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COURT FILE NO. 2001-05482
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY

IN THE MATTER OF THE *COMPANIES' CREDITORS*
ARRANGEMENT ACT, RSC 1985, c C-36, as amended

AND IN THE MATTER OF THE COMPROMISE OR
ARRANGEMENT OF JMB CRUSHING SYSTEMS INC. and 2161889
ALBERTA LTD.

APPLICANTS JMB CRUSHING SYSTEMS INC. and 2161889 ALBERTA LTD.

DOCUMENT **AFFIDAVIT OF BLAKE M. ELYEA**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
Gowling WLG (Canada) LLP
1600, 421 – 7th Avenue SW
Calgary, AB T2P 4K9

Attn: **Tom Cumming/Caireen E. Hanert/Stephen Kroeger**
Phone: 403.298.1938/403.298.1992/403.298.1018
Fax: 403.263.9193
File No.: A163514

AFFIDAVIT OF BLAKE M. ELYEA
sworn February 23, 2021

I, **BLAKE M. ELYEA**, of the City of Burnaby, in the Province of British Columbia,
MAKE OATH AND SAY THAT:

1. I am the Chief Restructuring Advisor for JMB Crushing Systems Inc. ("**JMB**") and 2161889 Alberta Ltd. ("**216**", and with JMB, the "**Applicants**"). As such, I 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.
2. I was appointed as Chief Restructuring Advisor of JMB and 216 on May 4, 2020, immediately following the commencement of their proceedings under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the "**CCAA**", and such

A handwritten signature or scribble in the bottom right corner of the page.

proceedings, the “**CCAA Proceedings**”). In that capacity, I have reviewed the business records of JMB relevant to the within proceedings and have satisfied myself that I am possessed of sufficient information and knowledge to swear this Affidavit.

3. I swear this Affidavit further to my Affidavits sworn August 6, 2020, October 16, 2020 November 20, 2020, December 4, 2020 and February 19, 2021 in these proceedings.
4. I am authorized to swear this Affidavit as Chief Restructuring Advisor of JMB.
5. I make this affidavit in support of an order declaring that the Equipment (as defined below) is not Property of the Applicants as defined in the initial order granted under the CCAA on May 1, 2020 (as subsequently amended and restated on May 11, 2020, the “**Initial Order**”).

Declaratory Relief

6. Pursuant to paragraph 4 of the Initial Order, “Property” of the Applicants is defined as “...current and future assets, undertaking and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”).”
7. Eastside Rock Products, Inc. (“**Eastside**”) is a company incorporated pursuant to the laws of the State of Washington and is a wholly owned subsidiary of JMB. The details of Eastside’s relationship with the Applicants is set out in the Affidavit of Jeff Buck sworn April 16, 2020 in these proceedings.
8. On or about November 9, 2017, Eastside purchased a Cheetah APS800 Generator set (the “**Generator**”) with trailer (the “**Trailer**” and with Generator, the “**Equipment**”) from NC Power Systems Co. Attached hereto as **Exhibit “A”** is a copy of the invoice for Eastside’s purchase of the Equipment. On my review of the Eastside’s business records Eastside used the Equipment in its operations until it was imported to Canada as set out below.
9. On May 7, 2019, the Equipment was brought into Canada. Attached hereto as **Exhibit “B”** is a copy of the Vehicle Import Form issued by Transport Canada. The Equipment was brought to Canada so that it could be used in JMB’s operations in Alberta.



10. On June 4, 2019, JMB registered the Trailer in Alberta in accordance with the *Traffic Safety Act*, RSA 2000, c T-6, that requires vehicles being driven on provincial roads, like the Trailer, to be registered with Alberta Registries. Attached hereto as **Exhibit "C"** is a copy of the Trailer registration.
11. I am advised by my review of JMB's books and records and believe that:
 - (a) no monies were paid or advanced to Eastside by JMB for the Equipment; and
 - (b) the Equipment has been and continues to be listed as a fixed asset in Eastside's financial statements. Attached hereto as **Exhibit "D"** is a redacted copy of Eastside's fixed asset listing dated December 31, 2020.

Canada Revenue Agency – Deemed Trust Issue

12. I am advised by Tom Cumming, counsel for the Applicants, and believe that the issue of whether Canada Revenue Agency (the "**CRA**") has a deemed trust as a result of payments made to the former shareholders of JMB Crushing Systems ULC ("**JMB ULC**"), the predecessor of JMB, has still not been resolved, despite the passage of over a year:
 - (a) The issue was first raised on September 9, 2019 by counsel to JMB ULC and its former shareholders in a Voluntary Disclosure letter (the "**VDL**") sent to the CRA;
 - (b) Since the application for the Initial Order on May 1, 2020, Jill Medhurst and Tristan Cones, counsel to the CRA, have been served with all materials in these proceedings;
 - (c) It was not until November 18, 2020 that Ms. Medhurst advised Mr. Cumming via email that, among other things, the CRA may have a priority claim. Mr. Cumming responded on the same day to set out the background to the CCAA Proceedings and to request a call to discuss matters;
 - (d) In a series of email correspondence exchanged on November 19 and 20, 2020, Ms. Medhurst advised Mr. Cumming that CRA had not been made aware of the alleged



priority claim, and that if she had been made aware, she could have tried to have CRA make this issue a priority;

- (e) On December 15, 2020, Ms. Medhurst advised Mr. Cumming via email that the CRA was not agreeable to compromising any priority claims that the CRA may have arising out of the VDL;
- (f) On December 15, 2020, Mr. Cumming advised Ms. Medhurst via email that the transaction between JMB and Mantle Materials Group, Ltd. was in jeopardy as a result of delays by the CRA;
- (g) On December 23, 2020, counsel for JMB ULC and its former shareholders sent a request for second administrative review to the CRA Voluntary Disclosures Program;
- (h) On January 11, 2021, Ms. Medhurst requested certain tax information from the Applicants in relation to the deemed trust issue, which information was provided on January 12, 2021;
- (i) On January 26 and February 5, 2021, Mr. Cumming sent an email to Ms. Medhurst requesting an update on the CRA's position;
- (j) On February 8, 2021, Ms. Medhurst advised Mr. Cumming via email that she had received no update from the CRA, but that she thought the review would be completed soon;
- (k) On February 17, 2021, Mr. Cumming inquired Ms. Medhurst via email as to whether there was an update from the CRA, and Ms. Medhurst responded that she was still trying to work out the issue with the CRA;
- (l) On February 18, 2021, Mr. Cumming sent an email to Ms. Medhurst in which he advised that additional court time had been booked for March 5, 2021 and requested that the CRA accelerate their inquiry; and



(m) On February 22, 2021, Ms. Medhurst advised Mr. Cumming via email that she had not received any information from the CRA.

Attached hereto as **Exhibit "E"** are copies of the emails.

13. I was not physically present before the commissioner taking this affidavit, but was linked with the commissioner utilizing video technology, and the process described in the notice from the court date March 27, 2020 for remote commissioning affidavits was utilized.

SWORN BEFORE ME at the City of)
Burnaby, in the Province of British)
Columbia, this 23rd day of February, 2021.)
)
)
)
_____)
A Commissioner of Oaths and Notary)
Public in and for the Province of British)
Columbia)



BLAKE M. ELYEA



THIS IS EXHIBIT "A" REFERRED TO IN
THE AFFIDAVIT OF BLAKE M. ELYEA
SWORN BEFORE ME
THIS 23rd DAY OF FEBRUARY, 2021

A Commissioner for Oaths/Notary Public in and
for the Province of British Columbia





JMB Crushing Systems ULC
PO Box 6977
Bonnyville, AB
T9N 2H4

INVOICE

WA - (425) 251-9800
AK - (907) 786-7500

Please Remit To: NC Power Systems Co.
PO Box 58201
Tukwila, WA 98138-1201

SOLD TO
EASTSIDE ROCK PRODUCTS INC
32715 CARMICHAEL RD
PO BOX 625
PRESTON WA

SHIP TO
EASTSIDE ROCK PRODUCTS INC

98050-0625

OK
TJ

INVOICE NUMBER	INVOICE DATE	CUSTOMER NUMBER	CUSTOMER ORDER NUMBER	STORE	DIV.	SALESMAN	TERMS	PAGE
E2702301	11-09-17	0304900	FALL CITY 752071	11	E	ATR	2	1
PSO/WO NO.	DOC. DATE	PC	LC	MC	SHIP VIA		INV SEQ NO.	
E27023	11-09-17			10			690349	
MAKE	MODEL	SERIAL NUMBER	EQUIPMENT NUMBER	METER READING	MACHINE ID NO.			
AA	APS800	DWB00636	R002	6994.50	E213224			
QUANTITY	ITEM	N/R	DESCRIPTION	UNIT PRICE	EXTENSION			

CUSTOMER CONTACT: DAVE CHURCH DLK9020BL10
TAX EXEMPTION LICENSE A35 5740 18

EQUIPMENT SALE
 CATERPILLAR MODEL APS800
 CATERPILLAR APS800
 1.0 ID NO: E213224 SERIAL NO: DWB00636 105352.00
 TRAILER VIN NO: 5EF2GC3008B772456
 LICENSE NO: 1661ZJ

ONE (1) USED CATERPILLAR MODEL APS800 GENERATOR
SET WITH TRAILER (TITLE ATTACHED)

 ORIGINAL SALE PRICE \$162,700.00
 LESS APPLIES RENTALS (\$57,348.00)
 CONVERSION AMOUNT \$105,352.00

WARRANTY: AS IS/WHERE IS NO WARRANTY

TERMS: NET DUE 10 DAYS FROM DATE OF INVOICE
 PAYMENT TO BE MADE TO:
 HGI EXCHANGE, LLC
 17035 WEST VALLEY HIGHWAY
 TUKWILA WA 98188-5519

JMB Crushing Systems ULC
PO Box 6977
Bonnyville, AB
T9N 2H4

This Sale is subject to all terms and conditions set forth in the NC Power Systems Work Authorization, including LIMITED WARRANTY AND RELEASE and EXCLUSION OF LIABILITIES set forth on that Order.

TERMS: ALL PARTS AND SERVICE INVOICES ARE DUE THE 10TH OF THE MONTH FOLLOWING THE DATE OF PURCHASE. MACHINE INVOICES NET 10 DAYS FROM DATE OF INVOICE.

Each payment or sum past due shall bear a late payment charge of the lesser of 1 1/2% per month, which is an annual percentage rate of 18%, or an amount not to exceed the highest rate permitted by law.



PAY THIS AMOUNT ▶	105352.00
AMOUNT CREDIT ▶	

Merchandise cannot be returned for credit without our prior approval and only in accordance with our Parts Return Policy. A copy of the policy is available upon request.

THIS IS EXHIBIT "B" REFERRED TO IN
THE AFFIDAVIT OF BLAKE M. ELYEA
SWORN BEFORE ME
THIS 23rd DAY OF FEBRUARY, 2021

A Commissioner for Oaths/Notary Public in and
for the Province of British Columbia





Transport Canada / Transports Canada

VEHICLE IMPORT FORM - FORM 1
FORMULAIRE D'IMPORTATION DE VÉHICULE - FORMULAIRE 1

Protected A (when completed)
Protégé A (lorsque rempli)

M775711

* Replaces form # M775705 (rev 6)

NOTICE TO PROVINCIAL / TERRITORIAL LICENCE AUTHORITY K-22 - AVIS AUX AUTORITÉS PROVINCIALES / TERRITORIALES D'IMMATRICULATION K-22

The conveyance described herein has been accounted for by Canada Border Services Agency and may be licensed in Canada subject to:
Les présentes attestent que le moyen de transport désigné ci-dessous a été déclaré à l'Agence des services frontaliers du Canada et peut être immatriculé au Canada:

1. A Canada Border Services Agency disposal restriction as indicated below and
1. Sous réserve de la restriction de l'Agence des services frontaliers du Canada indiquée ci-dessous et
2. Evidence of conformity with Transport Canada Safety Regulations as indicated in section 16 or 17.
2. Sous réserve d'une preuve de conformité aux normes de sécurité de Transports Canada tel qu'indiqué à la section 16 ou 17.

Canada Border Services Agency disposal restrictions - Restriction de l'Agence des services frontaliers du Canada
This conveyance may not be sold or disposed of in Canada.
Ce moyen de transport ne peut pas être vendu ou autrement aliéné au Canada.

At any time, without authorization from Canada Border Services Agency
En aucun temps, sans l'autorisation de l'Agence des services frontaliers du Canada

on or before: / le ou avant: _____ or / ou _____
 This conveyance is not subject to a disposal restriction.
Ce moyen de transport n'est pas touché d'une restriction.

Transaction No. - N° de la transaction: _____

Canada Border Services Agency Office data stamp
Timbre d'agent du bureau de l'Agence des services frontaliers du Canada

CAVADA BORDER SERVICES AGENCY
81056
Kingstons
07/11/2019
Office Initials - Initiales de l'agent

VEHICLE AND IMPORTER INFORMATION - RENSEIGNEMENTS SUR LES VÉHICULES ET L'IMPORTATEUR

1. Vehicle id no. - N° d'idant du véhicule: 5A9A9030019A772436
2. Name, id no. - processing agent / Nom, n° d'idant - Agence de traitement: ZUSK
3. Portcode / Code du bureau de douane: 010
4. Language preferred / Choix de langue: English / Français

5. Vehicle class (CHECK ONE ONLY) - Classe du véhicule (EN COCHER UNE SEULEMENT)

01 Bus / 02 Incomplete vehicle (Chassis-cab) / 03 Motorcycle / 04 Multipurpose passenger vehicle
 05 Passenger car / 06 Snowmobile / 07 Trailer / 10 Trailer converter dolly
 11 Truck / 12 Restricted use motorcycle / 13 Low-speed vehicle / 14 Three-wheeled vehicle

6. Manufacturer - Fabricant: Chevrolet 7. Make - Marque: Chevrolet 8. Model - Modèle: APS 900 9. Model year - Année du modèle: 2019
10. (CHECK ONE ONLY) - (EN COCHER UNE SEULEMENT)
 Compliance label affixed / Manufacturer's letter attached

11. Manufactured on / Fabriqué le: M → 10 Y → A → 07 12. A. Vehicle condition - État du véhicule: Normal to minor damage / Severely damaged / Clear / Salvage / Rebuilt / Reconstruit
13. Country and / or state / Pays et / ou état: USA

14. Importer - Importateur: IMS Kusheer Systems Inc. Foreign Vendor - Vendeur étranger: Valley Equipment Co.

Name of importer - Nom de l'importateur: IMS Kusheer Systems First name - Prénom: _____
Mailing address - Adresse postale: 61329 Karel Road Apt. - App.: _____ Address (street, apt.) - Adresse (rue, app.): 10 Box 11567
City - Ville: Beauville Province: NB. Postal code - Code postal: T9N 5H4 City - Ville: Stalem State - État: AK
Res. tel. - Tél. rés.: _____ Bus. tel. - Tél. bur.: _____ Fax - Télécopieur: _____ Email - Courriel: _____ Country - Pays: USA Zip code: 99305

COMPLETE ONLY FOR VEHICLES NOT REQUIRED TO ENTER THE REGISTRAR OF IMPORTED VEHICLES PROGRAM
À REMPLIR SEULEMENT POUR LES VÉHICULES QUI N'ONT PAS À ÊTRE INSCRITS AU PROGRAMME DU REGISTRAIRE DES VÉHICULES IMPORTÉS

16. Road instruction sheet then CHECK ONE (1) BOX ONLY - Lire la feuille d'instructions et COCHER UNE (1) CASE SEULEMENT

a Commercial importation - new Canadian specification vehicle and the importer is in the list of recognized vehicle importers at <http://www.wapps.gc.ca/saf-sec-surr/1/pc-ll/Search.aspx?>
 b Non-commercial importation - new Canadian specification vehicle bearing a valid Canadian compliance label. The manufacturer of the vehicle must be listed at <http://www.wapps.gc.ca/saf-sec-surr/1/vmrc-cvaot/Search.aspx?>
 c Canadian certified vehicle being returned to Canada by the original owner.
 d Vehicle is fifteen years old or older (except buses), or a bus that was manufactured before Jan. 1, 1971.
 e Vehicle entered for exhibition, demonstration, testing, evaluation or special purposes. (Schedule VII required)
 f Vehicle entered by a visitor, a tourist or a person holding a valid work permit or student visa.
 g Work vehicle and others (only if province requires licensing). Trailers are not work vehicles.

I declare that, to the best of my knowledge, the above information is true and accurate. I have the required evidence of the vehicle's conformity with Environment Canada's emission standards.
Je déclare que, pour autant que je sache, les renseignements ci-haut sont véridiques. Je possède la justification requise de la conformité du véhicule aux normes d'émissions d'Environnement Canada (voir les instructions au verso du formulaire).

IMPORTER OR AGENT - IMPORTATEUR DU MANDATAIRE

PRINT NAME - NOM EN LETTRES MOULÉES: _____ SIGNATURE: _____ DATE: (yyyy-mm-dd - aaaa-mre-jj) _____

COMPLETE FOR VEHICLES REQUIRED TO ENTER THE REGISTRAR OF IMPORTED VEHICLES PROGRAM
À REMPLIR POUR LES VÉHICULES DEVANT ÊTRE INSCRITS AU PROGRAMME DU REGISTRAIRE DES VÉHICULES IMPORTÉS

17. See instructions for explanation - Voir les instructions pour les explications

Vehicle purchased in the United States - Véhicule acheté aux États-Unis. \$195.00 plus applicable sales taxes (see www.riv.ca for information).
 195.00 plus les taxes de vente applicables (voir www.riv.ca pour des renseignements supplémentaires).

I am the owner or agent of the owner of the vehicle described herein. I have the required evidence of the vehicle's conformity with Environment Canada's emission standards (see instructions on back of form). This vehicle shall be modified to Transport Canada standards within the prescribed time of 45 days and the current owner shall be responsible for any penalties prescribed for failure to do so. I acknowledge that receipt of this Vehicle Import Form and payment of fees are not warranty that the vehicle is necessarily capable of being brought into conformity with applicable law. The vehicle shall be taken to an authorized inspection centre and otherwise processed in accordance with the requirements of the Registrar of Imported Vehicles. I authorize the required service payment.
Je suis le propriétaire du véhicule décrit ci-dessus ou son mandataire. Je possède la justification requise de la conformité du véhicule aux normes d'émissions d'Environnement Canada (voir les instructions au verso du formulaire). Ce véhicule sera rendu conforme aux normes de Transports Canada dans le délai réglementaire de 45 jours, et le propriétaire sera assujéti aux pénalités imposées si ce n'est pas le cas. Je reconnais que la réception du présent formulaire d'importation et le paiement des droits ne garantissent pas qu'il sera forcément possible de rendre le véhicule conforme à la loi applicable. Le véhicule sera présenté à un centre d'inspection autorisé et traité conformément aux exigences du Registraire des véhicules importés. J'autorise le paiement des droits de service requis.

Credit card - Carte de crédit / Envelope - Enveloppe _____

Credit card last 4 numbers only / N° de carte (les 4 derniers numéros seulement): _____ Authorization code / Code d'autorisation: _____

ID of owner/agent (driver's licence no., business number, etc.) / Identité du propriétaire ou du mandataire (n° de permis de conduire, n° d'entreprise, etc.): 113819-051

IMPORTER OR AGENT - IMPORTATEUR DU MANDATAIRE: W. Smith/Carroll SIGNATURE: B. G. Quinlan DATE: (yyyy-mm-dd - aaaa-mre-jj) 2019-05-07

Registrar of Imported Vehicles / Registraire des véhicules importés
GST No. - N° de la TVQ: 1211515268TQ0001
GST No. - N° de la TPS: 836793679RT0001
REGISTRAIRE DES VÉHICULES IMPORTÉS / REGISTRAIRE DES VÉHICULES IMPORTÉS
À L'USAGE DU REGISTRAIRE DES VÉHICULES IMPORTÉS
IMPORTED VEHICLE / VÉHICULE IMPORTÉ
430 / 430
450-6 / 450-6
420 / 420
430 / 430
Inspector's initials / Initiales de l'inspecteur: _____

If your vehicle is subject to the Registrar of Imported Vehicles Program (Box 17), a copy of this completed form will be forwarded to the Registrar of Imported Vehicles for processing. Within ten (10) days you will receive detailed instructions from the Registrar of Imported Vehicles concerning the modification and inspection process, including a list of inspection centres available to the importer, and a form to be used both by the modifier and the inspector. The inspection centre authorized by the Registrar of Imported Vehicles will complete and stamp the appropriate section in Box 17 once the vehicle has been properly modified and inspected. Once your vehicle has been certified by the inspection centre authorized by the Registrar of Imported Vehicles you will be able to license and register your vehicle with your Provincial Registrar.

The gold and white copies of this form are given to the importer at the time of importation. The gold copy is for the importer's records. The white copy is to be presented to the provincial / territorial licensing authorities by the importer at the time of licensing. The canary copy is kept by CBSA. The pink copy is kept by CBSA to be forwarded to the Registrar of Imported Vehicles.

Si votre véhicule est visé par le programme du Registraire des véhicules importés (case 17), un exemplaire du formulaire rempli sera envoyé au Registraire des véhicules importés pour traitement. Ici dix (10) jours, vous recevrez des instructions détaillées de ce registraire sur le processus de modification et d'inspection, et notamment une liste des centres d'inspection auxquels l'importateur peut recourir et la formule que l'auteur des modifications et l'inspecteur devront utiliser. Le centre d'inspection autorisé par le Registraire remplira et estampillera la section voulue de la case 17 une fois le véhicule correctement modifié et inspecté. Une fois votre véhicule certifié conforme par ce centre, vous pourrez immatriculer votre véhicule auprès du registraire de votre province.

Les exemplaires or et blanc du présent formulaire sont remis à l'importateur au moment de l'importation. L'exemplaire or est pour ses dossiers et le blanc doit être présenté aux autorités provinciales ou territoriales d'immatriculation par l'importateur au moment de l'immatriculation. L'exemplaire canari est conservé par l'ASFC. L'exemplaire rose est conservé par l'ASFC et sera transmis au Registraire des véhicules importés.

TRANSFER OF SALE OF VEHICLE PRIOR TO COMPLIANCE AND INSPECTION IS PROHIBITED WITHOUT PRIOR WRITTEN PERMISSION FROM THE REGISTRAR OF IMPORTED VEHICLES.

LE TRANSFERT DE LA VENTE D'UN VÉHICULE AVANT QU'IL NE SOIT CONFORME ET INSPECTÉ SONT INTERDITS SANS L'AUTORISATION ÉCRITE DU REGISTRAR DES VÉHICULES IMPORTÉS.

Location of the Compliance label on the different vehicle classes.

Emplacement de l'étiquette de conformité sur les diverses classes de véhicules.

Passenger car: The hinge pillar, door latch post or the door edge that meets the door latch post next to the driver's seating position.

Véhicule de tourisme: Sur le montant des charnières, sur le montant de la gâche ou à l'extrémité de la porte correspondant au montant de la gâche, du côté du conducteur.

Truck: Same as Passenger cars or, where it is impracticable, to the left side of the instrument panel or to the inward facing surface of the door next to the driver's seating position.

Camion: Comme les voitures de tourisme ou, s'il est impossible de l'appuyer à ces endroits, sur le côté gauche du tableau de bord ou sur la surface intérieure de la porte du conducteur.

Bus: Same as Truck.

Autobus: Voir camion.

Multi-purpose passenger vehicle: Same as Truck.

Véhicule de tourisme à usages multiples: Voir camion.

Motorcycle - All types: On a permanent part of the vehicle as close as practicable to the intersection of the steering post and the handlebars so that it is easily readable without moving any part of the vehicle except the steering system.

Motocyclette - Tout genre: Sur une partie fixe du véhicule, aussi près que possible de l'intersection de la colonne de direction et du guidon, de sorte qu'on puisse la lire sans avoir à déplacer des pièces du véhicule, seul le système de direction.

Snowmobile and Cutter: On the rear half of the right side so that it is easily readable from outside the vehicle without moving any part.

Motoneige et traineau: Sur la moitié arrière du côté droit de sorte qu'il soit facile, de l'extérieur, de la lire sans déplacer aucune pièce du véhicule.

Trailer: On the forward half of the left side of the trailer so that it is easily readable from outside the vehicle without moving any part.

Remorque: Sur la moitié arrière du côté gauche de la remorque de sorte qu'il soit facile, de l'extérieur, de la lire sans déplacer aucune pièce.

Incomplete vehicle (Chassis-cab): Shall be temporarily affixed so as to be easily readable and protected against any weather conditions to which it may be exposed, or permanently affixed similar to truck.

Véhicule incomplet (Châssis-cabine): Doit être apposée temporairement de façon à être lisible et protégée contre les intempéries auxquelles elle pourrait être exposée, ou être apposée en permanence comme dans le cas des camions.

Box 12a & 12b Explanations

Explications des cases 12a et 12b

Box 12a: Vehicle condition

Normal: normal wear and tear, including minor damages such as scratches, dents and burrns. Typically a roadworthy vehicle being driven at the time of importation.

Severely damaged: vehicle damaged to the extent that it would need to be rebuilt to be roadworthy. Such classification could be the result of a major accident, fire, flood or a theft recovered vehicle missing some major parts (doors, stripped interior, etc.).

Case 12a: Etat du véhicule

Normal: usure et détérioration normales, incluant dommages mineurs tels égratignures, bosses et écorchures. Véhicule en condition de marche typique, étant conduit au moment de son importation.

Gravement endommagé: véhicule endommagé de façon excessive nécessitant une reconstruction avant d'être en état de marche typique. Une telle classification peut être le résultat d'un accident majeur, incendie, inondation ou un véhicule volé et retrouvé avec certaines pièces majeures manquantes (portes, intérieur manquant, etc.).

Box 12b: Title status

As indicated on the official vehicle title document.

Case 12b: Titre de propriété

Tel qu'indiqué sur le document officiel "Certificate of Title" du véhicule.

Evidence of Conformity with Environment Canada's Emission Standards

Justification de la conformité aux normes d'émissions d'Environnement Canada

A person who imports a vehicle for the purpose of sale or lease must have the evidence of conformity set out in Section 35 or 36 of the On-Road Vehicle and Engine Emission Regulations, as the case may be.

Toute personne qui importe un véhicule dans le but de le vendre ou de le louer doit posséder la justification de la conformité décrite à l'article 35 ou 36 du Règlement sur les émissions des véhicules routiers et de leurs moteurs, suivant le cas.

For any other importer, as evidence of conformity, the vehicle being imported must:

Pour tout autre importateur, comme justification de la conformité le véhicule importé doit:

a) bear the national emissions mark set out in Section 7 of the Regulations, b) bear a U.S. emission control information label showing that the vehicle conformed to the Environmental Protection Agency (EPA) emission standards at the time of manufacture.

a) porter la marque nationale décrite à l'article 7 du Règlement sur les émissions;

c) bear a label showing that the vehicle conformed to the California Air Resources Board emission standards at the time of manufacture, or

b) porter une étiquette américaine d'information sur le contrôle des émissions indiquant que le véhicule était conforme aux normes d'émissions de l'Environmental Protection Agency (EPA) à la fin de son assemblage principal;

d) be the subject of a statement from the vehicle manufacturer or its duly authorized representative confirming that the vehicle complied with the emission standards of the On-Road Vehicle and Engine Emission Regulations, the U.S. EPA or the California Air Resources Board at the time of its manufacture.

c) porter une étiquette indiquant que le véhicule était conforme aux normes d'émissions du California Air Resources Board à la fin de son assemblage principal; ou
d) faire l'objet d'une déclaration du fabricant du véhicule ou de son représentant dûment autorisé selon laquelle il était conforme aux normes d'émissions du Règlement sur les émissions des véhicules routiers et de leurs moteurs, de l'EPA des États-Unis ou du California Air Resources Board à la fin de son assemblage principal.

Privacy Statement

The information you provide on this form is collected by Transport Canada, under the authority of sections 6 and 7 of the Motor Vehicle Safety Act (MVSA), to ensure that imported vehicles comply with the Canada Motor Vehicle Safety Standards (CMVSS). Also, Environment Canada collects the information, under the authority of sections 153 and 157 of the Canadian Environmental Protection Act (1999) (CEPA) to ensure that the vehicle conforms to that department's emission standards. To ensure that the vehicle meets CMVSS and Environment Canada's emission standards, the vehicle identification number (VIN) may be disclosed to other parties, including the following: Provincial Ministries of Transportation to license and register the vehicle; and Canadian Council of Motor Transport Administrators (CCMTA) for recall purposes. Information may also be disclosed to authorized parties to enforce and administer the MVSA and the CEPA. This form must be completed to import a vehicle into Canada. The personal information collected under the Registrar of Imported Vehicles Program is described in Personal Information Bank no. DOT PPU 009. Under the provisions of the Privacy Act and the Access to Information Act, individuals have the right of access to and protection of their personal information. Instructions for obtaining your personal information are provided in this Info Source, a copy of which is available in major public and academic libraries or online at <http://www.infosource.gc.ca>.

Énoncé de confidentialité

Les renseignements que vous fournissez dans ce formulaire sont recueillis par Transport Canada, en vertu des articles 6 et 7 de la Loi sur la sécurité automobile (LSA), pour assurer que les véhicules importés sont conformes aux Normes de sécurité des véhicules automobiles du Canada (NSVAC). De plus, Environnement Canada recueille les renseignements, conformément aux articles 153 et 157 de la Loi canadienne sur la protection de l'environnement (1999) (LCPE), pour assurer que les véhicules sont conformes aux normes d'émissions de ce ministère. Pour assurer que le véhicule se conforme aux NSVAC et aux normes d'émission d'Environnement Canada, le numéro d'identification du véhicule (NIV) peut également être divulgué à d'autres parties, incluant les parties suivantes: ministères provinciaux des Transports pour enregistrer et immatriculer le véhicule et au Conseil canadien des administrateurs et transporteurs (CCATM) à des fins de rappel. Les renseignements peuvent également être divulgués aux parties autorisées pour appliquer et régir la LSA et LCPE. Ce formulaire doit être rempli pour importer le véhicule au Canada. Les renseignements personnels recueillis dans le cadre du Programme du registraire des véhicules importés sont décrits dans le fichier de renseignements personnels n° MTC PPU 009. En vertu des dispositions de la Loi sur la protection des renseignements personnels et la Loi sur l'accès à l'information, chaque personne a droit à l'accès à sa information et à la protection de ses renseignements personnels. Des instructions sur l'obtention de vos renseignements personnels sont fournies dans Info Source, ou vous pouvez trouver dans les grandes bibliothèques publiques ou universitaires ou un direct à l'adresse <http://www.infosource.gc.ca>.

Vehicle Inspection Form



M775705

This form is no longer valid after the compliance date of: June 05, 2019

Section 1: Vehicle Information	
VIN: 5EF2GC3008B772456	Odometer: N/A
CHEETAH CHASSIS CORPORATION / APS800 Trailer	
Section 2: Statement Of Compliance Label Information	
Gross Vehicle Weight Ratings (in lbs.): 65,000 lbs Manufacture Date: 10/07	
Gross Axle Weight Ratings (in lbs) - <i>Please fill Below</i>	
Front: 20,000 lbs	Rear: 20,000
Tire Pressure (in P.S.I.) Front: 90 psi	Rear: 90 psi
Section 3: Modifier Information	
Company/Individual that performed modifications (Please print):	
Section 4: Modifications required to conform to Canadian Vehicle Safety Standards	
These Modifications are the responsibility of the importer. Inspector MUST confirm (x) the following:	
<input checked="" type="checkbox"/> Please confirm vehicle class. <input checked="" type="checkbox"/> Please confirm the date of manufacture. <input checked="" type="checkbox"/> Reflectors & lighting must conform with CMVSS 108 Standards. Please refer to Federal Lighting Equipment Location Requirements http://www.tc.gc.ca/eng/roadsafety/tp-tp13136-trailer_e-414.htm <input checked="" type="checkbox"/> Tire Manufacture: <u>New PRIDE.</u> <input checked="" type="checkbox"/> Tire Type: (must be the same for each tire unless stated otherwise on the compliance label), please circle P = Passenger car tire, LT = Light Truck Tire, ST <u>Trailer Tire</u> Others _____ <input checked="" type="checkbox"/> Max. load rating (as marked on tire): <u>6175 lbs 100 psi Single 5355 lbs 90 psi Dual</u> <input checked="" type="checkbox"/> Max. Inflation pressure cold (as marked on tire): <u>100 psi</u> <input checked="" type="checkbox"/> Please contact RIV if this vehicle does not bear a Statement of Compliance label certifying the vehicle met all US Federal Motor Vehicle Safety Standards on the date of manufacture. <input checked="" type="checkbox"/> Please contact RIV immediately, if this vehicle is NOT a trailer <input checked="" type="checkbox"/> Confirm number of axles on this trailer <u>2</u> <input checked="" type="checkbox"/> Please verify that all the information in Section 1 matches the vehicle	
Section 5: Declaration - Inspection Centre Only	
This vehicle as inspected <input checked="" type="checkbox"/> Pass <input type="checkbox"/> Fail	<i>Inspection Stamp here</i> REGISTRAR OF IMPORTED VEHICLES REGISTRAIRE DES VEHICULES IMPORTES 450 - C IMPORTED VEHICLES
Form 1 No.: M775705 ✓ - this number must be the same as form 1	
May 9/19 Kris Freelond 450 <i>Kris Freelond</i> Date Print Inspector's Name Centre No. Inspector's Signature	
FAX THIS COMPLETED FORM IMMEDIATELY TO 1-888-346-9416	



Canada Border Services Agency
 Agence des services frontaliers du Canada
IN BOND CARGO CONTROL DOCUMENT
EN DOUANE DOCUMENT DE CONTRÔLE DU FRET

Acquitlal No. - N° de l'acquittement 11304016 122125																			
U.S port of exit Bureau de sortie des É.-U.		In transit En transit																	
Manifest from Manifeste de 0818 Kingsgate		To À 0818 Kingsgate																	
Carrier code Code du transporteur Cargo control No. - N° de contrôle du fret																			
Consignee name and address Nom et adresse du destinataire JMB CRUSHING SYSTEMS INC. HWY 660 & RR 455 BONNYVILLE AB T9N 2H4																			
Shipper name and address Nom et adresse de l'expéditeur EASTSIDE ROCK PRODUCTS INC. 32715 CARMICHAEL ROAD FALL CITY WA 98024																			
Previous cargo control No. - N° de contrôle du fret antérieur																			
<table border="1"> <thead> <tr> <th>No. of pkgs. Nombre de colis</th> <th>Description and marks Désignation et marques</th> <th>Weight Poids</th> <th>Rate Taux</th> <th>Advances Avances</th> <th>Prepaid Port payé</th> <th>Collect Port dû</th> </tr> </thead> <tbody> <tr> <td>1 UNIT</td> <td>GENERATOR TRAILER - 5EP2GC3008B772456 MWB: 41236 HWB: 41236 Vessel: Cont#: N/A Seal#: 53 FT x 8 FT 6" x9 FT</td> <td>6804.00 KGM</td> <td></td> <td></td> <td></td> <td></td> </tr> </tbody> </table>						No. of pkgs. Nombre de colis	Description and marks Désignation et marques	Weight Poids	Rate Taux	Advances Avances	Prepaid Port payé	Collect Port dû	1 UNIT	GENERATOR TRAILER - 5EP2GC3008B772456 MWB: 41236 HWB: 41236 Vessel: Cont#: N/A Seal#: 53 FT x 8 FT 6" x9 FT	6804.00 KGM				
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Foreign point of lading Port de chargement étranger KING COVE			Location of goods Emplacement des marchandises KINGSGATE BC																
Name of carrier Nom du transporteur CDI INTERNATIONAL INC			Conveyance identification Identification du moyen de transport																

A8A(B) (05)

CUSTOMS DELIVERY AUTHORITY COPY
EXEMPLAIRE DE L'AUTORISATION DOUANIÈRE DE LIVRAISON

CN CUSTOMS BROKERAGE SERVICES
 Phone: 1-866-890-1931 Fax: 1 877 267 3444

Please ensure that shipment is customs cleared in CN Velocity. If any issue regarding customs release please request CBSA to retransmit customs release. CN CSR # 1-800 267 9779

THIS IS EXHIBIT "C" REFERRED TO IN
THE AFFIDAVIT OF BLAKE M. ELYEA
SWORN BEFORE ME
THIS 23rd DAY OF FEBRUARY, 2021

A Commissioner for Oaths/Notary Public in and
for the Province of British Columbia



THIS IS EXHIBIT "D" REFERRED TO IN
THE AFFIDAVIT OF BLAKE M. ELYEA
SWORN BEFORE ME
THIS 23rd DAY OF FEBRUARY, 2021

A Commissioner for Oaths/Notary Public in and
for the Province of British Columbia



Eastside Rock Products
 Depreciation Summary
 31-Dec-20
 01-Jan-20

Period End
 Period Beg

FA Type	Description	Sub-Description	Capital Lease?	Qty	Division	Make	Model	Vintage	GL ACCT	BACKUP SAVED	Addition File Year	Purchase Date	Dep. Start Date	Dep. Days	Transaction #1	#2	#3	#4	Vendor
Vehicle	Attachment																		
Crusher Equipment	Towable Generator	Caterpillar APS800 Diesel Portable Generator Serial #DDW800638		1	Eastside	Caterpillar	APS800		1612		2017	30-Nov-17	01-Jan-20	366	Manual JE - To record the final buyout purchase of NC Power Genset				

REDACTED

Lease or Loan Facility	Serial #	Component Of	Asset #	Acquisition Cost If Different from ASPE	COST				Sl. End Date of Useful Life	Method	Rate	ACCUMULATED AMORTIZATION			NBV			Closing NBV By Month	GL Check		
					Opening	Adjustments	Additions	Disposals				Ending	Opening	Adjust	Provision	Ending	Closing			Opening	Residual
					Balance							Balance	Balance			Balance	Balance			Balance	Balance
	0DWB00636				297,150.48					DB	15%	88,561.10	29,788.41	128,349.51	168,800.97	198,589.38	-				

REDACTED

MA

THIS IS EXHIBIT "E" REFERRED TO IN
THE AFFIDAVIT OF BLAKE M. ELYEA
SWORN BEFORE ME
THIS 23rd DAY OF FEBRUARY, 2021

A Commissioner for Oaths/Notary Public in and
for the Province of British Columbia

A handwritten signature in black ink, consisting of several stylized, overlapping strokes, located in the bottom right corner of the page.

From: Medhurst, Jill <Jill.Medhurst@justice.gc.ca>

Sent: November-18-20 10:02 AM

To: Cumming, Tom <Tom.Cumming@gowlingwlg.com>; Hanert, Caireen <Caireen.Hanert@gowlingwlg.com>

Cc: Bullen, Suzanne <Suzanne.Bullen@justice.gc.ca>

Subject: JMB Crushing

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

Good morning,

An issue has been raised with me by Bennett Jones counsel regarding a **possible** withholding tax issue arising from funds that have been paid by JMB to US shareholders since 2012.. I am not sure if you have been made aware of this issue, but, I would like to discuss this with you and the Monitor/counsel this Friday if you are available for a chat. Darrell Peterson from Bennett Jones advised me yesterday that the Monitor was made aware of this issue yesterday. I have asked CRA to check into this matter and it may take awhile before I will be advised of CRA's position regarding this issue. If CRA has a priority claim, then I would like to amend the order which set out the priorities to sale proceeds in the order involving the Mantle SAVO as CRA will have a priority over ATB and Sierra if this tax is assessed. It was probably these payments which contributed to the insolvency of JMB. It was unfortunate that no one except Bennett Jones and the JMB directors knew of this issue. You should ask Mr. Peterson to forward a copy of the letter sent to CRA, so that you are apprised of all of the outstanding legal issues. Under section 227(8.1), both JMB and the US shareholder are personally liable for the withholding tax that was not deducted. That is why Bennett Jones is now bringing up this issue, but, should have done so at the beginning of the CCAA proceedings.

Looking forward to hearing from you regarding your availability.

Thanks

Jill

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From: Medhurst, Jill <Jill.Medhurst@justice.gc.ca>

Sent: November-19-20 8:26 AM

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

Cc: Bullen, Suzanne <Suzanne.Bullen@justice.gc.ca>; Thiessen, Ted <Ted.Thiessen@gowlingwlg.com>; Hanert, Caireen <Caireen.Hanert@gowlingwlg.com>; Kroeger, Stephen <Stephen.Kroeger@gowlingwlg.com>; Cones, Tristen <Tristen.Cones@justice.gc.ca>

Subject: RE: JMB Crushing

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

Thank you for your email Tom. Unfortunately, with CRA being such a large organization, there are many issues that can and do fall through the cracks and this was a major issue. However, I cannot believe that this possible withholding tax was not referred to by the Monitor in all of its reports to the court nor by JMB and your firm and not brought to my attention before now. I am very disappointed that all of you knew of this issue except myself, which could have dealt with it at the beginning of the CCAA and before any orders were granted. As we are all well aware, it takes awhile for matters to be dealt with by CRA and a tax debtor, especially matters going back to 2012. Then Covid intervened which set matters back even further. If I had been made aware of this issue, I could have tried to have CRA make this a priority and it could have been dealt with prior to any court orders being granted.

I would like to speak with you and Sean tomorrow. I am free at 10:00 am or 2:00 pm, whichever time works for all of you. If the Monitor and JMB will not deal with this matter, I will be making an application to inform the court of this issue.

It would have taken an email or phone call to say that there may be a possible withholding tax issue and I cannot believe that no one thought to bring this to my attention before now. I spoke many times with Caireen and there was no mention made of this issue, which is very disappointing.

Regards

Jill



From: Cumming, Tom [mailto:Tom.Cumming@gowlingwlg.com]

Sent: November 18, 2020 4:32 PM

To: Medhurst, Jill <Jill.Medhurst@justice.gc.ca>

Cc: Bullen, Suzanne <Suzanne.Bullen@justice.gc.ca>; Thiessen, Ted <Ted.Thiessen@gowlingwlg.com>; Hanert, Caireen <Caireen.Hanert@gowlingwlg.com>; Kroeger, Stephen <Stephen.Kroeger@gowlingwlg.com>

Subject: RE: JMB Crushing

Good afternoon Jill,

I am surprised that Canada Revenue Agency (the "**CRA**") was not aware of this issue. In fact, these issues were raised with the CRA in a voluntary disclosure letter dated September 9, 2019 (the "**Voluntary Disclosure**") from Jay Winters and Jared Mackey of Bennett Jones LLP ("**Bennett Jones**") to the CRA. In a letter dated December 13, 2019, the CRA acknowledged the Voluntary Disclosure and that the application contains the required information and documentation under the Voluntary Disclosure Program. Copies of the Voluntary Disclosure and the December 13, 2019 letter are attached.

By way of background, pursuant to the Share Purchase Agreement dated November 21, 2018 (the "**SPA**") between JMB Crushing Systems Inc. (the "**JMB Purchaser**"), Resource Land Fund V, LP, JMB Crushing Systems ULC ("**JMB ULC**") and the shareholders of JMB ULC (the "**Sellers**"), the JMB Purchaser purchased the shares of the Sellers in JMB ULC (the "**JMB ULC Shares**"). Darrell Peterson of Bennett Jones represented the Sellers and JMB ULC in that transaction, and Bennett Jones has continued to represent JMB ULC and the Sellers in connection with the Voluntary Disclosure. Bennett Jones also represents Jeff Buck, who is a principal of one of the Sellers and was a former director and the former President of JMB Crushing Systems Inc. (the "**Current JMB**", which is a corporate successor of the JMB Purchaser and JMB ULC). Jeff Buck resigned in after the proceedings of the Current JMB and 2161889 Alberta Ltd. ("**216**") were commenced under the *Companies' Creditors Arrangement Act* (the "**CCAA**", and the proceedings, the "**CCAA Proceedings**").

Mr. Peterson received notice of the applications in the CCAA Proceedings for the approval and vesting order, reverse vesting order (the "**RVO**"), assignment order and sanction order which were heard on October 16, 2020, and did not attend that application or make any submissions. The appeal period in respect of those Orders have expired.

The potential tax liabilities which were identified in the Voluntary Disclosure were, we understand, the subject matter of an audit that was being carried out by the CRA of JMB ULC. During the due diligence process leading up to the completion of the share purchase contemplated by the SPA, the JMB Purchaser identified withholding tax irregularities in respect of JMB ULC, and the purchase price for the JMB ULC Shares was reduced by an adjustment equal to the estimated tax liability arising from these irregularities. The Sellers were required, in order to reduce or reverse that adjustment to the purchase price, to take steps to resolve the tax irregularities, and therefore submitted the Voluntary Disclosure to the CRA in order to accomplish that. The CRA commenced an audit and sent a letter dated February 25, 2020 from the CRA to the Current JMB setting out the information that the required in connection with the audit. Attached to this email is a copy of the February 25, 2020 letter from the CRA.

On May 26, 2020, RSM Canada, the auditor of the Current JMB, advised the Current JMB that the CRA audit arising from the Voluntary Disclosure was suspended in March of 2020 as a result of the COVID-19 public health emergency (<https://www.canada.ca/en/revenue-agency/campaigns/covid-19-update/covid-19-collections-audits-appeals.html>).

I trust that Mr. Peterson disclosed all of the foregoing to you. I would note that under the RVO, all assets of the Current JMB that were not acquired by Mantle Materials Group, Ltd. ("**Mantle**") were vested in 216, and all liabilities of the Current JMB that were not assumed by Mantle were vested in 216 without recourse to the



Current JMB. This would include any unremitted tax liabilities. Any priority that the CRA may have with respect to assets in the estate of the Current JMB, as against the assets transferred to 216, was preserved.

The insolvency of the Current JMB resulted from many factors, including the downturn in the oil and gas sector, which severely depressed the demand for aggregate, serious financial mismanagement by JMB ULC, and accounting irregularities by the management of JMB ULC under which recorded levels of inventory and accounts receivable which did not exist. The Second Report of the Monitor dated July 6, 2020 (hyperlink <http://cfcanada.fticonsulting.com/jmb/docs/Second%20Report%20of%20the%20Monitor%20FINAL.pdf>) provides information with respect to the over-statement of inventory (paragraphs 21 to 28), which was discovered by the Chief Restructuring Adviser of JMB and 216 (referred to in the Report as the CRA).

The over-stated inventory and accounts receivable were included in that part of the working capital calculation employed to determine the purchase price of the JMB ULC Shares. The majority of these irregularities came to light after the completion of the transaction contemplated by the SPA (and in the case of the inventory, after the commencement of the CCAA Proceedings) and were a contributing factor to the Current JMB being in default of its obligations under its letter loan agreement with ATB Financial. The triggering factor underlying the CCAA Proceedings was the unwillingness of ATB Financial to continue to provide financing to the Current JMB. While the tax irregularities identified in the Voluntary Disclosure may well be symptomatic of the more profound accounting irregularities, those tax irregularities were not themselves a precipitating cause of the Current JMB's insolvency, contrary to the speculations in your email.

We are pleased to discuss this issue further with you on Friday. Please let us know what time would be convenient for you.

Best regards,

Tom Cumming
Partner
T +1 403 298 1938
M +1 403 606 4592

tom.cumming@gowlingwlg.com

Note that we continue to operate remotely at full capacity but our physical office is only partially open as a result of the continuing COVID-19 health measures. Until full reopening, please use my Mobile number (in red). Thank you.



A handwritten signature in black ink, located in the bottom right corner of the page.

From: Medhurst, Jill <Jill.Medhurst@justice.gc.ca>

Sent: November-19-20 1:52 PM

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

Cc: Bullen, Suzanne <Suzanne.Bullen@justice.gc.ca>; Thiessen, Ted <Ted.Thiessen@gowlingwlg.com>; Hanert, Caireen <Caireen.Hanert@gowlingwlg.com>; Kroeger, Stephen <Stephen.Kroeger@gowlingwlg.com>; Cones, Tristen <Tristen.Cones@justice.gc.ca>; Sean F. Collins (scollins@mccarthy.ca) <scollins@mccarthy.ca>; Pantelis Kyriakakis (pkyriakakis@mccarthy.ca) <pkyriakakis@mccarthy.ca>

Subject: RE: JMB Crushing

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Tom... how would CRA insolvency been aware of a voluntary disclosure application made by JMB, that had not been audited and assessed by CRA? You and the Monitor/lawyer are well aware that I am not dealing with a small client where everything is within arms reach. I am dealing with a large bureaucracy where the left hand does not always know what is going on with the right hand and rightly or wrongly, you are very aware of the challenges I face with my client. It is very difficult to know which departments, of which there are many, may be dealing with an insolvent company. I checked with CRA at the beginning of this CCAA process as the **experienced** lawyer that I am and CRA advised there were pre and post initial order source deduction priority claims. As these were not assessed claims, there was nothing in the system that referenced these claims. Caireen and I worked out the payment of these claims. She had many opportunities to advise me of the possible a possible withholding tax claim. The networks for audit and insolvency are separated at CRA and CRA insolvency was not aware of the voluntary disclosure that had been made by JMB. The Monitor, the company and its lawyers were aware of this issue and chose not to bring it to my attention or to the court's attention. You cannot say that CRA is a regular creditor and that it is CRA's duty to bring all claims forward when it is so large, when it is based on self reporting by tax debtors and when it is dealing with so many tax debtors.

The major problem is that the Monitor and the Company are not being fully transparent with creditors, but, more importantly, with the Court. There is a possible priority claim that has not been brought to the Court's attention and it was the duty of the Monitor and the company to at least mention this to the Court. Referring to a possible contingent tax claim, buried in a report is not sufficient or briefly mentioned in court is not sufficient. This is not a tax claim, but, a priority withholding tax claim and you were aware of the nature of this possible claim. Had full disclosure of this claim been set out in any of the numerous Monitor reports, I would have been able to review this claim with CRA sooner and take steps to make sure that it was protected if and when it was assessed. You took away CRA's ability to assert this priority claim before any orders were granted by the Court.

It has been my experience that the very least, as a professional courtesy, insolvency practitioners and tax debtors will disclose all of the tax debtors claims and contingent claims to me if I have not raised it with them. I, in turn will assist when matters are time sensitive and when I am asked to try to speed up the CRA process if I can, so that insolvency proceedings do not take forever. I am very disappointed that given our good working relationship in the past, that you saw fit not to mention this issue to me.

I believe that to give the Court full transparency and to uphold all of the rights of all the creditors, specifically, one that may have a priority claim, that the Monitor consent to an order that directs that CRA is entitled to share in the sale proceeds arising from the sale to Mantle as if this claim is assessed by CRA, it will be a priority claim that has priority over ATB and Sierra. The amount that was to be held in trust by JMB was \$2.5 M. So I would ask that this amount be held back by the Monitor, until these issues can be dealt with and CRA is able to raise a withholding tax assessments against JMB if that is what it determines. Please advise if the Monitor and JMB will agree to this settlement proposal. It will defray further costs of having a full hearing on this issue and protect CRA's priority rights.



It is not enough to say that a distribution order has not been granted, as to my knowledge, there will not be any funds available to pay CRA's priority claim when JMB's assets are transferred to 216 and Mantle. All of the good assets have been purchased by Mantle. Please advise if there will be \$2.5 M to hold in trust that will not be coming from the Mantle sale? I will have CRA file a contingent claim with the Monitor for this claim. I would not have agreed to release lien funds had I know about this contingent withholding tax claim.

The CRA letter that you attached Tom in your previous email is not in response to the Voluntary Disclosure application, but, is in reference to the 2018 tax year and the VDP was for 2017 and prior years.

I am available at 10:00 am tomorrow for a call, so please let me know the conference phone details.

Thanks

Jill



From: Cumming, Tom [<mailto:Tom.Cumming@gowlingwlg.com>]

Sent: November 19, 2020 3:28 PM

To: Medhurst, Jill <Jill.Medhurst@justice.gc.ca>

Cc: Bullen, Suzanne <Suzanne.Bullen@justice.gc.ca>; Thiessen, Ted <Ted.Thiessen@gowlingwlg.com>; Hanert, Caireen <Caireen.Hanert@gowlingwlg.com>; Kroeger, Stephen <Stephen.Kroeger@gowlingwlg.com>; Cones, Tristen <Tristen.Cones@justice.gc.ca>; Sean F. Collins (scollins@mccarthy.ca) <scollins@mccarthy.ca>; Pantelis Kyriakakis (pkyriakakis@mccarthy.ca) <pkyriakakis@mccarthy.ca>

Subject: RE: JMB Crushing

Jill,

You suggest that we intentionally withheld information from you. That is not correct. We assumed that the CRA would provide you with the information in its possession relating to JMB and its tax status. We have also had no involvement with respect to the Voluntary Disclosure, or the status of that matter. While I was told that there had been a dispute between the purchaser and sellers with respect to JMB ULC's tax compliance practices, I had not reviewed any of the details of that issue. Caireen was not aware of the issue at all. I note that we were first retained by JMB in February of 2020, and therefore started from zero information.

In the context of the CCAA, when the company is facing a series of crises requiring immediate response, we simply did not have time to determine if there might be deemed trust claims that arose prior to my client acquiring the company, and have apparently never been ascertained. We dealt with the deemed trust claims that were in JMB's books which were discussed with you.

Your colleagues that the CRA had much better information with respect to the obligations of the pre-November 2018 JMB than we had or now have. All we have is a copy of the Voluntary Disclosure. I have no idea whether or not Bennett Jones' position is well founded and have not been instructed to verify that.

The Monitor only becomes aware of claims if it is dealing with a distribution application or running a claims process. In a claims process, all that the Monitor does is give notice to the creditors giving them the opportunity to prove their claims. Before any distribution happens, any valid, prior ranking trust claims have to be addressed. Since these proceedings were first commenced on May 1, 2020, I believe that it would be reasonable to expect that the CRA would be, in anticipation of an eventual distribution application, determining what might be owed and what its priority might be. It cannot be a surprise that this would eventually be necessary.

In any case, I reached out to my client this morning about the CRA audit, and he indicated that my understanding of that audit was not correct. The following is his response:

Just to be clear, the Voluntary Disclosure Package and the CRA audit are separate assessments.

The CRA Audit division is examining revenue, other expenses, contributed surplus, Schedule 8, due from related balances, AR, Inventory and interest on long term debt. This audit is in response to the amended tax returns that were filed by RSM Canada which eliminated the 2018 taxable income from the original filed returns.

The CRA Voluntary Disclosure division is examining the VDP package that was filed by Bennett Jones in connection with various international filing and tax withholding requirements that were not adhered to by the Sellers. To date, no requests have been received by the VDP division.

I have not prepared the CRA audit materials however I could pull this together within a couple days. CRA is also requesting RSM's working papers on the tax returns, so this may be difficult to obtain in lieu of the debt owed to RSM.



Finally, it is not correct that we did not advise the Court that the CRA may have a contingent claim. On October 16, 2020, I told the Court that there is a potential, contingent, unliquidated claim, that may have some deemed trust protection, but that the claim has not been quantified.

There will be no distribution from the estate without a further order of the Court, which, like every other application, will be on notice to the CRA. I would ask that you urge your colleagues to determine their position with respect to the Voluntary Disclosure as soon as possible.

I will send a call in number for 10 am.

Best regards,

Tom Cumming

Partner

T +1 403 298 1938

M +1 403 606 4592

tom.cumming@gowlingwlg.com

Note that we continue to operate remotely at full capacity but our physical office is only partially open as a result of the continuing COVID-19 health measures. Until full reopening, please use my Mobile number (in red). Thank you.



A handwritten signature in the bottom right corner of the page.

From: Medhurst, Jill <Jill.Medhurst@justice.gc.ca>

Sent: November-19-20 4:11 PM

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

Cc: Bullen, Suzanne <Suzanne.Bullen@justice.gc.ca>; Thiessen, Ted <Ted.Thiessen@gowlingwlg.com>; Hanert, Caireen <Caireen.Hanert@gowlingwlg.com>; Kroeger, Stephen <Stephen.Kroeger@gowlingwlg.com>; Cones, Tristen <Tristen.Cones@justice.gc.ca>; Sean F. Collins (scollins@mccarthy.ca) <scollins@mccarthy.ca>; Pantelis Kyriakakis (pkyriakakis@mccarthy.ca) <pkyriakakis@mccarthy.ca>

Subject: RE: JMB Crushing

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Well it looks like all of us were in the dark about this issue except the former directors and their lawyer. A priority order was obtained prior to a distribution order which is unusual. Usually there is a claims order and then creditors file their claims and then if there are any priority issues, that can be dealt with before any distribution. I am sorry Tom, but, CRA's departments are huge and insolvency collectors do not have access to audit files and CRA insolvency had no notification that the VDP was filed with CRA. There was no way for CRA to know about this application. You have a misconception about how matters are dealt with at CRA. Such a request may not have been assigned to an auditor as a form letter issued confirming receipt of the VDP and then an auditor would be assigned maybe two-six months after the receipt acknowledgment. Covid happened and everything was put on hold. If you had some information about this, I would have appreciated a heads up and I could have looked into it further and made representations before the sale orders were granted. I would have appreciated receiving the VDP sooner when you found out about it and when you knew when the purchasers were doing due diligence. If I did not see a deemed trust reference in the Monitor's reports or in the company's pleadings, then I will not appear. I would have at the very least appreciated a call before the October 16 application to advise that the contingent tax claim was a possible priority claim. I would have looked into the matter sooner. If there are no priority claims, I do not attend the proceedings. There are a number of different tax claims and most of them are not priority claims. I am very protective of these priority claims as you know and would have appreciated a heads up.

Could you please advise where the funds will come from for a claims and distribution order? Are there sufficient funds to cover a holdback of \$2.5 M without the Mantle sale proceeds? I know that you are aware that CRA cannot move with lightning speed. We can focus on the withholding tax and hopefully obtain a decision from the CRA auditor soon, but, I do not even know if this matter has been assigned to an auditor yet. I am having CRA insolvency make enquiries. I had advised previously that the letter you referred to was in response to the 2018 tax year and not the VDP.

I understand that the fact that there was a different JMB company when you became involved did not help the situation either. I would have thought whomever was in charge at that time would have given you background information about what had been done previously by the former directors as I feel this did impact how the company could not survive the downturn of the Alberta economy.

Thanks

Jill



From: Medhurst, Jill <Jill.Medhurst@justice.gc.ca>

Sent: November 20, 2020 11:52 AM

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

Cc: Bullen, Suzanne <Suzanne.Bullen@justice.gc.ca>; Thiessen, Ted <Ted.Thiessen@gowlingwlg.com>; Hanert, Caireen <Caireen.Hanert@gowlingwlg.com>; Kroeger, Stephen <Stephen.Kroeger@gowlingwlg.com>; Cones, Tristen <Tristen.Cones@justice.gc.ca>; Sean F. Collins (scollins@mccarthy.ca) <scollins@mccarthy.ca>; Pantelis Kyriakakis (pkyriakakis@mccarthy.ca) <pkyriakakis@mccarthy.ca>

Subject: RE: JMB Crushing

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Further to our call this morning and clarification that the Monitor did not have personal knowledge of the possible withholding tax priority claims that CRA may have until this past Tuesday, I confirm that the Monitor has not been misleading the court and not being fully transparent with the Court. From what Tom has stated below, it would seem that Gowlings was not fully apprised of the details as well. But both the company, the Monitor and their respective layers should have looked into this issue more closely and alerted myself and the court of this possible priority issue. Both the Monitor and Gowlings advised that they knew of the VDP when the due diligence was ongoing with the Purchaser, which I believe was this past summer. There was plenty of time for the Company and the Monitor to delve into this issue, which would have given me enough time to review this matter and provide CRA's position to all parties and definitely before the Court granted its order on October 16.

The important factor is that we are all now aware of this possible priority claim and that I hope that I can receive the cooperation of the company and the Monitor to assist with the audit of this claim in order to determine if in fact CRA has a valid priority claim. Also, as mentioned previously, if this is a valid priority claim, CRA will be asserting this priority and the payment of this claim against the claims of all creditors and secured creditors. I leave it open to CRA to pursue entitlement to the administrative and borrowing charges if there is not sufficient funds to pay any possible priority claims. I hope it will not come to this and I hope that both the Company and the Monitor will make efforts to ensure that CRA's possible priority claim is paid in full. I will be discussing this matter with CRA and I will get back to you next week with an update.

Thanks

Jill



From: Medhurst, Jill <Jill.Medhurst@justice.gc.ca>

Sent: December-15-20 10:47 AM

To: Cumming, Tom <Tom.Cumming@gowlingwlg.com>; Hanert, Caireen <Caireen.Hanert@gowlingwlg.com>

Cc: Bullen, Suzanne <Suzanne.Bullen@justice.gc.ca>

Subject: JMB Crushing

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Hi Tom and Caireen,

I have received instructions from CRA that they are not agreeable to compromising any priority claims that CRA may have, arising out of the Voluntary Disclosure letter dated September 9, 2019 that was sent to CRA, regarding the above corporation or any other priority claims they may have.

Also, to complete the second Voluntary Disclosure review, the company will need to send a formal letter to the Assistant Director of the Shawinigan National Verification and Collections Centre. Please see paragraph 59 of the information circular IC00-1R6 which sets out the process. If you could copy me with this letter, I will send it by email internally.

Thanks

Jill

Jill Medhurst

Counsel

Prairie Regional Office

601 606 4th Street SW, Calgary, Ab T2P 1T1

National Litigation Sector

Department of Justice Canada / Government of Canada

Jill.Medhurst@justice.gc.ca / Telephone 403 299-3985 / Facsimile 403 299-3907

Avocate

Bureau régional des Prairies (Calgary)

601 606 4th St Calgary, Ab T2P 1T1

Secteur national du contentieux

Ministère de la Justice Canada / Gouvernement du Canada

Jill.Medhurst@justice.gc.ca / Tél: 403 299-3985 / Téléc: 403 299-3907



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

Sent: December 15, 2020 1:43 PM

To: Medhurst, Jill <Jill.Medhurst@justice.gc.ca>; Hanert, Caireen <Caireen.Hanert@gowlingwlg.com>

Cc: Bullen, Suzanne <Suzanne.Bullen@justice.gc.ca>; Thiessen, Ted <Ted.Thiessen@gowlingwlg.com>

Subject: RE: JMB Crushing Systems Inc. ("JMB") and 2161889 Alberta Ltd. ("216")

Hi Jill

Thanks for your email. I am copying my partner Ted Thiessen, who specializes in tax.

Based on our analysis, there is little chance of completing the Mantle transaction unless arrangements can be made with Canada Revenue Agency (the "CRA"), the lien and trust claimants, and Alberta Environment and Parks (the "AEP") by Friday December 18, 2020. As you will note, we are quickly running out of time.

I attach a spreadsheet setting out the aggregate pits owned, occupied or operated by JMB and 216 (either through surface material leases, aggregate royalty agreements, fee simple ownership or otherwise) together with the reclamation obligations associated with each one. If the Mantle transaction does not close, the aggregate reclamation liability is \$2,025,664, for which there is security in the amount of \$598,016. I note that these are accounting estimates and actual reclamation costs are likely to exceed this. Also, reclamation amounts should be included for the Lafarge pits, so this is an under estimate. I would also note that most of the unsecured reclamation exposure is in JMB rather than 216.

As a result of the decision of the Supreme Court of Canada in *Orphan Wells Association v Grant Thornton Ltd.*, the AEP, as the regulator, has absolute priority over all creditors including the CRA for reclamation liabilities of JMB and 216. I would expect, based on my experience with Alberta regulators, that they would issue an order requiring JMB and 216 to reclaim all pits, whereupon there could be no distributions until that was completed. When the reclamation work is completed to the satisfaction of AEP, and reclamation certificates are issued by the AEP, the security deposits would be returned. My understanding is that this process typically takes 5 years from start to finish.

If the Mantle transaction is to close, we have to know this week. Even if the CRA is unwilling to compromise any valid tax claims, the Mantle transaction could still close if we had the following information:

- whether JMB is qualified under the Voluntary Disclosure Program (the "VDP"); and
- the amount of tax that the CRA actually believes is owing.

Based on our review of the information available to us, the CRA had no reasonable basis for denying JMB's status under the VDP. We have asked Bennett Jones LLP to take the steps necessary to appeal this, but clearly the time frame is insufficient to permit the Mantle transaction to proceed.

If the CRA is unable to respond to this request, and provide the information necessary to permit the completion of the transaction, there is a very real chance that it will be abandoned, leaving the CRA, as well as all of the other stakeholders, with limited options.

Can we discuss this matter at your earliest convenience?

Thank you.

Tom



Tom Cumming

Partner

T +1 403 298 1938

M +1 403 606 4592

tom.cumming@gowlingwlg.com

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From: Medhurst, Jill <Jill.Medhurst@justice.gc.ca>
Sent: January-11-21 4:41 PM
To: Cumming, Tom <Tom.Cumming@gowlingwlg.com>
Cc: Bullen, Suzanne <Suzanne.Bullen@justice.gc.ca>
Subject: JMB Crushing

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Hi Tom,

So I take it that you will be extending the CCAA tomorrow? Please let me know about providing the underlying documentation for voluntary disclosure? Has anyone from CRA been in contact with Bennett Jones or the company?

Thanks

Jill

Jill Medhurst
Counsel
Prairie Regional Office
601 606 4th Street SW, Calgary, Ab T2P 1T1
National Litigation Sector
Department of Justice Canada / Government of Canada
Jill.Medhurst@justice.gc.ca / Telephone 403 299-3985 / Facsimile 403 299-3907

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601 606 4th St Calgary, Ab T2P 1T1
Secteur national du contentieux
Ministère de la Justice Canada / Gouvernement du Canada
Jill.Medhurst@justice.gc.ca / Tél: 403 299-3985 / Téléc: 403 299-3907



From: Cumming, Tom <Tom.Cumming@gowlingwlg.com>
Sent: January 26, 2021 1:10 PM
To: Medhurst, Jill <Jill.Medhurst@justice.gc.ca>
Subject: Follow-up with Jill

Hi Jill

I just wanted to follow up with respect to the matters subject to the voluntary disclosure, and in particular whether the CRA needed anything in addition to what Jeff Ryks had assembled. Can you let me know where things stand?

Thanks.

Tom

Tom Cumming
Partner
T +1 403 298 1938
M +1 403 606 4592

tom.cumming@gowlingwlg.com

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Gowling WLG (Canada) LLP
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Calgary AB T2P 4K9
Canada



gowlingwlg.com

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From: Cumming, Tom <Tom.Cumming@gowlingwlg.com>
Sent: February 5, 2021 11:19 AM
To: Medhurst, Jill <Jill.Medhurst@justice.gc.ca>
Subject: JMB

Hi Jill

Have you heard from the CRA with respect to their position on the claim against JMB?

Thanks.

Tom

Tom Cumming
Partner
T +1 403 298 1938
M +1 403 606 4592

tom.cumming@gowlingwlg.com

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Canada



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A handwritten signature in black ink, located in the bottom right corner of the page.

From: Medhurst, Jill
Sent: February 8, 2021 7:39 AM
To: 'Cumming, Tom' <Tom.Cumming@gowlingwlg.com>
Cc: Bullen, Suzanne <Suzanne.Bullen@justice.gc.ca>
Subject: RE: JMB

Hi Tom,

I checked last week and not update yet. I think that the review should be completed soon. I will let you know as soon as I know.

Thanks and have a good week!

Jill



From: Cumming, Tom <Tom.Cumming@gowlingwlg.com>
Sent: February 17, 2021 9:43 AM
To: Medhurst, Jill <Jill.Medhurst@justice.gc.ca>
Cc: Bullen, Suzanne <Suzanne.Bullen@justice.gc.ca>; Cones, Tristen <Tristen.Cones@justice.gc.ca>; Malm, Tandra <Tandra.Malm@justice.gc.ca>
Subject: RE: JMB

Hi Jill

It will be 2 pm. Has the CRA reviewed the issue as to whether there is a deemed trust? It seems to me that that is separate from the issue as to the VDP, and has direct effect on the estate. I think we have sent you the necessary information, but let me know if there is anything else required.

Thanks.

Tom

Tom Cumming
Partner
T +1 403 298 1938
M +1 403 606 4592

tom.cumming@gowlingwlg.com

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

Sent: February 18, 2021 7:20 PM

To: Medhurst, Jill <Jill.Medhurst@justice.gc.ca>

Cc: Bullen, Suzanne <Suzanne.Bullen@justice.gc.ca>; Cones, Tristen <Tristen.Cones@justice.gc.ca>; Malm,

Tandra <Tandra.Malm@justice.gc.ca>

Subject: RE: JMB

Hi Jill

We have also asked for additional Court time on March 5 because we are re-jigging the transaction in order to permit us to close immediately without waiting for the AEP. What that means is that the pressure will almost immediately become significant to resolve all of the outstanding issues.

Is there any way that we can accelerate progress on the CRA's review of the information provided and their determinations? Would it be helpful to have the Court determine the matter so that everyone is working with a time line? Generally, I like to avoid recourse to the Court, but I do find that it can be helpful in focussing the attention of decision makers, and in any case, the deemed trust question is rather unusual. My tax guy was not able to find cases directly on point, although there were some that adverted to the fundamentals of the issue.

Do you want to have a call tomorrow to discuss this?

Kind regards,

Tom

Tom Cumming

Partner

T +1 403 298 1938

M +1 403 606 4592

tom.cumming@gowlingwlg.com

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From: Medhurst, Jill <Jill.Medhurst@justice.gc.ca>

Sent: February-22-21 4:12 PM

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

Cc: Bullen, Suzanne <Suzanne.Bullen@justice.gc.ca>; Cones, Tristen <Tristen.Cones@justice.gc.ca>; Malm, Tandra <Tandra.Malm@justice.gc.ca>

Subject: RE: JMB

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Hi Tom,

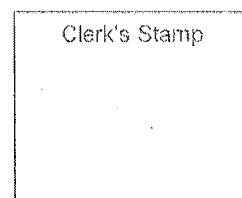
I am still waiting to hear from CRA, and I am not sure if there will be anything to report before the court application on Wednesday. However, I wanted to say that the QB court does not have the jurisdiction to deal with any tax issues...that is only for CRA and the tax court. The Monitor has agreed to hold the \$2 M (the lien funds) for any possible CRA priority claims. As I stated before, CRA is trying to move this along but it has been difficult given that CRA is focused on other matters dealing with the pandemic.

Hopefully, we will have some resolution by March 5, 2021.

Thanks

Jill





COURT FILE NO. 2001-05482
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY

IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, RSC 1985, c C-36, as amended
AND IN THE MATTER OF THE COMPROMISE OR
ARRANGEMENT OF JMB CRUSHING SYSTEMS INC. and 2161889
ALBERTA LTD.

APPLICANTS JMB CRUSHING SYSTEMS INC. and 2161889 ALBERTA LTD.

DOCUMENT **AFFIDAVIT OF BLAKE M. ELYEA**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
Gowling WLG (Canada) LLP
1600, 421 – 7th Avenue SW
Calgary, AB T2P 4K9
Attn: **Tom Cumming/Caireen E. Hanert/Stephen Kroeger**
Phone: 403.298.1938/403.298.1992/403.298.1018
Fax: 403.263.9193
File No.: A163514

AFFIDAVIT OF BLAKE M. ELYEA
sworn February 23, 2021

I, **BLAKE M. ELYEA**, of the City of Burnaby, in the Province of British Columbia,
MAKE OATH AND SAY THAT:

1. I am the Chief Restructuring Advisor for JMB Crushing Systems Inc. ("**JMB**") and 2161889 Alberta Ltd. ("**216**", and with JMB, the "**Applicants**"). As such, I 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.
2. I was appointed as Chief Restructuring Advisor of JMB and 216 on May 4, 2020, immediately following the commencement of their proceedings under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the "**CCAA**", and such

A handwritten signature in black ink, appearing to be "AD" or similar initials, located in the bottom right corner of the page.

proceedings, the “**CCAA Proceedings**”). In that capacity, I have reviewed the business records of JMB relevant to the within proceedings and have satisfied myself that I am possessed of sufficient information and knowledge to swear this Affidavit.

3. I swear this Affidavit further to my Affidavits sworn August 6, 2020, October 16, 2020 November 20, 2020, December 4, 2020 and February 19, 2021 in these proceedings.
4. I am authorized to swear this Affidavit as Chief Restructuring Advisor of JMB.
5. I make this affidavit in support of an order declaring that the Equipment (as defined below) is not Property of the Applicants as defined in the initial order granted under the CCAA on May 1, 2020 (as subsequently amended and restated on May 11, 2020, the “**Initial Order**”).

Declaratory Relief

6. Pursuant to paragraph 4 of the Initial Order, “Property” of the Applicants is defined as “...current and future assets, undertaking and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”).”
7. Eastside Rock Products, Inc. (“**Eastside**”) is a company incorporated pursuant to the laws of the State of Washington and is a wholly owned subsidiary of JMB. The details of Eastside’s relationship with the Applicants is set out in the Affidavit of Jeff Buck sworn April 16, 2020 in these proceedings.
8. On or about November 9, 2017, Eastside purchased a Cheetah APS800 Generator set (the “**Generator**”) with trailer (the “**Trailer**” and with Generator, the “**Equipment**”) from NC Power Systems Co. Attached hereto as **Exhibit “A”** is a copy of the invoice for Eastside’s purchase of the Equipment. On my review of the Eastside’s business records Eastside used the Equipment in its operations until it was imported to Canada as set out below.
9. On May 7, 2019, the Equipment was brought into Canada. Attached hereto as **Exhibit “B”** is a copy of the Vehicle Import Form issued by Transport Canada. The Equipment was brought to Canada so that it could be used in JMB’s operations in Alberta.



10. On June 4, 2019, JMB registered the Trailer in Alberta in accordance with the *Traffic Safety Act*, RSA 2000, c T-6, that requires vehicles being driven on provincial roads, like the Trailer, to be registered with Alberta Registries. Attached hereto as **Exhibit "C"** is a copy of the Trailer registration.
11. I am advised by my review of JMB's books and records and believe that:
 - (a) no monies were paid or advanced to Eastside by JMB for the Equipment; and
 - (b) the Equipment has been and continues to be listed as a fixed asset in Eastside's financial statements. Attached hereto as **Exhibit "D"** is a redacted copy of Eastside's fixed asset listing dated December 31, 2020.

Canada Revenue Agency – Deemed Trust Issue

12. I am advised by Tom Cumming, counsel for the Applicants, and believe that the issue of whether Canada Revenue Agency (the "CRA") has a deemed trust as a result of payments made to the former shareholders of JMB Crushing Systems ULC ("**JMB ULC**"), the predecessor of JMB, has still not been resolved, despite the passage of over a year:
 - (a) The issue was first raised on September 9, 2019 by counsel to JMB ULC and its former shareholders in a Voluntary Disclosure letter (the "**VDL**") sent to the CRA;
 - (b) Since the application for the Initial Order on May 1, 2020, Jill Medhurst and Tristan Cones, counsel to the CRA, have been served with all materials in these proceedings;
 - (c) It was not until November 18, 2020 that Ms. Medhurst advised Mr. Cumming via email that, among other things, the CRA may have a priority claim. Mr. Cumming responded on the same day to set out the background to the CCAA Proceedings and to request a call to discuss matters;
 - (d) In a series of email correspondence exchanged on November 19 and 20, 2020, Ms. Medhurst advised Mr. Cumming that CRA had not been made aware of the alleged

priority claim, and that if she had been made aware, she could have tried to have CRA make this issue a priority;

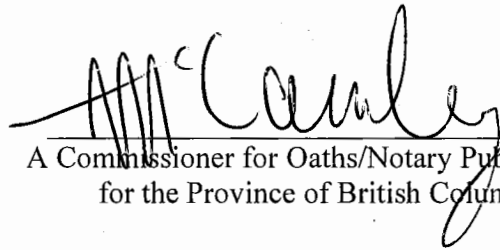
- (e) On December 15, 2020, Ms. Medhurst advised Mr. Cumming via email that the CRA was not agreeable to compromising any priority claims that the CRA may have arising out of the VDL;
- (f) On December 15, 2020, Mr. Cumming advised Ms. Medhurst via email that the transaction between JMB and Mantle Materials Group, Ltd. was in jeopardy as a result of delays by the CRA;
- (g) On December 23, 2020, counsel for JMB ULC and its former shareholders sent a request for second administrative review to the CRA Voluntary Disclosures Program;
- (h) On January 11, 2021, Ms. Medhurst requested certain tax information from the Applicants in relation to the deemed trust issue, which information was provided on January 12, 2021;
- (i) On January 26 and February 5, 2021, Mr. Cumming sent an email to Ms. Medhurst requesting an update on the CRA's position;
- (j) On February 8, 2021, Ms. Medhurst advised Mr. Cumming via email that she had received no update from the CRA, but that she thought the review would be completed soon;
- (k) On February 17, 2021, Mr. Cumming inquired Ms. Medhurst via email as to whether there was an update from the CRA, and Ms. Medhurst responded that she was still trying to work out the issue with the CRA;
- (l) On February 18, 2021, Mr. Cumming sent an email to Ms. Medhurst in which he advised that additional court time had been booked for March 5, 2021 and requested that the CRA accelerate their inquiry; and

THIS IS EXHIBIT "A" REFERRED TO IN

THE AFFIDAVIT OF BLAKE M. ELYEA

SWORN BEFORE ME

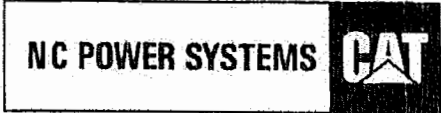
THIS 23rd DAY OF FEBRUARY, 2021



A Commissioner for Oaths/Notary Public in and
for the Province of British Columbia

ALEXANDRA L. MCCAWLEY
GOWLING WLG (CANADA) LLP
BARRISTER & SOLICITOR
550 BURRARD STREET - SUITE 2300
BENTALL 5 - VANCOUVER, B.C. V6C 2B5
TELEPHONE: (604) 891-2772





JMB Crushing Systems ULC
PO Box 6977
Bonnyville, AB
T9N 2H4

INVOICE

WA - (425) 251-9800
AK - (907) 786-7500

Please Remit To: NC Power Systems Co.
PO Box 58201
Tukwila, WA 98138-1201

SOLD TO
EASTSIDE ROCK PRODUCTS INC
32715 CARMICHAEL RD
PO BOX 625
PRESTON WA

SHIP TO
EASTSIDE ROCK PRODUCTS INC

98050-0625

OK
TJ

INVOICE NUMBER	INVOICE DATE	CUSTOMER NUMBER	CUSTOMER ORDER NUMBER	STORE	DIV	SALESMAN	TERMS	PAGE
E2702301	11-09-17	0304900	FALL CITY 752071	11	E	ATR	2	1
PSO/WO NO.	DOC. DATE	PC	LC	MC	SHIP VIA		INV SEQ NO.	
E27023	11-09-17			10			690349	
MAKE	MODEL	SERIAL NUMBER	EQUIPMENT NUMBER	METER READING	MACHINE ID NO.			
AA	APS800	DWB00636	R002	6994.50	E213224			
QUANTITY	ITEM	N/R	DESCRIPTION	UNIT PRICE	EXTENSION			

CUSTOMER CONTACT: DAVE CHURCH DLK9020BL10
TAX EXEMPTION LICENSE A35 5740 18

EQUIPMENT SALE
CATERPILLAR MODEL APS800
CATERPILLAR APS800
1.0 ID NO: E213224 SERIAL NO: DWB00636 105352.00
TRAILER VIN NO: 5EF2GC3008B772456
LICENSE NO: 1661ZJ

ONE (1) USED CATERPILLAR MODEL APS800 GENERATOR SET WITH TRAILER (TITLE ATTACHED)

ORIGINAL SALE PRICE \$162,700.00
LESS APPLIES RENTALS (\$57,348.00)
CONVERSION AMOUNT \$105,352.00

WARRANTY: AS IS/WHERE IS NO WARRANTY

TERMS: NET DUE 10 DAYS FROM DATE OF INVOICE
PAYMENT TO BE MADE TO:
HGI EXCHANGE, LLC
17035 WEST VALLEY HIGHWAY
TUKWILA WA 98188-5519

JMB Crushing Systems ULC
PO Box 6977
Bonnyville, AB
T9N 2H4

This Sale is subject to all terms and conditions set forth in the NC Power Systems Work Authorization, including LIMITED WARRANTY AND RELEASE and EXCLUSION OF LIABILITIES set forth on that Order.

TERMS: ALL PARTS AND SERVICE INVOICES ARE DUE THE 10TH OF THE MONTH FOLLOWING THE DATE OF PURCHASE. MACHINE INVOICES NET 10 DAYS FROM DATE OF INVOICE.

Each payment or sum past due shall bear a late payment charge of the lesser of 1 1/2% per month, which is an annual percentage rate of 18%, or an amount not to exceed the highest rate permitted by law.

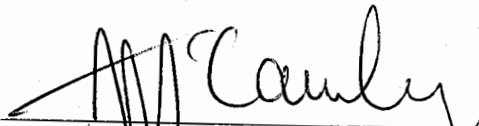


PAY THIS AMOUNT	▶	105352.00
AMOUNT CREDIT	▶	

Merchandise cannot be returned for credit without our prior approval and only in accordance with our Parts Return Policy. A copy of the policy is available upon request.

AB

THIS IS EXHIBIT "B" REFERRED TO IN
THE AFFIDAVIT OF BLAKE M. ELYEA
SWORN BEFORE ME
THIS 23rd DAY OF FEBRUARY, 2021



A Commissioner for Oaths/Notary Public in and
for the Province of British Columbia

ALEXANDRA L. MCCAWLEY
GOWLING WLG (CANADA) LLP
BARRISTER & SOLICITOR
550 BURRARD STREET - SUITE 2300
BENTALL 5 - VANCOUVER, B.C. V6C 2B5
TELEPHONE: (604) 891-2772





Transport Canada / Transports Canada

VEHICLE IMPORT FORM - FORM 1

FORMULAIRE D'IMPORTATION DE VÉHICULE - FORMULAIRE 1

Protected A (when completed) / Protégé A (lorsque rempli)

M775711

NOTICE TO PROVINCIAL / TERRITORIAL LICENCE AUTHORITY K-22 - AVIS AUX AUTORITÉS PROVINCIALES / TERRITORIALES D'IMMATRICULATION K-22

The conveyance described herein has been accounted for by Canada Border Services Agency and may be licensed in Canada subject to... Les véhicules mentionnés ci-dessous ont été déclarés à l'Agence des services frontaliers du Canada et peuvent être immatriculés au Canada.

Canada Border Services Agency dispose restrictions - Restriction de l'Agence des services frontaliers du Canada. Ce moyen de transport ne peut pas être vendu ou autrement aliéné au Canada.

At any time without authorization from Canada Border Services Agency... Transaction No. - N° de la transaction



VEHICLE AND IMPORTER INFORMATION - RENSEIGNEMENTS SUR LES VÉHICULES ET L'IMPORTATEUR

1. Vehicle id no. - N° d'ident. du véhicule: 5BA99030098772456
2. Name, id no. - processing agent: 20822
3. Port code: B13
4. Language preferred: English
5. Vehicle class: 01 Bus, 02 Incomplete vehicle, 03 Motorcycle, 04 Multipurpose passenger vehicle, 05 Passenger car, 06 Snowmobile, 07 Snowmobile cutter, 08 Trailer, 09 Trailer, 10 Trailer, 11 Truck, 12 Restricted use motorcycle, 13 Low-speed vehicle, 14 Three-wheeled vehicle

6. Manufacturer: Chevrolet
7. Make: Chevrolet
8. Model: APS 500
9. Model year: 2007
10. Compliance label affixed
11. Manufactured in: M - 10 - A - 07
12. Vehicle condition: Normal et dommage mineur
13. Country: USA

COMPLETE ONLY FOR VEHICLES NOT REQUIRED TO ENTER THE REGISTRAR OF IMPORTED VEHICLES PROGRAM

16. Read instruction sheet then CHECK ONE (1) BOX ONLY. Lire la feuille d'instructions et COCHER UNE (1) CASE SEULEMENT. Commercial importation - new Canadian specification vehicle... Non-commercial importation - new Canadian specification vehicle... Canadian certified vehicle being returned to Canada...



IMPORTER OR AGENT - IMPORTATEUR OU MANDATAIRE. PRINT NAME - NOM EN LETTRES MOULÉES, SIGNATURE, DATE

COMPLETE FOR VEHICLES REQUIRED TO ENTER THE REGISTRAR OF IMPORTED VEHICLES PROGRAM

17. See instructions for explanation. Voir les instructions pour les explications. Vehicle purchased in the United States - Véhicule acheté aux États-Unis. I am the owner or agent of the owner of the vehicle described herein... Je suis le propriétaire du véhicule décrit ci-dessus ou son mandataire.

Registrar of Imported Vehicles. GST No.: 1211515208/Q0001. REGISTRATION OF IMPORTED VEHICLES. A L'USAGE DU REGISTRE DES VÉHICULES IMPORTÉS. 450 - C, 450, KJE

If your vehicle is subject to the Registrar of Imported Vehicles Program (Box 17), a copy of this completed form will be forwarded to the Registrar of Imported Vehicles for processing. Within ten (10) days you will receive detailed instructions from the Registrar of Imported Vehicles concerning the modification and inspection process, including a list of inspection centres available to the importer, and a form to be used both by the modifier and the inspector. The inspection centre authorized by the Registrar of Imported Vehicles will complete and stamp the appropriate section in Box 17 once the vehicle has been properly modified and inspected. Once your vehicle has been certified by the inspection centre authorized by the Registrar of Imported Vehicles you will be able to license and register your vehicle with your Provincial Registrar.

The gold and white copies of this form are given to the importer at the time of importation. The gold copy is for the importer's records. The white copy is to be presented to the provincial / territorial licensing authorities by the importer at the time of licensing. The canary copy is kept by CBSA. The pink copy is kept by CBSA to be forwarded to the Registrar of Imported Vehicles.

Si votre véhicule est visé par le programme du Registraire des véhicules importés (case 17), un exemplaire du formulaire rempli sera envoyé au Registraire des véhicules importés pour traitement. D'ici dix (10) jours, vous recevrez des instructions détaillées de ce registraire sur le processus de modification et d'inspection, et notamment une liste des centres d'inspection auxquels l'importateur peut recourir et la formule que l'auteur des modifications et l'inspecteur devront utiliser. Le centre d'inspection autorisé par le Registraire remplira et estampillera la section voulue de la case 17 une fois le véhicule correctement modifié et inspecté. Une fois votre véhicule certifié conforme par ce centre, vous pourrez immatriculer votre véhicule auprès du registraire de votre province.

Les exemplaires or et blanc du présent formulaire sont remis à l'importateur au moment de l'importation. L'exemplaire or est pour ses dossiers et le blanc doit être présenté aux autorités provinciales ou territoriales d'immatriculation par l'importateur au moment de l'immatriculation. L'exemplaire canari est conservé par l'ASFC. L'exemplaire rose est conservé par l'ASFC et sera transmis au Registraire des véhicules importés.

TRANSFER OF SALES OF VEHICLE PRIOR TO COMPLIANCE AND INSPECTION OR PURCHASE OF IMPORT PRIOR WRITTEN PERMISSION FROM THE REGISTRAR OF IMPORTED VEHICLES

LE TRANSFERT OU LA VENTE D'UN VEHICULE AVANT QU'IL NE SOIT CONFORME ET INSPECTE SONT INTERDITS SANS L'AUTORISATION ECRITE DU REGISTRAIRE DES VEHICULES IMPORTES

Location of the Compliance label on the different vehicle classes

Emplacement de l'étiquette de conformité sur les diverses classes de véhicules

Passenger car: The hinge pillar, door latch post or the door edge that meets the door latch post next to the driver's seating position.

V voiture de tourisme : Sur le montant des charnières, sur le montant de la gâche ou à l'extrémité de la porte correspondant au montant de la gâche, du côté du conducteur.

Truck: Same as Passenger cars or, where it is impracticable, to the left side of the instrument panel or to the inward facing surface of the door next to the driver's seating position.

Camion : Comme les voitures de tourisme ou, s'il est impossible de l'apposer à ces endroits, sur le côté gauche du tableau de bord ou sur la surface intérieure de la porte du conducteur.

Bus: Same as Truck.

Autobus : Voir camion.

Multi-purpose passenger vehicle: Same as Truck.

Voiture de tourisme à usages multiples : Voir camion.

Motorcycle - All types: On a permanent part of the vehicle as close as practicable to the intersection of the steering post and the handlebars so that it is easily readable without moving any part of the vehicle except the steering system.

Motocyclette - Tout genre : Sur une partie fixe du véhicule, aussi près que possible de l'intersection de la colonne de direction et du guidon, de sorte qu'on puisse la lire sans avoir à déplacer des pièces du véhicule, sauf le système de direction.

Snowmobile and Cutter: On the rear half of the right side so that it is easily readable from outside the vehicle without moving any part.

Motoneige et traîneau : Sur la moitié arrière du côté droit de sorte qu'il soit facile, au dehors, de la lire sans déplacer aucune pièce du véhicule.

Trailer: On the forward half of the left side of the trailer so that it is easily readable from outside the vehicle without moving any part.

Remorque : Sur la moitié arrière du côté gauche de la remorque de sorte qu'il soit facile, de l'extérieur, de la lire sans déplacer aucune pièce.

Incomplete vehicle (Chassis-cab): Shall be temporarily affixed so as to be easily readable and protected against any weather conditions to which it may be exposed; or permanently affixed similar to truck.

Vehicule incomplet (Châssis-cabine) : Doit être apposée temporairement de façon à être lisible et protégée contre les intempéries auxquelles elle pourrait être exposée, ou être apposée en permanence comme dans le cas des camions.

Box 12a & 12b Explanations

Explications des cases 12a et 12b

Box 12a: Vehicle condition

Normal: normal wear and tear, including minor damages such as scratches, dents and bumps. Typically a roadworthy vehicle being driven at the time of importation.

Severely damaged: vehicle damaged to the extent that it would need to be rebuilt to be roadworthy. Such classification could be the result of a major accident, fire, flood or a theft recovered vehicle missing some major parts (doors, stripped interior, etc.)

Case 12a : État du véhicule

Normal: usure et détérioration normales, incluant dommages mineurs tels égratignures, bosses et écorchures. Véhicule en condition de marche typique, étant conduit au moment de son importation.

Gravement endommagé : véhicule endommagé de façon excessive nécessitant une reconstruction avant d'être en état de marche typique. Une telle classification peut être le résultat d'un accident majeur, incendie, inondation ou un véhicule volé et retrouvé avec certaines pièces majeures manquantes (portes, intérieur manquant, etc.)

Box 12b: Title status

As indicated on the official vehicle title document.

Case 12b : Titre de propriété

Tel qu'indiqué sur le document officiel "Certificate of Title" du véhicule.

Evidence of Conformity with Environment Canada's Emission Standards

Justification de la conformité aux normes d'émissions d'Environnement Canada

A person who imports a vehicle for the purpose of sale or lease must have the evidence of conformity set out in Section 35 or 36 of the On-Road Vehicle and Engine Emission Regulations, as the case may be.

Toute personne qui importe un véhicule dans le but de le vendre ou de le louer doit posséder la justification de la conformité décrite à l'article 35 ou 36 du Règlement sur les émissions des véhicules routiers et de leurs moteurs, suivant le cas.

For any other importer, as evidence of conformity, the vehicle being imported must:

Pour tout autre importateur, comme justification de la conformité le véhicule importé doit:

- bear the national emissions mark set out in Section 7 of the Regulations,
- bear a U.S. emission control information label showing that the vehicle conformed to the Environmental Protection Agency (EPA) emission standards at the time of manufacture,
- bear a label showing that the vehicle conformed to the California Air Resources Board emission standards at the time of manufacture; or
- be the subject of a statement from the vehicle manufacturer or its duly authorized representative confirming that the vehicle complied with the emission standards of the On-Road Vehicle and Engine Emission Regulations, the U.S. EPA or the California Air Resources Board at the time of its manufacture.

- porter la marque nationale décrite à l'article 7 du Règlement sur les émissions,
- porter une étiquette américaine d'information sur le contrôle des émissions indiquant que le véhicule était conforme aux normes d'émissions de l'Environmental Protection Agency (EPA) à la fin de son assemblage principal,
- porter une étiquette indiquant que le véhicule était conforme aux normes d'émissions du California Air Resources Board à la fin de son assemblage principal; ou
- faire l'objet d'une déclaration du fabricant du véhicule ou de son représentant dûment autorisé selon laquelle il était conforme aux normes d'émissions du Règlement sur les émissions des véhicules routiers et de leurs moteurs, de l'EPA des États-Unis ou du California Air Resources Board à la fin de son assemblage principal.

Privacy Statement

The information you provide on this form is collected by Transport Canada, under the authority of sections 5 and 7 of the Motor Vehicle Safety Act (MVSA), to ensure that imported vehicles comply with the Canada Motor Vehicle Safety Standards (CMVSS). Also, Environment Canada collects the information, under the authority of sections 153 and 157 of the Canadian Environmental Protection Act (1999) (CEPA) to ensure that the vehicle conforms to that department's emission standards. To ensure that the vehicle meets CMVSS and Environment Canada's emission standards, the Vehicle Identification Number (VIN) may be disclosed to other parties, including the following: Provincial Ministries of Transportation to license and register the vehicle; and Canadian Council of Motor Transport Administrators (CCMTA) for recall purposes. Information may also be disclosed to authorized parties to enforce and administer the MVSA and the CEPA. This form must be completed to import the vehicle into Canada. The personal information collected under the Registrar of Imported Vehicles Program is described in Personal Information Bank no. DOT PPU 006. Under the provisions of the Privacy Act and the Access to Information Act, individuals have the right of access to and protection of their personal information. Instructions for obtaining your personal information are provided in the Info Source, a copy of which is available in major public and academic libraries or online at <http://www.infosource.gc.ca>.

Énoncé de confidentialité

Les renseignements que vous fournissez dans ce formulaire sont recueillis par Transport Canada, en vertu des articles 5 et 7 de la Loi sur la sécurité automobile (LSA) pour assurer que les véhicules importés sont conformes aux Normes de sécurité des véhicules automobiles du Canada (NSVAC). De plus, Environnement Canada recueille les renseignements, conformément aux articles 153 et 157 de la Loi canadienne sur la protection de l'environnement (1999) (LCPE), pour assurer que les véhicules sont conformes aux normes d'émissions de ce ministère. Pour assurer que le véhicule se conforme aux NSVAC et aux normes d'émissions d'Environnement Canada, le numéro d'identification du véhicule (NIV) peut également être divulgué à d'autres parties, incluant les parties suivantes: ministères provinciaux des Transports pour arrêter et immatriculer le véhicule; et le Conseil canadien des administrateurs en transport motorisé (CCATM) à des fins de rappel. Les renseignements peuvent également être divulgués aux parties autorisées pour appliquer et régir la LSA et LCPE. Ce formulaire doit être rempli pour importer le véhicule au Canada. Les renseignements personnels recueillis dans le cadre du Programme du registraire des véhicules importés sont décrits dans le fichier de renseignements personnels n° MTC PPU 006. En vertu des dispositions de la Loi sur la protection des renseignements personnels et la Loi sur l'accès à l'information, chaque personne a droit à l'accès et à la protection de ses renseignements personnels. Des instructions sur l'obtention de vos renseignements personnels sont fournies dans Info Source, que vous pouvez trouver dans les grandes bibliothèques publiques ou universitaires ou en direct à l'adresse <http://www.infosource.gc.ca>.

Handwritten signature or initials.

Vehicle Inspection Form



RIV Registrar of Imported Vehicles

M775705

This form is no longer valid after the compliance date of: June 05, 2019

Section 1: Vehicle Information

VIN: **5EF2GC3008B772456** Odometer: **N/A**
CHEETAH CHASSIS CORPORATION / APS800 Trailer

Section 2: Statement of Compliance Label Information

Gross Vehicle Weight Ratings (in lbs.): **65,000 lbs** Manufacture Date: **10/07**

Gross Axle Weight Ratings (in lbs) - *Please fill Below*
 Front: **20,000 lbs** Next: _____ Rear: **20,000**

Tire Pressure (in P.S.I.) Front: **90 psi** Rear: **90 psi**

Section 3: Modifier Information

Company/Individual that performed modifications (Please print):

Section 4: Modifications required to conform to Canadian Vehicle Safety Standards

These Modifications are the responsibility of the importer. Inspector MUST confirm (✓) the following:

- Please confirm vehicle class.
- Please confirm the date of manufacture.
- Reflectors & lighting must conform with CMVSS 108 Standards. Please refer to Federal Lighting Equipment Location Requirements http://www.tc.gc.ca/eng/roadsafety/tp-tp13136-trailer_e-414.htm
- Tire Manufacture: **New PRIDE.**
- Tire Type: (must be the same for each tire unless stated otherwise on the compliance label), please circle:
 P = Passenger car tire, LT = Light Truck Tire, ST Trailer Tire
 Others _____
- Max. load rating (as marked on tire): **6175 lbs 100psi Single 5355 lbs 90 psi Dual**
- Max. Inflation pressure cold (as marked on tire): **100psi**
- Please contact RIV if this vehicle does not bear a Statement of Compliance label certifying the vehicle met all US Federal Motor Vehicle Safety Standards on the date of manufacture.
- Please contact RIV immediately, if this vehicle is NOT a trailer
- Confirm number of axles on this trailer **2**
- Please verify that all the information in Section 1 matches the vehicle

Section 5: Declaration - Inspection Centre Only

This vehicle as inspected <input checked="" type="checkbox"/> Pass <input type="checkbox"/> Fail	Inspection Stamp here REGISTRAR OF REGISTRAIRE DES 450 - C VEHICULES IMPORTEES IMPORTED VEHICLES
Form 1 No.: M775705 ✓ - this number must be the same as form 1	

May 9/19 Date **Kris Freebond** Print Inspector's Name **450** Centre No. Inspector's Signature

FAX THIS COMPLETED FORM IMMEDIATELY TO 1-888-346-9416

Handwritten initials




Canada Border Services Agency
 Agence des services frontaliers du Canada
IN BOND CARGO CONTROL DOCUMENT
EN DOUANE DOCUMENT DE CONTRÔLE DU FRET

Acquitral No. - N° de l'acquittement
 11304016 122125

U.S port of exit Bureau de sortie des É.-U. In transit En transit

Manifest from Manifeste de To A
 0818 Kingsgate 0818 Kingsgate

Consignee name and address Nom et adresse du destinataire
 JMB CRUSHING SYSTEMS INC.
 HWY 660 & RR 455
 BONNYVILLE AB T9N 2H4

Carrier code Code du transporteur Cargo control No. - N° de contrôle du fret

 23RY034743

Shipper name and address Nom et adresse de l'expéditeur
 EASTSIDE ROCK PRODUCTS INC.
 32715 CARMICHAEL ROAD
 FALL CITY WA 98024

Previous cargo control No. - N° de contrôle du fret antérieur

No. of pkgs. Nombre de colis	Description and marks Désignation et marques	Weight Poids	Rate Taux	Advances Avances	Prepaid Port payé	Collect Port dû
1 UNT	GENERATOR TRAILER - 5EF2GC3008B772456 MWB: 41236 HWB: 41236 Vessel: Cont#: N/A 53 FT x 8 FT 6" x9 FT Seal#:	6804.00 KGM				

Foreign point of lading Port de chargement étranger
 KING COVE

Location of goods Emplacement des marchandises
 KINGSGATE BC

Name of carrier Nom du transporteur
 CDI INTERNATIONAL INC

Conveyance identification Identification du moyen de transport

A8A(B) (05)

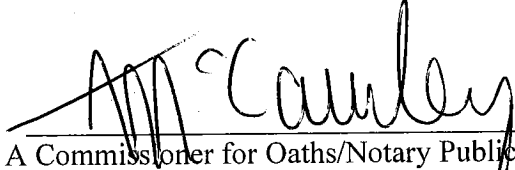
CUSTOMS DELIVERY AUTHORITY COPY
EXEMPLAIRE DE L'AUTORISATION DOUANIERE DE LIVRAISON

CN CUSTOMS BROKERAGE SERVICES
 Phone: 1-866-890-1931 Fax: 1 877 267 3444

Please ensure that shipment is customs cleared in CN Velocity. If any issue regarding customs release please request CBSA to retransmit customs release. CN CSR # 1-800 267 9779

AAA

THIS IS EXHIBIT "C" REFERRED TO IN
THE AFFIDAVIT OF BLAKE M. ELYEA
SWORN BEFORE ME
THIS 23rd DAY OF FEBRUARY, 2021


A Commissioner for Oaths/Notary Public in and
for the Province of British Columbia

ALEXANDRA L. MCCAWLEY
GOWLING WLG (CANADA) LLP
BARRISTER & SOLICITOR
550 BURRARD STREET - SUITE 2300
BENTALL 5 - VANCOUVER, B.C. V6C 2B5
TELEPHONE: (604) 891-2772



VEHICLE DESCRIPTION
VEHICLE MAKE

SECTION 2
YEAR

VEHICLE ACCESS
CODE (VAC)

Alberta GOVERNMENT

99946008279 Tab Validation Number

Cheetah
MODEL OR SERIES

2007
BODY COLOR

13967-0632
FUEL

Vehicle Registration
Certificate

APS800
VEHICLE STYLE

Black n/a
LICENCED MASS

SECTION 1

LICENCE PLATE NO.	CLASS	LICENCED MASS	VEHICLE STATUS
5VE408	4	kg	active
EXPIRY DATE (Y/M/D)	TYPE OF OPERATION		
CONTINUOUS	Trailer		
REGISTRATION NUMBER	IF LEASED VEHICLE, LEASING COMPANY NAME AND MVID		

Commercial Trailer
VEHICLE IDENTIFICATION NUMBER (VIN)

kg
UNIT NUMBER

5EF2GC3008B772456
VEHICLE STATUS

GS900
BUS CAPACITY

R266104926

active
SPECIAL CONDITIONS

MOTOR HOME SUPERSTRUCTURE / SECONDARY PARTS DESCRIPTION
MAKE MODEL OR SERIES

NAME & ADDRESS OF
REGISTRANT(S)

TYPE:
CLIENTS MVID

ORGANIZATION
0876-11075

SERIAL NUMBER

LICENCE PLATE NO.	CLASS
5VE408	4
EXPIRY DATE (Y/M/D)	
CONTINUOUS	

JMB CRUSHING SYSTEMS INC
PO BOX 6977 STN MAIN
BONNYVILLE AB T9N 2H4

YEAR

REGISTRY AGENT

0237-76735

VALIDATED

2019/06/04

ISSUED 2019/06/04
MAXIMUM SERVICE AMOUNT

\$*****109.45



This Certificate to be signed on the back by the registrant(s) and presented on demand of a Peace Officer.

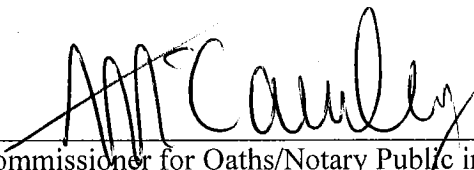
REG0405 (2015/12)

Handwritten signature

THIS IS EXHIBIT "D" REFERRED TO IN
THE AFFIDAVIT OF BLAKE M. ELYEA

SWORN BEFORE ME

THIS 23rd DAY OF FEBRUARY, 2021


A Commissioner for Oaths/Notary Public in and
for the Province of British Columbia

ALEXANDRA L. MCCAWLEY
GOWLING WLG (CANADA) LLP
BARRISTER & SOLICITOR
550 BURRARD STREET - SUITE 2300
BENTALL 5 - VANCOUVER, B.C. V6C 2B5
TELEPHONE: (604) 891-2772



Eastside Rock Products
 Depreciation Summary
 31-Dec-20
 01-Jan-20

Period End
 Period Beg

FA Type	Description	Sub-Description	Capital Lease?	Qty	Division	Make	Model	Vintage	GL ACCT	BACKUP SAVED	Addition Fis Year	Purchase Date	Dep. Start Date	Dep. Days	Transaction #1	#2	#3	#4	Vendor
Vehicle Crusher Equipment	Attachment Towable Generator	Caterpillar APS300 Diesel Portable Generator Serial #GDW800636			Eastside	Caterpillar	APS300		1612		2017	30-Nov-17	01-Jan-20	366	Manual JE - To record the final buyout purchase of NC Power Genset				

REDACTED



Lease or Loan Facility	Serial #	Component Of	Asset #	Acquisition Cost If Different from ASPE	COST				SL End Date of Useful Life	Method	Rate	ACCUMULATED AMORTIZATION			NBV		Closing NBV By Month	GL Check
					Opening Balance	Adjustments	Additions	Disposals				Ending Balance	Opening Balance	Adjust	Provision	Ending Balance		
	DDWB00636			CS900	297,150.48					DB	15%	96,561.10	29,786.41	126,349.51	168,800.87	196,589.38		

REDACTED

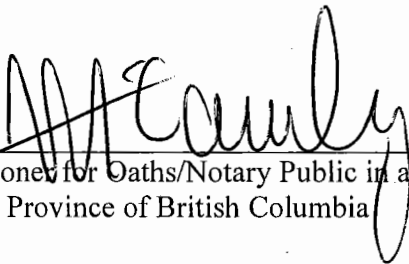
DEPRECIATION EXPENSE BY MONTH														Asset Balance									
Variance	Disposal Date	Proceeds	Cost of Disposition	Gain(Loss)	Sold To	Note	31.00	29.00	31.00	30.00	31.00	30.00	31.00	31.00	30.00	31.00	30.00	31.00	Sum	Provision	A/A Check	Check	
							Jan-20	Feb-20	Mar-20	Apr-20	May-20	Jun-20	Jul-20	Aug-20	Sep-20	Oct-20	Nov-20	Dec-20					
							2,523.06	2,360.28	2,523.06	2,441.67	2,523.06	2,441.67	2,523.06	2,441.67	2,523.06	2,441.67	2,523.06	2,441.67	20,788.41	20,788.41			

REDACTED

THIS IS EXHIBIT "E" REFERRED TO IN
THE AFFIDAVIT OF BLAKE M. ELYEA

SWORN BEFORE ME

THIS 23rd DAY OF FEBRUARY, 2021


A Commissioner for Oaths/Notary Public in and
for the Province of British Columbia

ALEXANDRA L. MCCAWLEY
GOWLING WLG (CANADA) LLP
BARRISTER & SOLICITOR
550 BURRARD STREET - SUITE 2300
BENTALL 5 - VANCOUVER, B.C. V6C 2B5
TELEPHONE: (604) 891-2772



From: Medhurst, Jill <Jill.Medhurst@justice.gc.ca>

Sent: November-18-20 10:02 AM

To: Cumming, Tom <Tom.Cumming@gowlingwlg.com>; Hanert, Caireen <Caireen.Hanert@gowlingwlg.com>

Cc: Bullen, Suzanne <Suzanne.Bullen@justice.gc.ca>

Subject: JMB Crushing

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

Good morning,

An issue has been raised with me by Bennett Jones counsel regarding a **possible** withholding tax issue arising from funds that have been paid by JMB to US shareholders since 2012.. I am not sure if you have been made aware of this issue, but, I would like to discuss this with you and the Monitor/counsel this Friday if you are available for a chat. Darrell Peterson from Bennett Jones advised me yesterday that the Monitor was made aware of this issue yesterday. I have asked CRA to check into this matter and it may take awhile before I will be advised of CRA's position regarding this issue. If CRA has a priority claim, then I would like to amend the order which set out the priorities to sale proceeds in the order involving the Mantle SAVO as CRA will have a priority over ATB and Sierra if this tax is assessed. It was probably these payments which contributed to the insolvency of JMB. It was unfortunate that no one except Bennett Jones and the JMB directors knew of this issue. You should ask Mr. Peterson to forward a copy of the letter sent to CRA, so that you are apprised of all of the outstanding legal issues. Under section 227(8.1), both JMB and the US shareholder are personally liable for the withholding tax that was not deducted. That is why Bennett Jones is now bringing up this issue, but, should have done so at the beginning of the CCAA proceedings.

Looking forward to hearing from you regarding your availability.

Thanks

Jill

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From: Medhurst, Jill <Jill.Medhurst@justice.gc.ca>

Sent: November-19-20 8:26 AM

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

Cc: Bullen, Suzanne <Suzanne.Bullen@justice.gc.ca>; Thiessen, Ted <Ted.Thiessen@gowlingwlg.com>; Hanert, Caireen <Caireen.Hanert@gowlingwlg.com>; Kroeger, Stephen <Stephen.Kroeger@gowlingwlg.com>; Cones, Tristen <Tristen.Cones@justice.gc.ca>

Subject: RE: JMB Crushing

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Thank you for your email Tom. Unfortunately, with CRA being such a large organization, there are many issues that can and do fall through the cracks and this was a major issue. However, I cannot believe that this possible withholding tax was not referred to by the Monitor in all of its reports to the court nor by JMB and your firm and not brought to my attention before now. I am very disappointed that all of you knew of this issue except myself, which could have dealt with it at the beginning of the CCAA and before any orders were granted. As we are all well aware, it takes awhile for matters to be dealt with by CRA and a tax debtor, especially matters going back to 2012. Then Covid intervened which set matters back even further. If I had been made aware of this issue, I could have tried to have CRA make this a priority and it could have been dealt with prior to any court orders being granted.

I would like to speak with you and Sean tomorrow. I am free at 10:00 am or 2:00 pm, whichever time works for all of you. If the Monitor and JMB will not deal with this matter, I will be making an application to inform the court of this issue.

It would have taken an email or phone call to say that there may be a possible withholding tax issue and I cannot believe that no one thought to bring this to my attention before now. I spoke many times with Caireen and there was no mention made of this issue, which is very disappointing.

Regards

Jill

From: Cumming, Tom [mailto:Tom.Cumming@gowlingwlg.com]

Sent: November 18, 2020 4:32 PM

To: Medhurst, Jill <Jill.Medhurst@justice.gc.ca>

Cc: Bullen, Suzanne <Suzanne.Bullen@justice.gc.ca>; Thiessen, Ted <Ted.Thiessen@gowlingwlg.com>; Hanert, Caireen <Caireen.Hanert@gowlingwlg.com>; Kroeger, Stephen <Stephen.Kroeger@gowlingwlg.com>

Subject: RE: JMB Crushing

Good afternoon Jill,

I am surprised that Canada Revenue Agency (the "CRA") was not aware of this issue. In fact, these issues were raised with the CRA in a voluntary disclosure letter dated September 9, 2019 (the "Voluntary Disclosure") from Jay Winters and Jared Mackey of Bennett Jones LLP ("Bennett Jones") to the CRA. In a letter dated December 13, 2019, the CRA acknowledged the Voluntary Disclosure and that the application contains the required information and documentation under the Voluntary Disclosure Program. Copies of the Voluntary Disclosure and the December 13, 2019 letter are attached.

By way of background, pursuant to the Share Purchase Agreement dated November 21, 2018 (the "SPA") between JMB Crushing Systems Inc. (the "JMB Purchaser"), Resource Land Fund V, LP, JMB Crushing Systems ULC ("JMB ULC") and the shareholders of JMB ULC (the "Sellers"), the JMB Purchaser purchased the shares of the Sellers in JMB ULC (the "JMB ULC Shares"). Darrell Peterson of Bennett Jones represented the Sellers and JMB ULC in that transaction, and Bennett Jones has continued to represent JMB ULC and the Sellers in connection with the Voluntary Disclosure. Bennett Jones also represents Jeff Buck, who is a principal of one of the Sellers and was a former director and the former President of JMB Crushing Systems Inc. (the "Current JMB", which is a corporate successor of the JMB Purchaser and JMB ULC). Jeff Buck resigned in after the proceedings of the Current JMB and 2161889 Alberta Ltd. ("216") were commenced under the *Companies' Creditors Arrangement Act* (the "CCAA", and the proceedings, the "CCAA Proceedings").

Mr. Peterson received notice of the applications in the CCAA Proceedings for the approval and vesting order, reverse vesting order (the "RVO"), assignment order and sanction order which were heard on October 16, 2020, and did not attend that application or make any submissions. The appeal period in respect of those Orders have expired.

The potential tax liabilities which were identified in the Voluntary Disclosure were, we understand, the subject matter of an audit that was being carried out by the CRA of JMB ULC. During the due diligence process leading up to the completion of the share purchase contemplated by the SPA, the JMB Purchaser identified withholding tax irregularities in respect of JMB ULC, and the purchase price for the JMB ULC Shares was reduced by an adjustment equal to the estimated tax liability arising from these irregularities. The Sellers were required, in order to reduce or reverse that adjustment to the purchase price, to take steps to resolve the tax irregularities, and therefore submitted the Voluntary Disclosure to the CRA in order to accomplish that. The CRA commenced an audit and sent a letter dated February 25, 2020 from the CRA to the Current JMB setting out the information that the required in connection with the audit. Attached to this email is a copy of the February 25, 2020 letter from the CRA.

On May 26, 2020, RSM Canada, the auditor of the Current JMB, advised the Current JMB that the CRA audit arising from the Voluntary Disclosure was suspended in March of 2020 as a result of the COVID-19 public health emergency (<https://www.canada.ca/en/revenue-agency/campaigns/covid-19-update/covid-19-collections-audits-appeals.html>).

I trust that Mr. Peterson disclosed all of the foregoing to you. I would note that under the RVO, all assets of the Current JMB that were not acquired by Mantle Materials Group, Ltd. ("Mantle") were vested in 216, and all liabilities of the Current JMB that were not assumed by Mantle were vested in 216 without recourse to the

Current JMB. This would include any unremitted tax liabilities. Any priority that the CRA may have with respect to assets in the estate of the Current JMB, as against the assets transferred to 216, was preserved.

The insolvency of the Current JMB resulted from many factors, including the downturn in the oil and gas sector, which severely depressed the demand for aggregate, serious financial mismanagement by JMB ULC, and accounting irregularities by the management of JMB ULC under which recorded levels of inventory and accounts receivable which did not exist. The Second Report of the Monitor dated July 6, 2020 (<http://cfcanada.fticonsulting.com/jmb/docs/Second%20Report%20of%20the%20Monitor%20FINAL.pdf>) provides information with respect to the over-statement of inventory (paragraphs 21 to 28), which was discovered by the Chief Restructuring Adviser of JMB and 216 (referred to in the Report as the CRA).

The over-stated inventory and accounts receivable were included in that part of the working capital calculation employed to determine the purchase price of the JMB ULC Shares. The majority of these irregularities came to light after the completion of the transaction contemplated by the SPA (and in the case of the inventory, after the commencement of the CCAA Proceedings) and were a contributing factor to the Current JMB being in default of its obligations under its letter loan agreement with ATB Financial. The triggering factor underlying the CCAA Proceedings was the unwillingness of ATB Financial to continue to provide financing to the Current JMB. While the tax irregularities identified in the Voluntary Disclosure may well be symptomatic of the more profound accounting irregularities, those tax irregularities were not themselves a precipitating cause of the Current JMB's insolvency, contrary to the speculations in your email.

We are pleased to discuss this issue further with you on Friday. Please let us know what time would be convenient for you.

Best regards,

Tom Cumming

Partner

T +1 403 298 1938

M +1 403 606 4592

tom.cumming@gowlingwlq.com

Note that we continue to operate remotely at full capacity but our physical office is only partially open as a result of the continuing COVID-19 health measures. Until full reopening, please use my Mobile number (in red). Thank you.



AD

From: Medhurst, Jill <Jill.Medhurst@justice.gc.ca>

Sent: November-19-20 1:52 PM

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

Cc: Bullen, Suzanne <Suzanne.Bullen@justice.gc.ca>; Thiessen, Ted <Ted.Thiessen@gowlingwlg.com>; Hanert, Caireen <Caireen.Hanert@gowlingwlg.com>; Kroeger, Stephen <Stephen.Kroeger@gowlingwlg.com>; Cones, Tristen <Tristen.Cones@justice.gc.ca>; Sean F. Collins (scollins@mccarthy.ca) <scollins@mccarthy.ca>; Pantelis Kyriakakis (pkyriakakis@mccarthy.ca) <pkyriakakis@mccarthy.ca>

Subject: RE: JMB Crushing

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Tom... how would CRA insolvency been aware of a voluntary disclosure application made by JMB, that had not been audited and assessed by CRA? You and the Monitor/lawyer are well aware that I am not dealing with a small client where everything is within arms reach. I am dealing with a large bureaucracy where the left hand does not always know what is going on with the right hand and rightly or wrongly, you are very aware of the challenges I face with my client. It is very difficult to know which departments, of which there are many, may be dealing with an insolvent company. I checked with CRA at the beginning of this CCAA process as the **experienced** lawyer that I am and CRA advised there were pre and post initial order source deduction priority claims. As these were not assessed claims, there was nothing in the system that referenced these claims. Caireen and I worked out the payment of these claims. She had many opportunities to advise me of the possible a possible withholding tax claim. The networks for audit and insolvency are separated at CRA and CRA insolvency was not aware of the voluntary disclosure that had been made by JMB. The Monitor, the company and its lawyers were aware of this issue and chose not to bring it to my attention or to the court's attention. You cannot say that CRA is a regular creditor and that it is CRA's duty to bring all claims forward when it is so large, when it is based on self reporting by tax debtors and when it is dealing with so many tax debtors.

The major problem is that the Monitor and the Company are not being fully transparent with creditors, but, more importantly, with the Court. There is a possible priority claim that has not been brought to the Court's attention and it was the duty of the Monitor and the company to at least mention this to the Court. Referring to a possible contingent tax claim, buried in a report is not sufficient or briefly mentioned in court is not sufficient. This is not a tax claim, but, a priority withholding tax claim and you were aware of the nature of this possible claim. Had full disclosure of this claim been set out in any of the numerous Monitor reports, I would have been able to review this claim with CRA sooner and take steps to make sure that it was protected if and when it was assessed. You took away CRA's ability to assert this priority claim before any orders were granted by the Court.

It has been my experience that the very least, as a professional courtesy, insolvency practitioners and tax debtors will disclose all of the tax debtors claims and contingent claims to me if I have not raised it with them. I, in turn will assist when matters are time sensitive and when I am asked to try to speed up the CRA process if I can, so that insolvency proceedings do not take forever. I am very disappointed that given our good working relationship in the past, that you saw fit not to mention this issue to me.

I believe that to give the Court full transparency and to uphold all of the rights of all the creditors, specifically, one that may have a priority claim, that the Monitor consent to an order that directs that CRA is entitled to share in the sale proceeds arising from the sale to Mantle as if this claim is assessed by CRA, it will be a priority claim that has priority over ATB and Sierra. The amount that was to be held in trust by JMB was \$2.5 M. So I would ask that this amount be held back by the Monitor, until these issues can be dealt with and CRA is able to raise a withholding tax assessments against JMB if that is what it determines. Please advise if the Monitor and JMB will agree to this settlement proposal. It will defray further costs of having a full hearing on this issue and protect CRA's priority rights.

It is not enough to say that a distribution order has not been granted, as to my knowledge, there will not be any funds available to pay CRA's priority claim when JMB's assets are transferred to 216 and Mantle. All of the good assets have been purchased by Mantle. Please advise if there will be \$2.5 M to hold in trust that will not be coming from the Mantle sale? I will have CRA file a contingent claim with the Monitor for this claim. I would not have agreed to release lien funds had I know about this contingent withholding tax claim.

The CRA letter that you attached Tom in your previous email is not in response to the Voluntary Disclosure application, but, is in reference to the 2018 tax year and the VDP was for 2017 and prior years.

I am available at 10:00 am tomorrow for a call, so please let me know the conference phone details.

Thanks

Jill

AM

From: Cumming, Tom [<mailto:Tom.Cumming@gowlingwlg.com>]

Sent: November 19, 2020 3:28 PM

To: Medhurst, Jill <Jill.Medhurst@justice.gc.ca>

Cc: Bullen, Suzanne <Suzanne.Bullen@justice.gc.ca>; Thiessen, Ted <Ted.Thiessen@gowlingwlg.com>; Hanert, Caireen <Caireen.Hanert@gowlingwlg.com>; Kroeger, Stephen <Stephen.Kroeger@gowlingwlg.com>; Cones, Tristen <Tristen.Cones@justice.gc.ca>; Sean F. Collins (scollins@mccarthy.ca) <scollins@mccarthy.ca>; Pantelis Kyriakakis (pkyriakakis@mccarthy.ca) <pkyriakakis@mccarthy.ca>

Subject: RE: JMB Crushing

Jill,

You suggest that we intentionally withheld information from you. That is not correct. We assumed that the CRA would provide you with the information in its possession relating to JMB and its tax status. We have also had no involvement with respect to the Voluntary Disclosure, or the status of that matter. While I was told that there had been a dispute between the purchaser and sellers with respect to JMB ULC's tax compliance practices, I had not reviewed any of the details of that issue. Caireen was not aware of the issue at all. I note that we were first retained by JMB in February of 2020, and therefore started from zero information.

In the context of the CCAA, when the company is facing a series of crises requiring immediate response, we simply did not have time to determine if there might be deemed trust claims that arose prior to my client acquiring the company, and have apparently never been ascertained. We dealt with the deemed trust claims that were in JMB's books which were discussed with you.

Your colleagues that the CRA had much better information with respect to the obligations of the pre-November 2018 JMB than we had or now have. All we have is a copy of the Voluntary Disclosure. I have no idea whether or not Bennett Jones' position is well founded and have not been instructed to verify that.

The Monitor only becomes aware of claims if it is dealing with a distribution application or running a claims process. In a claims process, all that the Monitor does is give notice to the creditors giving them the opportunity to prove their claims. Before any distribution happens, any valid, prior ranking trust claims have to be addressed. Since these proceedings were first commenced on May 1, 2020, I believe that it would be reasonable to expect that the CRA would be, in anticipation of an eventual distribution application, determining what might be owed and what its priority might be. It cannot be a surprise that this would eventually be necessary.

In any case, I reached out to my client this morning about the CRA audit, and he indicated that my understanding of that audit was not correct. The following is his response:

Just to be clear, the Voluntary Disclosure Package and the CRA audit are separate assessments.

The CRA Audit division is examining revenue, other expenses, contributed surplus, Schedule 8, due from related balances, AR, Inventory and interest on long term debt. This audit is in response to the amended tax returns that were filed by RSM Canada which eliminated the 2018 taxable income from the original filed returns.

The CRA Voluntary Disclosure division is examining the VDP package that was filed by Bennett Jones in connection with various international filing and tax withholding requirements that were not adhered to by the Sellers. To date, no requests have been received by the VDP division.

I have not prepared the CRA audit materials however I could pull this together within a couple days. CRA is also requesting RSM's working papers on the tax returns, so this may be difficult to obtain in lieu of the debt owed to RSM.

Finally, it is not correct that we did not advise the Court that the CRA may have a contingent claim. On October 16, 2020, I told the Court that there is a potential, contingent, unliquidated claim, that may have some deemed trust protection, but that the claim has not been quantified.

There will be no distribution from the estate without a further order of the Court, which, like every other application, will be on notice to the CRA. I would ask that you urge your colleagues to determine their position with respect to the Voluntary Disclosure as soon as possible.

I will send a call in number for 10 am.

Best regards,

Tom Cumming

Partner

T +1 403 298 1938

M +1 403 606 4592

tom.cumming@gowlingwlg.com

Note that we continue to operate remotely at full capacity but our physical office is only partially open as a result of the continuing COVID-19 health measures. Until full reopening, please use my Mobile number (in red). Thank you.



AA

From: Medhurst, Jill <Jill.Medhurst@justice.gc.ca>

Sent: November-19-20 4:11 PM

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

Cc: Bullen, Suzanne <Suzanne.Bullen@justice.gc.ca>; Thiessen, Ted <Ted.Thiessen@gowlingwlg.com>; Hanert, Caireen <Caireen.Hanert@gowlingwlg.com>; Kroeger, Stephen <Stephen.Kroeger@gowlingwlg.com>; Cones, Tristen <Tristen.Cones@justice.gc.ca>; Sean F. Collins (scollins@mccarthy.ca) <scollins@mccarthy.ca>; Pantelis Kyriakakis (pkyriakakis@mccarthy.ca) <pkyriakakis@mccarthy.ca>

Subject: RE: JMB Crushing

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Well it looks like all of us were in the dark about this issue except the former directors and their lawyer. A priority order was obtained prior to a distribution order which is unusual. Usually there is a claims order and then creditors file their claims and then if there are any priority issues, that can be dealt with before any distribution. I am sorry Tom, but, CRA's departments are huge and insolvency collectors do not have access to audit files and CRA insolvency had no notification that the VDP was filed with CRA. There was no way for CRA to know about this application. You have a misconception about how matters are dealt with at CRA. Such a request may not have been assigned to an auditor as a form letter issued confirming receipt of the VDP and then an auditor would be assigned maybe two-six months after the receipt acknowledgment. Covid happened and everything was put on hold. If you had some information about this, I would have appreciated a heads up and I could have looked into it further and made representations before the sale orders were granted. I would have appreciated receiving the VDP sooner when you found out about it and when you knew when the purchasers were doing due diligence. If I did not see a deemed trust reference in the Monitor's reports or in the company's pleadings, then I will not appear. I would have at the very least appreciated a call before the October 16 application to advise that the contingent tax claim was a possible priority claim. I would have looked into the matter sooner. If there are no priority claims, I do not attend the proceedings. There are a number of different tax claims and most of them are not priority claims. I am very protective of these priority claims as you know and would have appreciated a heads up.

Could you please advise where the funds will come from for a claims and distribution order? Are there sufficient funds to cover a holdback of \$2.5 M without the Mantle sale proceeds? I know that you are aware that CRA cannot move with lightning speed. We can focus on the withholding tax and hopefully obtain a decision from the CRA auditor soon, but, I do not even know if this matter has been assigned to an auditor yet. I am having CRA insolvency make enquiries. I had advised previously that the letter you referred to was in response to the 2018 tax year and not the VDP.

I understand that the fact that there was a different JMB company when you became involved did not help the situation either. I would have thought whomever was in charge at that time would have given you background information about what had been done previously by the former directors as I feel this did impact how the company could not survive the downturn of the Alberta economy.

Thanks

Jill

From: Medhurst, Jill <Jill.Medhurst@justice.gc.ca>

Sent: November 20, 2020 11:52 AM

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

Cc: Bullen, Suzanne <Suzanne.Bullen@justice.gc.ca>; Thiessen, Ted <Ted.Thiessen@gowlingwlg.com>; Hanert, Caireen <Caireen.Hanert@gowlingwlg.com>; Kroeger, Stephen <Stephen.Kroeger@gowlingwlg.com>; Cones, Tristen <Tristen.Cones@justice.gc.ca>; Sean F. Collins (scollins@mccarthy.ca) <scollins@mccarthy.ca>; Pantelis Kyriakakis (pkyriakakis@mccarthy.ca) <pkyriakakis@mccarthy.ca>

Subject: RE: JMB Crushing

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Further to our call this morning and clarification that the Monitor did not have personal knowledge of the possible withholding tax priority claims that CRA may have until this past Tuesday, I confirm that the Monitor has not been misleading the court and not being fully transparent with the Court. From what Tom has stated below, it would seem that Gowlings was not fully apprised of the details as well. But both the company, the Monitor and their respective layers should have looked into this issue more closely and alerted myself and the court of this possible priority issue. Both the Monitor and Gowlings advised that they knew of the VDP when the due diligence was ongoing with the Purchaser, which I believe was this past summer. There was plenty of time for the Company and the Monitor to delve into this issue, which would have given me enough time to review this matter and provide CRA's position to all parties and definitely before the Court granted its order on October 16.

The important factor is that we are all now aware of this possible priority claim and that I hope that I can receive the cooperation of the company and the Monitor to assist with the audit of this claim in order to determine if in fact CRA has a valid priority claim. Also, as mentioned previously, if this is a valid priority claim, CRA will be asserting this priority and the payment of this claim against the claims of all creditors and secured creditors. I leave it open to CRA to pursue entitlement to the administrative and borrowing charges if there is not sufficient funds to pay any possible priority claims. I hope it will not come to this and I hope that both the Company and the Monitor will make efforts to ensure that CRA's possible priority claim is paid in full. I will be discussing this matter with CRA and I will get back to you next week with an update.

Thanks

Jill

From: Medhurst, Jill <Jill.Medhurst@justice.gc.ca>

Sent: December-15-20 10:47 AM

To: Cumming, Tom <Tom.Cumming@gowlingwlg.com>; Hanert, Caireen <Caireen.Hanert@gowlingwlg.com>

Cc: Bullen, Suzanne <Suzanne.Bullen@justice.gc.ca>

Subject: JMB Crushing

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Hi Tom and Caireen,

I have received instructions from CRA that they are not agreeable to compromising any priority claims that CRA may have, arising out of the Voluntary Disclosure letter dated September 9, 2019 that was sent to CRA, regarding the above corporation or any other priority claims they may have.

Also, to complete the second Voluntary Disclosure review, the company will need to send a formal letter to the Assistant Director of the Shawinigan National Verification and Collections Centre. Please see paragraph 59 of the information circular IC00-1R6 which sets out the process. If you could copy me with this letter, I will send it by email internally.

Thanks

Jill

Jill Medhurst

Counsel

Prairie Regional Office

601 606 4th Street SW, Calgary, Ab T2P 1T1

National Litigation Sector

Department of Justice Canada / Government of Canada

Jill.Medhurst@justice.gc.ca / Telephone 403 299-3985 / Facsimile 403 299-3907

Avocate

Bureau régional des Prairies (Calgary)

601 606 4th St Calgary, Ab T2P 1T1

Secteur national du contentieux

Ministère de la Justice Canada / Gouvernement du Canada

Jill.Medhurst@justice.gc.ca / Tél: 403 299-3985 / Téléc: 403 299-3907

From: Cumming, Tom <Tom.Cumming@gowlingwlg.com>
Sent: December 15, 2020 1:43 PM
To: Medhurst, Jill <Jill.Medhurst@justice.gc.ca>; Hanert, Caireen <Caireen.Hanert@gowlingwlg.com>
Cc: Bullen, Suzanne <Suzanne.Bullen@justice.gc.ca>; Thiessen, Ted <Ted.Thiessen@gowlingwlg.com>
Subject: RE: JMB Crushing Systems Inc. ("JMB") and 2161889 Alberta Ltd. ("216")

Hi Jill

Thanks for your email. I am copying my partner Ted Thiessen, who specializes in tax.

Based on our analysis, there is little chance of completing the Mantle transaction unless arrangements can be made with Canada Revenue Agency (the "CRA"), the lien and trust claimants, and Alberta Environment and Parks (the "AEP") by Friday December 18, 2020. As you will note, we are quickly running out of time.

I attach a spreadsheet setting out the aggregate pits owned, occupied or operated by JMB and 216 (either through surface material leases, aggregate royalty agreements, fee simple ownership or otherwise) together with the reclamation obligations associated with each one. If the Mantle transaction does not close, the aggregate reclamation liability is \$2,025,664, for which there is security in the amount of \$598,016. I note that these are accounting estimates and actual reclamation costs are likely to exceed this. Also, reclamation amounts should be included for the Lafarge pits, so this is an under estimate. I would also note that most of the unsecured reclamation exposure is in JMB rather than 216.

As a result of the decision of the Supreme Court of Canada in *Orphan Wells Association v Grant Thornton Ltd.*, the AEP, as the regulator, has absolute priority over all creditors including the CRA for reclamation liabilities of JMB and 216. I would expect, based on my experience with Alberta regulators, that they would issue an order requiring JMB and 216 to reclaim all pits, whereupon there could be no distributions until that was completed. When the reclamation work is completed to the satisfaction of AEP, and reclamation certificates are issued by the AEP, the security deposits would be returned. My understanding is that this process typically takes 5 years from start to finish.

If the Mantle transaction is to close, we have to know this week. Even if the CRA is unwilling to compromise any valid tax claims, the Mantle transaction could still close if we had the following information:

- whether JMB is qualified under the Voluntary Disclosure Program (the "VDP"); and
- the amount of tax that the CRA actually believes is owing.

Based on our review of the information available to us, the CRA had no reasonable basis for denying JMB's status under the VDP. We have asked Bennett Jones LLP to take the steps necessary to appeal this, but clearly the time frame is insufficient to permit the Mantle transaction to proceed.

If the CRA is unable to respond to this request, and provide the information necessary to permit the completion of the transaction, there is a very real chance that it will be abandoned, leaving the CRA, as well as all of the other stakeholders, with limited options.

Can we discuss this matter at your earliest convenience?

Thank you.

Tom

Tom Cumming
Partner
T +1 403 298 1938
M +1 403 606 4592

tom.cumming@gowlingwlg.com

Note that we continue to operate remotely at full capacity but our physical office is only partially open as a result of the continuing COVID-19 health measures. Until full reopening, please use my Mobile number (in red). Thank you.



AA

From: Medhurst, Jill <Jill.Medhurst@justice.gc.ca>
Sent: January-11-21 4:41 PM
To: Cumming, Tom <Tom.Cumming@gowlingwlg.com>
Cc: Bullen, Suzanne <Suzanne.Bullen@justice.gc.ca>
Subject: JMB Crushing

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Hi Tom,


So I take it that you will be extending the CCAA tomorrow? Please let me know about providing the underlying documentation for voluntary disclosure? Has anyone from CRA been in contact with Bennett Jones or the company?

Thanks

Jill

Jill Medhurst
Counsel
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Department of Justice Canada / Government of Canada
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Jill.Medhurst@justice.gc.ca / Tél: 403 299-3985 / Téléc: 403 299-3907



From: Cumming, Tom <Tom.Cumming@gowlingwlg.com>
Sent: January 26, 2021 1:10 PM
To: Medhurst, Jill <Jill.Medhurst@justice.gc.ca>
Subject: Follow-up with Jill

Hi Jill

I just wanted to follow up with respect to the matters subject to the voluntary disclosure, and in particular whether the CRA needed anything in addition to what Jeff Ryks had assembled. Can you let me know where things stand?

Thanks.

Tom

Tom Cumming
Partner
T +1 403 298 1938
M +1 403 606 4592

tom.cumming@gowlingwlg.com

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Calgary AB T2P 4K9
Canada



gowlingwlg.com

Gowling WLG | 1,400+ legal professionals | 18 offices worldwide

Handwritten initials, possibly "AD", in the bottom right corner of the page.

From: Cumming, Tom <Tom.Cumming@gowlingwlg.com>
Sent: February 5, 2021 11:19 AM
To: Medhurst, Jill <Jill.Medhurst@justice.gc.ca>
Subject: JMB

Hi Jill

Have you heard from the CRA with respect to their position on the claim against JMB?

Thanks.

Tom

Tom Cumming
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tom.cumming@gowlingwlg.com

Note that we continue to operate remotely at full capacity but our physical office is only partially open as a result of the continuing COVID-19 health measures. Until full reopening, please use my Mobile number (in red). Thank you.



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A handwritten signature in the bottom right corner of the page.

From: Medhurst, Jill
Sent: February 8, 2021 7:39 AM
To: 'Cumming, Tom' <Tom.Cumming@gowlingwlg.com>
Cc: Bullen, Suzanne <Suzanne.Bullen@justice.gc.ca>
Subject: RE: JMB

Hi Tom,

I checked last week and not update yet. I think that the review should be completed soon. I will let you know as soon as I know.

Thanks and have a good week!

Jill

From: Cumming, Tom <Tom.Cumming@gowlingwlg.com>
Sent: February 17, 2021 9:43 AM
To: Medhurst, Jill <Jill.Medhurst@justice.gc.ca>
Cc: Bullen, Suzanne <Suzanne.Bullen@justice.gc.ca>; Cones, Tristen <Tristen.Cones@justice.gc.ca>; Malm, Tandra <Tandra.Malm@justice.gc.ca>
Subject: RE: JMB

Hi Jill

It will be 2 pm. Has the CRA reviewed the issue as to whether there is a deemed trust? It seems to me that that is separate from the issue as to the VDP, and has direct effect on the estate. I think we have sent you the necessary information, but let me know if there is anything else required.

Thanks.

Tom

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AM

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

Sent: February 18, 2021 7:20 PM

To: Medhurst, Jill <Jill.Medhurst@justice.gc.ca>

Cc: Bullen, Suzanne <Suzanne.Bullen@justice.gc.ca>; Cones, Tristen <Tristen.Cones@justice.gc.ca>; Malm, Tandra <Tandra.Malm@justice.gc.ca>

Subject: RE: JMB

Hi Jill

We have also asked for additional Court time on March 5 because we are re-jigging the transaction in order to permit us to close immediately without waiting for the AEP. What that means is that the pressure will almost immediately become significant to resolve all of the outstanding issues.

Is there any way that we can accelerate progress on the CRA's review of the information provided and their determinations? Would it be helpful to have the Court determine the matter so that everyone is working with a time line? Generally, I like to avoid recourse to the Court, but I do find that it can be helpful in focussing the attention of decision makers, and in any case, the deemed trust question is rather unusual. My tax guy was not able to find cases directly on point, although there were some that adverted to the fundamentals of the issue.

Do you want to have a call tomorrow to discuss this?

Kind regards,

Tom

Tom Cumming

Partner

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tom.cumming@gowlingwlg.com

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From: Medhurst, Jill <Jill.Medhurst@justice.gc.ca>

Sent: February-22-21 4:12 PM

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

Cc: Bullen, Suzanne <Suzanne.Bullen@justice.gc.ca>; Cones, Tristen <Tristen.Cones@justice.gc.ca>; Malm, Tandra <Tandra.Malm@justice.gc.ca>

Subject: RE: JMB

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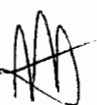
Hi Tom,

I am still waiting to hear from CRA, and I am not sure if there will be anything to report before the court application on Wednesday. However, I wanted to say that the QB court does not have the jurisdiction to deal with any tax issues...that is only for CRA and the tax court. The Monitor has agreed to hold the \$2 M (the lien funds) for any possible CRA priority claims. As I stated before, CRA is trying to move this along but it has been difficult given that CRA is focused on other matters dealing with the pandemic.

Hopefully, we will have some resolution by March 5, 2021.

Thanks

Jill



This is the Certificate to accompany
the Affidavit of Blake Elyea
made on February 23, 2021

COURT FILE NO. 2001-05482

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

IN THE MATTER OF THE *COMPANIES' CREDITORS*
ARRANGEMENT ACT, RSC 1985, c C-36, as amended

AND IN THE MATTER OF THE COMPROMISE OR
ARRANGEMENT OF JMB CRUSHING SYSTEMS INC. and 2161889
ALBERTA LTD.

APPLICANTS JMB CRUSHING SYSTEMS INC. and 2161889 ALBERTA LTD.

DOCUMENT **AFFIDAVIT OF BLAKE M. ELYEA**

ADDRESS FOR **Gowling WLG (Canada) LLP**
SERVICE AND 1600, 421 – 7th Avenue SW
CONTACT Calgary, AB T2P 4K9

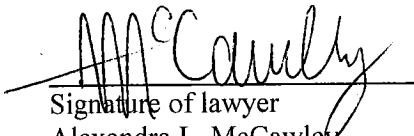
INFORMATION OF Attn: **Tom Cumming/Caireen E. Hanert/Stephen Kroeger**
PARTY FILING Phone: 403.298.1938/403.298.1992/403.298.1018
THIS DOCUMENT Fax: 403.263.9193
File No.: A163514

AFFIDAVIT OF BLAKE M. ELYEA

CERTIFICATE

I, Alexandra McCawley, am the commissioner who took the affidavit from Blake Elyea dated February 23, 2021, two copies of which are attached to this certificate. As commissioner I was satisfied that the process for taking the affidavit using video technology was necessary because it was impossible or unsafe, for medical reasons, for the deponent and me to be physically present together.

Certified February 23, 2021


Signature of lawyer
Alexandra L. McCawley

ALEXANDRA L. MCCAWLEY
GOWLING WLG (CANADA) LLP
BARRISTER & SOLICITOR
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