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COURT FILE NO. 2001-05482

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

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

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

APPLICANTS JMB CRUSHING SYSTEMS INC. and 2161889 ALBERTA LTD.

DOCUMENT AFFIDAVIT OF BLAKE M. ELYEA

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

Attn: Tom Cumming/Caireen E. Hanert/Stephen Kroeger

Phone:403.298.1938/403.298.1992/403.298.1018Fax:403.263.9193File No.:A163514

AFFIDAVIT OF BLAKE M. ELYEA sworn February 23, 2021

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

- 1. I am the Chief Restructuring Advisor for JMB Crushing Systems Inc. ("JMB") and 2161889 Alberta Ltd. ("216", and with JMB, the "Applicants"). As such, I have personal knowledge of the matters herein deposed to, except where stated to be based upon information and belief, in which case I verily believe same to be true.
- 2. I was appointed as Chief Restructuring Advisor of JMB and 216 on May 4, 2020, immediately following the commencement of their proceedings under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the "CCAA", and such

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

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

Declaratory Relief

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

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

Canada Revenue Agency - Deemed Trust Issue

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

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

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

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

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

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

SWORN BEFORE ME at the City of Burnaby, in the Province of British Columbia, this 23rd day of February, 2021.

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

BLAKE M. ELYEA

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

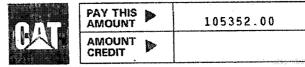
A Commissioner for Oaths/Notary Public in and for the Province of British Columbia

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This Sale is subject to all terms and conditions set forth in the NC Power Systems Work Authorization, including LIMITED WARRANTY AND RELEASE and EXCLUSION OF LIABILITIES set forth on that Order. TERMS: ALL PARTS AND SERVICE INVOICES ARE DUE THE 10TH OF THE MONTH FOLLOWING THE DATE OF PURCHASE, MACHINE INVOICES NET 10 DAYS FROM DATE

TERMS:



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

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

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

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

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

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

I SANSFER OR SAL OF VEHICLE - RIGR TO COMPLIANCE AND SALE INSECTION OF REALISTED WITHOUT PRIOR WATTEN PERFESSION FROM THE RESISTING OF REPORTED VEHICLES.

Location of the Compliance label on the different vehicle classes

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

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

Bus: Same as Truck.

Multi-purpose passenger vehicle: Same as Truck.

Motorcycle - All types. On a permanent part of the vehicle as close as ptacticable to the intersection of the steering past and the handlebars as that it is easily readable without moving any part of the vehicle except the dearing evolution. steering system.

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

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

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

Box 12a & 12b Explanations

Box 12a: Vehicle condition Normal: normat wear and tear, including minor damages such as scratches, dense and burnps. Typically a readworthy vehicle being driven at the time of importations. importation.

Severely damaged, vehicle damager to the extent that it would need to be rebuilt to be readworthy. Such classification could be the result of a major accident, tire, flood or a theit recovered vehicle missing some major parts (doors, stripped intenor, etc.).

Box 12b: Title status As indicated on the official vehicle title document.

Evidence of Conformity with Environment Canada's Emission Standards

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

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

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

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

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

Privacy Statement The information you provide on this form is collected by Transport Canada, unuer the nutricity of sections 6 and 7 of the Motor Vehicle Safety Add (kv/SA), to ensure that imported valides combly with the Canada Motor Vehicle Safety (Add (kv/SA), to ensure that imported valides combly with the Canada Motor Vehicle Safety (Add (kv/SA), to ensure the Canada collects the Information, ender the authority of sections 163 and 57 of the Canada collects the Information, ender the authority of sections 163 the valide conterms to first department's encience at add (1989) (CePA) to encure that the valide conterms to first department's encience at additional the Vehicle demilification Number (MN) may be disclosed to other partnet, isolution the following fervincial minimizes of transport Administrations (CeNTA) for receipt partnets, information may also be disclosed to authorized partnets to import the vehicle and Canada. The described in Personal Information Bonk no. DOT PPU 000, Under the partnet are partnets at he valide receipt on the personal information Bonk no. DOT PPU 000, Under the partnet and the descass to and protection of their personal information Bonk no. DOT PPU 000, Under the partnets of major provision and the personal information Bonk no. DOT PPU 000, Under the provisions of the described in Personal formation Bonk no. DOT PPU 000, Under the provisions of the described in Personal information Bonk no. DOT PPU 000, Under the provisions of the described in Centrada. The described in Centrada of the following the following the following the following provision and the personal information action of which is available in major public and maximum cent provided in the the Source, a court of which is available in major public and maximum cent provided in the Info Source, action of which is available in major public and maximum the fully (www.infosource.gd.ca.

Si voire véhicule est visé par le programme du Registraire des véhicules importés (case 17), un exemplaire du formulaire remail sera envoyé au Registraire des véhicules importés pour traitement, ici dis (10) jours, vous recevrez des instructions détaillées de ce registraire sur le processus de modification et d'inspedition et notamment uné liste des centres d'inspection auxqu'els l'importateur peut recourir et la formule que l'atteur des modifications et l'Inspecteur devront utiliser. Le centre d'inspection auxqu'els l'importateur peut recourir et la correctampiliera le section voulire de la case 17 une fois le véhicule correctament modifié et inspect. Une fois voirs véhicule certifié conforme par ce centre, vous pourrez immatriculer votre véhicule auprès du registraire de votre province.

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

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

Volture de tourisme - Sur le montant des chamières, sur le montant de la gache ou à textremile de la porte correspondent au montant de la gashe, du côté du conducteur.

Camion : Commo les valtures de tourisme ou, sit est impossible de l'apposer à ces endroits, sur le côté gauche du tabléau de bord ou sur la surface intérieure de la porte du conducteur.

Autobus : Voir camion.

Voiture de tourisme à usages multiples : Voir camion.

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

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

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

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

Explications des cases 12a et 12b

Case 12a : État du véhicule Normal: usure et détérioration normales troluant dommages mineurs feis egraligneurs: bosses et éconchures: Véhicule en condition de marche typique, étent conduit au moment de son importation

Gravement encommagé : véhicule elidominagé de facos excessive papessitant une reconstruction avant d'être en état de marche typique Une telle classification peut être le viscultat d'un accident majeux, incendie, mondation ou un véhicule vola er traticuve avec certeines pièces majeures manquentes (portes, intérieur manquant, êtc.).

Case 12b :: Titre de propriété Tel qu'indiqué sur le document officiel "Gertificate of Title" du véhicule. Il

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

Toute personne qui împorte un văhicule dans le but de le vendre ou de le louer doil posseder la justification de la conformite décrite à l'article 35 ou 36 dui Reighemont sur los émissions des véhicules rotaliers et de lears moleurs, suivent le cas

Pour tout autre importateur, comme justification de la conformité le véhicule importe cont

a) porter la marque nationale décrite à l'article 7 du Réglement sur les

emissions; b) porter une átiquette américaine d'information sur le contrôle des emissions indiquant que le véhicula était conforme aux normes d'émissions de l'Environmenta: Protection Agency (EPA) à la fin de sen assemblage enteries.

principal. c) portor une étiquette indiquant que la vériculia était conforme aux normes d'émissions du California Air Resources Board à la fin de son assemblage

d'amissions du California au resources poero e un est su de son principal du d) faire l'objet d'une déclaration du fabricant du véhicule ou de son représentant durinent autorise selon laquelle il était conforme aux normes d'emissions du Régletificht su les cantacions des véhicules routiers et de laus moteura, de l'EBA des États-Unie ou du California AurResources Board a la fin de son assemblage principal.

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Front: 20,000 lbs	Next:	Rear: 20,000
Float. 20,000 103	Next.	Real: 20,000
Tire Pressure (in P.S.I.) Front:	90 ps; Section 3. Modifier Infor	Rear: 90psi
Company/Individual that perfor	med modifications (Please print):	
Section 4. Mo	difications required to conform to Ca	
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Reflectors & lighting mus	t conform with CMVSS 108 Standar tp://www.tc.gc.ca/eng/roadsafety/tp-	rds. Please refer to Federal Lighting Equipment -tp13136-trailer_e-414.htm
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CUSTOMS DELIVERY AUTHORITY COPY EXEMPLAIRE DE L'AUTORISATION DOUANIERE DE LIVRAISON

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

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

J.

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

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

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THIS IS EXHIBIT "D" REFERRED TO IN

THE AFFIDAVIT OF BLAKE M. ELYEA

SWORN BEFORE ME

THIS 23rd DAY OF FEBRUARY, 2021

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

	Eastside Rock Products														
	Depreciation Summary														
Period End	31-Dec-20														
Period Beg	01-Jan-20														
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REDACTED

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REDACTED

THIS IS EXHIBIT "E" REFERRED TO IN

THE AFFIDAVIT OF BLAKE M. ELYEA

SWORN BEFORE ME

THIS 23rd DAY OF FEBRUARY, 2021

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

JU/

From: Medhurst, Jill <<u>Jill.Medhurst@justice.gc.ca</u>> Sent: November-18-20 10:02 AM To: Cumming, Tom <<u>Tom.Cumming@gowlingwlg.com</u>>; Hanert, Caireen <<u>Caireen.Hanert@gowlingwlg.com</u>> Cc: Bullen, Suzanne <<u>Suzanne.Bullen@justice.gc.ca</u>> Subject: JMB Crushing

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

Good morning,

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

Looking forward to hearing from you regarding your availability.

Thanks

Jill

The information in this email is intended only for the named recipient and may be privileged or confidential. If you are not the intended recipient please notify us immediately and do not copy, distribute or take action based on this email. If this email is marked 'personal' Gowling WLG is not liable in any way for its content. E-mails are susceptible to alteration. Gowling WLG shall not be liable for the message if altered, changed or falsified.

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References to 'Gowling WLG' mean one or more members of Gowling WLG International Limited and/or any of their affiliated businesses as the context requires. Gowling WLG (Canada) LLP has offices in Montréal, Ottawa, Toronto, Hamilton, Waterloo Region, Calgary and Vancouver.

W

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

Sent: November-19-20 8:26 AM

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

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

Subject: RE: JMB Crushing

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

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

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

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

Regards

llil

From: Cumming, Tom [mailto:Tom.Cumming@gowlingwlg.com] Sent: November 18, 2020 4:32 PM To: Medhurst, Jill <<u>Jill.Medhurst@justice.gc.ca</u>>

Cc: Bullen, Suzanne <<u>Suzanne.Bullen@justice.gc.ca</u>>; Thiessen, Ted <<u>Ted.Thiessen@gowlingwlg.com</u>>; Hanert, Caireen <<u>Caireen.Hanert@gowlingwlg.com</u>>; Kroeger, Stephen <<u>Stephen.Kroeger@gowlingwlg.com</u>> Subject: RE: JMB Crushing

Good afternoon Jill,

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

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

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

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

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

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

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

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

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

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

Best regards,

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

tom.cumming@gowlingwlg.com

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





From: Medhurst, Jill <<u>Jill.Medhurst@justice.gc.ca</u>> Sent: November-19-20 1:52 PM

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

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

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

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

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

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

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

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

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

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

Thanks

Jill

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From: Cumming, Tom [mailto:Tom.Cumming@gowlingwlg.com]
Sent: November 19, 2020 3:28 PM
To: Medhurst, Jill <<u>Jill.Medhurst@justice.gc.ca</u>>
Cc: Bullen, Suzanne <<u>Suzanne.Bullen@justice.gc.ca</u>>; Thiessen, Ted <<u>Ted.Thiessen@gowlingwlg.com</u>>; Hanert, Caireen <<u>Caireen.Hanert@gowlingwlg.com</u>>; Kroeger, Stephen <<u>Stephen.Kroeger@gowlingwlg.com</u>>; Cones, Tristen <<u>Tristen.Cones@justice.gc.ca</u>>; Sean F. Collins (<u>scollins@mccarthy.ca</u>) <<u>scollins@mccarthy.ca</u>>; Pantelis Kyriakakis(<u>pkyriakakis@mccarthy.ca</u>) <<u>pkyriakakis@mccarthy.ca</u>>

Subject: RE: JMB Crushing

Jill,

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

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

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

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

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

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

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

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

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

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

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

I will send a call in number for 10 am.

Best regards,

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

tom.cumming@gowlingwlg.com

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



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From: Medhurst, Jill <<u>Jill.Medhurst@justice.gc.ca</u>> Sent: November-19-20 4:11 PM

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

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

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

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

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

Thanks

Jill

From: Medhurst, Jill <<u>Jill.Medhurst@justice.gc.ca</u>> Sent: November 20, 2020 11:52 AM

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

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

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

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

Thanks

Jill

From: Medhurst, Jill <<u>Jill.Medhurst@justice.gc.ca</u>> Sent: December-15-20 10:47 AM To: Cumming, Tom <<u>Tom.Cumming@gowlingwlg.com</u>>; Hanert, Caireen <<u>Caireen.Hanert@gowlingwlg.com</u>> Cc: Bullen, Suzanne <<u>Suzanne.Bullen@justice.gc.ca</u>> Subject: JMB Crushing

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Hi Tom and Caireen,

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

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

Thanks

Jill

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

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

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

Hi Jill

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

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

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

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

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

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

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

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

Can we discuss this matter at your earliest convenience?

Thank you.

Tom

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

tom.cumming@gowlingwlg.com

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K

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

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Hi Tom,

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

Thanks

Jill

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

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



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

Hi Jill

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

Thanks.

Tom

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

tom.cumming@gowlingwlg.com

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



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

Hi Jill

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

Thanks.

Tom

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

tom.cumming@gowlingwlg.com

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

Hi Tom,

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

M

Thanks and have a good week!

Jill

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

Hi Jill

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

Thanks.

Tom

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

tom.cumming@gowlingwlg.com

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From: Cumming, Tom <<u>Tom.Cumming@gowlingwlg.com</u>> Sent: February 18, 2021 7:20 PM To: Medhurst, Jill <<u>Jill.Medhurst@justice.gc.ca</u>> Cc: Bullen, Suzanne <<u>Suzanne.Bullen@justice.gc.ca</u>>; Cones, Tristen <<u>Tristen.Cones@justice.gc.ca</u>>; Malm, Tandra <<u>Tandra.Malm@justice.gc.ca</u>> Subject: RE: JMB

Hi Jill

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

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

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

Kind regards,

Tom

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

tom.cumming@gowlingwlg.com

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





From: Medhurst, Jill <<u>Jill.Medhurst@justice.gc.ca</u>> Sent: February-22-21 4:12 PM To: Cumming, Tom <<u>Tom.Cumming@gowlingwlg.com</u>> Cc: Bullen, Suzanne <<u>Suzanne.Bullen@justice.gc.ca</u>>; Cones, Tristen <<u>Tristen.Cones@justice.gc.ca</u>>; Malm, Tandra <<u>Tandra.Malm@justice.gc.ca</u>> Subject: RE: JMB

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Hi Tom,

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

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

Thanks

Jill



Form 49 Rule 13.19

COURT FILE NO. 2001-05482

Clerk's Stamp

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.

JMB CRUSHING SYSTEMS INC. and 2161889 ALBERTA LTD.

APPLICANTS

DOCUMENT

AFFIDAVIT OF BLAKE M. ELYEA

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

 Attn:
 Tom Cumming/Caireen E. Hanert/Stephen Kroeger

 Phone:
 403.298.1938/403.298.1992/403.298.1018

 Fax:
 403.263.9193

 File No.:
 A163514

AFFIDAVIT OF BLAKE M. ELYEA sworn February 23, 2021

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

- 1. I am the Chief Restructuring Advisor for JMB Crushing Systems Inc. ("JMB") and 2161889 Alberta Ltd. ("216", and with JMB, the "Applicants"). As such, I have personal knowledge of the matters herein deposed to, except where stated to be based upon information and belief, in which case I verily believe same to be true.
- 2. I was appointed as Chief Restructuring Advisor of JMB and 216 on May 4, 2020, immediately following the commencement of their proceedings under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the "CCAA", and such

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

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

Declaratory Relief

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

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

Canada Revenue Agency – Deemed Trust Issue

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

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

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

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

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

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

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SWORN BEFORE ME at the City of Burnaby, in the Province of British Columbia, this 23rd day of February, 2021.

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

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

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

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

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



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EASTSIDE ROCK PRODUCTS INC

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MAKE	MODEL	SERIAL N	JMBER EQUIPMENT NUMBER	ME	TER REAL	DING	MACHI	NE ID NO.
AA	APS800	DWB006	36 R002			6994	.50 E2	13224

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

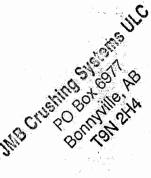
EQUIPMENT SALE		·
CATERPILLAR	MODEL	AP\$800
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ID NO: E213224	SERIAL NO:	DWB00636
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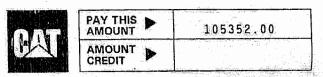
ONE (1) USED CATERPILLAR MODEL APS800 GENERATOR SET WITH TRAILER (TITLE ATTACHED)

WARRANTY: AS IS/WHERE IS NO WARRANTY

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



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



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

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

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

THIS IS EXHIBIT "B" REFERRED TO IN THE AFFIDAVIT OF BLAKE M. ELYEA SWORN BEFORE ME

THIS 23rd DAY OF FEBRUARY, 2021

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

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

rvices Agency and may be licensed in	en accounted for by Canada Border	Les présentes attestent que le m	AUX AUTORITES PROVINCIALES loyen de transport désigné cl-dessous à été déclaré du Canada et peut être immetriculé au Canada :	
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AAA

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

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

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Location of the Compliance label on the different vehicle classes.

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

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

Bus: Same as Truck,

Multi-purpose passenger vehicle: Same as Truck.

Motorcycle - All types. On a permanent part of the vehicle as close as practicable to the intersection of the steering post and the handlebars so that it is easily readable willout moving any part of the vehicle except the steering system.

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

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

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

Box 12a & 12b Explanations

(doors, stripped Interior, etc.)

Box 12a: Vehicle condition

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

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

Box 12b: Title status As indicated on the official vehicle title document.

Evidence of Conformity with Environment Canada's Emission Standards

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

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

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

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

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

Privacy Statement The Information you provide on this form is collected by Transport Canada, under the authority of sections 5 and 7 of the *Motor Vanida Safety Act* (MVSA), to ensure that imported vehicles compty with the Canada Motor Vehicle Safety Standards (CMVSS). Also Environment Canada collects the information, under the authority of sections 153 and 157 of the Canadian Environmental Protection and the vehicle context that the vehicle the vehicle context that department's emission istandards. Including the the vehicle meets CMVSS and Environment Canada's emission istandards, including the following. Provinciel Ministriae of Transportation to license and register the vehicle and Canadian Councel of Motor Transportation to license and register the vehicle and Canadian Councel of Motor Transportation to license and register the vehicle and Canadian may also be disclosed to authorized parties to enforce and administer the MVSA and the CEPA. This form must be completed to import the vehicle in the Canada. The bescribed in Personal Information Bank no. DO'T PPU DBs. Unter the provisions of the Privacy Act and the Access to information Act, Individuals have the right of access to and protection of their personal Information Bank no. DO'T PPU DBs. Unter the provisions of the Privacy Act and the Access to information Act, Individuals have the right of access to and protection of their personal Information Bank no. DO'T PPU DBs. Unter the provisions of the privacy Act and the Access to information Act, Individuals have the right of access to and protection of their personal Information Bank no. DO'T PPU DBs. Unter the provisions of the and academic libraries or online at http://www.infosource.gc.ca.

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

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

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

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

Volture de tourisme : Sur la montant des chamières, sur la montant de la gàche ou à l'extremité de la porte corrèspondant au montant de la gâche, du côté du conducteur.

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

Autobus : Voir camion

Volture de tourisme à usages multiples : Voir camion.

Motocyclette - Tout genre : Sur une partie fixe du véhicule, aussi près que possible de l'intersection de la colonne de diraction ét du guidon, de sorte qu'on puisse la lire sans avoir à déplacer des places du véhicule, saufte systeme de direction.

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

Remorque : Sur la moilié arrière du côlé gauche de la remorque de sorte qu'il soil facile, de l'extérieur, de la lire sans déplacer aucune pièce.

Véhicule incomplet (Châssis-cabine) : Doil être apposée temporalrement de façon à être lisible et prolégée contre les intempéries auxquelles étie pourrait être exposée, ou être apposée en permanence comme dans le cas des camions

Explications des cases 12a et 12b

Case 12a : État du véhicule Nornel: usura et détérioration normales, incluent dommages mineurs tele égralignures, bosses et écorchures. Véhicule en condition de marche typique, étant conduit au moment de son importation.

Gravement enclammagé : véhicule endominagé de façon excessive nécessitant une reconstruction avant d'être en état de marche typique. Une telle classification peut être le résultat d'un accident majeur, incendie, innondation ou un véhicule volé et retrouvé avec certaines plèces majeures manguantes (portes, intérieur manguant, etc.).

Case 12b 1 Titre de propriété Tel qu'indiqué sur le document officiel "Certificate of Title" du véhicule.

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

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

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

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

entissions, protection d'information sur le contrôle des emissions indiquant que le véhicule était conforme aux normes d'émissions de l'Environmental Protection Agency (EPA) à la fin de son assemblage encience.

ou control de la control de la

d'emissions du Galiadria dui ressource du édition du fabricant du véhicule ou de son cipite l'objet d'une déclaration du fabricant du véhicule ou de son représentant d'unent autorisé selon laquelle il était conforme aux normes d'emissions du Réglament sur les émissions des véhicules routiers et de leurs moteurs, de l'EPA des États-Unis ou du California Air Resources Board à la fin de son assemblage principal.

Board à la fin de son assemblage principal. Encret de confidentialité les renseignements que vous fournissez dans de formulaite sont recueille par Transports Canada, en vertu des articles 6 at 7 da la *Lai sur la sécurité automobile* (LSA) pour assurer que les vehicules importés sont conformes aux Normes de securité des véhicules automobiles du Canada (NSVAC). De plus, Environnemian Canade que litté es renseignements, conformément aux articles 153 at 157 de la *Lai* seixadiunne sur la protection de l'environnement (1999) (LCPE), pour assurer que les les véhicules automobiles du Canada (NSVAC). De plus, Environnemian Canade que litté es renseignements, conformément aux articles 153 at 157 de la *Lai* seixadiunne sur la protection de l'environnement (1999) (LCPE), pour assurer que les les véhicules sont conformes aux NSVAC et aux normes d'amissions d'Emironnement. Cenada, le numero d'Identification du véhicule (NIV) paut également être divulgé à d'autres parties, incluant les partes suivantes: ministras provinciaux des Transports pour enrogisator et lumnatificuler le véhicule (CCATNI) é des fins de rappel. Les renseignements pauven également être divulgués aux parties autoritées pour appliquer et règri la LSA et LCPE. Ce formulair d'au l'ar emb four importer le véhicule au Canada. Les renseignements personnels recueillis dais le catte du Programme du registraire des véhicules importés sont décré al dans le fichier de renseignements personnels m' MTC PPU 006. En venu des dispositions de la *Loi sur la protection des renseignements* personnels renseignements personnels sont décrés à l'information, chaque personne a droit à l'accès et à l'a protection de ses renseignements personnels. Des instructions sur l'obtanition de vois renseignements personnels sont douis posteneis posteneis ou en direct à l'adresse litte/lwww.infoscure.gc.ca.

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

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

THIS IS EXHIBIT "C" REFERRED TO IN THE AFFIDAVIT OF BLAKE M. ELYEA SWORN BEFORE ME

THIS 23rd DAY OF FEBRUARY, 2021

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

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

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THIS 23rd DAY OF FEBRUARY, 2021

A Commissioner for Oaths/Notary Public in and for the Province of British Columbia ALEXANDRA L. MCCAWLEY

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

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

THIS 23rd DAY OF FEBRUARY, 2021

A Commissioner for Oaths/Notary Public in and

for the Province of British Columbia

ALEXANDRA L. MCCAWLEY GOWLING WLG (CANADA) LLP BARRISTER & SOLICITOR 550 BURRARD STREET - SUITE 2300 BENTALL 5 - VANCOUVER, B.C. V6C 2B5 TELEPHONE: (604) 891-2772 From: Medhurst, Jill <<u>Jill.Medhurst@justice.gc.ca</u>> Sent: November-18-20 10:02 AM To: Cumming, Tom <<u>Tom.Cumming@gowlingwlg.com</u>>; Hanert, Caireen <<u>Caireen.Hanert@gowlingwlg.com</u>> Cc: Bullen, Suzanne <<u>Suzanne.Bullen@justice.gc.ca</u>> Subject: JMB Crushing

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

Good morning,

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

Looking forward to hearing from you regarding your availability.

Thanks

Jill

The information in this email is intended only for the named recipient and may be privileged or confidential. If you are not the intended recipient please notify us immediately and do not copy, distribute or take action based on this email. If this email is marked 'personal' Gowling WLG is not liable in any way for its content. E-mails are susceptible to alteration. Gowling WLG shall not be liable for the message if altered, changed or falsified.

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References to 'Gowling WLG' mean one or more members of Gowling WLG International Limited and/or any of their affiliated businesses as the context requires. Gowling WLG (Canada) LLP has offices in Montréal, Ottawa, Toronto, Hamilton, Waterloo Region, Calgary and Vancouver.

From: Medhurst, Jill <<u>Jill.Medhurst@justice.gc.ca</u>> Sent: November-19-20 8:26 AM To: Cumming, Tom <<u>Tom.Cumming@gowlingwlg.com</u>> Cc: Bullen, Suzanne <<u>Suzanne.Bullen@justice.gc.ca</u>>; Thiessen, Ted <<u>Ted.Thiessen@gowlingwlg.com</u>>; Hanert,

Caireen <<u>Caireen.Hanert@gowlingwlg.com</u>>; Kroeger, Stephen <<u>Stephen.Kroeger@gowlingwlg.com</u>>; Cones, Tristen <<u>Tristen.Cones@justice.gc.ca</u>>

Subject: RE: JMB Crushing

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

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

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

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

Regards

Jill

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

Sent: November 18, 2020 4:32 PM

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

Cc: Bullen, Suzanne <<u>Suzanne.Bullen@justice.gc.ca</u>>; Thiessen, Ted <<u>Ted.Thiessen@gowlingwlg.com</u>>; Hanert, Caireen <<u>Caireen.Hanert@gowlingwlg.com</u>>; Kroeger, Stephen <<u>Stephen.Kroeger@gowlingwlg.com</u>> Subject: RE: JMB Crushing

Good afternoon Jill,

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

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

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

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

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

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

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

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

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

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

Best regards,

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

tom.cumming@gowlingwlg.com

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 \mathcal{A}

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

Sent: November-19-20 1:52 PM

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

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

Subject: RE: JMB Crushing

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

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

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

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

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

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

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

Thanks

Jill

From: Cumming, Tom [mailto:Tom.Cumming@gowlingwlg.com] Sent: November 19, 2020 3:28 PM

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

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

Subject: RE: JMB Crushing

Jill,

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

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

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

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

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

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

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

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

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

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

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

I will send a call in number for 10 am.

Best regards,

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

tom.cumming@gowlingwlg.com

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

Sent: November-19-20 4:11 PM

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

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

,

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

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

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

Thanks

Jill

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

Sent: November 20, 2020 11:52 AM

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

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

Subject: RE: JMB Crushing

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

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

Thanks

Jill

From: Medhurst, Jill <<u>Jill.Medhurst@justice.gc.ca</u>> Sent: December-15-20 10:47 AM To: Cumming, Tom <<u>Tom.Cumming@gowlingwlg.com</u>>; Hanert, Caireen <<u>Caireen.Hanert@gowlingwlg.com</u>> Cc: Bullen, Suzanne <<u>Suzanne.Bullen@justice.gc.ca</u>> Subject: JMB Crushing

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Hi Tom and Caireen,

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

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

Thanks

Jill

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

Avocate

Bureau régional des Prairies (Calgary) 601 606 4th St Calgary, Ab T2P 1T1 Secteur national du contentieux Ministère de la Justice Canada / Gouvernement du Canada Jill.Medhurst@justice.gc.ca / Tél: 403 299-3985 / Téléc: 403 299-3907 From: Cumming, Tom < Tom.Cumming@gowlingwlg.com >

Sent: December 15, 2020 1:43 PM

To: Medhurst, Jill <<u>Jill.Medhurst@justice.gc.ca</u>>; Hanert, Caireen <<u>Caireen.Hanert@gowlingwlg.com</u>> Cc: Bullen, Suzanne <<u>Suzanne.Bullen@justice.gc.ca</u>>; Thiessen, Ted <<u>Ted.Thiessen@gowlingwlg.com</u>> Subject: RE: JMB Crushing Systems Inc. ("JMB") and 2161889 Alberta Ltd. ("216")

Hi Jill

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

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

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

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

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

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

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

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

Can we discuss this matter at your earliest convenience?

Thank you.

Tom

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

tom.cumming@gowlingwlg.com

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

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Hi Tom,

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

Thanks

Jill

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

Avocate

Bureau régional des Prairies (Calgary) 601 606 4th St Calgary, Ab T2P 1T1 Secteur national du contentieux Ministère de la Justice Canada / Gouvernement du Canada Jill.Medhurst@justice.gc.ca / Tél: 403 299-3985 / Téléc: 403 299-3907 From: Cumming, Tom <<u>Tom.Cumming@gowlingwlg.com</u>> Sent: January 26, 2021 1:10 PM To: Medhurst, Jill <<u>Jill.Medhurst@justice.gc.ca</u>> Subject: Follow-up with Jill

Hi Jill

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

Thanks.

Tom

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

tom.cumming@gowlingwlg.com

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

Hi Jill

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

Thanks.

Tom

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

tom.cumming@gowlingwlg.com

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

Hi Tom,

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

Thanks and have a good week!

Jill

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

Hi Jill

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

Thanks.

Tom

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

tom.cumming@gowlingwlg.com

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From: Cumming, Tom <<u>Tom.Cumming@gowlingwlg.com</u>> Sent: February 18, 2021 7:20 PM To: Medhurst, Jill <<u>Jill.Medhurst@justice.gc.ca</u>> Cc: Bullen, Suzanne <<u>Suzanne.Bullen@justice.gc.ca</u>>; Cones, Tristen <<u>Tristen.Cones@justice.gc.ca</u>>; Malm,

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

Subject: RE: JMB

Hi Jill

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

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

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

Kind regards,

Tom

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

tom.cumming@gowlingwlg.com

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



From: Medhurst, Jill <<u>Jill.Medhurst@justice.gc.ca</u>> Sent: February-22-21 4:12 PM To: Cumming, Tom <<u>Tom.Cumming@gowlingwlg.com</u>> Cc: Bullen, Suzanne <<u>Suzanne.Bullen@justice.gc.ca</u>>; Cones, Tristen <<u>Tristen.Cones@justice.gc.ca</u>>; Malm, Tandra <<u>Tandra.Malm@justice.gc.ca</u>> Subject: RE: JMB

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Hi Tom,

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

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

Thanks

Jill

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

COURT FILE NO. 2001-05482

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COURT

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

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

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

APPLICANTS JMB CRUS

JMB CRUSHING SYSTEMS INC. and 2161889 ALBERTA LTD.

DOCUMENT

AFFIDAVIT OF BLAKE M. ELYEA

Gowling WLG (Canada) LLP 1600, 421 – 7th Avenue SW

Calgary, AB T2P 4K9

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

 Attn:
 Tom Cumming/Caireen E. Hanert/Stephen Kroeger

 Phone:
 403.298.1938/403.298.1992/403.298.1018

 Fax:
 403.263.9193

 File No.:
 A163514

AFFIDAVIT OF BLAKE M. ELYEA CERTIFICATE

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

Certified February 23, 2021

Alexandra L. McCawley

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