



COURT FILE NUMBER

2001 05482

COURT

COURT OF QUEEN'S BENCH OF  
ALBERTA

JUDICIAL CENTRE

CALGARY

JS  
Nov. 27 2020  
Justice Eidsvik



IN THE MATTER OF THE  
COMPANIES' CREDITORS  
ARRANGEMENT ACT, R.S.C. 1985, c.  
C-36, as amended

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

APPLICANT

JMB CRUSHING SYSTEMS INC.

ADDRESS FOR SERVICE AND  
CONTACT INFORMATION OF  
PARTY FILING THIS  
DOCUMENT

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**TRANSCRIPTS OF QUESTIONING ON AFFIDAVIT OF BLAKE ELYEA  
conducted on November 24, 2020**

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COURT FILE NUMBER: 2001-05782

COURT: COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE: CALGARY

APPLICANTS: JERRY SHANKOWSKI AND  
945411 ALBERTA LTD

RESPONDENTS: JMB CRUSHING SYSTEMS INC., GOWLING;  
WLG (CANADA) LLP, TOM CUMMING,  
CAIREEN E. HANERT, ALISON J. GRAY,  
FTI CONSULTING CANADA INC.,  
MCCARTHY TETREALT LLP, SEAN F.  
COLLINGS, PANTELIS KYRIAKAKIS,  
NICOLE FITZ-SIMON, NATHAN STEWART

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**QUESTIONING ON AFFIDAVIT**

**OF**

**BLAKE ELYEA**

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Proceedings taken remotely via Zoom in Edmonton,  
Alberta, on the 24th day of November, A.D. 2020.

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R. B. Hajduk,                    Appeared for the Applicants,

C. E. Hanert,                    Appeared for the Respondents,  
T. Cumming,                    MB Crushing Systems Inc., and  
   2161889 Alberta LTD

J. Pawlyk                        Appeared for RB Aggregate  
   Consulting

P. Alexander                      Appeared for JR Paine & Associates

J.E. Hillson                      Appeared for ATB Financial

C. L. Tchir                      Appeared for Shamrock Valley

P. Kyriakakis                    Appeared for FTI Consulting

Ms. M.C. McNeely,              Court Reporter.

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\* EXHIBITS \*

<u>NO.</u>	<u>PAGE</u>	<u>DESCRIPTION</u>
A-ID	93	FOR IDENTIFICATION: EMAIL FROM TENILLE PAUL DATED APRIL 29TH 2020

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\* UNDERTAKINGS \*

<u>NO.</u>	<u>PAGE</u>	<u>DESCRIPTION</u>
1	60	PROVIDE A COPY OF THE ALBERTA TRANSPORTATION SPECIFICATIONS BEING REFERENCED IN MR. ELYEA'S AFFIDAVIT
2	63	PROVIDE A COPY OF THE DOCUMENT THAT CONFIRMS THAT THE PRODUCT REQUIRED BY THE MD FOR THE 2020 CONTRACT YEAR WAS DESCRIBED AS MODIFIED DES 1 CLASS 12.5
3	74	*TAKEN UNDER ADVISEMENT* DETERMINE IN THE ALBERTA TRANSPORTATION DOCUMENTS THE PORTIONS THAT SUPPORT THAT THE MODIFIED DES 1 CLASS 12.5 IS A MODIFIED BASE COURSE MATERIAL AND NOT AN ASPHALT PRODUCT
4	95	DETERMINE WHETHER THE EMAIL MARKED A FOR IDENTIFICATION FORMS PART OF THE JMB BUSINESS RECORDS, AND IF IT DOES THEN PROVIDE A COPY OF THE EMAIL

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\* UNDERTAKINGS HAVE BEEN INSERTED AND INDEXED \*  
AS A COURTESY SERVICE TO COUNSEL TO BE  
UTILIZED AT THEIR DISCRETION

1 BLAKE ELYEA, having first been duly affirmed at  
2 1:30 P.M. questioned by Mr. Hajduk testified as  
3 follows:

4 Q MR. HAJDUK: Good afternoon, sir.  
5 I'm going to be questioning you today on your  
6 affidavit which was sworn November 20th, 2020.  
7 And it does include your affidavit sworn  
8 October 16th, 2020.

9 And just first of all, I'll just sort of  
10 establish a few ground rules. And one of them  
11 is that we both have to allow each other an  
12 opportunity to speak. Sometimes you're going  
13 to know the answer in advance, and we have to  
14 be careful not to interrupt each other so that,  
15 you know, there's a very clear record of what  
16 exactly is said, and then the response to that  
17 question.

18 If I ask you a question and you don't  
19 understand, please advise me and I'll try to  
20 re-clarify it. If it's a situation where I'm  
21 asking you for an undertaking, I can tell you  
22 right now I'll wait for the response of your  
23 counsel, just to make sure that, you know, your  
24 counsel is agreeing with the undertaking to be  
25 provided.

26 And so what I'm going to do now is start  
27 questioning you. I would just indicate to the

1 Court Reporter that there's a bit of  
2 feedback --

3 MR. KYRIAKAKIS: I think it's coming  
4 from the phone line.

5 MS. HANERT: Yes. I don't know.  
6 Mr. Hajduk, I'm having a hard time. It sort of  
7 sounds like you're a little bit underwater and  
8 your words are being delayed.

9 MR. HAJDUK: Yes, I think that --  
10 let's try -- maybe that will help. Maybe I'll  
11 move my computer closer to me. The other thing  
12 is, yes, that feedback. Well, the feedback  
13 is -- I don't think it's there now.

14 MS. HANERT: That's much better.

15 MR. HAJDUK: Yes, that's much  
16 better. Okay. So let's try that.

17 MS. HANERT: And I'm sorry, before  
18 we begin, I understood that you were going to  
19 be cross-examining Mr. Elyea on his affidavit  
20 sworn November 20th. I don't know whether or  
21 not he's got his affidavit sworn -- what was  
22 the date on that again?

23 MR. HAJDUK: October 16, 2020.

24 MS. HANERT: Okay.

25 MR. HAJDUK: I think it said that  
26 on one of his affidavits.

27 MS. HANERT: He will have to pull

1 that up so that he's got that in front of him.

2 MR. HAJDUK: Yes.

3 MS. HANERT: As will I.

4 MR. HAJDUK: I'd like you to bring  
5 up the --

6 MS. HANERT: We're getting the  
7 feedback again.

8 MR. HAJDUK: Yes. Is -- because  
9 somebody had said they believe it's the  
10 telephone line that's causing the feedback. I  
11 don't know if the person who has called in can  
12 maybe join us with Zoom and see if that cuts  
13 out the feedback because it's going to be very  
14 difficult to question with that feedback.

15 MS. HANERT: Mr. Kyriakak is on by  
16 phone, but he's muted, so I'm not sure where  
17 the additional sound would be coming from.  
18 Mr. Elyea?

19 THE WITNESS: Yes.

20 MS. HANERT: Perhaps, do you have  
21 some headphones that you can wear? If you're  
22 listening on your computer speaker, that might  
23 be creating some issues.

24 THE WITNESS: Yeah. How's that?

25 MS. HANERT: We'll find out when  
26 Mr. Hajduk starts to speak again.

27 MR. HAJDUK: I'm talking now and



1           there doesn't appear to be any feedback, but it  
2           sort of just erupts. So let's try and see what  
3           happens.

4           Q     Okay. So first of all, Mr. Elyea, I'm going to  
5           be asking you questions with respect to your  
6           position with the respondent, JMB Crushing  
7           Systems Inc.. And just for purposes of making  
8           this a little bit easier, whenever I refer to  
9           JMB Crushing Systems Inc. as "JMB", you're  
10          going to understand that I'm referring to that  
11          company; is that fair?

12          A     That's fair, yeah.

13          Q     Okay. And so I want to understand first of  
14          all, you began working with JMB in May 4th of  
15          2020; correct?

16          A     Yes, that's correct.

17          Q     Okay. And I understand that since that time,  
18          you've been the chief restructuring advisor for  
19          JMB; is that fair?

20          A     Yeah, I've carried on with that role, yes.

21          Q     Okay. And in that capacity, then, when you  
22          started on May 4th, 2020, I take it that you  
23          became familiar with the business operations of  
24          JMB by reviewing its records firstly; is that  
25          fair?

26          A     I would say yes, that's fair. Yeah.

27          Q     Okay. And who else did you speak to at that

1 time to gaining an understanding or knowledge  
2 of the business operations of JMB?

3 A I think -- well, I mean, I'd have to go back  
4 prior to that time. I obviously spoke with the  
5 directors of the company, or at least one  
6 director of the company to understand what was  
7 going on. I also spoke with the --

8 Q Who's that?

9 A That would be Byron Levkulich.

10 Q Okay. And who else did you speak to?

11 A And I would have briefly spoken to the court  
12 appointed Monitor prior to my appointment.

13 Q Okay. And --

14 A And I would have spoken to, likely, not  
15 positive if it was before or on the day of the  
16 appointment, but Mr. Jeff Buck who was the  
17 president at that time.

18 Q When you say you spoke to the Monitor, who was  
19 that specifically that you spoke to?

20 A An individual named Tom Powell.

21 Q Okay. And I take it that you don't recall the  
22 specifics of that conversation?

23 A No. I mean, the best I can recall is that  
24 they're background on -- on the appointment and  
25 what was happening with JMB.

26 Q And who appointed you?

27 A The directors.

1 Q Of JMB?

2 A Of JMB, yes.

3 Q Okay. And why did you have occasion to  
4 converse with the Monitor?

5 A He was the one that put my name forward as one  
6 of the candidates to act in this capacity.

7 Q Okay. And so you have worked with that Monitor  
8 before, then?

9 A I have not.

10 Q Okay. What is your experience working as a  
11 restructuring advisor?

12 A I have been a licensed insolvency trustee since  
13 2005. So I've practiced small, medium, large  
14 insolvencies at firms as large as KPMG, and as  
15 small as one and two partner firms.

16 Q Have you ever been a chief restructuring  
17 officer or advisor in this capacity prior to  
18 this appointment?

19 A I've done advisory work for different  
20 companies, not per se with the title.

21 Q Okay. So this is the first placement where  
22 you've actually been a chief restructuring  
23 advisor or officer; is that fair?

24 A This would be the first placement with that  
25 title.

26 Q Well, you're telling me then you've been  
27 involved in other situations where you've been

1 the chief restructuring advisor or officer, but  
2 just not having that specific title?

3 A Absolutely. I've been an advisor in insolvency  
4 since 1999. I've worked on numerous insolvency  
5 engagements providing advice to lenders and  
6 stakeholders and to the court in various  
7 capacities. This -- yeah?

8 Q Oh, I apologize. You go ahead. You finish.

9 A No, go ahead.

10 Q I was just wondering, so what were your  
11 specific duties, then? What did you understand  
12 your duties were as the chief restructuring  
13 advisor of JMB when you started on May 4th,  
14 2020?

15 A My primary principle of duty was to assist with  
16 cash flow forecasts, and providing information  
17 to the stakeholders that were used in this  
18 matter, in these proceedings. My understanding  
19 is there were some information gaps that  
20 were -- that they felt they couldn't get timely  
21 information.

22 Q Okay. So you were to assist with the cash flow  
23 management?

24 A Yeah, cash flow management, yeah. That was at  
25 the start, yes.

26 Q Was that your primary duty?

27 A Well, at the start, my primary duty was to

1 assist with cash flow projections and such  
2 other advice and direction as the parties  
3 agreed.

4 Q Okay. So I'm trying to understand --

5 A So it was a very -- it was a very fluid role.

6 Q And by that you mean what --

7 A If I was asked questions by our legal advisors  
8 for information or documents, I had to gain an  
9 understanding of the business. I had to review  
10 the cash flow protections. I had to ascertain  
11 did we have enough cash week to week, how much  
12 borrowings do we need to have week to week.  
13 You're talking about a company that I arrived  
14 in that was in crisis, and there would be 1,000  
15 different things to do at any given time. And  
16 you're triaging matters of importance. So you  
17 carry on the business, ultimately. So that,  
18 you know, we could carry on and come out over a  
19 successful restructure.

20 Q Right. Exactly. And so were you then the  
21 primary designate that counsel for JMB and the  
22 Monitor contact with respect to representing  
23 JMB?

24 A I would say no. I was one of them.

25 Q Okay. And who were the others?

26 A I would say they would have had lots of access  
27 with the president, Jeff Buck.

1 Q Who else?

2 A And they would have been able to get  
3 information from the CFO at the time, or the  
4 current CFO.

5 Q Who's that?

6 A Jeff Ryks.

7 Q And who else?

8 A Those would be the -- those I'd say would be  
9 the two, the primary other people that would be  
10 providing information to legal counsel and the  
11 Monitor.

12 Q Okay. And when you initially spoke to  
13 Mr. Buck, Jeff Buck, do you recall your  
14 conversation with him on about May 4th of 2020?

15 A No, I don't.

16 Q And did you have continued conversations with  
17 Jeff Buck from and after May 4th, 2020?

18 A Yes.

19 Q And when did those conversations end, or do  
20 they still occur from time to time?

21 A They would have ended the day that Mr. Buck  
22 resigned from JMB.

23 Q And do you know when that was?

24 A Sorry?

25 Q Do you know when that was?

26 A I would say approximately June 25th to 26th.

27 Q And with respect to your conversations with any

1 other personnel of JMB, can you advise us to  
2 who those would be? I believe there's Jason  
3 Panter; correct?

4 A Sure. I would have spoken with -- I mean, JMB  
5 probably had 60 people at the time I showed up.  
6 So excluding truck drivers and loader operators  
7 and the odd mechanic, I've spoken to numerous  
8 people at JMB on a daily basis or a weekly  
9 basis, so ...

10 Q Okay. I get the understanding now. So with  
11 respect to Jeff Buck, can you please advise me  
12 of the nature of the conversations you would  
13 have had with him that would have involved the  
14 business operations, you were trying to gain  
15 some information and advice from him with  
16 respect to how to conduct matters?

17 A I would say Jeff Buck would -- I mean, Jeff  
18 Buck was the president of the company, so he  
19 was the expert of the company and what the  
20 company did. So obviously we have had numerous  
21 business discussions about customers, projects,  
22 cash flow, the business in general.

23 Q Okay. And so with respect to -- I'm looking at  
24 your affidavit of October 16th, 2020. And it  
25 starts off the same way as your affidavit of  
26 November 20th of 2020 says -- it indicates that  
27 you: (As read)

1           "Have personal knowledge of the  
2           matters here and after deposed to  
3           accept for stating would be based  
4           upon information and belief, in  
5           which case I verily believe the  
6           same to be true."

7           And then you go on to paragraph 2, indicating  
8           that you have reviewed the business records and  
9           all the proceedings, and as a result of that,  
10          you believe you are possessed with sufficient  
11          information to swear the affidavit.

12          And then you go on to go through the  
13          affidavit. And I'm just wondering when I'm  
14          looking at the affidavit that was sworn on  
15          October 16th of 2020, I take it that everything  
16          that is in that affidavit was based upon a  
17          review of documentation; correct? There was  
18          nothing in there that was based upon something  
19          you were told by somebody.

20          As you're looking through, I can't see  
21          anything that indicates you were advised by  
22          somebody to go -- Everything indicates sort of  
23          the actual statement. And by that, I'm taking  
24          it that you're speaking from your review of  
25          the -- of the record of JMB relevant to the  
26          proceedings as you've indicated in paragraph 2  
27          of that affidavit. So after your review, you



1 just let me know.

2 A Sorry. Do you want to sort of just clarify  
3 what you're looking for? You want to know  
4 whether this is information I've attained from  
5 looking at the records, or whether I've heard  
6 this from someone?

7 Q It appears to me that the entire affidavit is  
8 based upon a review of records, and that  
9 nothing in the affidavit contained is --

10 A Sorry. I lost you --

11 Q -- information --

12 A Sorry. I lost your --

13 Q What's that? Can you hear me?

14 A Sorry. I lost you. Hang on. Can you hear me?

15 Q I can hear you, yes. Can you hear me?

16 A I can't -- I can't hear. Hang on one second.

17 Q Oops. Hold on here. Now can you hear me?

18 A Can you hear me? No?

19 Q I can hear you. Can you hear me?

20 A Can you hear me?

21 Q I can hear you.

22 A Okay. Sorry. Sorry.

23 Q Okay. Maybe what I'll do, it'll be a little  
24 bit easier. I'll just go through the  
25 paragraphs, and then it's a very short  
26 affidavit. So if I'm going to -- let's start  
27 off with paragraph 5. I take it that the

1 contents of paragraph 5 of your affidavit is  
2 based upon your review of documents; correct?

3 A Paragraph 5 is, yes.

4 Q And that's where you get the information to  
5 make what you say in that paragraph, you get it  
6 from a review of documents, not from what  
7 anybody else has told you; correct?

8 A Well, these are both a review in documents and  
9 consultation with my legal counsel when I  
10 prepare my affidavit.

11 Q Yes, but you don't state that you have been  
12 advised by someone and believed under oath --

13 A No.

14 Q -- that you --

15 A Correct. Correct. I do not state that someone  
16 advised me of that fact.

17 Q Right. So is it fair to say that what's in  
18 paragraph 5, then, was information you obtained  
19 from just the review of the business records of  
20 JMB; is that fair?

21 A Yeah, I would say that's fair. Yeah.

22 Q Okay. And likewise with paragraph 6, what you  
23 stated in paragraph 6 of your affidavit of  
24 October 16th. Again, that's because of your  
25 review of the business documents and business  
26 documents alone; is that correct?

27 A I would say yes, that's correct.

1 Q And then with respect to paragraph 7, 8, and 9,  
2 and 10, again the same? It would be basically  
3 information that you would have garnered from  
4 your review of the business records and because  
5 of somebody telling you something; correct?

6 A It's a combination of business records and  
7 being involved in the operations of the  
8 company.

9 Q Okay. Well, then you're going to have to tell  
10 me. Then I'll go through this, and when you  
11 say being involved with the operations of the  
12 company.

13 A Well, I mean, if I'm -- if our trucks are  
14 delivering gravel and I know on a daily basis  
15 to the MD yard, I'm not getting that  
16 necessarily out of a document, sir.

17 Q Right.

18 A If I was told, you know, if I see the report  
19 saying, hey, we delivered 2,500 tonnes of  
20 gravel to MD yard, I know that we delivered  
21 2,500 tonne of gravel to the MD yard.

22 Q Yes, but that's because you're reviewing your  
23 document.

24 A Not necessarily.

25 Q Well, are you seeing a truck actually go to the  
26 MD yard and drop that gravel off?

27 A And I saying a truck did?

1 Q I'm asking you if you're seeing it happen, or  
2 did --

3 A I did not -- I did not -- I did not see that,  
4 but I'm aware of what the operations of the  
5 company were doing.

6 Q Yes, and you're aware of the operations because  
7 you reviewed the business records; correct?

8 A Partially.

9 Q And then so you're saying that part of the  
10 information you put in the affidavit is based  
11 upon information you've received from another  
12 party; is that correct?

13 A No. No, you're asking me if I reviewed a  
14 document. So if we're looking at paragraph 8,  
15 if I reviewed a document to say that we  
16 delivered product only to the MD yard, yes, I'm  
17 aware of documents that show we delivered  
18 product to the MD yard, but I'm also aware of  
19 management meetings and discussions talking  
20 about delivering product to the MD yard.

21 Q Right. And those would be discussions where  
22 other people would have said products being  
23 delivered to the MD yard; correct?

24 A Right. Yes.

25 Q And those would be discussions with third  
26 parties that would have given you that  
27 information; correct?

1 A Well, I have both, sir. So if you don't mind,  
2 rephrase your question with respect to 8. Do  
3 you want to know if eight is a result of I know  
4 the product is delivered to the yard because I  
5 looked at documents?

6 Q Well, okay. Let's first of all go back to  
7 seven. When you have the information stated in  
8 paragraph 7, that's information that you  
9 garnered solely by your review of the business  
10 records; correct?

11 A That paragraph 7 is a business record document,  
12 yes.

13 Q With respect to paragraph 8, you're saying  
14 during the period covered by the lien claims,  
15 JMB delivered the product only to the MD yard.

16 A And that is the document, sir.

17 Q Just so solely restricted to information --

18 A Yeah.

19 Q -- received from the document; correct?

20 A Yeah. Well, in this affidavit, that refers to  
21 a document, yes.

22 Q Not from --

23 A And --

24 Q -- you would have been advised by a third  
25 party; correct?

26 A No. No. That there is a document, if you want  
27 to be specific, about what's covered in this

1 paragraph of my affidavit, sir. That is the  
2 document.

3 Q I'm asking you, when you make that statement,  
4 are you basing it upon the review of a business  
5 record, or did you make that statement also  
6 because you were told something by somebody?

7 A No, this is a business record.

8 Q Okay. Paragraph 9, is that again statements  
9 that are made because you reviewed business  
10 records, or because of statements that you  
11 received from third parties that were told to  
12 you?

13 A I'd say that would be a combination of both.

14 Q Okay. I'll get back to that one later. And so  
15 the paragraph number 10, is that just a product  
16 of documents you reviewed, or was it also a  
17 product of information that was provided by  
18 third parties?

19 A No, ten is documents and factual.

20 Q Okay. And what about 11, is it documents and  
21 factual, or also information received from  
22 third parties?

23 A I would say that could easily be both.

24 Q So you're not sure with that one?

25 A No, I'm not saying I'm not sure. I know the  
26 purpose from reading the documents of the  
27 company of what the gravel was used for.

1 Q And paragraph 12, is that factual document  
2 based, or is that also based partially or  
3 wholly on --

4 A No. That's --

5 Q -- sorry --

6 A -- paragraph 12 is -- Sorry, sir.

7 Q Sorry. I'm just --

8 A Go ahead. Sorry.

9 Q -- repeating the question.

10 A Yes, sorry.

11 Q That's okay. I interrupted you a few times  
12 already. Paragraph 12, is that simply based on  
13 factual document review, or is it based on  
14 partial information from third parties?

15 A I mean, 12 is -- 12 is an exhibit. I mean,  
16 it's factual documents attached to my affidavit  
17 that I've reviewed.

18 Q And what about paragraph 13. Is that factual  
19 documents, or does that also include  
20 information received from third parties?

21 A No, I'd say that's factual documents.

22 Q Okay. Now, if we get to paragraph 4 of your  
23 affidavit, you state that this affidavit is  
24 supplemental to the affidavit of Jason Panter,  
25 sworn October 9th, 2020, and filed in these  
26 proceedings.

27 My question is then, I take it that you would

1           have reviewed the Jason Panter affidavit before  
2           swearing this affidavit; is that correct?

3           A     I would say that's correct, yeah.

4           Q     Okay. And you agree with me, right; you did  
5           that?

6           A     I've done that, and I also speak to Jason  
7           Panter on a daily basis.

8           Q     Okay. And can you tell me a little bit about  
9           Jason Panter? How long has he been with JMB?

10          A     I would estimate probably two years.

11          Q     Okay. So two years from today's date, or two  
12          years from May 1st, 2020?

13          A     I'd say approximately two years back from  
14          today's date. I don't have his exact date of  
15          employment with JMB.

16          Q     Okay. And do you understand what his position  
17          was with the company prior to you becoming  
18          involved?

19          A     Yes.

20          Q     Okay.

21          A     He has a title as project manager and  
22          estimator.

23          Q     Okay. And what did you understand that to mean  
24          in connection with the daily business  
25          operations of JMB?

26          A     He managed various projects for JMB in the  
27          field, as well as did estimating for potential



1 projects that were -- we were trying to secure.

2 Q And I take it during that period of time he  
3 would have been reporting to Mr. Buck?

4 A I would assume he would have.

5 Q Okay. And can you tell me, then, if he was  
6 involved in any way with respect to the  
7 Bonnyville contract that is the subject of  
8 these proceedings and the Shankowski lands, if  
9 he had any connection in that regard, or was he  
10 involved in other projects?

11 A Sorry, involved?

12 Q Well, I guess what I'm trying to find out is,  
13 did the purview of his daily grind or his daily  
14 work schedule allow him then to be involved  
15 with the Bonnyville contract or the Bonnyville  
16 project and the crushing and supply of gravel  
17 or aggregate to Bonnyville, MD of Bonnyville,  
18 or was he doing something else?

19 A I would say Jason had numerous roles and  
20 responsibilities. I don't recall if he was  
21 directly responsible for the MD project, but I  
22 can definitely say he was well aware of the  
23 inner workings of what the project was about.

24 Q Okay. And when we say the Bonnyville project,  
25 we're talking about the Bonnyville contract. I  
26 believe that's November 1st of 2013.

27 And so when we talk about the Bonnyville

1 project or the Bonnyville contract, you'll  
2 understand we're making reference to that, that  
3 contract; is that fair?

4 A Well, I think you need to be a bit more  
5 specific. I mean, you're talking about a 2013  
6 contract that was amended I believe four times.

7 Q Yes, and the amendments I understand are part  
8 of that contract, but I'm just generally  
9 referring to that particular project, the MD of  
10 Bonnyville.

11 A The MD of -- the ten-year gravel supply  
12 contract?

13 Q Yes, that's what I'm basically --

14 A Yes.

15 Q Okay.

16 A Yes.

17 Q And --

18 A Okay.

19 Q Okay. So just so that we're on the same page.  
20 Now, I take it when you reviewed the Jason  
21 Panter affidavit that was sworn on October 9th,  
22 2020, you didn't take any issue with its  
23 contents; is that fair?

24 A That's correct, yeah.

25 Q And I take it that you agreed or didn't have  
26 any reason to argue or disagree with Mr. Panter  
27 on any of the contents of his affidavit; is

1           that fair?

2           A     That's correct.

3           Q     Okay.  And you can't tell me today if --  
4           whether Mr. Panter had direct dealings with  
5           Mr. Shankowski or if Mr. Panter had direct  
6           dealings with the MD of Bonnyville.  You just  
7           can't tell me one way or the other because you  
8           don't have any information that would confirm  
9           or dispute that; is that fair?

10          A     I'm not sure if I can answer that question for  
11          you.  Sorry.  Maybe rephrase your question or  
12          just back up a bit, sorry.  Explain to me what  
13          you want to know about Jason Panter and his  
14          dealings.

15          Q     Right.  So what I'm saying is that --

16          A     I've lost you again, Richard.

17          Q     Oh sorry.  Can you hear me now?  No.

18          A     Can you hear me?

19          Q     I can hear you, yes.

20          A     Hello?

21          Q     Hello, can you hear me?  No?  Maybe we have a  
22          poltergeist or something, I'm not sure.

23          But ...

24          A     Are you back?

25          Q     Yes, can you hear me?  I can hear you.

26          A     No, sorry.  I can't hear you still.

27          Q     Okay.

1 A Hello?

2 Q Hi, can you hear me? I'll just keep talking  
3 here a little bit so --

4 A There. Sorry. I don't know what keeps  
5 happening.

6 Q Okay. No worries. No worries. So what I was  
7 trying to understand was you're not aware of  
8 any direct dealings that Mr. Panter would have  
9 had with either Mr. Shankowski, or with  
10 representatives of the MD of Bonnyville;  
11 correct?

12 A I am aware that Mr. Panter does speak to  
13 representatives of the MD of Bonnyville.

14 Q Okay. So you're aware then that he had some  
15 specific direct firsthand knowledge regarding  
16 those business dealings; is that fair?

17 A Yes.

18 Q Okay. And with respect to paragraph 9 of your  
19 affidavit of October 16th, 2020, you indicate  
20 in the first sentence that all product provided  
21 under the Bonnyville contract was intended and  
22 stockpiled for the MD's general use.

23 Now, previously you indicated that this  
24 particular paragraph included both information  
25 that you received from third parties as well as  
26 factual information. I'm just wondering with  
27 respect to that particular sentence, is that a

1 factual statement, or is that something that  
2 combines both aspects?

3 A Well, it's going to be both aspects. And I  
4 have to clarify for you. I mean, we have a  
5 contract that says, here's where the gravel is  
6 going. Every year they tell us where it's  
7 going to be delivered. I also am, you know,  
8 working in the operations of the company, so I  
9 understand that so many trips are going to get  
10 made to the MD yard, and the gravel gets  
11 dropped off, and then we bill them. And  
12 whatever they do with the gravel is up to them.

13 Q No, I understand that, but I'm just wondering  
14 when you say MD's general use, is that just  
15 something that, you know, you're -- you're kind  
16 of sort of interpreting on your own, or is that  
17 something that you've read from a document, or  
18 is that something someone has told you?

19 A That's my knowledge of the business operations  
20 of JMB with MD.

21 Q Yes, but I want to know how you gained that  
22 knowledge. That's what I want to know. Where  
23 did you gain that knowledge from?

24 A Six months of working in the business.

25 Q Okay. Well --

26 A I -- I --

27 Q -- that's fine, but more specifically, you

1 know, you're telling me you gained it six  
2 months working in the business, but do you know  
3 what they use the gravel for, can you tell me  
4 that?

5 A From my discussions with the operations  
6 personnel, I understand they used it for road  
7 repair throughout their municipal district  
8 throughout the year.

9 Q Right. So for road construction, correct?

10 A Road repair, yeah.

11 Q Well, and road construction?

12 A I don't know about road construction, road  
13 repair.

14 Q Okay. And so that's what you mean by general  
15 use; correct?

16 A I don't -- yeah, in general, they're usually  
17 free to do what they want to do, if that's what  
18 it meant.

19 Q Well, you've given me road repair.

20 A I know -- I do know that it was used for road  
21 repair.

22 Q Do you know if it was used for anything else?

23 A I do not.

24 Q Okay. So the only information you have is that  
25 the gravel, the aggregate, and the stockpiles  
26 was used for road repair; correct?

27 A I understand that there's a mountain of

1 aggregate in their yard that they were able to  
2 use, and used it throughout the MD for road  
3 repair. I don't know if they did road  
4 projects. I don't know.

5 Q You don't know anything else, correct, other  
6 than for road repair; is that fair?

7 A Yes. My understanding, it was for maintenance,  
8 yes.

9 Q Okay. Thank you. And when you say the MD  
10 retained discretion to use the product as it  
11 wished, are you making that, again, from a  
12 factual document review, or is that something  
13 you're just assuming or speculating on? I want  
14 to know where do you get that information from?

15 A From working in the business while we were  
16 doing the project. As we dropped it off, we  
17 billed it, they paid for it. We didn't control  
18 what they did with it.

19 Q Right. So that doesn't necessarily mean that  
20 they did with it anything other than road  
21 repair; correct? I mean, you're just saying  
22 they did with it what they wished because it's  
23 their product, they own it; correct?

24 A That's -- well, yes. They can do what they  
25 wish with it because they owned it, yeah.

26 Q Right. But you don't have any other  
27 information that would suggest they were doing

1 anything else with it other than road repair or  
2 road maintenance; is that correct?

3 A That's correct from my discussions with the  
4 operations crew, yes.

5 Q Okay. Thank you. Now, I'm taking you to your  
6 affidavit that's sworn November 20th, 2020.  
7 And it indicates that, in paragraph 4, you  
8 swear this affidavit further to your affidavit  
9 sworn August 6th, 2020, October 16th, 2020 in  
10 these proceedings. I want to ask you this  
11 question first.

12 Paragraph 9 in your affidavit of October  
13 16th, 2020, with respect to the use of the  
14 gravel for the road repair and maintenance, I  
15 take it you were advised of this and became  
16 aware of this very early in May of 2020; is  
17 that fair?

18 A I'm sorry. You're referring to which  
19 affidavit?

20 Q Now I'm referring to the October 16th, 2020  
21 affidavit again. I'm bouncing back, I  
22 apologize for this sort of randomness --

23 A Sorry.

24 Q -- I want to ask you a question again on when  
25 you acquired the knowledge that the use of the  
26 gravel or aggregate that was being supplied by  
27 JMB to the MD of Bonnyville, was being used for



1 the road maintenance and repair. And I'm  
2 suggesting it was very early after you were --  
3 after you became involved as the chief  
4 restructuring advisor; is that fair?

5 A No, it's not.

6 Q Okay. So --

7 A I would say I probably didn't start asking  
8 questions about the use of the material until  
9 quite later on in the process, once obviously,  
10 some of the litigation was surrounding it that  
11 I gained more knowledge about what they used it  
12 for. But on May 4th, when I started with JMB,  
13 I knew we had a contract with the MD of  
14 Bonnyville, and I knew they owed us money.

15 Q When did you first become aware, then, that the  
16 gravel and aggregate was being used for the  
17 road repair and maintenance?

18 A I'm not sure if I can answer that. I don't  
19 know.

20 Q You don't have any ability to determine when  
21 that information would have been made aware to  
22 you?

23 A I've worked for the company for six months.  
24 I -- I cannot recall an exact day. All I can  
25 say is May 4th, I'm fairly confident, given  
26 what was happening early on in these  
27 proceedings, I could have cared less what it

1 was being used for.

2 Q Okay. Let me understand this, then, could you  
3 have -- do you obtain this information within  
4 the month of May?

5 A No. I would say it's highly unlikely I was  
6 asking questions that deep into what they were  
7 using the product for, because I had too many  
8 other things to deal with at that time.

9 Q Okay. When did you first review the Bonnyville  
10 contract, and that's the contract that's  
11 attached as Exhibit C to the affidavit of Jason  
12 Panter of October 9th. When was the first time  
13 you recall ever seeing that contract?

14 A Ever seeing it, or ever reviewing it?

15 Q Seeing it, first of all.

16 A So seeing a physical piece of paper on my desk?

17 Q Yes, that said that contract.

18 A I was aware in May that we had a contract with  
19 them.

20 Q Okay. And when did you first see it?

21 A See the contract?

22 Q Yes.

23 A Likely I sent that contract to our legal  
24 counsel for review early on in May.

25 Q Okay. And when you say you sent it to your  
26 legal counsel for review, what was the reason  
27 for that?

1 A Because we weren't getting paid for an  
2 outstanding receivable, and we needed a  
3 mechanism to collect the receivable.

4 Q Okay. And is that with respect to the series  
5 of emails that are contained as Exhibit B to  
6 your affidavit of November 21st, 2020?

7 A I'm sorry, that I -- you're asking me what with  
8 respect to Exhibit B?

9 Q Well, that exhibit indicates a number of emails  
10 back and forth between the MD of Bonnyville and  
11 representatives of JMB with respect to the  
12 payment of invoices. And it's -- they're dated  
13 around April 29th, 28th of 2020; do you see  
14 that?

15 A I see it.

16 Q Is that the nature of the outstanding invoices,  
17 or was there something else?

18 A No, I was not involved with JMB on April 29th.

19 Q I'm not asking you that. You've indicated that  
20 you sent the Bonnyville contract to the lawyers  
21 for --

22 A I did. I did. It wasn't -- no. It was based  
23 on my discussions with the chief administrative  
24 officer of the MD of Bonnyville.

25 Q Right. And basically, what was happening is  
26 you --

27 A Sorry. I've lost you again. Hang on, Richard.

1           Sorry.  Go ahead.

2           Q     Hello, can you hear me?

3           A     Yeah.

4           Q     Okay.  And you were asking -- you wanted the MD  
5                 of Bonnyville to pay certain invoices that were  
6                 outstanding; correct?

7           A     So upon -- upon my appointment on May 4th,  
8                 either May 4th or May 5th, I would have spoken  
9                 with the chief administrative officer of the MD  
10                of Bonnyville to understand this situation of  
11                why we weren't getting paid, you know,  
12                approximately 3 million dollars that was due to  
13                JMB.

14          Q     And the chief administrative officer, was that  
15                 Tulipe Maralieas [phonetic]?

16          A     It is not.

17          Q     Who was that?

18          A     It is an individual named Luke Mercier.

19          Q     And that was the chief administrative officer  
20                 for the MD of Bonnyville?

21          A     That's correct.

22          Q     Okay.  And did those conversations with respect  
23                 to finding out why JMB was not being paid, did  
24                 those relate, or were the documents that are  
25                 contained at Exhibit B of your affidavit, which  
26                 was sworn November 21st, 2020, you contain a  
27                 number of emails.  Did those emails, did they

1 relate to this issue of the outstanding  
2 payments from the MD of Bonnyville to JMB?

3 A Do they relate to why we weren't getting paid,  
4 are you asking?

5 Q I'm trying to understand if they're connected.  
6 If there's a different debt that you were going  
7 after, or is this thing --

8 A These -- Exhibit B is email correspondence that  
9 I've seen with respect to outstanding amounts  
10 between MD and JMB.

11 Q Right.

12 A And that is some of the reasons why I  
13 understand they weren't getting paid the  
14 receivable.

15 Q Right. And so that relates to a reason or one  
16 of the reasons why the MD of Bonnyville wasn't  
17 paying. And was that part of the reason,  
18 what's reflected in those emails, why you  
19 wanted the Bonnyville contract to be reviewed  
20 by the legal counsel?

21 A No, it's not.

22 Q Okay. Then when you talk about legal counsel,  
23 you're talking about Gowlings?

24 A I'm talking about JMB's legal counsel, yes.

25 Q Okay. So that's Gowlings; correct?

26 A Yes.

27 Q And who would you have contact with there

1 primarily?

2 A Tom. Well, Tom Goming and Gregg Hanner  
3 [phonetic].

4 Q Okay. And so when you sent them the Bonnyville  
5 contract in May of 2020, what were you sending  
6 it to them specifically for?

7 MS. HANERT: Mr. Hajduk, I'm going  
8 to interfere right there because I think you're  
9 treading on some pretty thin ice with respect  
10 to privileged conversations. So I'm not  
11 permitting the witness to answer that question.

12 MR. HAJDUK: I'm not asking him to  
13 say what he received in communication. I just  
14 want to know the purpose of him sending that  
15 contract. What was he sending it for? He's  
16 indicated already that it was to determine an  
17 issue with respect to amounts to be paid, and  
18 he's saying that it doesn't relate entirely to  
19 what's in Exhibit B of his affidavit. So I'm  
20 just trying to get a better understanding of  
21 what it relates to.

22 MS. HANERT: Mr. Hajduk, you've got  
23 his answer on that point, and I'm not  
24 permitting the witness to answer anything  
25 further on that.

26 MR. HAJDUK: Okay. And I'll just  
27 state that, you know, of course I object to --

1 I don't accept your position, but you know,  
2 we'll just make sure that it's clear on the  
3 record that I don't have to state that  
4 objection every time or that I agree with you,  
5 and we can deal with those matters in court  
6 separately; is that fair, Counsel?

7 MS. HANERT: That's fine. And  
8 Mr. Hajduk, to put on the record, my -- the way  
9 that I typically deal with these kinds of  
10 objections, we don't have enough time to deal  
11 with them today, but certainly I'd be happy to  
12 have a conversation with you offline to see if  
13 we can answer some of these for you if that's  
14 in fact appropriate.

15 MR. HAJDUK: Okay. We can deal  
16 with that later if that's a --

17 MS. HANERT: Yes.

18 MR. HAJDUK: -- possibility.  
19 Otherwise, we both know each other's position.

20 Q Okay. So when you sent the contract, the  
21 Bonnyville contract to your lawyers in May to  
22 review, had you reviewed the contract yourself  
23 prior to sending it to them?

24 A I did not.

25 Q Okay. And I take it, then, that at some point  
26 in time, you reviewed that contract in full?

27 A Parts of it. I would say most recently, I've

1 read it in full.

2 Q Okay. When was the first time that you read  
3 the entire document?

4 A That's tough to answer. I can't -- I can't  
5 tell you an exact date about that.

6 Q Okay. When was the first time that you were  
7 aware of paragraph 26 of that contract?

8 A Paragraph 26 is what again, sir?

9 Q That's the paragraph that deals with the deemed  
10 trust.

11 A So do you have something you want to show me.

12 Q Paragraph 26 of the contract.

13 A Yes.

14 Q Can you see that? It's on page five of the  
15 Bonnyville contract.

16 A No, because I don't have the Bonnyville  
17 contract in front of me.

18 Q Oh, okay. Well, that's the provision, sir,  
19 that -- it's attached as Exhibit C to the  
20 affidavit of Jason Panter, but I'll read it for  
21 you just so you get an understanding of what it  
22 says, Paragraph 26: (As read)

23 "From the amounts paid to JMB by  
24 the MD, JMB is deemed to hold that  
25 part of them in trust which is  
26 required or needed to pay for any  
27 salaries, wages, compensations."



1 And then it goes on and on and on, and ends  
2 with: (As read)

3 "All costs directly or  
4 indirectly related to the product  
5 and services, JMB shall pay the  
6 foregoing from such trust funds."

7 And I'm wondering when was the first time you  
8 became aware of that paragraph of the contract?

9 A Likely on the day that you cancelled the  
10 examination, my first examination, which would  
11 have been around October 20th, possibly.

12 Q Okay. And before that, you were not aware of  
13 that paragraph in the contract; is that fair?

14 A That's correct. Yeah.

15 Q Okay. And before that date, no one had ever  
16 discussed with you paragraph 26 of the  
17 contract; is that fair?

18 A That is true, yes.

19 Q And you had never enquired of anybody prior to  
20 that date with respect to paragraph 26 and its  
21 interpretation or meaning; is that fair?

22 A I have not, yes.

23 Q You would agree with me; correct?

24 A Yes, I have not.

25 Q Okay. Now, with respect to -- I'm looking --  
26 just for clarity, I'm looking at your November  
27 20th, 2020, contract -- or I mean, affidavit,

1 I'm sorry. So when I'm looking at that  
2 affidavit, and we look at paragraph 8, and that  
3 relates to Exhibit B that we were talking  
4 about, you understood then, very quickly after  
5 your appointment on May 4th, 2020, that there  
6 was an issue whereby the MD of Bonnyville would  
7 not pay for certain invoices owed to JMB  
8 because of outstanding issues with certain  
9 service providers; is that fair?

10 A That's correct. Yes.

11 Q Okay. And what did you do, if anything, with  
12 respect to that matter?

13 A I mean, I gained -- I gained an understanding  
14 of the situation from our CFO. I likely spoke  
15 with Mr. Buck, and I phoned Luc Mercier, the  
16 CAO of the MD to see if there was some sort of  
17 arrangement we could put in place to free up  
18 funds so that JMB could get some cash from the  
19 MD.

20 Q And what -- who did you have those discussions  
21 with?

22 A I just said.

23 Q Who?

24 A I just told you. I said I spoke with -- I  
25 spoke with Luc Mercier, the CAO of MD of  
26 Bonnyville and I also probably -- I also said I  
27 likely spoke with Jeff Buck and I would have

1 spoken with Jeff Ryks, the CFO.

2 Q So you said Luc Mercier, the CEO of Bonnyville;  
3 correct?

4 A CAO.

5 Q CAO, sorry.

6 A Chief Administrative Officer.

7 Q Okay. And can you tell me, then, what your  
8 discussion entailed? Tell me what you recall  
9 of that conversation.

10 A I wanted to gain an understanding of where the  
11 MD was at with respect to the liens. And we  
12 knew that the liens were less than the amount  
13 owed, so we were wondering if there was a way  
14 to effectively pay the money into trust or do  
15 something so that we could get some sort of  
16 cash flowing from the MD to continue  
17 operations.

18 Q Okay. But when I look at that paragraph 8, it  
19 doesn't indicate anything about liens. And if  
20 I look at -- it just indicates that, when we  
21 look at Exhibit B, that there's parties that  
22 aren't being paid, and that are complaining and  
23 calling them.

24 A Okay.

25 Q So I'm trying to understand, then, you know,  
26 what was the basis of how you understood the MD  
27 of Bonnyville's refusal to pay the invoices of

1 JMB, notwithstanding these -- these complaints  
2 by certain, you know, subcontractors or  
3 providers or service providers or whatever  
4 for JMB?

5 A I believe -- I believe I've answered that. I  
6 said I spoke with the CFO of JMB and there was  
7 records that indicated they did analysis of  
8 what was owed.

9 Q Okay. But didn't you demand that they make the  
10 payment to JMB Crushing? They owed the money  
11 to JMB, so why should --

12 A Did I --

13 Q Why should they worry about who -- who is owed  
14 money?

15 A Did I demand from MD to pay us?

16 Q Well, yeah.

17 A I -- I was trying to set aside an issue so that  
18 we could get -- [audio lost] --

19 Q Sorry, I didn't hear that. I don't know if you  
20 cut out. I can't hear you now. I can't hear  
21 you, sorry. Can't hear you.

22 MS. HANERT: Mr. Elyea, if you can  
23 hear us, can you give us a thumbs up?

24 THE WITNESS: Okay. I'm here.  
25 Sorry.

26 Q MR. HAJDUK: That's okay. You can  
27 hear us all now? Or you can hear me now?

1 A Yeah. Sorry. I don't know why every couple  
2 minutes it seems to do this.

3 Q Okay. So I'm trying to understand, you know,  
4 your dealings with the CAO of the MD of  
5 Bonnyville, and what you're telling me is you  
6 were trying to sort of massage or trying to get  
7 an agreement with them whereby these invoices  
8 could be paid; is that fair?

9 A Yes. I was aware that there was a large amount  
10 that was owed with respect to that project. MD  
11 was aware of it obviously through this  
12 correspondence. So I was -- I was -- I was  
13 trying to see if there was an arrangement we  
14 could make without a long and protracted battle  
15 to get some money paid to JMB.

16 Q Okay. And when you say, "That project", what  
17 project are you referring to?

18 A The MD ten-year supply contract.

19 Q Okay. So that's -- when you say "Project" you  
20 just mean that supply contract; is that fair?

21 A Yes. Yeah. Yeah. The current work we were  
22 doing.

23 Q Okay. When you've been involved as an advisor  
24 in this capacity before, has that been in CCAA  
25 proceedings?

26 A I've been involved as an advisor in -- in  
27 various informal and formal proceedings

1           where -- where -- whether I was working for a  
2           firm or by myself. So I'm not sure what you  
3           want to know.

4           Q     Well, I'm just wondering if those other  
5           capacities involved CCAA proceedings?

6           A     I have been involved in CCAA proceedings.

7           Q     Okay. And then I take it you're familiar with  
8           the process and what it entails generally?

9           A     Generally, yes.

10          Q     Okay. And do you understand when JMB then  
11          sought and was granted creditor protection  
12          under the CCAA hospice of authority? Do you  
13          recall when that first happened?

14          A     On May 1st.

15          Q     Okay. And does that, then, as far as you were  
16          aware, change the rights and obligations of  
17          parties when that happens?

18          MS. HANERT:                    Mr. Hajduk, I'm not  
19          allowing the witness to answer that question.  
20          I think that's a question of legal conclusion.

21          Q     MR. HAJDUK:                Okay. So sir, on May  
22          1st, then, JMB goes into creditor protection,  
23          and you're telling me that notwithstanding that  
24          that has occurred, you're still trying to deal  
25          with the MD of Bonnyville so that you can avoid  
26          a long and protracted process before getting  
27          paid?

1       A     Let me phrase it this way, they have \$3 million  
2             of ours.  There's a bunch of unpaid people.  
3             They're going to control whether they're going  
4             to give me the money or not, and their decision  
5             is either they give me the money, or we have to  
6             make a court application to come up with a  
7             process to get the money.  So --

8       Q     And so I take it that the process that you  
9             eventually worked out with them was that you  
10            give us all the money, and we'll make sure that  
11            you're not responsible or liable for any  
12            resulting claims; is that fair?

13      A     I did not work that process out with them.

14      Q     You didn't?

15      A     I did not.

16      Q     Well, how did you understand the process?

17      A     Which -- are you talking about the formal lien  
18             process, or are you talking about my  
19             discussions with the CEO prior -- prior to the  
20             lien process that was enacted?

21      Q     Well, did you understand all of the amounts  
22             that were owing were in relation to a liens  
23             amount, or did you understand there was other  
24             liabilities?

25      A     I understood that there was amounts that were  
26             unpaid for that project, and they weren't  
27             paying us because they were aware that these

1 amounts were outstanding.

2 Q Right. And so it had nothing to do with  
3 whether the lands or property were liened, it  
4 had to do with whether there are amounts owing  
5 to third parties in respect of that project; is  
6 that fair?

7 A This was purely a commercial discussion to see  
8 if we could come up with a commercial  
9 resolution to get some cash flowing to JMB.

10 Q Right. And -- and what had to be done was JMB  
11 would -- would take the money and then the --  
12 any liability of the MD of Bonnyville would be  
13 absorbed by JMB; is that fair?

14 A No.

15 Q Was it not your understanding that the MD of  
16 Bonnyville was cornered that if they just  
17 simply paid the money to JMB without taking  
18 care of the suppliers or, you know, providers  
19 that there might be something that comes back  
20 against them?

21 A Well, I'm sure that's what their hesitation was  
22 of paying them on May 4th. But I mean,  
23 obviously they didn't pay us on May 4th and  
24 that's why there was various court applications  
25 to set up this lien process.

26 Q And eventually there was an order worked out  
27 with the MD of Bonnyville; is that correct?



1 A There was, yes.

2 Q And in paragraph 9 of your affidavit of --  
3 sworn November 21st, 2020, midway you say this  
4 sentence: (As read)

5 "According, JMB worked with the MD  
6 and the Monitor to create a process  
7 by which any additional lien claims  
8 would be stayed. The MD would pay  
9 the monies to the Monitor. The MD  
10 would no longer have any liability  
11 in relation to those monies."

12 Correct?

13 A Yes.

14 Q And I take it that when you say, "Any liability  
15 in relation to those monies", that meant in any  
16 capacity or sense; correct?

17 A I would say yes.

18 Q So they would not be -- once they paid you --  
19 once they paid JMB they could, you know, be  
20 satisfied that no one could ever go back  
21 against them for anything with respect to --  
22 that was connected with those -- payment of  
23 those monies; is that fair?

24 A I'd say under the terms of the court order,  
25 yes.

26 Q Well, as you understood it, and you understood  
27 the arrangement --

1       A     Well, as I understood, that is what was stated  
2             in the court order.  And they were -- they were  
3             happy to release the money to the Monitor  
4             because they realized they didn't have any  
5             further liability after that.

6       Q     Right.  And so in this particular situation,  
7             then, you were working with the Monitor in the  
8             month of May to achieve this understanding; is  
9             that fair?

10      A     I did work some with a Monitor, yes.

11      Q     And which representative of the Monitor was  
12             that?  Or who?  How many of them?

13      A     I mean, there's two representatives of the  
14             Monitor I dealt with.  I dealt with an  
15             individual named Tom Powell, and I dealt with  
16             an individual named Mike Clark to provide them  
17             with information.

18      Q     Okay.  And so during the month of May of 2020,  
19             these were the individuals that you worked with  
20             from the Monitor to work out a situation where  
21             the monies could be paid from the MD of  
22             Bonnyville to either the Monitor or import; is  
23             that fair?

24      A     Well, they were representatives of the Monitor.  
25             I believe most of the work was done -- was done  
26             between Gowlings and McCarthy Tetreault, which  
27             was the Monitor's legal counsel.

1 Q Okay. Very good. And how do you -- how do you  
2 understand that?

3 A I'm sorry?

4 Q How do you come to that conclusion?

5 A Because I would have been -- sorry. I would  
6 have been asked for information from our legal  
7 counsel with respect to this matter, and they  
8 would have been dealing with McCarthy  
9 Tetreault --

10 Q Okay.

11 A -- and the Monitor.

12 Q So I just want to be -- I'm sure you've not had  
13 direct involvement or conversation or  
14 discussions with Jerry Shankowski, have you?

15 A I don't believe I have.

16 Q Okay. Now, when you indicated that you  
17 understood that the gravel was being used by  
18 the MD of Bonnyville for repair and maintenance  
19 of roads, did you understand what roadways  
20 those were?

21 A I did not, no.

22 Q And I take it you did not make any inquiries  
23 with anyone to make that determination; is that  
24 fair?

25 A I did not.

26 Q Okay. And I take it part of your obligations  
27 as the chief restructuring advisor for JMB was

1 to determine the third party payment  
2 liabilities of JMB to other parties; is that  
3 fair or not?

4 Oh, can you hear me? I think we lost him  
5 again.

6 MS. HANERT: M'mm-hmm.

7 THE WITNESS: Can you hear me?

8 Q MR. HAJDUK: Yeah, can you hear me?

9 A Yeah, I can. Sorry about that. Can you repeat  
10 the question?

11 MR. HAJDUK: Madam Court Reporter,  
12 can you just repeat the question, please.

13 COURT REPORTER: (By reading):  
14 And I take it part of your obligations as the  
15 chief restructuring advisor for JMB was  
16 determine the third party payment liabilities  
17 of JMB to other parties; is that fair or not?

18 Q MR. HAJDUK: Is that part of your  
19 job, sir?

20 A To determine all of them? Which ones?

21 Q Well, I take it when you're determining the  
22 cash flow of the company, that would include a  
23 consideration of amounts that were owing or  
24 potentially owing to third parties; is that  
25 correct?

26 A No.

27 Q So explain to me then --

1 A Sorry, you're talking about -- you're talking  
2 about current liability, past liability,  
3 current expense, past expense? I'm not sure I  
4 understand.

5 Q I'm talking about current and general expenses.  
6 So you're trying to figure out the cash flow.  
7 You have incoming cash, you have to find out  
8 what's owed to other parties; that was your  
9 role; correct?

10 A I'm not sure I understand.

11 Q Okay. So when you're determining cash flow,  
12 what would you go and do to make that  
13 determination and advise JMB or its legal  
14 counsel as to what that cash flow is?

15 A So we prepared a cash flow based on our  
16 forecast receipts and forecast of disbursements  
17 based on our current -- based on our current  
18 operations.

19 Q Okay. But when you have the disbursement  
20 portion of it, how do you decide what are  
21 disbursements and what are not disbursements?

22 A Because we know what our planned disbursements  
23 are week by week.

24 Q How do you know that?

25 A Because we have an accounting supervisor that  
26 keeps track of these things.

27 Q So you would just get the information from a

1 third party then; correct?

2 A I would get the information from a third party  
3 and I would make the decision of who we pay.

4 Q Okay. And when you say you make the decision  
5 of who you pay, how would you make those  
6 decisions?

7 A Based on the available cash flow and then the  
8 necessity to -- for the operations.

9 Q Okay. And I take it there would be no other  
10 deeper or more integrated investigation by you  
11 or review by you other than that process; is  
12 that fair?

13 A Well, I was aware that -- I was aware that  
14 they're -- most -- I would say the expenditures  
15 that we were paying on week by week basis, I  
16 was fully aware of who they were and why we  
17 owed them.

18 Q Okay. Did you have any dealings with the  
19 Monitor? Did you, for instance, send the  
20 Bonnyville contract to the Monitor?

21 A I don't believe I did.

22 Q Okay. And I take it, that, as you understand  
23 it, would be left between legal counsel for JMB  
24 and their communications with the Monitor?

25 A I would likely assume that's where they would  
26 have had those discussions.

27 Q Okay. And what role did you have in the

1 establishment of the lien determination process  
2 that was formalized by the order of Justice  
3 Eidsvik of May 20th, 2020? What was your  
4 involvement in that?

5 A I would have been asked to confirm and verify  
6 numbers, potentially, to the records of the  
7 company.

8 Q And that would be for the purposes of what?

9 A For verifying amounts owing.

10 Q To?

11 A To lien claimants and unpaid suppliers.

12 Q Okay. And when you say, "Verifying amounts"  
13 that would just include looking at invoices  
14 that were unpaid, or would that include a more  
15 in-depth examination?

16 A No. At the start of this project on May 4th  
17 there was a schedule prepared by the CFO that  
18 indicated these were potentially lienable  
19 amounts against the MD project and here they  
20 were, and they listed them.

21 Q Okay. And then that was the CFO for JMB;  
22 correct?

23 A For JMB, yeah.

24 Q Right. That's Jeff Ryks, I think you said;  
25 right?

26 A Yes.

27 Q Okay. And so then -- so you would just then

1           communicate that information to legal counsel?

2           A     Yes.  And that document was -- would have been  
3           provided to legal counsel based on my  
4           discussions with Jeff Ryks.

5           Q     Right.  But there would be no further or  
6           in-depth review of any other documents or  
7           information that JMB had; correct?

8           A     I would say that's correct at that time, yeah.

9           Q     So the information you got with respect to the  
10          amount of liens or potential liens or amounts  
11          that may be lienable would have come from Jeff  
12          Ryks, the CFO of JMB, in May of 2020; is that  
13          fair?

14          A     That's true, yes.

15          Q     And then you simply just re-communicated that  
16          and transferred that information to Gowling; is  
17          that fair?

18          A     That's fair, yes.

19          Q     And you did no other review of the agreements  
20          or documents to make any determinations as to  
21          any other amounts that might be owing in any  
22          other capacity by JMB to third parties; is that  
23          fair?

24          A     I wasn't aware of any based on my discussions  
25          with the CFO.

26          Q     Right.  And so your awareness as to any  
27          liabilities of third parties was strictly



1 related to what information you received from  
2 the CFO of JMB Crushing; is that fair?

3 A That's true, yeah. Correct.

4 Q Okay. And that was the extent of your  
5 involvement with respect to the lien  
6 determination process that culminated in the  
7 order of May 20th, 2020, of Justice Eidsvik; is  
8 that fair?

9 A I would have been asked questions by the  
10 Monitor based on the -- based on the documents  
11 that were filed if there was discrepancies  
12 between what I previously provided and what was  
13 filed.

14 Q Right. But the information by the Monitor  
15 would have strictly related to accounting  
16 issues numbers; correct?

17 A I would say that's correct, yeah.

18 Q There were no discussions by you and the  
19 Monitor or any other party with respect to the  
20 nature of the improvement or any purpose for  
21 which the aggregate was supplied; is that fair?

22 A That's true. I did not have those discussions.

23 Q After May 20th of 2020, did you have any  
24 further involvement in the determination of the  
25 lien process that had been established by the  
26 court order?

27 A Only with respect to questions of amounts that

1           were filed verse what JMB records previously  
2           provided said.

3           Q     Okay. I take it you had no involvement with  
4           respect to the determination of whether or not  
5           a lien was proper or whether or not it related  
6           to an improvement or any of those other  
7           factors; is that fair?

8           A     I did not have any of those. Yes, that's fair.

9           Q     I take it that with respect to the lien  
10          determination notices that were sent out by the  
11          Monitor, you had no involvement with respect to  
12          determining which lien determination notices  
13          would go out?

14          A     I did not.

15          Q     I'm taking you to paragraph 20 of your  
16          affidavit sworn November 21st, 2020.

17          MS. HANERT:                    Mr. Hajduk, just a  
18          quick --

19          MR. HAJDUK:                    Sorry.

20          MS. HANERT:                    I'm sorry, which  
21          paragraph number?

22          MR. HAJDUK:                    Paragraph number 20.

23          MS. HANERT:                    Thank you.

24          Q     MR. HAJDUK:                    Are you there, sir?

25          A     I am. Can you hear me?

26          Q     It indicates that -- in the first sentence of  
27          paragraph 20, that you were advised by GM, the

1 operations personnel. And can you tell me who  
2 those operations personnel are that provided  
3 you with the information that you're  
4 referencing?

5 A Jason Panter.

6 Q Okay. Who else?

7 A For this affidavit, Jason Panter.

8 Q Okay. So it was just Jason Panter who provided  
9 you with all of the information that is further  
10 specified in paragraph 20; is that fair?

11 A Yes. I reviewed this information with him.

12 Q Okay. When you say, "Reviewed it" you mean you  
13 discussed the issue, and based upon your  
14 discussions with him, you then basically  
15 completed paragraphs 20(a) through and  
16 including paragraph 20(g) of the affidavit; is  
17 that fair?

18 A Well, this is what he advised me, so this is --  
19 and I've discussed it, so I understand what's  
20 here.

21 Q Okay. So let's go through it then. So  
22 paragraph (a) you state: (As read)

23 "Typically aggregate classified as  
24 DES 1 (asphalt material) under the  
25 specifications set out by Alberta  
26 Transportation -- and then you have  
27 (the AT specifications) -- can

1           attract a higher royalty rate due  
2           to the greater amount of waste  
3           elimination material generated  
4           during crushing/processing."

5           Do you see that?

6       A     Yes. Hang on --

7       Q     Oh, I think I might have lost you again. Yeah.  
8           I can't hear you yet.

9       A     Can you hear me now?

10      Q     Yeah, I can hear you now.

11      A     Breaking up -- it's breaking up a bit. Sorry  
12           about that again.

13      Q     Okay. That's fine. So with respect to  
14           paragraph 20(a), you make reference to  
15           specifications set out by Alberta  
16           Transportation; do you see that?

17      A     Yes.

18      Q     And what are those specifications?

19      A     Those are -- those are Alberta standards for --  
20           for aggregates and for road building.

21      Q     Right. And have you ever seen them?

22      A     Yes, I have.

23      Q     Okay. And so you have a copy of that?

24      A     I don't have it in front of me, but I have seen  
25           them.

26      Q     Okay. That's what you're referring to, that --  
27           specifications that you reviewed when you

1 relate to paragraph 28; correct?

2 A Yes.

3 MR. HAJDUK: Okay. Can you  
4 undertake to provide me a copy of the AT  
5 specifications that you're referencing?

6 THE WITNESS: I can't provide you  
7 with an undertaking.

8 MR. HAJDUK: Well --

9 MS. HANERT: Yeah. Mr. Elyea,  
10 you're a little fast for me. Mr. Hajduk, I  
11 will undertake to do that. I would note that  
12 they are publicly available documents, but  
13 we'll provide them too.

14 MR. HAJDUK: M'mm-hmm. I know they  
15 are. I just want to see the ones that he  
16 referred to in reference with respect to his  
17 affidavit.

18 \* UNDERTAKING NO. 1 \*

19 PROVIDE A COPY OF THE ALBERTA  
20 TRANSPORTATION SPECIFICATIONS BEING  
21 REFERENCED IN MR. ELYEA'S  
22 AFFIDAVIT, AS REFERRED TO ABOVE

23 Q MR. HAJDUK: Okay. So, sir,  
24 getting back to paragraph 20(a), it indicates  
25 that: (As read)

26 "The aggregate classified as Des  
27 1 can attract a higher royalty rate

1           due to the greater amount of waste  
2           elimination material generated  
3           during the crushing or processing."

4           Now, can you explain to me if this was just  
5           information that was provided to you and you  
6           just sort of reprinted it or restated it in  
7           print from Mr. Panter, or is this a synopsis of  
8           what you understand from your conversation with  
9           him?

10          A     This is a discussion that I had with  
11           Mr. Panter, and this is what he advised me on.

12          Q     Okay. And so if I'm to understand this  
13           correctly, any aggregate classified as DES 1  
14           under the AT specifications is going to attract  
15           a higher royalty rate because you have a  
16           greater amount of waste or elimination  
17           material; correct?

18          A     I say the word "can".

19          Q     Right. It can attract a higher --

20          A     It might not always, because we have pits that  
21           do not have a varying royalty rate for this  
22           type of material.

23          Q     Right. But -- but generally, I think what  
24           you're trying to say here, is if there's more  
25           wastage, that means there's more loss for  
26           the -- the person that is -- the owner of the  
27           land where the aggregate is, right?

1           So in that particular situation, the more you  
2           waste, the less amount there is for the royalty  
3           holder to make; is that fair?

4           A     That is fair based on my discussions with Jason  
5           Panter, yes.

6           Q     Right. And likewise, there's a higher amount  
7           of waste or elimination, because you have to  
8           produce smaller and smaller particles of  
9           acceptable gravel; is that fair?

10          A     It can. I'm not saying -- I'm not saying it's  
11          definite from what he's told me, but it can  
12          attract, yeah.

13          Q     Right.

14          A     It can produce more elimination.

15          Q     Right. So then we go on to paragraph (b) of  
16          20, and it says:

17                "Although the product required by  
18                the MD for the 2'20 contract year  
19                was described as modified DES 1  
20                class 12.5, the actual product  
21                produced to meet the specifications  
22                of the MD met the AT specification  
23                for DES 2 class 16 product, and  
24                could be classified as such."

25          MR. HAJDUK:                    So first of all, I  
26          want you to provide me with the document that  
27          confirms that the product required by the MD

1 for the 2'20 contract year was described as  
2 modified DES 1 class 12.5; okay? Can you  
3 undertake that for me, please?

4 MS. HANERT: We will undertake to  
5 do that.

6 MR. HAJDUK: Okay.

7 \* UNDERTAKING NO. 2 \*

8 PROVIDE A COPY OF THE DOCUMENT THAT  
9 CONFIRMS THAT THE PRODUCT REQUIRED  
10 BY THE MD FOR THE 2020 CONTRACT  
11 YEAR WAS DESCRIBED AS MODIFIED DES  
12 1 CLASS 12.5, AS REFERRED TO ABOVE

13 Q MR. HAJDUK: Okay. And from that  
14 statement, then, what I'm understanding is that  
15 there was really no difference between DES 2  
16 class 16 product and DES 1 class 12.5 modified  
17 product; is that fair, sir?

18 A There is not a significant difference enough,  
19 so we could still classify as a DES 2 class 16  
20 product.

21 Q Okay. So when you say, "Not significant  
22 enough" I don't understand what that means?

23 A Well, I guess in simple terms, if the recipe  
24 said it had to contain XYZ, and the material we  
25 made for the MD met that, then they were, you  
26 know, they were similar.

27 Q So are you telling me, then, that modified DES



1           1 class 12.5 is really just another way to say  
2           DES 2 class 16 product?

3           A     I am not.

4           Q     Okay.  So --

5           A     I'm -- I'm saying the MD of Bonnyville provided  
6           us with their specification for what they  
7           wanted, and they call it a modified DES one  
8           class 12.5 because they changed the  
9           specification in the Alberta Transportation.

10          Q     Right.  And --

11          A     And --

12          Q     Sorry, go ahead if I interrupted you.

13          A     And based on a review of the sieve analysis of  
14          the product we actually produced for the MD, it  
15          actually fit the criteria of DES 2 class 16  
16          material as well.

17          Q     Okay.

18          A     So we could actually turn around and could have  
19          sold that product to someone and called it DES  
20          2 class 16.

21          Q     Okay.  But could you have sold a DES 2 class 16  
22          product as modified DES 1 class 12.5?

23          A     Well, essentially, we did sell a DES 2 class 16  
24          product as modified DES 1 class 12.5.

25          Q     Okay.  So what you're saying is that the  
26          modified DES 1 class 12.5 could have been sold  
27          as DES 2 class 16, and the DES 2 class 16

1 product could have been sold as modified DES 1  
2 class 12.5?

3 A No, I'm not saying that. No, I'm not saying  
4 that.

5 Q Well --

6 A I'm saying -- I'm saying -- I'm saying the  
7 approximately 50,000 tonnes of DES 1 class 12.5  
8 which had a modified spectrum MD, based on the  
9 sieve analysis, could also be sold as something  
10 referred to as DES 2 class 16.

11 Q Well, yeah, but that's not my question. My  
12 question is could the DES 2 class 16 product be  
13 sold as modified DES 1 class 12.5?

14 A It could not in this case.

15 Q Why?

16 A Because it's a different size rock.

17 Q Okay. So there's a distinction by the nature  
18 of the size of the rock; correct?

19 A Between -- between -- yes. So the DES 2 class  
20 16 we produced, 16 refers to 16 millimetres,  
21 which is 5/8th of an inch. The modified DES 1  
22 class 12.5 we made was actually a half-inch  
23 rock. So there's a 1/8th of an inch difference  
24 between the two rocks, the primary rocks.

25 Q Right. So a DES 1 class 12.5 is a smaller  
26 rock; correct?

27 A It is a smaller rock.

1 Q Okay. And generally, with that smaller rock  
2 you're going to have more wastage; correct?  
3 More elimination when you produce it?

4 A You can, yes.

5 Q Right. And the contract requirements from the  
6 MD of Bonnyville specifically stated they  
7 required approximately 50,000 tonnes of -- of  
8 modified DES 1 class 12.5; correct?

9 A According to their spec, yes.

10 Q Right. And they made a distinction between  
11 modified DES 1 class 12.5 and DES 2 class 16;  
12 correct?

13 A Yes.

14 Q And you don't know what the product was used  
15 for at the end of the day, do you?

16 A I do not.

17 Q Okay. And with respect to paragraph (c),  
18 you're indicating that, as I understand it, the  
19 word "modified" was just simply an add-on that  
20 really didn't mean anything, or did it have  
21 some significance?

22 A It has huge significance.

23 Q Explain what that means.

24 A So DES 1 class 12.5 is specified by the Alberta  
25 Transportation; it's got certain specs of what  
26 it has to contain. As soon as you change a  
27 spec of the Alberta Transportation, you can no

1 longer call it a DES 1 class 12.5 material,  
2 because it's not a spec product; it's out of  
3 spec.

4 Q Right. So the modification in this particular  
5 instance means that it's somewhat different  
6 than a DES 1 class 12.5; correct?

7 A It means they modified the spec.

8 Q And do you know how they modified it?

9 A I believe in the 8-micron screen.

10 Q Okay. And how do you understand that? From  
11 what information?

12 A Because I've seen the spec in the MD 2020  
13 supply contract --

14 Q Okay.

15 A -- as it was set out, and I discussed it and  
16 compared it to the Alberta Transportation spec  
17 in my discussions with Jason Panter.

18 Q Okay. Excellent. So -- so there was a  
19 specific dimension and size analysis that was  
20 attributable to a modified DES 1 class 12.5  
21 description; correct?

22 A Well, modified DES 1 class 12.5 doesn't exist.

23 Q Well, it did --

24 A The only classification in the Alberta  
25 Transportation is DES 1 class 12.5.

26 Q Right. But Bonnyville requested a modified DES  
27 1 class 12.5; correct?

1 A Right. Yes.

2 Q You don't understand why they requested that,  
3 do you?

4 A I have had discussions with Mr. Panter about  
5 it. For whatever reason, he believes that they  
6 wanted something that was easier to compact.

7 Q Okay. But -- that's something he told you?

8 A That's something he told me, yeah.

9 Q Okay. And so, again, you don't know what they  
10 used it for at the end of the day, do you? You  
11 know it was used for roads; correct?

12 A Generally I know it was used for road repair.

13 Q Road repair.

14 A That's what I was told.

15 Q That's what you were told.

16 A Yeah.

17 Q And who told you that?

18 A Jason Panter, likely.

19 Q You're not sure?

20 A There's a lot of people that work at JMB, sir.

21 Q Okay. So you --

22 MS. HANERT: Mr. Hajduk, sorry to  
23 interrupt. I just want to be clear on the  
24 time periods here. Are you referring to this  
25 material that was delivered to your client in  
26 March and April of 2020, or are you speaking  
27 with respect to just generally?

1 MR. HAJDUK: I'm talking about this  
2 material, not delivered to my client; it was  
3 delivered to the --

4 MS. HANERT: Sorry, yes.

5 MR. HAJDUK: -- MD of Bonnyville,  
6 yeah. The 48-50,000 tonnes of modified DES 1  
7 class 12.5.

8 Q Did you understand that, Mr. Elyea?

9 A Sorry, I lost you. You're going to have to  
10 repeat that.

11 Q Okay. So -- so basically with respect to the  
12 specific use of the modified DES 1 class 12.5,  
13 expecting an approximate 50,000 tonnes taken  
14 from the Shankowski lands, you understood --  
15 you said it was for, like, road compaction or  
16 road repair, I think, but you don't remember  
17 who specifically told you that; is that fair?

18 A That's fair.

19 Q Okay. And you understood that when something  
20 is classified as a DES 1 product, it's  
21 basically for asphalt; is that correct?

22 A That's my understanding, yes.

23 Q Okay. And what that means is that it's fitting  
24 the dimensions or standards that are required  
25 by the AT specifications with respect to the  
26 asphalt construction, correct, of roads?

27 A No. My understanding --

1 MS. HANERT: Just to be --  
2 THE WITNESS: Sorry?  
3 MS. HANERT: Sorry, just to be  
4 clear, you're asking for his understanding,  
5 understanding that he's not an expert in --  
6 MR. HAJDUK: That's correct.  
7 MS. HANERT: Okay. Thank you.  
8 Q MR. HAJDUK: You can go ahead.  
9 A My understanding is that DES 1 material is used  
10 for asphalt.  
11 Q Okay. And you get that understanding from how?  
12 From where?  
13 A From speaking -- likely with -- from speaking  
14 with Mr. Panter.  
15 Q Okay. And you're not positive about that, but  
16 you believe that to be likely; is that fair?  
17 A I've asked him the question, so ...  
18 Q And when you indicate in subparagraph(d) of  
19 paragraph 20, the JMB accounting system does  
20 not have a, quote: (As read)  
21 "Modified class option for the  
22 purposes of categorising the  
23 product supply, and accordingly  
24 modified was left off the  
25 description of the product supplied  
26 to the MD."  
27 Do you see that?

1 A Yes.

2 Q Okay. So are you saying, then -- I don't  
3 understand what you mean by that statement.  
4 Are you saying that -- that it -- it put it in  
5 a different category or something, or what?

6 A Well, the accounting system at JMB, we have a  
7 classification, DES 1 class 12., 5 that's our  
8 classification. So we don't have a  
9 classification called "modified".

10 Q Okay. And what is the significance of that,  
11 then, for the purposes of your affidavit in  
12 paragraph 20(g)?

13 A If you look at the billing records of the  
14 company, it shows, and if you look at the  
15 royalty statements to Mr. Shankowski, we  
16 prepared a DES 1 class 12.5 material. There's  
17 no indication that's modified.

18 Q And so what you're saying, if I understand you  
19 correctly, is that the modified would take it  
20 outside of the asphalt material?

21 A You can no longer call it -- you can no longer  
22 call it that material.

23 Q You can no longer call it what material?

24 A Well, you can no longer call it -- because of  
25 the modification, my understanding is you  
26 cannot call it a DES 1 product. It's actually  
27 a base material so it's really a DES 2 product.



1 Q But when you say a base material, you don't  
2 know what the material is used for?

3 A That's a classification of what they call a  
4 DES 2 material in the Alberta Transportation.  
5 It's referred to as a base course material.

6 Q So what you're saying is that you're  
7 attributing it to be a base material such as  
8 DES 2 class 16, because you're saying the fact  
9 that it was, quote "modified" DES 1 class 12.5  
10 makes it into a base material product; correct?

11 A Yeah.

12 Q Okay.

13 A Correct.

14 Q But there's nothing in the AT specifications  
15 that says it's a base material product;  
16 correct?

17 A DES 2 is considered a base course material  
18 product.

19 Q Correct, but there's nothing that says DES 1  
20 modified 12.5 is a -- is a base material  
21 product?

22 A I'm not aware of anything in the Alberta  
23 Transportation specs that talk about modified  
24 specs.

25 Q Right. And so when you indicate in paragraph  
26 20(e): (As read)

27 "The product supplied to the MD

1 based on its specification is in  
2 fact a -- quote -- modified base  
3 course material and not an asphalt  
4 product."

5 On what basis do you make that statement?

6 A Based on the Alberta Transportation spec.

7 MR. HAJDUK: Okay. I want you to  
8 find for me in the Alberta Transportation spec  
9 where it says, and this could be part of the  
10 undertaking, that it is not -- a modified DES 1  
11 class 12.5 is not an asphalt product; can you  
12 undertake to do that for me, please?

13 MS. HANERT: Mr. Hajduk, we're  
14 going to take that under advisement, because I  
15 think that that requires the interpretation of  
16 a document, and I don't think that that would  
17 be an appropriate undertaking to request, but  
18 we will take that under advisement.

19 MR. HAJDUK: Sure.

20 MS. HANERT: Just so I'm clear, can  
21 you repeat the undertaking for me, please?

22 MR. HAJDUK: Sure. What I want you  
23 to do is with respect to the AT specification  
24 documents that you're going to provide, I want  
25 you to point out for me in those documents,  
26 those portions that would support that the  
27 modified DES 1 class 12.5 is a modified base

1 course material and not an asphalt product.

2 That's the undertaking, okay?

3 MS. HANERT: Sorry, I just want to  
4 make sure that I've got this right. So that  
5 would support the conclusion that it is a  
6 modified base course material?

7 MR. HAJDUK: And not an asphalt  
8 product, because this is what Mr. Elyea is  
9 saying in paragraph 12 -- 20(e), and I'm just  
10 trying to find the basis for that  
11 understanding.

12 MS. HANERT: Okay. That's under  
13 advisement.

14 \* UNDERTAKING NO. 3 \*  
15 \*TAKEN UNDER ADVISEMENT\* DETERMINE  
16 IN THE ALBERTA TRANSPORTATION  
17 DOCUMENTS THE PORTIONS THAT SUPPORT  
18 THAT THE MODIFIED DES 1 CLASS 12.5  
19 IS A MODIFIED BASE COURSE MATERIAL  
20 AND NOT AN ASPHALT PRODUCT, AS  
21 REFERRED TO ABOVE

22 Q MR. HAJDUK: And, sir, when you  
23 indicated that the contract with Mr. Shankowski  
24 indicated a different amount to be paid for an  
25 asphalt product, what's your understanding of  
26 that?

27 A I'm sorry, I don't think we discussed the

1 Shankowski contract.

2 Q I'm sorry, I think we had talked about the fact  
3 that there was modified DES 1 12.5, and  
4 although it was a DES 1 product, you're saying  
5 it's not an asphalt product. So I understood  
6 there was some connection with the Shankowski  
7 contract. Maybe I'm wrong.

8 But did you have any connection there with  
9 respect to the amount owed to Shankowski, then,  
10 under the royalty's agreement and whether it  
11 was an asphalt product or not an asphalt  
12 product?

13 A Are you asking me whether I was involved in the  
14 preparation of documents, payable statements  
15 for Shankowski?

16 Q Yeah.

17 A What are you asking me?

18 Q I'm asking -- I want to find out if the  
19 modified DES 12, right, which you're saying is  
20 not an asphalt product, and obviously under the  
21 Shankowski agreement there's a different system  
22 set up with respect to requiring prior consent  
23 and then if it's an asphalt product.

24 So I want to understand when you first became  
25 aware of those provisions under the Shankowski  
26 royalty agreement?

27 A I would say I became aware, my best estimate

1 would be around October 20th, 21st.

2 Q Of this year; correct?

3 A Of this year, yeah.

4 Q Okay. And you understand that the basis for  
5 putting such a -- for putting that provision in  
6 the Shankowski royalty agreement was that  
7 there's more elimination of waste with an  
8 asphalt product which causes more loss to the  
9 royalty holder, and therefore the royalty  
10 holder generally wants to get an increased  
11 price for the asphalt product that's being  
12 sold; is that fair?

13 MS. HANERT: Mr. Hajduk, I think  
14 that that question calls for him to answer what  
15 may have been in the contracting party's minds,  
16 which would not be appropriate for this  
17 witness, but you can ask him about his general  
18 understanding.

19 Q MR. HAJDUK: Okay. Is that your  
20 general understanding, sir?

21 A That would be my general understanding from --  
22 from my discussions, yes.

23 Q Right. So it's a question of the amount of  
24 elimination and waste that's produced with  
25 producing the higher quality gravel that's used  
26 for asphalt; is that fair, generally?

27 A I mean, I can't comment whether it's considered

1 a higher quality gravel. Just based on my  
2 discussions with -- with -- with Jason Panter,  
3 it's -- there's potentially higher elimination  
4 in making that product.

5 Q Okay. Now, in paragraph (f) of 20 you state:  
6 (As read)

7 "The products supplied to the MD in  
8 March and April of 2020 and  
9 described as -- quote -- DES 1  
10 class 12.5 on the statements of  
11 account sent to Shankowski, in fact  
12 generate less waste than the DES 2  
13 class 16 product previously  
14 provided."

15 And by that statement, then, if I'm to  
16 understand it correctly, what you're saying is  
17 that the modified DES 1 12.5 produced or  
18 generated less waste -- the 48,000 tonnes of  
19 that product produced less waste than the  
20 production of 150,000 tonnes of the DES 2 class  
21 16 product from the Shankowski lands; is that  
22 fair?

23 A Less waste on a percentage basis, that's what I  
24 was advised, yes.

25 Q Right. So for each tonne of rock that -- or  
26 each tonne of aggregate that's converted into  
27 DES 1 class 12.5, that is modified, you're

1 saying there's going to be less waste than for  
2 the same volume of aggregate that's converted  
3 into DES 2 class 16 product; fair?

4 A That's what I was advised, yes.

5 Q Okay. And did you understand the basis for  
6 that?

7 A From my discussions with Mr. Panter, because it  
8 seems counter to, obviously, the higher royalty  
9 rate for -- that we're speaking about here.

10 Q Well, I'm trying to understand though. For  
11 that first sentence in paragraph 20(f), how  
12 does that -- how does that result? How do you  
13 get a lesser elimination rate for the smaller  
14 rock, which is -- you said it's an 8th of an  
15 inch smaller than the DES 2 class 16, so how  
16 are you getting lesser waste generated from the  
17 production of modified DES 1 class 12.5?

18 MS. HANERT: Ms. Hajduk, I think we  
19 should go on to paragraph 20(g) of Mr. Elyea's  
20 affidavit, because I think he explains it  
21 there.

22 MR. HAJDUK: Yeah, but I'm asking  
23 him to explain it.

24 THE WITNESS: Sorry, I just lost you  
25 again, so you're going to have to repeat that,  
26 Mr. Hajduk.

27 Q MR. HAJDUK: You're indicating in

1 20(f) --

2 A Yes.

3 Q -- that there is less waste generated with the  
4 production of the modified DES 1 class 12.5 as  
5 opposed to the production of the DES 2 class  
6 16, and I'm trying to understand how that can  
7 be if the modified DES 1 class 12.5 is a  
8 smaller rock than the DES 2 class 16?

9 A So in this case -- as advised, I'm not a gavel  
10 expert, but I did ask the question to  
11 Mr. Panter. And you have to understand that  
12 gavel pits are not consistent throughout. You  
13 can have large rocks, small rocks, you can have  
14 a combination of all sorts of material. In  
15 this particular case, for this production, that  
16 was the amount of elimination.

17 Q I don't understand. You're just saying that  
18 there was a lesser elimination for the  
19 production of the DES 1 class 12.5 and he  
20 doesn't understand how it occurred?

21 A Well, in this case there was, because obviously  
22 the type of rock in the pit that they were  
23 crushing that that time was made up of certain  
24 sized rock, so it had a different elimination  
25 rate.

26 Q Okay. So I can further understand this, you're  
27 saying an elimination rate would have been less



1 than the elimination rate required to produce  
2 the DES 2 class 16 product; correct?

3 A In this particular case, there was less  
4 elimination produced when they made the DES --  
5 the modified DES 1 class 12.5 than when they  
6 made the DES 2 class 16.

7 Q Right. And did Mr. Panter advise you on what  
8 basis he was saying that?

9 A He was -- my understanding he was advised from  
10 the crusher that did the crushing.

11 Q Okay. So he was advised from the crusher that  
12 did the crushing that there was less  
13 elimination for the DES 1 class 12.5; correct?

14 A That is correct.

15 Q Okay. And that's how he gained his  
16 information; correct?

17 A Yes.

18 Q Okay. And you never checked with the crusher?  
19 You never followed up with the crusher to find  
20 out if this information was accurate, did you?

21 A I had no reason to.

22 Q Right. And in fact what you're saying in  
23 paragraph 20(f) is that there was an  
24 approximate 50 percent waste rate for the DES 2  
25 class 16 product, as compared to an approximate  
26 40 percent waste rate for the modified DES 1  
27 class 12.5 product; correct?

1 A That's correct.

2 Q Okay. And from that, what I'm understanding,  
3 then, is that as there was less waste for the  
4 modified DES 1 class 12.5 product, this is less  
5 of a loss for the royalty holder, correct,  
6 because there's less waste; is that fair?

7 A In this particular case, yes.

8 Q Okay. When you say, "In this particular case",  
9 is that because other cases there may be more  
10 waste for the DES 1 classified -- or modified  
11 12.5; is that fair?

12 A You can have -- you can have rates from zero to  
13 100. I mean, it all depends, from my  
14 understanding, what type of material you're  
15 running through the crusher.

16 Q Right. And so the percentage waste variables  
17 that are stated in your paragraph 20(f), again,  
18 that was information that Mr. Panter received  
19 from the crusher; correct?

20 A That is correct, from my understanding.

21 Q And that was not something that was verified by  
22 you; correct?

23 A I had no reason to do that. That's correct.

24 Q So did you understand, then, if -- actually let  
25 me take you to Mr. Shankowski's affidavit of --  
26 the one that's sworn November 6th.

27 MS. HANERT: Sorry, Mr. Hajduk, we can't

1 hear you now.

2 Q MR. HAJDUK: Yeah, sorry. I apologize.  
3 Can you go to the affidavit of Mr. Jerry  
4 Shankowski sworn on November 6th, 2020, please.

5 And I guess I want to take you to Exhibit O,  
6 an affidavit; do you see that?

7 A I have to get there, hang on.

8 Q Sure. Do you see Exhibit O, sir?

9 A I'm not there yet.

10 Q I apologize. Just let me know. I'm not trying  
11 to rush you.

12 A Exhibit O, yes.

13 Q Okay. And do you see how that is an invoice,  
14 number 10790; do you see that?

15 A Yes.

16 Q An invoice from JMB to the MD of Bonnyville for  
17 39,366 tonnes of Designation 2 class 16  
18 material; do you see that?

19 A Yes.

20 Q And the unit price is \$15.50 per tonne; do you  
21 see that?

22 A Yes.

23 Q And if you look under the description it  
24 indicates the total unit cost is \$31 per tonne,  
25 and this billing represents 50 percent of the  
26 total cost.

27 So -- and I understand what happens is when

1 the aggregate was crushed MD of Bonnyville has  
2 to pay 50 percent and then when it's delivered  
3 to the stock pile they have to pay the other 50  
4 percent; that's your understanding, correct?

5 A That's my understanding in this case, yeah.

6 Q Right. So the -- the unit cost per tonne of  
7 Designation 2 class 16 material would be \$31  
8 per tonne; correct?

9 A Okay.

10 Q Is that fair?

11 A Yes.

12 Q And you understood that the price per tonne was  
13 based on a -- a schedule or a price  
14 determination that was determined by the  
15 contractual dealings between the parties;  
16 correct?

17 A Yeah.

18 Q You pay a higher amount for aggregate that  
19 costs JMB a higher amount to produce; is that  
20 fair?

21 A That could be, yes.

22 Q Okay. That's not inconsistent with what you  
23 understand; fair?

24 A I'm sorry?

25 Q That is not inconsistent with how you  
26 understand the dealings work; right?

27 A That they get charged a higher amount because

1 the production cost is higher?

2 Q If it costs more to produce the product, that  
3 generally means the product that sold to the  
4 end party is a little higher than it would cost  
5 otherwise; correct?

6 A It's possible.

7 Q Okay. Thank you. Let's go to page -- so  
8 that's page one of Exhibit O. And then let's  
9 go to page four of Exhibit O, and it's another  
10 invoice. This one is for 48,980 tonnes of the  
11 same Designation 2 class 16 material for \$31  
12 per tonne; do you see that?

13 A Sorry, which invoice are you?

14 Q That's invoice 10834 on page four of Exhibit O.

15 A Okay. I see that -- I see that invoice. Yes.

16 Q Okay. And so you can see, then, and we can go  
17 to the next -- the next invoice for the  
18 Designation 2 class 16 material which is on  
19 page 10 of Exhibit O, and it's invoice 10844  
20 and it's for 61,654 tonnes of Designation 2  
21 class 16 material, and again, it's at \$31 per  
22 tonne; do you see that?

23 A Invoice 10844, \$31 per tonne, yes.

24 Q And then you see at the very bottom there --  
25 not very bottom, but mid way through the  
26 invoice it says 150,000 tonnes to date, right,  
27 and then it indicates how it got to the 150,000

1 tonnes --

2 A Okay.

3 Q -- from the previous invoices.

4 So that's 150,000 tonnes of Designation 2  
5 class 16 material that was provided to MB from  
6 the Shankowski lands in 2020; correct?

7 A Yes.

8 Q Okay. And now, let's go and look at the same  
9 information with respect to the Designation 1  
10 class 12.5. And I want to take you to page 11  
11 of Exhibit O, and if you can get to that page,  
12 please. And that's invoice 10845; do you see  
13 that?

14 A Yes, 10845.

15 Q And that says 4,519 tonnes of Designation 1  
16 class 12.5 material at \$33.28 per tonne; do you  
17 see that?

18 A Yes, I do.

19 Q So that would be \$2.28 per tonne higher than  
20 the Destination 2 class 16; correct?

21 A Yes.

22 Q And do you understand why that's an increased  
23 price per tonne?

24 A I would assume because it's a premium product,  
25 but I don't know for sure.

26 Q Okay. So you don't -- you don't really  
27 understand why; is that fair?

- 1 A Well, I -- I guess -- okay. I don't know why  
2 that was \$33 a tonne. I can only assume it's a  
3 more premium product.
- 4 Q What do you mean? When you say, "Premium  
5 product", what do you mean?
- 6 A It's a higher value product that we can sell.
- 7 Q Okay. So it attributes a higher price;  
8 correct?
- 9 A Yes.
- 10 Q Okay. And what's clear is Bonnyville is paying  
11 an additional \$2.28 per tonne for this specific  
12 product which is the modified DES 1 class 12.5;  
13 correct?
- 14 A Yes.
- 15 Q Okay. And so if we go now to page 13 of  
16 Exhibit O, and that's another invoice. And  
17 this one is invoice 10851, and that's for  
18 42,448 tonnes of Designation 1 class 12.5.  
19 Again, that's at \$33.28 per tonne; correct?
- 20 A Yes, that's -- that's \$33.28 per tonne for that  
21 product, yes.
- 22 Q Right. And so then, if you go to page 17 of  
23 Exhibit O, that's 230.62 tonnes of Designation  
24 1 class 12.5 material, again at \$33.28 per  
25 tonne; correct?
- 26 A Can you show me which invoice number?
- 27 Q It's invoice 10861 at page 17 of Exhibit O.

1 A Sorry, repeat yourself, please?

2 Q Sure. So page 17, it's at the very bottom of  
3 the page, of the exhibit is the pages, and this  
4 is page 17 of that Exhibit O and it's invoice  
5 number 10861.

6 A Okay. I'm on that invoice.

7 Q Okay. And do you see that it says 230.62  
8 tonnes of Designation 1 class 12.5 material at  
9 \$33.28 per tonne?

10 A I do see that, yes.

11 Q And then you see the line midway through that  
12 invoice that says 48,997.62 tonnes crushed to  
13 date, and then it describes how it got there,  
14 and that's of the Designation 1 class 12.5  
15 material that was taken from the Shankowski pit  
16 and provided to MD of Bonnyville in 2020;  
17 correct?

18 A Yes.

19 Q Okay. And do you understand how the crusher  
20 charges for its services? RB Aggregates in this  
21 case would have charged JMB for the crushing  
22 services they provided?

23 A Yes, I understand that they -- I understand  
24 what RB does, yes.

25 Q Not what RB does, but how do you understand the  
26 difference in crushing cost with respect to the  
27 DES 2 class 16 and the modified DES 1 class



1 12.5?

2 A Yes. My understanding is there are different  
3 crushing rates for different product.

4 Q Do you understand why there's different  
5 crushing rates for different product?

6 A I'd assume because there's different setup and  
7 different screen sizes and it's -- it's -- it's  
8 different material that runs through the  
9 machine.

10 Q So you're not fully aware, then, of what all it  
11 entails; is that correct?

12 A Well, it's -- it's more processing to get, so  
13 obviously they have to charge a higher cost.  
14 But if you want me to give you a technical  
15 answer, no, I'm not going to give you a  
16 technical answer, because I don't have one.

17 Q So do you understand that to make the modified  
18 DES 1 class 12.5 necessitates a crushing of a  
19 lot more gravel to get there?

20 A Potentially it can.

21 Q Well --

22 A I don't know.

23 Q -- in this particular situation I'm saying are  
24 you aware?

25 A I'm not aware of the -- of the amount of raw  
26 material that went into the machine to produce  
27 that, no.

1 Q Okay. And so I'm going to ask you now to go to  
2 Exhibit T of the affidavit of JMB crushing.

3 A Sorry, my affidavit?

4 Q No. Sorry, I apologize, I was wrong. I want  
5 you to go to Exhibit T of the affidavit of  
6 Jerry Shankowski of November 6th, 2020. Just  
7 tell me when you get there.

8 A Exhibit T, yes?

9 Q Yes. Do you have Exhibit T?

10 A Perhaps if you can explain to me what's on it,  
11 then I can confirm.

12 Q Sure. So that's schedule A to the contract  
13 between RB Aggregates and JMB Crushing with  
14 respect to the crushing services that RB  
15 Aggregates was providing to JMB in relation to  
16 the product of 2020, and specifically the DES 1  
17 class 12.5 and the DES 2 class 16; do you see  
18 that on the first page of the Schedule A?

19 A I'll take your word that that's what this  
20 relates to, but I see Schedule A services.

21 Q Yeah. Well, the affidavit is on in the  
22 materials, so it's -- it's there. And this is  
23 the Schedule A and it's indicated in the  
24 affidavit of Mr. Shankowski, paragraph 31, what  
25 this document is.

26 A Okay.

27 Q And have you seen this document before today?

1 A Have I seen this specific document as it  
2 relates to this affidavit and the contract it  
3 was in, or these specs?

4 Q Have you seen this document before today, sir?

5 A I've seen these specs before, because they look  
6 like they're a copy out of the MD contract for  
7 2020.

8 Q So have you seen this document, yes or no?

9 A I've seen these specs.

10 Q Okay. But that's not answering the question,  
11 is it.

12 A Well, unfortunately this is very difficult to  
13 read on the computer here, so ...

14 Q Okay. Well, you haven't seen -- have you  
15 looked the RB Aggregates contract?

16 A I don't believe I have.

17 Q Okay. And so you understood that RB Aggregates  
18 was the party responsible for crushing all the  
19 gravel that became the DES 2 class 16 and the  
20 modified DES 1 class 12.5; is that correct?

21 A I understand RB did the crushing for JMB, yes.

22 Q Right. And you understood that JR Paine did  
23 the quality control to make sure that the  
24 product was -- was to the size and measurements  
25 as required under the contract; is that fair?

26 A I understand that too, yes.

27 Q Okay. So if you now look at Schedule B, that's

1 page three of Exhibit T, it says fees. And I'm  
2 going to read it for the record:

3 "The subcontractor shall be reimbursed on  
4 a cost basis for its services at  
5 the following rates for each of the  
6 products (all is in accordance with  
7 requirements of Schedule A) One,  
8 DES 1 class 12.5, \$11 per tonne;  
9 two, DES 2 class 16, \$6 per tonne."

10 Now, sir, do you understand why there is a \$5  
11 difference in tonne for the crushing fees by RB  
12 Aggregates with respect to those two  
13 classifications?

14 A I assume because it's more work to the crusher,  
15 but I don't know.

16 Q You don't know?

17 A I don't have a technical answer for you why  
18 it's 11 versus 6.

19 Q Are you familiar with somebody called Tenille  
20 Paul?

21 A I am, yes.

22 Q And who is Tenille Paul?

23 A I believe her title is the administrative  
24 services manager at JMB.

25 Q And does she work for JMB still?

26 A Yes, she does.

27 Q Okay. And I'm going to show you an email from

1 her, and I'm going to read it to you first of  
2 all. So I'm going to put it on the record and  
3 then we'll mark it as an exhibit for  
4 identification. It says, from Tenille Paul,  
5 it's dated April 29th, 2020 at 2:59:45 p.m.  
6 MDT, and it's to --

7 MS. HANERT: Sorry, Mr. Hajduk,  
8 because I haven't seen this document before and  
9 we are online, I would ask that we go off the  
10 record so that you can read it to me or email  
11 me a copy --

12 MR. HAJDUK: Sure.

13 MS. HANERT: -- for my reference so  
14 I can determine whether or not it's  
15 appropriately read into the record.

16 MR. HAJDUK: Okay. Let's take a  
17 break, and then I'll send it to you and then  
18 you can take a look at it and then I'll ask him  
19 questions on it.

20 MS. HANERT: Okay. That's fine.  
21 That's fair.

22 **(PROCEEDINGS RECESSED AT 3:26 P.M.)**

23 **(PROCEEDINGS RECONVENED AT 3:42 P.M.)**

24 Q MR. HAJDUK: Mr. Elyea, we're back  
25 on the record, and I'm showing you an email  
26 from Paul Tenille [sic] of JMB dated April  
27 29th, 2020 at 2:59:45 p.m. MDT, which was an

1 email to Mr. Jerry Shankowski, regarding the  
2 Shankowski pit. Have you ever seen this email  
3 before?

4 A I --

5 MS. HANERT: Mr. Hajduk, just for  
6 the record, what you have shown the witness is  
7 a word document that appears to be extracted  
8 and copied out of an email, not the email  
9 itself.

10 Q MR. HAJDUK: Yeah, I think they're  
11 pretty close.

12 But have you ever seen this email before, the  
13 substance of the email, Mr. Elyea?

14 A I don't recall seeing that email before.

15 MR. HAJDUK: Okay. I'm going to  
16 have this document marked as Exhibit A for  
17 identification please.

18 MS. HANERT: That's fine.

19 EXHIBIT A - FOR IDENTIFICATION:  
20 EMAIL FROM TENILLE PAUL DATED APRIL  
21 29TH, 2020, AS REFERRED TO ABOVE

22 MR. HAJDUK: Okay. And I'm going  
23 to ask for an undertaking that you review the  
24 business records of JMB and advised me if this  
25 email, which has been marked as Exhibit A for  
26 identification forms part of the business  
27 records, and if it does, then to provide me a

1 copy of the email, by way of undertaking.

2 MS. HANERT: I'm -- I'm struggling  
3 with that a bit. I understand that you took  
4 this from an email that you're now asking us to  
5 give you a copy of the same email?

6 MR. HAJDUK: Yeah, but you're not  
7 letting me mark it as a full exhibit. I'm  
8 going to have -- yeah, so the bottom line is  
9 maybe it's contrived, maybe it's made up. I'm  
10 asking if it's an actual email that JMB can  
11 say, Yes, we have this email too.

12 MS. HANERT: Oh, I see. So you're  
13 saying that your client doesn't actually have  
14 the original email?

15 MR. HAJDUK: Well, he has the  
16 email, but I'm saying that I need to establish  
17 that you're not taking issue that this is the  
18 original email. So if you have the original  
19 email, that's going to satisfy that issue,  
20 right?

21 MS. HANERT: Yes. And do you have  
22 a series of questions that you would like to  
23 advance in writing? My concern, Mr. Hajduk, is  
24 that we've got a court application that's  
25 scheduled for 9:00 a.m. on Friday and --

26 MR. HAJDUK: I can't ask him  
27 questions on this because he can't answer them.

1 It's not an email that he -- he prepared.

2 MS. HANERT: Okay. So you just  
3 want to know whether or not it's part of the  
4 records of JMB?

5 MR. HAJDUK: What I'm going to do  
6 is I'm going to now prepare a supplemental  
7 affidavit of Mr. Shankowski and attach this to  
8 that, okay, and that affidavit -- and so then  
9 that's going to be also evidence, and then  
10 that's going to be evidence with respect to  
11 what's contained in that document, and the  
12 Court will put as much weight as it chooses to  
13 on that document.

14 MS. HANERT: Okay. We'll take that  
15 undertaking.

16 MR. HAJDUK: Okay.

17 \* UNDERTAKING NO. 4 \*

18 DETERMINE WHETHER THE EMAIL MARKED  
19 A FOR IDENTIFICATION FORMS PART OF  
20 THE JMB BUSINESS RECORDS, AND IF IT  
21 DOES THEN PROVIDE A COPY OF THE  
22 EMAIL, AS REFERRED TO ABOVE

23 MR. HAJDUK: Subject to anything  
24 arising on the undertakings or any objection  
25 that may be dealt with by court application,  
26 those are all my questions.

27 I don't know if Mr. Pawlyk has any questions or



1 not.

2 MR. PAWLYK: I don't. Although,  
3 Counsel that are on this phone call, we should  
4 probably have a discussion fairly soon about  
5 this upcoming court application given that  
6 these examinations, the undertakings as well as  
7 the late file briefs, I don't think we're going  
8 to get through this, especially if we're going  
9 to have to deal with the builder's lien issues  
10 and the trust issues at the same time.

11 MR. HAJDUK: Yeah, I agree. It's a  
12 lot to put on for one day.

13 MS. HANERT: Well, where we're  
14 currently scheduled, Her Ladyship has already  
15 identified that. She is expecting us to be as  
16 brief as possible in our submissions. She's  
17 already accommodating timing by starting at  
18 9:00 a.m. I expect that we can address this  
19 with her at 9:00 a.m. on Friday, but we're not  
20 going to be amendable to a further adjournment  
21 of this issue. We expect that it's going to  
22 be -- we should be able to deal with it on  
23 Friday. The submissions of almost all the  
24 applications with respect to the trust claims  
25 are identical.

26 Mr. Hajduk, I understand that you have  
27 adjourned the matters involving the naming of

1 the professionals and any associated relief to  
2 a different date, so those don't need to be  
3 dealt with. And the factual background between  
4 the lien claims and trust claims is identical.  
5 So there shouldn't be --

6 MR. HAJDUK: So I don't think  
7 we're asking for an adjournment. I think what  
8 we have to do is we have to have it really  
9 structured, because we don't want to lose this  
10 day.

11 MS. HANERT: Yeah.

12 MR. HAJDUK: We have to be very,  
13 very structured on how we're going to handle  
14 this.

15 MS. HANERT: Okay. Well, I had  
16 understood that Mr. Pawlyk had made the  
17 suggestion, and I thought it was a good one,  
18 that we put together a schedule. As my client  
19 is not the applicant, but your clients are,  
20 we're looking to you to put together that  
21 schedule for our review and comment. So if you  
22 could do that in the next day --

23 MR. HAJDUK: -- people just  
24 throwing in their documents at the last minute  
25 outside of the time restrictions, right. You  
26 have people filing this week, and so we have  
27 more and more parties. And so, you know, so I

1 think it's also important for you to be  
2 involved in that scheduling process to, so that  
3 we can get it all done.

4 MS. HANERT: I'm happy to do that,  
5 I'm just saying somebody has to put pen to  
6 paper for a preliminary document to be done,  
7 and then we will review and comment on it, and  
8 we can discuss it.

9 In terms of -- just before we adjourn off the  
10 record, I wanted to make it clear that we are  
11 reserving our right to re-examine by the  
12 counsel for the professionals involved in this  
13 matter, both the counsel that's acting for  
14 Gowling and the professionals that have been  
15 named, and counsel who's acting for McCarthy  
16 Tetreault, and the professionals who have been  
17 named as potential respondents. They may wish  
18 to re-examine.

19 MR. HAJDUK: Re-examine who, sorry?

20 MS. HANERT: Pardon me?

21 MR. HAJDUK: Re-examine who?

22 MS. HANERT: Re-examine Mr. Elyea.

23 If they review the transcript and they  
24 determine that there's some information there  
25 that they would like to re-examine the witness  
26 on, I'm reserving their right to do that. They  
27 didn't attend today because we --

1 MR. HAJDUK: You can reserve the  
2 right all you want, but, I mean, you're going  
3 to have a huge gap or he's going -- no, that's  
4 not right. But we'll take issue with that when  
5 the application is made. But you can -- you  
6 can reserve all you want, but that's not the  
7 proper process because this witness now is  
8 going to be able to talk to everybody, and you  
9 know, so -- so that's not the proper method.  
10 They should have been here to question him on  
11 re-examination if there was an issue.

12 MS. HANERT: And I understand that.  
13 I understand your position on that, Mr. Hajduk,  
14 but you did not make it clear that you were  
15 going to be touching any matters that might  
16 involve the professionals who your client is  
17 purporting to name as respondents, and so  
18 accordingly, I'm reserving the right. It's on  
19 the record.

20 MR. HAJDUK: I have a question. I  
21 don't know what she's talking about.

22 MS. HANERT: You questioned him on  
23 some matters that touch of the knowledge of  
24 counsel and instructions to counsel and things  
25 like that that the lawyers who are involved who  
26 are representing the professionals may wish to  
27 re-examine Mr. Elyea on.

1 MR. HAJDUK: We can deal with it  
2 later. It may not be a big issue.

3 MS. HANERT: I appreciate that.  
4 I'm just simply putting our position on record  
5 so there's no misunderstanding, that's all.

6 MR. HAJDUK: Well, all I'm going to  
7 indicate is that we'll deal with that issue  
8 when it arises, and I'm not consenting.

9 MS. HANERT: I understand your  
10 position.

11 MR. HAJDUK: Okay. Very good.  
12 Thank you. Thank you, Mr. Elyea.

13 WHICH WAS ALL THE EVIDENCE TAKEN AT THIS QUESTIONING  
14 (Questioning concluded at 3:57 P.M.)

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1 I, Mary C. McNeely, Court Reporter, hereby  
2 certify that I attended at the above  
3 proceedings and took faithful shorthand notes,  
4 and the foregoing typewritten sheets are a  
5 complete and accurate transcript of my  
6 shorthand notes to the best of my skill and  
7 ability.

8 Dated at the City of Edmonton, in the  
9 Province of Alberta, this 25th day of November,  
10 A.D. 2020.

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M. C. McNeely, CSR (A)  
Court Reporter.

# EXHIBIT "A" FOR IDENTIFICATION

EXHIBIT A-ID  
WITNESS Blake Elyea  
DATE November 24/2020  
REPORTER MARY CATHERINE MCNEELY

**From:** Tenille Paul <tenillemolloy@jmbcrush.com>  
**Date:** April 29, 2020 at 2:59:45 PM MDT  
**To:** "jsshank2@shaw.ca" <jsshank2@shaw.ca>  
**Cc:** Jeff Ryks <jeffryks@jmbcrush.com>, Chad Miller <chadmiller@jmbcrush.com>, Jeff Buck <jeffb@jmbcrush.com>  
**Subject:** Shankowski Pit

Hey Jerry,

Further to your conversation with Jeff Ryks earlier please note the following:

- 2020 tonnages crushed:
  - 48,997 tonnes Designation 1 Class 12.5
  - 150,000 tonnes Designation 2 Class 16
  - All crushing was done for the MD of Bonnyville
- Elimination percentages were at an average of 40%. This would equal 79,598 tonnes of sand. Elimination was screened on ¼" (6mm)
- Grand total of pit run was 278,595 tonnes
- We had a pile of approximately 7,000 tonnes of 40mm gravel that was re-processed into Designation 2 Class 16

Any questions on this please let us know.

Thanks,  
Tenille