 40 C/W: Enclosed Cab, Air Ride Seat, Control Pattern Changer, 7 Pin Electric Kit, Hydraulic Coupler, 73 in Bucket</p>
29	<p>Owner Equipment ID: WL016 Year: 2013 Manufacturer: Cat Model: 246C Description: 2013 Cat 246C Two-Speed Skid Steer Loader Machine Type: Skid Steer Loader S/N: CAT0246CVJAY08691 Hrs/Mil: 22008.0 Hours Tires / U/C: 50% C/W: Enclosed Cab, Air Conditioner, Air Ride Seat, Joystick Steering, E-Stops, Hydraulic Coupler, 79 in Bucket, Forks, Counterweight Kit</p>
30	<p>Owner Equipment ID: WL017 Year: 2012 Manufacturer: Volvo Model: L220G Description: 2012 Volvo L220G Wheel Loader Machine Type: Wheel Loader S/N: VCEL220GC00012444 Hrs/Mil: 21127.0 Hours EPA: EPA C/W: Enclosed Cab, Air Conditioner, Rear View Camera, Air Ride Seat, Autoshift, VEI On-Board Scale w/Printer, E-Stops, 2012 US EPA Label, 132 in Bucket, 875/65R29 Tires</p>
31	<p>Owner Equipment ID: WP001 Year: 2006 Manufacturer: Trio Description: 2006 Trio 18 Ft x 36 In Coarse Washer Machine Type: Misc. Industrial S/N: TCW3618-178</p>

Owner Initials	
DS CP	DS EB

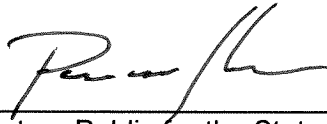
32	<p>Owner Equipment ID: TL001 Year: 1995 Manufacturer: Bonair Model: BA-19SS Description: 1995 Bonair BA-19SS 16 ft T/A Testing Travel Trailer Machine Type: Travel Trailer S/N: 2BL2RSH29S2450233 Tires / U/C: 50 C/W: Bumper Pull. Spring Suspension. Electric Brakes. 205/75R15 Tires</p>
33	<p>Owner Equipment ID: CC100 Year: 2008 Manufacturer: Elrus Model: H4800 Description: 2008 Elrus H4800 Closed Circuit Cone Crusher Machine Type: Cone Crusher S/N: M4768ER08CC Tires / U/C: 60% C/W: Sandvik P4800 Cone Crusher. 300 hp Drive Motor. 36 in Wide Feed Conveyor. 42 in Wide Under Crusher Conveyor. Magna-Skin 39 in x 0 ft 30 in Cross Belt Magnet. Tri'A Carrier. Walking Beam. Hydraulic Leveling</p>
34	<p>Owner Equipment ID: JS100 Year: 2015 Manufacturer: Elrus Model: 2054 Description: 2015 Elrus 2054 Portable Incline Jaw Screen Plant Machine Type: Screen Plant S/N: M6545ERC15JS Tires / U/C: 65% C/W: ELRUS 2054 54 in x 20 in Jaw Crusher. 125 hp Drive Motor. 20 ft x 6 ft Double Deck Screen. 60 in Wide Under Crusher Conveyor. 60 in Wide Under Screen Conveyor. 36 in Conveyor. 16 wheel. Walking Beam. Hydraulic Leveling</p>
35	<p>Owner Equipment ID: SP100 Year: 2008 Manufacturer: Elrus Model: 6X20-3DSP Description: 2008 Elrus 6X20-3DSP Portable Incline 6 x 20 Screen Plant Machine Type: Screen Plant S/N: M4544ER08SP Tires / U/C: 55% C/W: 20 ft x 6 ft Triple Deck Screen. 42 in Wide Feed Conveyor. 60 in Wide Under Screen Conveyor. 34 in Wide Left Discharge Conveyor. 34 in Wide Right Discharge Conveyor. T/A Carrier. Walking Beam. Hydraulic Leveling</p>
36	<p>Owner Equipment ID: PV100 Year: 2008 Manufacturer: Vanguard Description: 2008 Vanguard 500 kW Mobile Control Tower Control Van with Switch Gear Machine Type: Control Van with Switch Gear S/N: 5V8VA53218M806072 Tires / U/C: 50-60% C/W: Cummins Engine. 500 kW Rated 3 Phase Output. 480 V Rated Voltage. 455 kW. Rated Single Phase Output. 208 V Rated Voltage. E-Stops. T/A Trailer. Air Brakes. Elrus Tower (M4540ER08CT). compressor. work bench. tool box. 7773L under body fuel tank.</p>
37	<p>Owner Equipment ID: LT003 Year: 2013 Manufacturer: Doosan Model: L8 Description: 2013 Doosan L8 8 kW 60 Hz T4F Light Tower Machine Type: Light Tower S/N: 4FVLTBDA7DU449843 Hrs/Mil: 9849.0 Hours Tires / U/C: 50 EPA: EPA C/W: 2012 US EPA Label. Kubota 3 Cylinder 12.6 kW 1.1 L Diesel Engine. 4 Lamps. Balloon Diffuser. Power Receptacles. S/A Trailer. Lunette Ring. Electric Brakes</p>

Owner Initials	
DS CP	DS EB

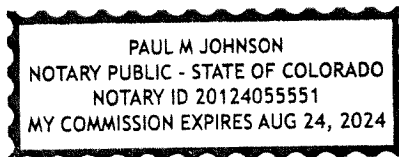
38	<p>Owner Equipment ID: LT006 Year: 2012 Manufacturer: Magnum Model: MLT5080K Description: 2012 Magnum MLT5080K 9 kW Light Tower Machine Type: Light Tower S/N: 5AJLS1612CB004671 Hrs/Mil: 20518.0 Hours EPA: EPA C/W: 2011 US EPA Label. Kubota D1105 16.5 kW Diesel Engine. 4 Lamps. S/A Trailer. Lunette Ring</p>
39	<p>Owner Equipment ID: FT001 Year: 2012 Manufacturer: Westeel Description: 2012 Westeel 11000 L Skid Mounted Steel Fuel Tank Machine Type: Fuel Tank S/N: 63120429 C/W: 12 V Transfer Pump. Fuel Meter. Automatic Shut-Off Nozzle</p>
40	<p>Owner Equipment ID: OF001 Year: 1990 Manufacturer: National Trailer Description: 1990 National Trailer 24 ft x 8 ft Portable T/A Mobile Office Machine Type: Mobile Office S/N: 2N9M08324L1013860 Tires / U/C: 60 C/W: Lunette Ring Hitch. Spring Suspension. Electric Brakes. 225/75R15 Tires</p>
41	<p>Owner Equipment ID: TV100 Year: 1981 Manufacturer: Fruehauf Model: FB9 F2W Description: 1981 Fruehauf FB9 F2W 53 ft x 96 in T/A Van Trailer Machine Type: Van Trailer S/N: 2H8V04523BS004517 Tires / U/C: 40 C/W: 36000.0 kg GVWR. Walking Beam Suspension. Air Brakes. Curbside Door. 11R22.5 Tires</p>
42	<p>Owner Equipment ID: TS001 Year: 2013 Manufacturer: Rice Lake Model: EZ8010 Description: Quantity of (3) 2013 Rice Lake EZ8010 ATV Portable Truck Scale Machine Type: Truck Scale S/N: 3FBP C/W: 80ft of scale.</p>
43	<p>Owner Equipment ID: TS002 Year: 2009 Manufacturer: Ancoma Model: PV5301030S Description: 2009 Ancoma PV5301030S Portable Truck Scale Machine Type: Truck Scale S/N: 301109 C/W: 10 Ft x 30 Ft</p>
44	<p>Owner Equipment ID: TS003 Year: 2015 Manufacturer: Precision Model: ETS119090 Description: 2015 Precision ETS119090 11 Ft x 90 Ft Truck Scale - Fits Truck Machine Type: Truck Scale S/N: 15-595 C/W: rub rails & Indicator s/n 1703600068. 3 section.</p>
45	<p>Description: 66 in Q/C Cleanup Excavator Bucket Machine Type: Excavator Bucket</p>

Owner Initials	
DS CP	DS EB

This is **Exhibit "D"** referred to in the Affidavit of
Byron Levkulich sworn before me this 1st day of November, 2023



A Notary Public for the State of Colorado





October 24, 2023

Private & Confidential

Mantle Materials Group, Ltd.
3203 93 St NW,
Edmonton, Alberta
T6N 0B2
Attention: Cory Pichota, President & Chief Operating Officer

Dear Mr. Pichota:

Further to Mantle Materials Group Ltd.'s ("Mantle") request for the names and contact information of Atlas Aggregates Inc.'s ("Atlas") shareholders for the purposes of soliciting interest in a potential sale of Mantle's share ownership position in Atlas, legal counsel has advised that Atlas is unable to disclose this information to Mantle due to privacy concerns related to the collection of personal information.

However, Atlas' Board of Directors are prepared to consider whether Atlas would consider making an offer to acquire Mantle's share ownership position in Atlas. If Atlas's Board of Directors determines that it will not pursue this opportunity, then it will provide Mantle's contact information (and that of its Trustee) to all Atlas' shareholders and interested parties will be free thereafter to contact you directly regarding the prospective sale.

Also, with respect to your request regarding Atlas' 2023 Financial Statements, we anticipate delivering such to all Atlas shareholders, including Mantle, in due course.

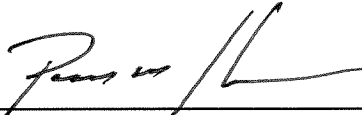
Please do not hesitate to contact the undersigned if you wish to discuss this matter further.

Yours very truly,
Atlas Aggregates Inc.

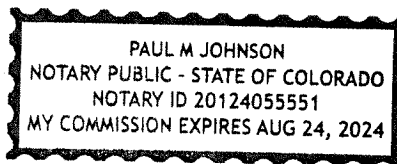
Glenn N. Huber
Chairman

c.c. S. Mullie, Atlas Aggregates Inc.

This is **Exhibit "E"** referred to in the Affidavit of
Byron Levkulich sworn before me this 1st day of November, 2023



A Notary Public for the State of Colorado





October 25, 2023

Thomas Cumming
Direct +1 403 298 1938
tom.cumming@gowlingwlg.com

By email, personal delivery and registered mail

Atlas Aggregates Inc.
600, 438-11th Avenue SE
Calgary, AB T2G 0Y4
Brienne@jankelawgroup.com
glenn@chrysaliscapital.ca

Attention: Mr. Glenn Huber

Dear Sir:

Re: Atlas Aggregates Inc. ("Atlas")

We represent Mantle Materials Group, Ltd. ("**Mantle**"), a shareholder of Atlas. Mr. Cory Pichota, the President of Mantle, requested from Mr. Glenn Huber a list of shareholders of Atlas together with their contact details. Mr. Huber refused this request, alleging privacy concerns, and followed-up his refusal in a letter to Mantle dated October 24, 2023 from Atlas to Mantle, Atlas refused to disclose this information, stating privacy concerns.

Privacy rules do not apply to the information requested by Mantle. Under section 23(1) of the *Business Corporations Act* of Alberta (the "**ABCA**"), directors and shareholders of a corporation, together with their agents and legal representatives, may examine the records of the corporation referred to in section 21(1) of the *ABCA* during the usual business hours of the corporation free of charge. Under section 21(1)(d) of the *ABCA*, the records include the securities register provided for in section 49. Under section 49(1) of the *ABCA*, the securities register includes the name and current contact information of each person who is or has been a security holder, the number of securities held by each security holder, and the date and particulars of the issue and transfer of each security. The requirement to make this information available to shareholders of Atlas is mandatory, and not subject to Atlas' discretion.

We are also concerned that Atlas indicated in its October 24, 2023 letter that it is interested in making an offer to purchase the shares of Mantle in Atlas, and yet is not prepared to ensure that other shareholders of Atlas also have an opportunity to purchase those shares. The directors of Atlas have a fiduciary duty to exercise their powers and discretions in a disinterested manner, and it is not appropriate that they withhold a potential opportunity to acquire shares until after they have determined they would forgo the offer.

Therefore, on behalf of Mantle, we hereby give notice that we require immediate access to the securities register of Atlas, which must include the information that Atlas is required under section 49(1) of the *ABCA* to record in that register (the "**Securities Register**"). If Atlas is unwilling to provide access to the Securities Register, Mantle will apply to the Court of King's Bench of Alberta for an Order directing Atlas to immediately provide an agent or legal representative of Mantle with access to the Securities Register.

Gowling WLG (Canada) LLP
Suite 1600, 421 7th Avenue SW
Calgary AB T2P 4K9 Canada

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gowlingwlg.com

Gowling WLG (Canada) LLP is a member of Gowling WLG, an international law firm which consists of independent and autonomous entities providing services around the world. Our structure is explained in more detail at gowlingwlg.com/legal.

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Please respond to this notice by no later than 5:00 pm October 26, 2023. Please provide us with times when a representative will be able to review the Securities Register.

We look forward to hearing from you.

Sincerely,

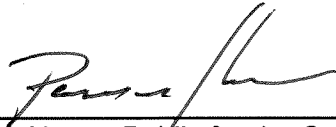
Gowling WLG (Canada) LLP

DocuSigned by:
Tom Cumming

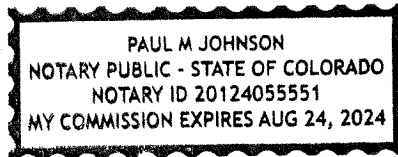
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Thomas Cumming

cc. Cory Pichota, President and CEO, Mantle Materials Group, Ltd.
TSC

This is **Exhibit "F"** referred to in the Affidavit of
Byron Levkulich sworn before me this 1st day of November, 2023



A Notary Public for the State of Colorado



Archived: Tuesday, October 31, 2023 6:07:54 PM

From: [Michael Janke](#)

Mail received time: Fri, 27 Oct 2023 14:26:49

Sent: Fri, 27 Oct 2023 20:26:29

To: [Cumming, Tom](#) [Cumming, Tom](#)

Cc: [Lesley Fredette Jaffer, Zafar Kroeger, Stephen John Stout Jaffer, Zafar Kroeger, Stephen](#)

Subject: RE: Atlas Aggregates Inc.

Importance: Normal

Sensitivity: None

This message originated from outside of Gowling WLG. | Ce message provient de l'extérieur de Gowling WLG.

Good afternoon Tom,

Thank you for your note – we have had the opportunity to discuss your client's request with our client. For ease, I'll adopt your numbers below and advise as follows:

1. The 2021 amendments to the *Business Corporations Act* (Alberta) ("BCA") included the following definition: "(k.1) "contact information" includes a person's address and, **if requested by the Registrar**, a person's telephone number and email address";

We acknowledge that Section 49(1) of the BCA requires that a corporation maintain a securities registrar with "current contact information" – however, based on the referenced definition, it does not include a person's telephone number and email address except in the specified circumstance;

2. We disagree. The express language used in Section 23(11)(b) references use of the securities register for the purpose of "an offer to **acquire** shares of the corporation". Mantle's stated intention is to sell shares of the corporation. The legislature was free to utilize more broadly encompassing language to include both an acquisition or divestiture of shares of the corporation amongst shareholders, but it did not and in the absence of more, given the section is clear and plain meaning; and
3. Acknowledged. However, in the absence of an Order to the contrary, the board of directors is entitled to rely on this restriction to the extent that its in the best interests of the corporation to do so. While this restriction is often relied upon by boards to prevent the transfer of securities into foreign jurisdictions or jurisdictions that it does not intend on becoming a reporting issuer, this discretion has not been constrained by legislature.

Please advise on what basis you have asserted that shareholders have an "entitlement" to receive the offer to sell shares? We are also unaware of any obligation on the board of directors to disclose a corporate opportunity to its shareholders until it determine that it does not intend to pursue that opportunity, if at all.

Finally, our review of the *Personal Information Protection Act* (Alberta) governs precisely the information that your client is requesting – and believe that its provisions and exceptions apply in these circumstances.

I appreciate your invitation to discuss, and I have good flexibility early next week if it would be helpful to schedule a call. However, Atlas' board of directors is entitled to consider what is in the Corporation's best interests where a significant ownership block of its securities is made available in the secondary market. My client intends to proceed as originally outlined in my previous correspondence: it will continue to consider whether the corporation will make an offer to your client to acquire shares of Atlas, and if it determine not to do so, it will communicate the availability of Atlas' shares owned by Mantle's and forward Mr. Pichota's contact information.

I am also prepared to forward any other information your client, the Trustee or you may think helpful to Atlas' board to make this determination, including the time frame and sales process the Trustee intends to effect the solicitation and sale of the securities.

Appreciated,

Michael Janke, ICD.D

Lawyer

T 403.441.0509 C 403.993.0307 | F 403.536.2787

Michael@Jankelawgroup.com

JANKE LAW GROUP

Barristers and Solicitors

OUR ADDRESS IS:

#600, 438 - 11th Avenue S.E.

Calgary, Alberta, T2G 0Y4

CONFIDENTIAL NOTICE: This email, including any attachments, may contain information that is confidential and privileged. Any unauthorised disclosure, copying or use of this email is prohibited. If you are not the intended recipient, please notify us by reply email or telephone call and permanently delete this email and any copies immediately.

Please consider the environment before printing this e-mail

From: Cumming, Tom <Tom.Cumming@gowlingwl.com>

Sent: Thursday, October 26, 2023 4:55 PM

To: Michael Janke <Michael@Jankelawgroup.com>

Cc: Lesley Fredette <lesley@Jankelawgroup.com>; Jaffer, Zafar <Zafar.Jaffer@gowlingwl.com>; Kroeger, Stephen <Stephen.Kroeger@gowlingwl.com>; John Stout <john.stout@rlholdings.com>

Subject: RE: Atlas Aggregates Inc.

Hi Michael,

Thanks for your note. It has been a while but all is well. I hope it is the same for you.

I have considered your response and note the following:

1. Section 49(1) of the ABCA requires that the securities register show for each class or series of securities, the name and current contact information of each person who is or has been a security holder, the number of securities held by each security holders, and the dates and particulars of the issue and transfer of each security. Hence, I disagree that the current contact information is not within the scope of the provision, which was last amended in 2021. If email addresses and phone numbers are not included, that is surprising.
2. The use of the information is contemplated by section 23(11)(b), as being in connection with the potential sale of shares of Atlas.
3. We have previously reviewed the private company restrictions in the Articles and believe that a court order, if required, can over-come this restriction. Hopefully, if shares are being transferred to a current shareholder, the board would not exercise their discretion to attempt to interfere in the transfer.

All of the shareholders are entitled to consider the offer to sell the shares. The board members cannot refuse to make other shareholders aware of this opportunity before they decide whether they or their companies will offer to purchase the shares.

While we do not agree that the information referred to in paragraph 1 above is subject to privacy laws, and the proposed utilization is not contemplated by section 23(11)(b), we have an application scheduled for early November and could seek an Order from the Justice confirming that privacy laws do not apply and section 23(11)(b) permits communications with the shareholders to make them aware of the opportunity to acquire Mantle's shares. Also, if it would make your client more comfortable, Mantle can undertake to only use that information for the purposes indicated, and for no other reason.

Please let me know whether that would be acceptable, or if you would like to discuss this matter.

Kind regards,

Tom

Tom Cumming (he/him)

Partner

T +1 403 298 1938

M +1 403 606 4592

tom.cumming@gowlingwlg.com



From: Michael Janke <Michael@Jankelawgroup.com>

Sent: Wednesday, October 25, 2023 1:12 PM

To: Cumming, Tom <Tom.Cumming@ca.gowlingwlg.com>; Delure, Kristy <Kristy.Delure@ca.gowlingwlg.com>

Cc: Lesley Fredette <lesley@Jankelawgroup.com>

Subject: RE: Atlas Aggregates Inc.

This message originated from outside of Gowling WLG. | Ce message provient de l'extérieur de Gowling WLG.

Hi Tom,

Hope you are well – I have your correspondence of today's date – and although I have yet to communicate with my client, I can advise as follows:

1. We disagree with your blanket statement that privacy rules do not apply to Mantel's request, which exceeded the scope of information required to be maintained by Atlas in accordance with section 49(1)(a) of the BCA;
2. More specifically, it is Atlas' position that "current contact information" does not extend to the personal email and phone numbers provided by Atlas shareholders, which were requested by Mantle;
3. Furthermore, we are unclear that your client's stated motive for requesting "current contact information" falls within the permitted uses prescribed by section 23(11) of the BCA. As we understand the request, Mantle is not making an offer to acquire securities of Atlas, and Mantle's pending insolvency proceedings are not "a matter relating to the affairs of Atlas. If you or your client have a different perspective on the application of section 23(11), Atlas' Board will of course consider it;
4. We take exception to your assertion that Atlas' directors have acted in a self-interested manner if that is what you intended by your assertion that they are not acting in a disinterested manner. Rather, it appears that Atlas' Board is acting in the best interest of Atlas, taking all stakeholders into consideration. In this instance, Atlas has been advised that some portion of its securities may be available for acquisition in the secondary market, and to the extent that Atlas may consider making a bid to purchase those securities for cancellation, that outcome has the potential to benefit all shareholders of Atlas, not just those who may be in a position to acquire securities;
5. Mr. Huber's communication made it clear that, if the opportunity represented by the availability of Atlas' securities in the secondary market was not one that Atlas would pursue, it would then advise all shareholders of the availability of Mantle's position in Atlas and invite interested shareholders to contact your client directly; and

6. We note that Atlas maintains its private company restrictions including that any transfer must be approved by the Board. While a court may supplant this condition, particularly in an insolvency situation, until such time as that Order has been obtained, Atlas' board is entitled to rely on that restriction to evaluate the suitability of any proposed transfer.

Tom, let's be clear. Atlas is not interested in frustrating your client's efforts, but needs to take a careful and considered approach to how it deals with its stakeholders, including its shareholders. Please advise how your client's position falls within the scope of Section 23(11) of the BCA for the Board's consideration, and providing that it does, Atlas will provide you and your client with a copy of the securities register in accordance with its obligations under the BCA, but the register does not include the personal email addresses or telephone numbers of the shareholders.

If the Board determines that it is not in Atlas' best interests to make a bid to acquire the available securities, it will deliver Mr. Pichota's contact information and notice of the opportunity to each of its shareholders.

We look forward to hearing from you.

Michael Janke, ICD.D

Lawyer

T 403.441.0509 | C 403.993.0307 | F 403.536.2787

Michael@Jankelawgroup.com

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From: Cumming, Tom <Tom.Cumming@gowlingwlg.com>

Sent: Wednesday, October 25, 2023 11:54 AM

To: Barbara <Barbara@Jankelawgroup.com>; Delure, Kristy <Kristy.Delure@gowlingwlg.com>; Glenn Huber <glenn@chrysaliscapital.ca>

Cc: Michael Janke <Michael@Jankelawgroup.com>; Lesley Fredette <lesley@Jankelawgroup.com>

Subject: RE: Atlas Aggregates Inc.

Thank you Barbara. We took the email information from the public corporate registration.

Kind regards,

Tom Cumming (he/him)

Partner

T +1 403 298 1938

M +1 403 606 4592

tom.cumming@gowlingwlg.com



From: Barbara <Barbara@Jankelawgroup.com>

Sent: Wednesday, October 25, 2023 11:28 AM

To: Delure, Kristy <Kristy.Delure@ca.gowlingwlg.com>; Glenn Huber <glenn@chrysaliscapital.ca>

Cc: Cumming, Tom <Tom.Cumming@ca.gowlingwlg.com>; Michael Janke <Michael@Jankelawgroup.com>; Lesley Fredette <lesley@Jankelawgroup.com>

Subject: RE: Atlas Aggregates Inc.

This message originated from outside of Gowling WLG. | Ce message provient de l'extérieur de Gowling WLG.

Hi Kristy,

Please note that Brienne is no longer with our office. I will forward this information to Lesley Fredette, who has assumed her position.

Thank you,

Barbara Davies

Ph: 825-413-0635

barbara@Jankelawgroup.com

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OUR ADDRESS IS:

#600, 438 - 11th Avenue S.E.

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From: Delure, Kristy <Kristy.Delure@gowlingwlg.com>

Sent: Wednesday, October 25, 2023 11:06 AM

To: Brienne Foster <brienne@Jankelawgroup.com>; Glenn Huber <glenn@chrysaliscapital.ca>

Cc: Cumming, Tom <Tom.Cumming@gowlingwlg.com>

Subject: Atlas Aggregates Inc.

Good morning,

Please see the attached correspondence, of today's date, on behalf of Tom Cumming.

Please note that a hard copy is being personally delivered to Brienne's attention at the registered office address and a copy has also been sent by Canada Post registered mail.

We trust you will find the attached to be in order; however, should you have any questions or concerns please do not hesitate to contact our office.

Regards,

Kristy Delure (she/her)

Legal Administrative Assistant

T +1 403 298 1843

kristy.deiure@gowlingwlg.com

Assistant To: Thomas Cumming

T +1 403 298 1938
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