



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

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

JS  
 Jan. 12, 2021  
 Justice Eidsvik

APPLICANTS JMB CRUSHING SYSTEMS INC. and 2161889 ALBERTA LTD.

DOCUMENT AFFIDAVIT OF BYRON LEVKULICH

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

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

**AFFIDAVIT OF BYRON LEVKULICH**  
 sworn January 11, 2021

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

- I am a Director of Canadian Aggregate Resources Corporation (“**CARC**”), the direct and indirect parent of the Applicants JMB Crushing Systems Inc. (“**JMB**”) and 2161889 Alberta Ltd. (“**216**”, and with JMB, the “**Applicants**”). As such, I have personal knowledge of the matters herein deposed to, except where stated to be based upon information and belief, in which case I verily believe same to be true.

2. I swear this Affidavit further to my Affidavits sworn July 24, August 21, September 9, September 23, September 30, October 13, November 11, and December 4, 2020 in these proceedings.
3. In preparing this Affidavit, I have consulted with legal, financial and other advisors of the Applicants and members of the Applicants' management team. I have also reviewed the business records of the Applicants relevant to these proceedings and have satisfied myself that I am possessed of sufficient information and knowledge to swear this Affidavit.
4. I am authorized to swear this Affidavit as corporate representative of the Applicants.
5. The background to these proceedings is described in detail in the Affidavit of Jeff Buck sworn April 16, 2020.
6. On May 1, 2020, Justice K.M. Eidsvik pronounced an Initial Order in favour of the Applicants, which Order was amended and restated by the Amended and Restated Initial Order pronounced on May 11, 2020, which among other things:
  - (a) granted the Applicants protection from their creditors under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the "CCAA"), up to and including May 11, 2020 (the "**Stay Period**");
  - (b) appointed FTI Consulting Canada Inc. as monitor of the Applicants in these proceedings (in such capacity, the "**Monitor**");
  - (c) approved a debtor-in-possession interim revolving credit facility to be provided by ATB Financial and an alternate interim revolving credit facility to be provided by CARC; and
  - (d) approved a sale and investment solicitation process (the "**SISP**").
7. Mantle Materials Group, Ltd. ("**Mantle**") agreed to purchase the core assets of the Applicants (the "**Core Assets**") pursuant to the Amended and Restated Asset Purchase Agreement dated September 28, 2020 (the "**Mantle APA**") between the Applicants and

Mantle (the purchase and sale transaction contemplated thereby being the “**Mantle Transaction**”).

Stay Extension

8. On October 1, 2020, Justice Eidsvik granted an Order approving the Mantle APA and Mantle Transaction. On October 16, 2020, Her Ladyship granted the following Orders:
  - (a) the Amended and Restated Sale Approval and Vesting Order (the “**SAVO**”), vesting all of the right, title and interest of the Applicants in the Core Assets in Mantle free and clear of all encumbrances other than permitted encumbrances;
  - (b) the Reverse Vesting Order (the “**RVO**”), vesting in 216 all of the right, title and interest of JMB in the assets of JMB that were excluded from the Core Assets, and vested in Eastside Rock Products, Inc. (“**Eastside**”) certain equipment owned by JMB located in the State of Washington;
  - (c) the Assignment Order (the “**Assignment Order**”), assigning certain contracts included in the Core Assets to Mantle; and
  - (d) the Sanction Order (the “**Sanction Order**”), sanctioning a plan of arrangement under the CCAA and the *Business Corporations Act* of British Columbia.
9. For the reasons summarized below and in my Affidavit sworn December 4, 2020 (the “**December Affidavit**”), the Mantle Transaction has not been completed and the RVO, Assignment Order and Sanction Order have not been implemented.
10. Since May 11, 2020, the Stay Period has been extended by Orders of this Honourable Court pronounced July 28, August 26, September 11, September 24, October 1, October 16 November 12 and December 7, 2020 (the latter Order being the “**December 7<sup>th</sup> Order**”). Under the December 7<sup>th</sup> Order, the Stay Period terminates on January 15, 2021.
11. Since the December 7<sup>th</sup> Order, the Applicants have continued to act diligently and in good faith in these proceedings by, among other things:

- (a) continuing to maintain the Applicants' property and assets;
  - (b) continuing discussions with the Alberta Environment and Parks ("AEP") in connection with the applications to the AEP for approval of the transfers of surface material leases and registrations to Mantle pursuant to the SAVO and to 216 pursuant to the RVO;
  - (c) working with the Monitor and the senior secured creditors to close the Mantle Transaction;
  - (d) responding to applications seeking a declaration of trust over monies paid to JMB by the MD of Bonnyville; and
  - (e) assessing the potential claim of Canada Revenue Agency against JMB and whether such claim may be secured by a deemed trust or statutory lien under the *Income Tax Act*, RSC 1985, c. 1.
12. The details of the steps in connection with the AEP approvals for that Mantle Transaction that JMB and 216 have taken are detailed in my December Affidavit. I am advised by counsel for the Applicants and believe that discussions with the AEP continued until December 23, 2020, but were put on hold as a result of the Christmas break, and that counsel expects discussions to recommence following the return of a representative of the AEP from vacation on January 11, 2021.
13. I am advised by counsel for the Applicants and believe that Mantle, Fiera and ATB Financial ("ATB") have negotiated arrangements with respect to operating costs of the Applicants from October 23, 2020, however, given the developments described above and the implications of a claim being pursued by Canada Revenue Agency referred to above, further discussions are ongoing between Mantle, ATB Fiera and the other secured creditors in respect thereof.
14. I am further advised by counsel for the Applicants and believe that:
- (a) On November 27, 2020, Jerry Shankowski ("Shankowski") and 945411 Alberta Ltd. ("945") applied to set aside the SAVO and RVO and to set aside an agreement

between Mantle and Shankowski under which Shankowski consented to the transfer of a royalty agreement to Mantle that it is party to with JMB. On December 7, 2020, Justice Eidsvik issued an endorsement which, *inter alia*, dismissed the application;

- (b) On December 7, 2020, counsel for Shankowski and 945 sent a letter to the Alberta Court of Appeal seeking to withdraw the Leave Applications without the consent of the named Respondents. I am further advised by counsel to the Applicants that on the same date, counsel for Shankowski and 945 provided, among others, counsel for the Applicants, the Monitor and ATB the letter sent to the Court of Appeal of Alberta;
- (c) On December 8, 2020 this Honourable Court heard applications by Shankowski, 945 and several other parties for a declaration that certain funds paid by the Municipal District of Bonnyville No. 87 (the “**MD**”) under an agreement between JMB and the MD for the supply of aggregate are held in trust for Shankowski, 945 and those other parties (the “**Trust Applications**”). On January 6, 2021, Justice Eidsvik issued an endorsement which, *inter alia*, dismissed the Trust Applications;
- (d) On December 9, 2020 the Court of Appeal of Alberta heard Shankowski and 945’s application to withdraw the Leave Applications. The Court of Appeal of Alberta allowed Shankowski and 945’s application to withdraw their applications for leave to appeal the SAVO and RVO and to stay the SAVO and RVO. The Applicants, the Monitor and ATB objected to the withdrawal and sought to speak to costs. On December 9, 2020, the Court of Appeal heard the costs application and awarded costs in favour of the Applicants, the Monitor and ATB; and
- (e) The appeals brought by each of Shankowski/945 and RBee Aggregate Consulting Ltd. (“**RBee**”) from the denial of their respective lien claims against lands owned by the MD (the “**Lien Appeals**”) was discussed as being scheduled to be heard on January 7, 2021. However, no booking was confirmed by counsel for the lien claimants and counsel for the Applicants was advised shortly before the holiday break that Justice Eidsvik would not be available on January 7, 2021. In light of

the decision issued by Justice Eidsvik on January 6, 2021 and the fact that the Lien Appeals remain outstanding and have not yet been scheduled, the parties will be seeking to reschedule the Lien Appeals to permit counsel for Shankowski/945 and RBee to obtain instructions on the Lien Appeals.

15. Given the foregoing, additional time will be needed to deal with these outstanding matters.
16. Based on my discussions with the Monitor and my review of the Applicants' cash flow statement appended to the Monitor's Twelfth Report, the Applicants have sufficient funds through to February 26, 2021 to allow for the completion of the steps outlined above.
17. Having regard to the circumstances, I believe that the granting of an extension of the Stay Period to a date determined by this Honourable Court is necessary and in the best interests of the Applicants and their stakeholders.
18. The Monitor is supportive of the extension of the Stay Period sought by the Applicants.
19. The Applicants have acted, and continue to act, in good faith and with due diligence in respect of all matters relating to the CCAA proceedings, and no creditor will be prejudiced by the proposed extension of the Stay Period.

**Breach of Initial Order**

20. On January 7, 2021, JMB became aware that Shankowski and 945 permitted Shamrock Valley Enterprises Ltd. ("**Shamrock**") to remove aggregate consisting of pit screenings (the "**Aggregate**") from the pit owned by Shankowski (the "**Shankowski Pit**") that is subject to the aggregate royalty agreement dated October 29, 2018 (the "**Royalty Agreement**") between JMB, Shankowski and 945. I am advised by Blake Elyea, Chief Restructuring Adviser for JMB, and believe that upon learning that a Shamrock truck and personnel were at the Shankowski Pit, he contacted Shamrock to demand that it cease and desist from removing the Aggregate from the Shankowski Pit. In that conversation, Shamrock informed Mr. Elyea that:

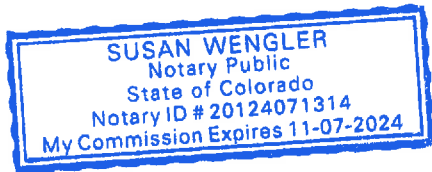
- (a) Shamrock was removing the Aggregate pursuant to an arrangement it had made with Shankowski to take such Aggregate in payment of amounts owed to Shamrock by Shankowski; and
  - (b) Pursuant to that arrangement, Shamrock had approval from Shankowski to remove seven truckloads of Aggregate from the Shankowski Pit, each of which contained approximately 27 tonnes.
21. The removal of the Aggregate occurred on January 7, 2021, but it appeared that Shamrock commenced site preparation work to remove the Aggregate prior to January 7, 2021. JMB does not know how many truckloads of Aggregate were removed by Shamrock. Neither Shankowski nor Shamrock had made any effort to contact JMB to warn that they were taking the screenings.
22. Upon learning of this, counsel for the Applicants wrote to counsel for each of Shankowski/945 and Shamrock to demand that they cease and desist from removing any Aggregate from the Shankowski Pit, as the Aggregate is owned by JMB pursuant to the Royalty Agreement, and therefore, removal of the Aggregate constituted a breach of the Initial Order granted May 1, 2020, among other things. Copies of the letters sent to counsel for each of Shankowski/945 and Shamrock are attached hereto as **Exhibits “A” and “B”** respectively.
23. It is of great concern to the Applicants that the Aggregate was removed from the Shankowski Pit in breach of the Initial Order, as well as in breach of the *Code of Practice for Pits* (the “**Code**”) made under the *Environmental Protection and Enhancement Act*, RSA 2000, c E-12 and the *Conservation and Reclamation Regulation*, AR 115/93. The security posted by JMB for reclamation obligations in respect of the Shankowski Pit has expired and will not be replaced by JMB. Mantle will not replace the security until the completion of the transaction contemplated by the SAVO. Therefore, any operations in or removal of aggregate from the Shankowski Pit is strictly prohibited by section 3.1.2 of the Code.

- 24. On January 8, 2021, counsel for Shamrock replied. A copy of the response letter is attached hereto as **Exhibit "C"**.
- 25. As of this the date of my Affidavit, I am advised by counsel for the Applicants and believe that no response has been received from counsel for Shankowski/945. However, I am advised by Mr. Elyea and believe that on January 8, 2020, Shankowski contacted him to discuss the issue. Shankowski asked Mr. Elyea why it is that JMB can tell him what he can do with the Shankowski Pit, claimed that the Aggregate belonged to him and had been at the Shankowski Pit prior to the Royalty Agreement being entered into, and claimed that the Aggregate had no value.
- 26. I was not physically present before the Commissioner for Oaths, but was connected to her by video technology and followed the process for remote commissioning.

SWORN (OR AFFIRMED) BEFORE ME )  
 at Denver, Colorado, this 11<sup>th</sup> day of )  
 January, 2021. )

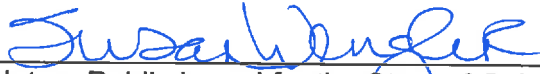
*Susan Wengler*  
 \_\_\_\_\_  
 Notary Public in and for the State of  
 Colorado )

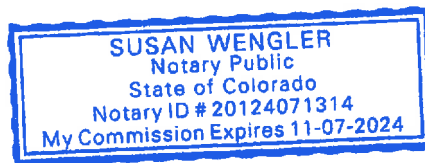
*Byron Levkulich*  
 \_\_\_\_\_  
 BYRON LEVKULICH )





THIS IS EXHIBIT "A" REFERRED TO IN  
THE AFFIDAVIT OF BYRON LEVKULICH  
SWORN BEFORE ME  
THIS 11TH DAY OF JANUARY, 2021

  
\_\_\_\_\_  
Notary Public in and for the State of Colorado



January 7, 2021

**Delivered by email**

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

Hajduk LLP  
#202 Platinum Place  
10120 - 118 Street NW  
Edmonton, Alberta T5K 1Y4

**Attention: Mr. Richard Hajduk**

Dear Mr. Hajduk:

**Re: Proceedings of JMB Crushing Systems Inc. ("JMB") and 2161889 Alberta Ltd. under the Companies' Creditors Arrangement Act (the "CCAA", and such proceedings, the "CCAA Proceedings")  
Court File No. 2001-05482**

---

This morning it came to the attention of JMB that your clients, Jerry Shankowski ("JS") and 945441 Alberta Ltd. ("945"), have permitted Shamrock Valley Enterprises Ltd. ("Shamrock") to remove aggregate ("Aggregate") consisting of pit screenings from the aggregate pit (the "Shankowski Pit") subject to the aggregate royalty agreement dated October 29, 2018 (the "Royalty Agreement") between JMB, JS and 945.

Upon learning that a truck and personnel of Shamrock were at the Shamrock Pit this morning, a representative of JMB contacted Shamrock to demand that Shamrock cease and desist from removing the Aggregate from the Shankowski Pit. In that conversation, Shamrock informed JMB's representative of the following:

1. Shamrock was removing the Aggregate pursuant to an arrangement it had made with JS to take such Aggregate in payment of amounts owed to Shamrock by JS; and
2. Pursuant to that arrangement, Shamrock had approval to remove seven truckloads of Aggregate from the Shankowski Pit, each of which contained approximately 27 MT tonnes.

The removal of the Aggregate occurred today, but Shamrock appears to have commenced site preparation work to remove the Aggregate yesterday. JMB does know how many truckloads of Aggregate were removed by Shamrock today.

The Aggregate is owned by JMB pursuant to the Royalty Agreement and therefore, by permitting Shamrock to take the Aggregate in payment of a debt owed by JS to Shamrock, JS has committed a wilful and wrongful conversion of property of JMB. In addition, JS and 945 are on notice of the vesting of the Royalty Agreement and Aggregate in Mantle Materials Group, Ltd. ("Mantle") pursuant to the Sale Approval and Vesting Order of the Honourable Justice K.M. Eidsvik pronounced on October 16, 2020 (the "SAVO"), subject to the completion of the transaction contemplated thereby. Pursuant to the letter

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

**T +1 403 298 1000**  
**F +1 403 263 9193**  
**gowlingwlg.com**

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

ACTIVE\_CA\ 42860194\3

agreement dated as of October 14, 2020 (the “**Letter Agreement**”) between Mantle, JS and 945, the vesting of the Royalty Agreement in Mantle was consented to by JS and 945. Further, JS and 945 acknowledged that, as between them and Mantle, the Royalty Agreement was deemed to be in good standing notwithstanding any claims JS and 945 may have against JMB. Therefore, by permitting Shamrock to take the Aggregate in payment of a debt owed by JS to Shamrock, JS and 945 wrongfully converted property currently owned by JMB that is to be vested in Mantle.

By permitting Shamrock to remove the Aggregate from the Shankowski Pit in payment of amounts owed by JS to Shamrock, JS and 945 have committed serious and flagrant contraventions of the following:

- (a) paragraph 14 of the Amended and Restated CCAA Initial Order of the Honourable Justice K.M. Eidsvik of the Court of Queen’s Bench of Alberta (the “**Court**”) pronounced on May 11, 2020 (the “**Initial Order**”), which stays and suspends, *inter alia*, the exercise of any right or remedy against or in respect of JMB or its property, whether judicial or extra-judicial, except with the leave of the Court;
- (b) paragraph 14 of the Initial Order, which states, *inter alia*, that no person shall fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, contract or agreement in favour of JMB, except with the consent of JMB or FTI Consulting Canada Inc. in its capacity as monitor of JMB and 216 (the “**Monitor**”), or leave of the Court; and
- (c) paragraph 17 of the Initial Order, which states, *inter alia*, that all persons having oral or written agreements with JMB are restrained until further order of the Court from exercising any remedy under such agreements.

JS and 945 have not sought or obtained the leave of JMB, the Monitor or the Court to give the Aggregate to Shamrock. They have also not sought or obtained the consent of ATB Financial to its purported disposition of the Aggregate to Shamrock, notwithstanding that ATB Financial has a first ranking security interest in the Aggregate.

Finally, as you are aware, the security posted by JMB for reclamation obligations in respect of the Shankowski Pit has expired and will not be replaced by Mantle until the completion of the transaction contemplated by the SAVO. As such, under section 3.1.2 of the *Code of Practice for Pits* (the “**Code**”) made under the *Environmental Protection and Enhancement Act*, RSA 2000, c E-12 and the *Conservation and Reclamation Regulation* (AR 115/93), the removal of Aggregate from the Shankowski Pit is illegal.

In the circumstances described above, the breaches by JS and 945 of the Initial Order are serious and flagrant, and constitute contempt of court. Further, these actions are clear breaches by JS and 945 of both the Royalty Agreement and the Letter Agreement.

Based on the foregoing, we hereby demand that JS and 945 forthwith:

- (a) cease and desist from disposing of Aggregate owned by JMB;
- (b) disclose to JMB and the Monitor and fully account for any taking or appropriation, or sales or other dispositions, of JMB’s Aggregate by JS, 945 or any of their agents or contractors, including to Shamrock;

- (c) disclose to JMB and the Monitor when JS or 945 sold or otherwise disposed of JMB's Aggregate, to whom such Aggregate has been sold or transferred to, and the quantum of such Aggregate that was sold or transferred; and
- (d) disclose to JMB and the Monitor the current location of all such Aggregate.

As a result of the actions of JS and 945, we intend to apply to the Court to seek relief against JS and 945 to prevent them from taking any further actions in contravention of the Initial Order, the Royalty Agreement or the Letter Agreement, and from acting in further contravention of the Code. As well, we will be seeking a finding of contempt against JS and 945.

We propose to address the scheduling of these matters at the hearing scheduled for January 12, 2021 and will be serving materials shortly.

Yours truly,

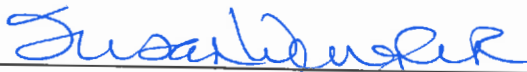
Gowling WLG (Canada) LLP

Thomas Cumming

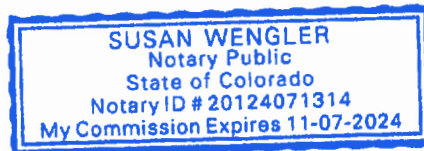
cc. Caireen Hanert, Alison Gray and Stephen Kroeger, Gowling WLG (Canada) LLP  
Blake Elyea, Chief Restructuring Advisor, JMB Crushing Systems Inc.  
Pantelis Kyriakakis and Sean Collins, McCarthy Tétrault LLP  
Tom Gusa, Dentons Canada LLP  
Kyla Mahar, Miller Thomson LLP

TSC:ki

THIS IS EXHIBIT "B" REFERRED TO IN  
THE AFFIDAVIT OF BYRON LEVKULICH  
SWORN BEFORE ME  
THIS 11TH DAY OF JANUARY, 2021



Notary Public in and for the State of Colorado



January 7, 2021

Delivered by email to [cltchir@morrowtchir.ca](mailto:cltchir@morrowtchir.ca)

**Thomas Cumming**  
Direct +1 403 298 1938  
[tom.cumming@gowlingwlg.com](mailto:tom.cumming@gowlingwlg.com)

Morrow Tchir LLP  
PO Box 336, 5226 50 Avenue  
St. Paul, AB T0A 3A0

**Attention: Christina Tchir**

Dear Ms. Tchir:

**Re: Proceedings of JMB Crushing Systems Inc. (“JMB”) and 2161889 Alberta Ltd. under the Companies’ Creditors Arrangement Act (the “CCAA”, and such proceedings, the “CCAA Proceedings”)  
Court File No. 2001-05482**

---

As you are aware, we are counsel for JMB in its CCAA Proceedings.

It has come to the attention of JMB that your client, Shamrock Valley Enterprises Ltd. (“**Shamrock**”), has removed aggregate (“**Aggregate**”) consisting of pit screenings from the aggregate pit (the “**Shankowski Pit**”) subject to the aggregate royalty agreement dated October 29, 2018 (the “**Royalty Agreement**”) between JMB and your clients Jerry Shankowski (“**JS**”) and 945441 Alberta Ltd. (“**945**”). This morning, when Blake Elyea, the Chief Restructuring Advisor of JMB, became aware of this situation, he contacted Shamrock to request that Shamrock cease and desist from removing the Aggregate from the Shankowski Pit. In that conversation, Shamrock informed Mr. Elyea that:

1. Shamrock was removing the Aggregate pursuant to an arrangement it had made with JS to take such Aggregate in payment of amounts owed to Shamrock by JS; and
2. Shamrock’s arrangement with JS permitted it to remove seven truckloads of Aggregate from the Shankowski Pit, each of which contained approximately 27 MT tonnes.

The removal of the Aggregate commenced today, but it appears that Shamrock commenced the site preparation work to remove the Aggregate yesterday. JMB has no information with respect to how many truckloads of Aggregate were removed by Shamrock today.

Pursuant to the Royalty Agreement, JMB has exclusive access to the Shankowski Pit, and ownership of any Aggregate located on or under the lands subject to the Royalty Agreement. Neither JS nor 945 have any right, title or interest in the Aggregate or any ability to sell or otherwise dispose of the Aggregate.

By removing the Aggregate from the Shankowski Pit and purporting to take ownership thereof in payment of a debt owed by JS to it, Shamrock has contravened the following provisions of the Amended and Restated CCAA Initial Order of the Honourable Justice K.M. Eidsvik of the Court of Queen’s Bench of Alberta (the “**Court**”) pronounced on May 11, 2020 (the “**Initial Order**”):

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

**T +1 403 298 1000**  
**F +1 403 263 9193**  
**[gowlingwlg.com](http://gowlingwlg.com)**

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

- (a) paragraph 14 of the Initial Order, which stays and suspends, *inter alia*, the exercise of any right or remedy against or in respect of JMB or its property, whether judicial or extra-judicial, except with the leave of the Court;
- (b) paragraph 14 of the Initial Order, which states, *inter alia*, that no person shall fail interfere with any right, contract or agreement in favour of JMB, except with the consent of JMB or FTI Consulting Canada Inc. in its capacity as monitor of JMB and 216 (the “**Monitor**”), or leave of the Court; and
- (c) paragraph 17 of the Initial Order, which states, *inter alia*, that all persons having oral or written agreements with JMB are restrained until further order of the Court from exercising any remedy under such agreements.

Further, in taking the Aggregate, Shamrock has wrongfully confiscated property that is owned by JMB and is subject to a prior ranking security interest in favour of ATB Financial.

Finally, there is currently in place no security posted under the *Code of Practice for Pits* (the “**Code**”) enacted pursuant to the *Environmental Protection and Enhancement Act*, RSA 2000, c E-12 and the *Conservation and Reclamation Regulation* (AR 115/93) and therefore the removal of the Aggregate by Shamrock is a violation of section 3.1.2 of the Code, which states that no person shall commence or continue an activity at a pit unless the full amount of security for that pit has been provided to the Director (as defined in the Code).

Shamrock is on the Service List for the CCAA Proceedings and has full access to all of the Orders pronounced by the Court including the Initial Order. Shamrock also participated in the applications to determine whether or not there is a trust in favour of certain creditors, including Shamrock, pursuant to paragraph 26 of the agreement between JMB and the Municipal District of Bonnyville. In connection therewith, it would have received a copy of the affidavit of JS sworn November 6, 2020, to which the Royalty Agreement was attached as Exhibit “L”. That affidavit was uploaded to Caselines prior to the application heard on November 27, 2020. As such, Shamrock was on notice of both the Initial Order and the Royalty Agreement, and therefore knew or ought to have known that the removal of the Aggregate breached the Initial Order and wrongfully converted the Aggregate.

Based on the foregoing, on behalf of JMB we hereby demand that Shamrock forthwith:

- (d) cease and desist from removing Aggregate from the Shankowski Pit;
- (e) disclose to JMB and the Monitor and fully account for any Aggregate removed from the Shankowski Pit;
- (f) disclose to JMB and the Monitor when Aggregate was removed from the Shankowski Pit; and
- (g) disclose to JMB and the Monitor the current location of any such Aggregate.

In the event that Shamrock fails to comply with the foregoing, and take such actions as are necessary to fully comply with the Initial Order and the Code, we expect to receive instructions to apply to the Court to seek relief against Shamrock for its actions.

We note that we have time booked with the Court on January 12, 2021 and would propose to address these matters at that hearing.

Yours truly,

Gowling WLG (Canada) LLP

Thomas Cumming

cc. Caireen Hanert, Alison Gray and Stephen Kroeger, Gowling WLG (Canada) LLP  
Blake Elyea, Chief Restructuring Advisor, JMB Crushing Systems Inc.  
Pantelis Kyriakakis and Sean Collins, McCarthy Tétrault LLP  
Tom Gusa, Dentons Canada LLP  
Kyla Mahar, Miller Thomson LLP

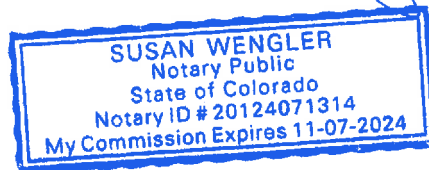
TSC:ki



THIS IS EXHIBIT "C" REFERRED TO IN  
THE AFFIDAVIT OF BYRON LEVKULICH  
SWORN BEFORE ME  
THIS 11TH DAY OF JANUARY, 2021

*Susan Wengler*

Notary Public in and for the State of Colorado



**MORROW TCHIR LLP**  
BARRISTERS, SOLICITORS &  
NOTARIES PUBLIC

ORVILLE T.G. MORROW, BA LLB (1946-2016)  
CHRISTINA L. TCHIR, BA LLB\* ([cltchir@morrowtchir.ca](mailto:cltchir@morrowtchir.ca))  
JAMES E. MORROW, BA LLB\* ([jemorrow@morrowtchir.ca](mailto:jemorrow@morrowtchir.ca))  
SIMONE R. MULKAY, BA JD\*\* ([srmulkay@morrowtchir.ca](mailto:srmulkay@morrowtchir.ca))  
CAELEIGH V. SHIER, BComm LLB\*\* ([cvshier@morrowtchir.ca](mailto:cvshier@morrowtchir.ca))

P.O. BOX 336, 5226 - 50 AVENUE  
ST. PAUL, ALBERTA T0A 3A0  
TELEPHONE: (780)645-2981  
FAX: (780) 645-3801  
[www.morrowtchir.ca](http://www.morrowtchir.ca)

\*denotes Professional Corporation and Member of Limited Liability Partnership  
\*\*denotes Associate

Our File: 19978/20 CT

Sent Via E-mail to [tom.cumming@gowlingwlg.com](mailto:tom.cumming@gowlingwlg.com)

January 8, 2021

Gowling WLG (Canada) LLP  
Suite 1600, 421 7<sup>th</sup> Avenue SW  
Calgary, Alberta T2P 4K9

**Attention:** Thomas Cumming

Dear Sir:

**RE: Proceedings of JMB Crushing Systems Inc. ("JMB") and 2161889 Alberta Ltd. under the Companies' Creditors Arrangement Act (the "CCAA", and such proceedings, the "CCAA Proceedings")  
Court File No. 2001-05482**

We confirm receipt of your correspondence dated January 7, 2021 which we have reviewed with our client, Shamrock Valley Enterprises Ltd. ("Shamrock").

Shamrock was astonished to receive your letter considering the value of the material they removed was less than \$700. Nevertheless, in reply to your demands, we confirm that:

1. Shamrock agrees not to remove any further material from the Shankowski Pit; and
2. Shamrock removed only 5 loads of approximately 27 tonnes each (135 tonnes total) on January 7, 2021. The material removed was reject screenings only with a market value of \$5/ per tonne (\$675 worth of material total).

Shamrock removed the material pursuant to a private agreement between them and Jerry Shankowski which Jeff Buck was aware of. Should you have any further questions with respect to this agreement, contact Mr. Shankowski or Mr. Buck directly. We have advised our client that despite the private agreement, the CCAA proceedings prohibit them from further removing of any materials.

I trust this to be satisfactory and that we do not need to address this matter in Court on January 12, 2021.

**MORROW TCHIR LLP**

Per:



CHRISTINA L. TCHIR  
Barrister, Solicitor and Notary Public  
CLT/cl  
Cc: Client via e-mail