

COURT FILE NUMBER 2301 16114
COURT COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY

NB
C121191

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 MANTLE MATERIALS GROUP,
LTD. and RLF CANADA HOLDINGS LTD.

APPLICANT TRAVELERS CAPITAL CORP.

DOCUMENT **APPLICATION TO COMPEL RESPONSES**

ADDRESS FOR SERVICE AND CONTACT
INFORMATION OF PARTY
FILING THIS DOCUMENT
MLT Aikins LLP
2100, 222 3rd Ave SW
Calgary, AB T2P 0B4
Attention: Ryan Zahara/Molly McIntosh
Phone: 403-693-5420/780-969-3501
Email: rzahara@mltaikins.com/
mcintosh@mltaikins.com
File No: 010774.02

NOTICE TO THE RESPONDENT, MANTLE MATERIALS GROUP, LTD.

This application is made against you. You are the respondents.

You have the right to state your side of this matter before the judge.

To do so, you must be in court when the application is heard as shown below:

- Date: December 18, 2023
- Time: 10:00 a.m.
- Where: Calgary Law Courts
- Before Whom: Virtually, before the Honourable D. B. Nixon (Booked on the Commercial List)

Go to the end of this document to see what you can do and when you must do it.

Remedy claimed or sought:

1. The Applicant, Travelers Capital Corp. (“**Travelers**”), seeks an Order from this Honourable Court substantially in the form attached hereto as **Schedule “A”**:
 - a. compelling the Respondent, Mantle Materials Group, Ltd. (“**Mantle**”) to provide responses to certain undertakings that were taken under advisement or refused and certain questions improperly objected to (the “**Refused Questioning/Undertakings**”) at the Questioning on Affidavit of Mr. Levkulich, held on December 4, 2023 (the “**Cross-Examination**”);
 - b. granting Travelers costs on such basis as this Honourable Court deems appropriate for all steps related to the within Application; and
 - c. such further and other relief as counsel may advise and this Honourable Court deems just and appropriate in the circumstances.
2. All capitalized terms used herein that are not otherwise defined have the meaning ascribed to them in the Bench Brief of Travelers, filed concurrently herewith.

Grounds for Making this Application:

Procedural Background

3. On July 14, 2023, Mantle filed a notice of intention to make a proposal pursuant to Division 1 of Part III of the *Bankruptcy and Insolvency Act*, RSC 1985, C B-3 (the “**BIA**”) in Alberta Court of King’s Bench Action No. 2301-10358/25-2965622 (the “**Proposal Proceedings**”).
4. In the Proposal Proceedings, Mantle has filed a number of affidavits, including, but not limited to, the following:
 - a. Affidavit of Byron Levkulich, sworn on August 7, 2023;
 - b. Supplemental Affidavit of Byron Levkulich, sworn on August 11, 2023;
 - c. Second Supplemental Affidavit of Byron Levkulich, sworn on August 14, 2023;
 - d. Third Affidavit of Byron Levkulich, sworn on September 15, 2023; and
 - e. Fourth Affidavit of Byron Levkulich, sworn on November 1, 2023.(collectively, the “**Proposal Affidavits**”).

5. On November 27, 2023, Mantle filed an application in the within Action seeking to convert the Proposal Proceedings to an initial order under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 (the "**CCAA Application**").
6. In support of the CCAA Application, Mantle filed the Affidavit of Mr. Levkulich, sworn on November 27, 2023 (the "**Affidavit**").

Corporate Background

7. Mantle is a wholly owned subsidiary of RLF Canada Holdings Limited ("**RLF Canada**"), which in turn is a wholly-owned subsidiary of Resource Land Fund V LP ("**RLF V**"), a Delaware limited partnership and a private equity fund managed by RLH LLP ("**RLH**", and together with RLF Canada, RLF V, RLF Canada Lender Limited ("**RLF Lender**"), the "**RLH Group of Companies**").
8. RLF Lender is a secured creditor of Mantle and the Interim Financing lender in the Proposal Proceedings. RLF Lender is a wholly owned subsidiary of RLF V.
9. Mr. Levkulich holds senior positions and has significant decision-making authority in the RLH Group of Companies, as follows:
 - a. Mr. Levkulich is the principal of RLH. In that role, he is responsible for sourcing investments, negotiating acquisitions, and overseeing the development of those investments as a director of said investments. RLH is the fund manager and recommends those investments to certain funds, such as RLF V. RLH is the party that advises the funds on where it should invest the monies raised.
 - b. Mr. Levkulich is also a limited partner of RLF V (i.e. he is an investor in the fund).
 - c. Mr. Levkulich is a director of RLF Canada, which is the parent company of Mantle and the investment vehicle for RLF V. There are no other officers or employees in RLF Canada.
 - d. Mr. Levkulich is the Chief Executive Officer, president, treasurer, and secretary of RLF Lender, which was created solely to provide funds from RLF V to Mantle.
 - e. Mr. Levkulich is the director of Mantle.

The Cross-Examination

10. During the Cross-Examination, counsel for Mantle objected to several relevant and material questions, which are described in further detail below.
11. The Undertakings requested during Cross-Examination that were refused or initially taken under advisement and subsequently refused are as follows:

| Reference in Transcript | Undertaking Requested |
|-------------------------|--|
| 20:6 to 20:9 | <u>Undertaking #1</u> : To provide written copies of any reporting on the loans from RLF Canada Lender Limited to RLF V (Refused) |
| 21:26 to 22:2 | <u>Undertaking #2</u> : To provide copies of RLF Canada Lender's reporting to RLF V if it has conducted provisioning for any of its loans to Mantle and said provisioning has to be reported to RLF V and is in writing or otherwise. (Refused) |
| 110:27 to 111:27 | <u>Undertaking #30</u> : To review records and provide a copy of the process document being prepared between Mantle and FTI regarding the administration process outlined at paragraph 109 (a) to (f) of the Affidavit, in whatever state it happens to be in (Taken Under Advisement) |

12. The Refused Questions are focused on the source of funds invested in Mantle by RLF V, through RLF Canada, and RLF Canada Lender, the availability of future funds from those entities, and how the RLH Group has characterized those invested funds in light of the insolvency of Mantle and its predecessor, JMB/216 (the "**Lender Financing Questions**"), as follows:

| Reference in Transcript (Page:Line) | Question Objected To |
|--|--|
| 10:8 to 10:9 | Turning to RLF V, what are the size of the funds raised by RLF V? |
| 11:5 to 11:7 | Are the funds – is RLF V – is it a closed fund now, or is it unable to raise any further funds? |
| 12:26 to 13:1 | Are there any funds remaining in RLF V from its investments left to be deployed? |
| 13:4 to 13:7 | Can those funds [in RLF V], once deployed, if repaid from investments, be reinvested again? Or once they're returned, do they have to be returned to limited partners? |
| 14:4 to 14:5 | Has RLF V written off its \$40 million investment to JMB? |

| | |
|----------------|--|
| 20:19 to 20:21 | When RLF Canada Lender Limited gives out loans to Mantle, does it do any provision on those loans? |
| 21:5 to 21:8 | If RLF Canada Lender, on any of its loans to Mantle, has done any provisioning, meaning has it reserved any amount for a loss? |
| 21:16 to 21:18 | If RLF Canada Lender has conducted provisioning for any of these loans, who would conduct that provisioning? |

13. The Refused Questions include questions relating to the RLF Group’s obligations to report on the status of their investments including any exposure to risk in respect of same, environmental liabilities associated with their investments, advances (whether secured loans or unsecured capital injections) made to wholly owned subsidiaries in respect of the acquisition or subsequent to the acquisition to each respective corporation’s parent company, and/or their investors (the “**Financial Reporting Questions**”), as follows:

| Reference in Transcript (Page:Line) | Question Objected To |
|--|---|
| 13:16 to 13:19 | Does Mr. Levkulich, as the principal of that fund, RLF V, have to provide financial reporting in respect of the status of investments by RLF V to the limited partners? |
| 13:23 to 14:1 | If RLF V does provide financial reporting in respect of the status of its investments to Mantle, has any reporting been provided with respect to its investment in JMB, so \$40 million that was invested at the start to those partners? |
| 14:8 to 14:10 | Has RLF V reported on its investment in Mantle as an ongoing investment, or has it written that off as well? |
| 15:25 to 16:1 | And has RLF V, in respect to those funds, advanced to Mantle, advised its limited partners with respect to whether or not there is any prospect of recovery of those funds? |
| 19:18 to 19:19 | Does RLF Canada Lender Limited have to provide reporting on its loans to RLF V? |
| 20:2 to 20:3 | If RLF Canada has to report on RLF V, what form does that reporting come in? |
| 21:21 to 21:23 | If there has been any provisioning on those loans, would that provisioning have to be reported to RLF V? |

14. The Refused Questions include the following questions relating to Mr. Levkulich and Mr. Patsch’s personal exposure to liability in their capacity as directors of Mantle and any indemnities or rights of recovery they have against the RLF Group (or any individual corporation therein) in respect of same (collectively, the “**Indemnification Questions**”):

| Reference in Transcript (Page:Line) | Question Objected To |
|--|--|
| 9:22 to 10:4 | In [Mr. Levkulich’s] capacity as a director of RLF Canada Holdings Limited, has he been provided an indemnity by the company, being RLF Canada Holdings Limited, for any obligations he incurs personally as a director? |
| 16:16 to 16:18 | In your capacity as a principal of RLH LLC, does RLF V provide any indemnity for you as principal for acting in that role? |
| 16:21 to 16:24 | In your capacity as a director of Mantle Materials Group, Ltd., are you provided an indemnity by the company, Mantle, for your acting as its director? |
| 17:10 to 17:14 | In your capacity as a director of Mantle Materials Group, do you have an indemnity from either RLF Canada Holdings Company or RLF V for any personal liability you might incur as a director of Mantle? |
| 22:12 to 22:14 | If Mantle has given you an indemnity as a director for any personal liabilities incurred in that capacity? |
| 61:1 to 61:3 | If you are personally liable under those EPOs, would you have an indemnity for that from Mantle? |
| 61:11 to 61:14 | If Mantle is unable to complete the EPOs and then you’re required to pay funds personally, is there any ability for you to recover those funds in your capacities [with Mantle, RLF Canada Lender, RLF V or RLH LLC]? |
| 61:19 to 61:22 | If [Aaron Patsch] is personally liable under [the EPOs] would he have the ability to be indemnified for those liabilities from either Mantle, RLF Canada Lender, RLF V or RLH LLC? |

15. The Refused Questions include questions relating to the reporting obligations, if any, of Mantle’s directors to Mantle’s parent companies or to governmental/regulatory bodies in the case of their personal liability in respect of the EPOs (the “**EPO Reporting Questions**”), as follows:

| Reference in Transcript (Page:Line) | Question Objected To |
|--|--|
| 8:20 to 22 | Have you ever had them [the Army Corps of Engineers, who is the regulator in the United States in respect of the wetland mitigation industry] issue any environmental protection orders vis-à-vis RLH, LLC or any of its other investments? |
| 61:25 to 62:1 | If you are held liable under those EPOs or had a sanction against you, would you have to report that to either RLF V as the investment vehicle? |
| 62:4 to 62:7 | If you were personally liable under those EPOs or charged criminally, would you have to report that to any of the government contracts in the US that you worked on? |
| 62:17 to 62:19 | Would [Mr. Levkulich] have to report that if he was found liable or had a charge under an environmental protection order in Canada to that regulator [the Army Corps of Engineers] in the US? |
| 63:17 to 63:22 | If Mantle fails to complete its work under the EPOs or is otherwise convicted of any violation of the <i>EPEA</i> for failing to complete those, would Mantle have to report this to its investors? |
| 63:26 to 64:4 | If Mantle is convicted of a violation under the <i>EPEA</i> or similar legislation for failing to complete the 2021 EPOs or requirements thereunder, would this be a violation of the investment agreement between RLF V and its limited partners? |
| 64:7 to 10 | Would it be in a violation or a breach of any agreement between RLH and RLF V to fail to complete the 2021 EPOs or requirements thereunder? |

- 16. The Refused Undertakings and Questions are relevant and material to the CCAA Application and directly relate to the matters at issue in the CCAA Application.
- 17. Travelers is entitled to know the information sought in the Refused Undertakings and Questions and cannot adequately respond to the matters at issue in the CCAA Application without responses to same.
- 18. Mantle has no legal basis to withhold answers to the Objected Questions.

Material or evidence to be relied on:

19. This Notice of Application;
20. The Affidavit of Byron Levkulich sworn on November 27, 2023, filed;
21. The Transcript of Questioning on Affidavit of Byron Levkulich, sworn on November 27, 2023, held on December 4, 2023, filed;
22. The Affidavit of Crystal Topilko, sworn/affirmed on December 14, 2023, to be filed concurrently herewith;
23. The Bench Brief of Travelers, to be filed concurrently herewith;
24. The pleadings filed in the within Action;
25. Such further and other material as counsel may advise and this Honourable Court may permit.

Applicable Rules:

26. *Alberta Rules of Court*, AR 124/2010, Part 6 and Rules 1.2, 1.3, 5.1, 5.2, 5.25, 5.30, 10.29-10.31 and 10.33; and
27. Such further and other Rules as counsel may advise and this Honourable Court may permit.

Applicable Acts and Regulations:

28. Such further and other legislation as counsel may advise and this Honourable Court may permit.

How the application is proposed to be heard or considered:

29. Virtually, before the Honourable Justice Nixon in Chambers (booked on the Commercial List).

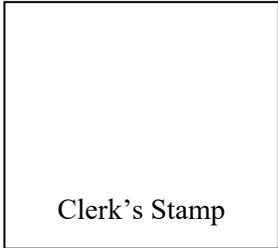
WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and time shown at the beginning of the form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.

SCHEDULE "A"

(see attached form of Order)

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JUDICIAL CENTRE CALGARY



IN THE MATTER OF THE *COMPANIES' CREDITORS
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LTD. and RLF CANADA HOLDINGS LTD.

APPLICANT TRAVELERS CAPITAL CORP.
RESPONDENT MANTLE MATERIALS GROUP, LTD.
DOCUMENT **ORDER TO COMPEL ANSWERS**

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MLT Aikins LLP
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Attention: Ryan Zahara/Molly McIntosh
Phone: 403-693-5420/780-969-3501
Email: rzahara@mltaikins.com/
mcintosh@mltaikins.com
File No: 010774.02

DATE ON WHICH ORDER WAS PRONOUNCED: _____
LOCATION WHERE ORDER WAS PRONOUNCED: Calgary, Alberta
NAME OF JUSTICE WHO MADE THIS ORDER: The Honourable Mr. Justice
D.B. Nixon

UPON THE APPLICATION of Travelers Capital Corp. ("**Travelers**") for an Order to compel answers to questions and responses to undertakings requested at the Questioning on Affidavit of Byron Levkulich, sworn on November 27, 2023, held on December 4, 2023 (the "**Cross Examination**"); that were objected to or refused; **AND UPON** reviewing the Affidavit of Crystal Topilko, sworn on December 14, 2023, **AND UPON** reviewing all other materials filed by Travelers in support of the within Application; **AND UPON** hearing from counsel for Travelers, Mantle Materials Group, Ltd. ("**Mantle**") and all other interests parties present;

IT IS HEREBY ORDERED AND DECLARED THAT:

1. The time for service of this Application is hereby abridged and deemed good and sufficient.
2. Mantle shall provide answers to Travelers on or before 5:00 PM MST on December ____, 2023 (the “**Deadline**”) to the following questions objected to at the Cross-Examination:
 - a. Have you ever had them [the Army Corps of Engineers, who is the regulator in the United States in respect of the wetland mitigation industry] issue any environmental protection orders vis-à-vis RLH, LLC or any of its other investments? (8:20 to 22)
 - b. In [Mr. Levkulich’s] capacity as a director of RLF Canada Holdings Limited, has he been provided an indemnity by the company, being RLF Canada Holdings Limited, for any obligations he incurs personally as a director? (9:22 to 10:4)
 - c. Turning to RLF V, what are the size of the funds raised by RLF V? (10:8 to 10:9)
 - d. Are the funds – is RLF V – is it a closed fund now, or is it unable to raise any further funds? (11:5 to 11:7)
 - e. Are there any funds remaining in RLF V from its investments left to be deployed? (12:26 to 13:1)
 - f. Can those funds [in RLF V], once deployed, if repaid from investments, be reinvested again? Or once they’re returned, do they have to be returned to limited partners? (13:4 to 13:7)
 - g. Does Mr. Levkulich, as the principal of that fund, RLF V, have to provide financial reporting in respect of the status of investments by RLF V to the limited partners? (13:16 to 13:19)
 - h. If RLF V does provide financial reporting in respect of the status of its investments to Mantle, has any reporting been provided with respect to its investment in JMB, so \$40 million that was invested at the start to those partners? (13:23 to 14:1)
 - i. Has RLF V written off its \$40 million investment to JMB? (14:4 to 14:5)
 - j. Has RLF V reported on its investment in Mantle as an ongoing investment, or has it written that off as well? (14:8 to 14:10)

- k. And has RLF V, in respect to those funds, advanced to Mantle, advised its limited partners with respect to whether or not there is any prospect of recovery of those funds? (15:25 to 16:1)
- l. In your capacity as a principal of RLH LLC, does RLF V provide any indemnity for you as principal for acting in that role? (16:16 to 16:18)
- m. In your capacity as a director of Mantle Materials Group, Ltd., are you provided an indemnity by the company, Mantle, for your acting as its director? (16:21 to 16:24)
- n. In your capacity as a director of Mantle Materials Group, do you have an indemnity from either RLF Canada Holdings Company or RLF V for any personal liability you might incur as a director of Mantle? (17:10 to 17:14)
- o. Does RLF Canada Lender Limited have to provide reporting on its loans to RLF V? (19:18 to 19:19)
- p. If RLF Canada has to report on RLF V, what form does that reporting come in? (20:2 to 20:3)
- q. When RLF Canada Lender Limited gives out loans to Mantle, does it do any provision on those loans? (20:19 to 20:21)
- r. If RLF Canada Lender, on any of its loans to Mantle, has done any provisioning, meaning has it reserved any amount for a loss? (21:5 to 21:8)
- s. If RLF Canada Lender has conducted provisioning for any of these loans, who would conduct that provisioning? (21:16 to 21:18)
- t. If there has been any provisioning on those loans, would that provisioning have to be reported to RLF V? (21:21 to 21:23).
- u. If Mantle has given you an indemnity as a director for any personal liabilities incurred in that capacity? (22:12 to 22:14)
- v. If you are personally liable under those EPOs, would you have an indemnity for that from Mantle? (61:1 to 61:3)
- w. If Mantle is unable to complete the EPOs and then you're required to pay funds personally, is there any ability for you to recover those funds in your capacities [with Mantle, RLF Canada Lender, RLF V or RLH LLC]? (61:11 to 61:14)

- x. If [Aaron Patsch] is personally liable under [the EPOs] would he have the ability to be indemnified for those liabilities from either Mantle, RLF Canada Lender, RLF V or RLH LLC? (61:19 to 61:22)
 - y. If you are held liable under those EPOs or had a sanction against you, would you have to report that to either RLF V as the investment vehicle? (61:25 to 62:1)
 - z. If you were personally liable under those EPOs or charged criminally, would you have to report that to any of the government contracts in the US that you worked on? (62:4 to 62:7)
 - aa. Would [Mr. Levkulich] have to report that if he was found liable or had a charge under an environmental protection order in Canada to that regulator [the Army Corps of Engineers] in the US? (62:17 to 62:19)
 - bb. If Mantle fails to complete its work under the EPOs or is otherwise convicted of any violation of the EPEA for failing to complete those, would Mantle have to report this to its investors? (63:17 to 63:22)
 - cc. If Mantle is convicted of a violation under the EPEA or similar legislation for failing to complete the 2021 EPOs or requirements thereunder, would this be a violation of the investment agreement between RLF V and its limited partners? (63:26 to 64:4)
 - dd. Would it be in a violation or a breach of any agreement between RLH and RLF V to fail to complete the 2021 EPOs or requirements thereunder? (64:7 to 10).
3. Mantle shall provide responses to Travelers, on or before the Deadline, to the following undertakings refused at the Cross-Examination:
- a. Undertaking 1: To provide written copies of any reporting on the loans from RLF Canada Lender Limited to RLF V (Refused) (20:6 to 20:9)
 - b. Undertaking 2: To provide copies of RLF Canada Lender's reporting to RLF V if it has conducted provisioning for any of its loans to Mantle and said provisioning has to be reported to RLF V and is in writing or otherwise. (Refused) (21:26 to 22:2)
 - c. Undertaking 30: To review records and provide a copy of the process document being prepared between Mantle and FTI regarding the administration process outlined at paragraph 109 (a) to (f) of the Affidavit, in whatever state it happens to be in (Taken Under Advisement) (110:27 to 111:27).

4. Travelers is awarded costs in the amount of \$ _____ against Mantle, payable forthwith.

**Justice of the Court of King's
Bench of Alberta**